

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

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

**PLAINTIFFS’ MOTION FOR JOINDER OF FANNIE MAE AND FREDDIE MAC AS NOMINAL DEFENDANTS AND FOR ISSUANCE OF SUMMONSES**

When Plaintiffs amended the Complaint in this case on March 8, 2018, they added shareholder derivative claims on behalf of the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”). Consistent with the procedures ordinarily followed in shareholder derivative actions in federal court, Plaintiffs move that the Court formally join Fannie and Freddie as nominal defendants under RCFC 19(a) and issue summonses to both Companies.

The plaintiffs in *Rafter v. United States*, another Net Worth Sweep case with derivative claims pending before this Court, have already filed a motion requesting the same relief in that case with respect to Fannie that Plaintiffs in this motion request with respect to both Companies. *See* Plaintiffs’ Motion for Joinder of Federal National Mortgage Association as a Nominal Defendant and for Issuance of a Summons, *Rafter v. United States*, No. 14-740 (Fed. Cl. Apr. 30, 2018). Plaintiffs will not repeat the arguments advanced by the *Rafter* plaintiffs but instead incorporate them by reference. As the *Rafter* plaintiffs’ motion explains, this Court has jurisdiction to hear derivative claims, *see First Hartford Corp. Pension Plan & Tr. v. United States*, 194 F.3d

1279, 1293 (Fed. Cir. 1999), but the Court's rules do not provide a clear mechanism for joining and formally notifying a corporation that is the subject of a derivative suit, *compare* FED. R. CIV. P. 4, *with* RCFC 4. Plaintiffs believe that the best approach is for the Court to join Fannie and Freddie as nominal defendants and issue summonses under RCFC 19(a)(2), RCFC 83, and the All Writs Act, 28 U.S.C. § 1651. But in *Starr*, Judge Wheeler took a slightly different approach that would also be appropriate: issuing a "Notice and Order" to the corporation in question alerting it to the case and stating that it would be permitted to participate. *See Starr Int'l Co., Inc. v. United States*, 103 Fed. Cl. 287 (2012); Exhibit A (*Starr* Notice and Order).

Out of an abundance of caution, Plaintiffs request that the Court issue summonses to Fannie and Freddie. But Plaintiffs do not believe that such action by the Court is necessary for the outcome of this litigation to be just as binding on the Companies as it will be on the United States. Attorneys for both Companies have agreed to accept service of the amended complaint, and the Companies remain under the complete control of the United States. Under these circumstances, summonses or formal notices are not required to fully apprise both Companies of this litigation and to give those who control them an opportunity to be heard.

Plaintiffs consulted counsel for Defendant, and Defendant opposes this motion.

Date: May 10, 2018

Respectfully submitted,

*Of counsel:*

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# EXHIBIT A

# In the United States Court of Federal Claims

No. 11-779C

(Filed: January 31, 2012)

\*\*\*\*\*  
 \*  
 STARR INTERNATIONAL COMPANY, INC., \*  
 \*  
 Plaintiff, \*  
 \*  
 v. \*  
 \*  
 THE UNITED STATES, \*  
 \*  
 Defendant, \*  
 \*

## NOTICE AND ORDER

TO: American International Group, Inc.  
 180 Maiden Lane  
 New York, New York 10038

A lawsuit has been filed in this Court by shareholders of your corporation. Plaintiff commenced the action with the filing of a Verified Class Action Complaint on November 21, 2011. Plaintiff filed an Amended Verified Class Action Complaint on January 31, 2012, a copy of which is attached hereto. Pursuant to Rule 19(a)(2) of this Court, American International Group, Inc. (“AIG”) is hereby added as a party to this case as a nominal defendant. In all future pleadings and orders, the caption will show AIG as a nominal defendant.

As a party, AIG will be bound by the Court’s final judgment in this case. AIG may participate in this case to any extent it deems appropriate. AIG is not required to answer or respond to the attached complaint (although it may answer or respond if it wishes), and no action is required of AIG at the present time. However, the Court invites AIG to enter an appearance in this case through counsel of its choice (a member of the bar of this Court) as a means of being informed of all pleadings, motions, briefs, and orders filed in this case. The Court will include AIG’s counsel of record in all notifications regarding this case.

AIG may review all documents filed to date in this case by accessing the Court’s Case Management/Electronic Case Files (“CM/ECF”) system. These documents are

available to the public through PACER, an acronym for “Public Access to Court Electronic Records.”

For your information, the following attorneys are representing the Plaintiff and Defendant in this case:

For Plaintiff:

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Counsel of record for Plaintiff is directed to serve this Notice and Order upon AIG, with the attached amended complaint, and to file thereafter Proof of Service with the Court.

IT IS SO ORDERED.

s/Thomas C. Wheeler  
THOMAS C. WHEELER  
Judge