

UNITED STATES COURT OF FEDERAL CLAIMS

OWL CREEK ASIA I, L.P.; OWL CREEK ASIA II, L.P.; OWL CREEK I, L.P.; OWL CREEK II, L.P.; OWL CREEK ASIA MASTER FUND, LTD.; OWL CREEK CREDIT OPPORTUNITIES MASTER FUND, L.P.; OWL CREEK OVERSEAS MASTER FUND, LTD.; AND OWL CREEK SRI MASTER FUND, LTD.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 18-281C
(Judge Sweeney)

APPALOOSA INVESTMENT LIMITED PARTNERSHIP I; PALOMINO MASTER LTD.; AND AZTECA PARTNERS LLC,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 18-370C
(Judge Sweeney)

AKANTHOS OPPORTUNITY MASTER FUND, L.P.,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 18-369C
(Judge Sweeney)

<p>CSS, LLC,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>THE UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 18-371C (Judge Sweeney)</p>
<p>MASON CAPITAL L.P., AND MASON CAPITAL MASTER FUND L.P.,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>THE UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No. 18-529C (Judge Sweeney)</p>

PLAINTIFFS’ JOINT UNOPPOSED MOTION TO COORDINATE

The plaintiffs in *Owl Creek Asia I, L.P., et al., v. United States* (No. 18-281C) (the “Owl Creek Action”), *Appaloosa Investment Limited Partnership I, et al., v. United States* (No. 18-370C) (the “Appaloosa Action”), *Akanthos Opportunity Master Fund, L.P., v. United States* (No. 18-369C) (the “Akanthos Action”), *CSS, LLC, v. United States* (No. 18-371C) (the “CSS Action”), *Mason Capital L.P., and Mason Capital Master Fund L.P., v. United States* (No. 18-529C) (the “Mason Action” and, together with the *Owl Creek Action*, the *Appaloosa Action*, the *Akanthos Action*, and the *CSS Action*, the “Subject Actions”)¹ hereby jointly move this Court for an Order coordinating the Subject Actions with the following cases (collectively, the “Coordinated Actions”):

¹ The plaintiffs in the Subject Actions are referred to herein collectively as the “Plaintiffs.”

- *Fairholme, et al., v. United States* (No. 13-465C) (the “Fairholme Action”);
- *Arrowood Indemnity Co., et al., v. United States* (No. 13-698C) (the “Arrowood Action”);
- *Cacciapalle, et al., v. United States* (No. 13-466C) (including the cases consolidated therewith, *American European Ins. Co. v. United States*, No. 13-496C, and *Dennis v. United States*, No. 13-542C) (the “Cacciapalle Action”);
- *Fisher, et al., v. United States* (No. 13-608C) (including the consolidated case therewith, *Shipmon v. United States*, No. 13-672C); and
- *Washington Federal, et al., v. United States* (No. 13-385C).

The Coordinated Actions were coordinated for purposes of discovery, motion practice, case management and scheduling, and other pretrial proceedings, as appropriate, pursuant to this Court’s October 29, 2013 Order (as amended, the “Coordination Order”), filed in each of the Coordinated Actions.

Plaintiffs further request that the Subject Actions be governed by the briefing schedule set forth in the Court’s February 21, 2018 scheduling orders (which amended the Court’s January 12, 2018 scheduling order), entered in the Coordinated Actions and in related cases *Reid v. United States* (No. 14-152C) and *Rafter v. United States* (No. 14-740C) (the “MTD Scheduling Order”).²

Basis for Relief

Pursuant to Rule 42(a)(3) of the Rules of the United States Court of Federal Claims, the

² See, e.g., *Fairholme Action* (Docket Nos. 396 and 399). The MTD Scheduling Order applies not only to the Coordinated Actions but also to the related cases *Reid v. United States* (No. 14-152C) and *Rafter v. United States* (No. 14-740C). See *Fairholme Action* (Docket No. 396, at n.1).

Court may “issue any [] orders to avoid unnecessary cost or delay” if “actions before the court involve a common question of law or fact[.]” R.C.F.C 42(a)(3); *see Jaynes v. U.S.*, 69 Fed. Cl. 450, 459 (2006) (*citing* R.C.F.C. 40.2; 42(a)) (stating that “individual civil actions [] could be coordinated under this court’s rules governing related cases [] and consolidation”); *Sweet v. United Parcel Serv., Inc.*, Case No. CV0902653DDPRZX, 2011 WL 13186686, at *1 (C.D. Cal. Apr. 20, 2011) (concluding that several individual actions should be coordinated for purposes of judicial economy because all of the cases involve common witnesses, the same defendant, and the plaintiffs all held similar positions).

Moreover, the Court’s October 29, 2013 Order regarding coordination contemplates the coordination of related actions:

3. When a case that properly belongs as part of the Coordinated Actions (each a “Related Action”) is hereafter filed in or transferred to this Court, the Court requests the assistance of counsel in calling to the attention of the clerk of the Court the filing or transfer of any case that might properly be coordinated as part of the Coordinated Actions, and counsel are to assist in assuring that counsel in subsequent actions receive notice of this Order.

4. Each Related Action shall be governed by the terms of this Order and shall be coordinated for all purposes with the Coordinated Actions.

Order, *Cacciapalle, et al., v. United States*, Case No. 1:13-cv-00466, at *2 (Fed. Cl., Oct. 29, 2013) (emphasis added) (Docket No. 36).

As explained in the Notices of Directly Related Cases filed by the Plaintiffs in their respective Subject Actions,³ the Subject Actions and the Coordinated Actions are directly related and all allege a taking by the United States of the plaintiffs’ property interest in stock issued by

³ *See Owl Creek* Action (Docket No. 2); *Appaloosa* Action (Docket No. 2); *Akanthos* Action (Docket No. 2); *CSS* Action (Docket No. 2); *Mason* Action (Docket No. 2).

the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”), by way of the August 17, 2012 amendment to the Senior Preferred Stock Purchase Agreements between the Department of Treasury and the Federal Housing Finance Agency (acting as conservator for Fannie Mae and Freddie Mac).⁴ As such, all of the Subject Actions share common questions of law and fact with the Coordinated Actions and are properly coordinated for purposes of judicial economy.

Coordinating the Subject Actions with the Coordinated Actions will not result in any harm or prejudice to the Defendant or other parties. Indeed, Plaintiffs have conferred with counsel for Defendant, and Defendant does not oppose the relief sought in this Motion.⁵

Prayer for Relief

For the reasons stated herein, Plaintiffs respectfully move this Court to enter the Proposed Order submitted herewith (1) coordinating the Subject Actions with the Coordinated Actions and (2) specifying that the Subject Actions are governed by the MTD Scheduling Order such that: (a) the Defendant’s motion to dismiss must be filed no later than June 29, 2018; (b) the response to the Defendant’s motion to dismiss must be filed no later than September 20, 2018; and (3) the Defendant must file its reply in support of its motion to dismiss no later than December 19, 2018.

⁴ On March 8, 2018, the plaintiffs in the Coordinated Actions filed amended complaints. Aside from the complaints filed in the *Cacciapalle* and *Arrowood* Actions, all of the complaints were filed under seal. However, it is Plaintiffs’ understanding that all of the complaints under seal include claims similar to Plaintiffs’ and are based on the same facts.

⁵ Defendant’s consent was conditioned on Plaintiff’s agreement not to amend the complaints in the Subject Actions to incorporate material produced during jurisdictional discovery.

Respectfully submitted:

April 23, 2018

By: *s/ Lawrence D. Rosenberg*

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MASON CAPITAL L.P., AND MASON
CAPITAL MASTER FUND L.P.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 18-529C
(Judge Sweeney)

**[PROPOSED] ORDER RE: PLAINTIFFS' JOINT UNOPPOSED
MOTION TO COORDINATE**

AND NOW, upon consideration of the Joint Unopposed Motion to Coordinate filed by the plaintiffs in *Owl Creek Asia I, L.P., et al., v. United States* (No. 18-281C) (the "Owl Creek Action"), *Appaloosa Investment Limited Partnership I, et al., v. United States* (No. 18-370C) (the "Appaloosa Action"), *Akanthos Opportunity Master Fund, L.P., v. United States* (No. 18-369C) (the "Akanthos Action"), *CSS, LLC, v. United States* (No. 18-371C) (the "CSS Action"), and *Mason Capital L.P., and Mason Capital Master Fund L.P., v. United States* (No. 18-529C) (the "Mason Action" and, together with the *Owl Creek Action*, *Appaloosa Action*, *Akanthos Action*, and *CSS Action*, the "Subject Actions"), and good cause appearing therefore, it is hereby ORDERED and DECREED as follows:

The Subject Actions are hereby coordinated with the following previously coordinated actions: *Fairholme, et al., v. United States* (No. 13-465C); *Arrowood Indemnity Co., et al., v.*

United States (No. 13-698C); *Cacciapalle, et al., v. United States* (No. 13-466C) (including the cases consolidated therewith, *American European Ins. Co. v. United States*, No. 13-496C and *Dennis v. United States*, No. 13-542C); *Fisher, et al., v. United States* (No. 13-608C) (including the case consolidated therewith, *Shipmon v. United States*, No. 13-672C); and *Washington Federal, et al., v. United States* (No. 13-385C) (collectively, the “Coordinated Actions”). The Subject Actions and the Coordinated Actions are coordinated for purposes of discovery, motion practice, case management and scheduling, and other pretrial proceedings, as appropriate.

Furthermore, the Subject Actions shall be governed by the February 21, 2018 scheduling orders entered in the Coordinated Actions, which amended the January 12, 2018 scheduling order. *See, e.g., Fairholme, et al., v. United States* (No. 13-465C) (Docket No. 399). As such, with respect to each of the Subject Actions: (1) the Defendant’s motion to dismiss must be filed no later than June 29, 2018; (2) the response to the Defendant’s motion to dismiss must be filed no later than September 20, 2018; and (3) the Defendant must file its reply in support of its motion to dismiss no later than December 19, 2018.

A party to any of the Subject Actions may move for relief from the terms of this Order by filing a motion with the Court.

IT IS SO ORDERED.

MARGARET M. SWEENEY
Judge