

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FAIRHOLME FUNDS, INC., et al.,)	
)	
Plaintiffs,)	No. 13-465C
)	(Judge Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	

DEFENDANT’S NOTICE OF FILING OF DECLARATION

In accordance with the Court’s order dated May 25, 2016, defendant, the United States, hereby files the attached declaration in support of its invocation of the presidential communications privilege with respect to four documents delivered to the Court for in camera review on May 27, 2016.

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

s/Robert E. Kirschman, Jr.
ROBERT E. KIRSCHMAN, JR.
Director

s/Kenneth M. Dintzer
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June 10, 2016

Attorneys for Defendant

ATTACHMENT

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FAIRHOLME FUNDS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	No. 13-465C
v.)	(Judge Sweeney)
)	
THE UNITED STATES,)	
)	
Defendant.)	

DECLARATION OF NICHOLAS L. McQUAID

I, Nicholas L. McQuaid, declare:

1. I currently hold the position of Deputy White House Counsel. In this capacity, I am responsible for, inter alia, providing legal advice to White House staff, including advice on matters involving the invocation of the presidential communications privilege.

2. I submit this declaration in accordance with the Court's May 27, 2016 order (1) mandating submission, for in camera review, of four documents withheld from production based upon an assertion of the presidential communications privilege; and (2) inviting the United States, no later than June 10, 2016, to submit a declaration formally invoking the presidential communications privilege with respect to the four documents submitted for in camera review. I base this declaration on my personal knowledge and on information made available to me in the performance of my duties.

3. I am aware that, upon consultation with the Office of the Counsel to the President, the United States has withheld certain documents in whole or in part on the basis of the presidential communications privilege. I understand that descriptions of these documents have been provided to plaintiffs in a privilege log submitted by the United States.

4. On behalf of the Office of the President, I hereby assert the presidential communications privilege with respect to all portions of the documents identified in the Treasury privilege log as UST00500982 and UST00521902, and the redacted portions of documents UST00515290 and UST00550441. The assertion of privilege is based on my review of each of these documents. In making this declaration, I have also relied on the description of the documents provided by my staff and on the description of the documents contained in the Treasury privilege log.

5. I understand that Treasury is also asserting other privileges, such as the deliberative process privilege, with respect to some of the documents or portions of documents as to which the presidential communications privilege is being asserted. The fact that my assertion is limited to the presidential communications privilege is in no way intended to suggest that those documents or portions of documents are not protected in whole or in part by other privileges.

6. The documents or portions of documents as to which the presidential communications privilege is being asserted consist of draft memoranda and electronic mail communications that were authored or solicited and received by an immediate presidential advisor or his staff who had broad and significant responsibility for investigating and formulating advice to be given to the President with respect to decisionmaking on the subject of housing reform policy. In particular, the withheld documents and redactions are:

- a. UST00500982: a draft memorandum concerning housing policy ideas and initiatives, which was attached to an email from Brian Deese, the Deputy Director of the National Economic Council, to various senior Treasury staff requesting any final comments from Treasury, and which was prepared by James

Parrott, a senior advisor to the National Economic Council, and contains input from Gene Sperling, the Director of the National Economic Council, and his staff, as well as from various senior housing policy staff at Treasury;

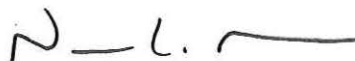
- b. UST00521902: a draft memorandum assigned a file name including, in part, "POTUS_Draft," bearing the heading "THE WHITE HOUSE," and recommending various near- and long-term housing policy reform initiatives;
 - c. UST00515290: portions of an electronic mail conversation between James Parrott, a senior advisor to the National Economic Council, and Treasury staff discussing advice regarding White House housing policy reform; and
 - d. UST00550441: portions of an email from Gene Sperling, the Director of the National Economic Council, to Treasury Secretary Timothy Geithner, and copying Brian Deese, concerning the timing of upcoming housing initiatives.
7. These communications were solicited and received by senior presidential advisors or their staff, including:
- a. Gene Sperling, former Director of the National Economic Council and Assistant to the President for Economic Policy. The National Economic Council is part of the White House Office, and, at the time of these communications, Mr. Sperling was the chief White House advisor to the President on the development and implementation of economic policy. In that capacity, he led the President's daily economic briefing. He also advised the President on decisions relating to housing policy initiatives.
 - b. Brian Deese, former Deputy Director of the National Economic Council (and current Assistant to the President and Senior Advisor). At the time of these

communications, Mr. Deese reported directly to Gene Sperling on issues relating to housing policy reform.

- c. James Parrott, former Senior Advisor to the National Economic Council. Mr. Parrott reported directly to Mr. Sperling on issues related to housing policy reform.

8. The communications as to which the presidential communications privilege is being asserted were authored or solicited and received by an immediate presidential advisor or his staff who had broad and significant responsibility for investigating and formulating advice to be given to the President with respect to decisionmaking on the subject of housing reform policy. I believe that, without the protection of the presidential communications privilege over the communications described above, presidential advisors and their staffs would be chilled from gathering relevant information, exploring alternatives, and providing fully informed recommendations regarding the performance of the President's duties.

9. I declare under penalty of perjury that the foregoing is true and correct. Executed this 10th day of June 2016.



Nicholas L. McQuaid,
Deputy Assistant to the President and
Deputy Counsel to the President