

ORAL ARGUMENT SCHEDULED FOR APRIL 15, 2016**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PERRY CAPITAL LLC,

Appellant,

v.

JACOB J. LEW, et al.,

Appellees.

Nos. 14-5243 (L),
14-5254 (con.),
14-5260 (con.),
14-5262 (con.)

**APPELLANT PERRY CAPITAL LLC'S UNOPPOSED MOTION TO
UNSEAL INSTITUTIONAL PLAINTIFFS' REPLY BRIEF AND
DOCUMENTS REFERENCED THEREIN**

Pursuant to Circuit Rule 47.1(c), Appellant Perry Capital LLC hereby files this unopposed motion to unseal the Initial Reply Brief for Institutional Plaintiffs (Feb. 2, 2016) (D.E. 1597013), the Final Reply Brief for Institutional Plaintiffs (Mar. 8, 2016) (D.E. 1602947) (together "Institutional Plaintiffs' Reply Brief"), and the seven sealed documents referenced therein that were filed in this Court as part of Appellant Fairholme Funds, Inc.'s, *et al.*, ("Fairholme") sealed motion for judicial notice of, and motion to supplement the record with, documents subject to the protective order in *Fairholme Funds, Inc. v. United States*, No. 13-cv-465 (Fed. Cl.), *see* Fairholme's Motion for Judicial Notice (July 29, 2015) (D.E. 1565601).

Pursuant to instructions from the Clerk's office, Appellants have provided the Court with those seven documents (Exhibits 3, 5, 6, 7, 17, 19 and 33 to Fairholme's Motion for Judicial Notice) under seal in a separate filing. In support of this Motion, Perry Capital states as follows:

1. Oral argument is scheduled for Friday, April 15, 2015.
2. On July 29, 2015, Fairholme filed a sealed motion in this Court to take judicial notice of, and to supplement the record with, thirty-four documents that were produced by the government and subject to the protective order in *Fairholme Funds, Inc. v. United States*, a separate litigation involving the Net Worth Sweep in the Court of Federal Claims. Fairholme's Motion for Judicial Notice, *supra*.
3. On November 3, 2015, this Court issued an order referring Fairholme's Motion for Judicial Notice to the merits panel in this case, and permitting the parties to reference the documents in their remaining briefs. Order (Nov. 3, 2015) (D.E. 1582075).
4. As permitted by the November 3 Order, Institutional Plaintiffs' Reply Brief references seven of the thirty-four documents that were appended to Fairholme's Motion for Judicial Notice.
5. On April 11, 2016, the Court of Federal Claims issued a sealed order removing the "Protected Information" designation from those seven documents. Sealed Order in *Fairholme Funds, Inc. v. United States*, No. 13-cv-465 (Apr. 11,

2016) (D.E. 311). In accordance with instructions from the Clerk, simultaneously with this motion, Appellant is filing under seal the April 11 Order of the Court of Federal Claims and the seven documents de-designated by that Order.

6. The parties have conferred, and Appellees do not oppose the unsealing of Institutional Plaintiffs' Reply Brief or the seven documents referenced therein. Further, the parties agree that the seven de-designated documents may be disclosed publicly and discussed in open court at oral argument on April 15.

7. Although the remainder of the documents filed by Fairholme in its Motion for Judicial Notice will remain under seal, the parties agree that there is no need to clear the courtroom due to confidentiality concerns during oral argument. Should the Court wish to discuss materials in Fairholme's Motion for Judicial Notice that were not cited in Institutional Plaintiffs' Reply Brief, the parties would be available to do so in a closed session

Dated: April 13, 2016

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CERTIFICATE OF SERVICE

I certify that on this 13th day of April, 2016, I caused the foregoing to be filed with the Clerk of the United States Court of Appeals for the D.C. Circuit using the appellate CM/ECF system. Service was accomplished on the following persons by the appellate CM/ECF system:

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