

# United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 14-5243**

**September Term, 2015**

**1:13-cv-01025-RCL**

**1:13-cv-01053-RCL**

**1:13-cv-01439-RCL**

**1:13-mc-01288-RCL**

**Filed On:** June 21, 2016

Perry Capital LLC, for and on behalf of  
investment funds for which it acts as  
investment manager,

Appellant

v.

Jacob J. Lew, in his official capacity as the  
Secretary of the Department of the Treasury,  
et al.,

Appellees

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Consolidated with 14-5254, 14-5260, 14-5262

**BEFORE:** Brown and Millett, Circuit Judges and Ginsburg, Senior Circuit  
Judge

## **ORDER**

It is, on the court's own motion, **ORDERED** that the class plaintiffs and each defendant submit supplemental briefs addressing the following questions:

1. Regarding the class plaintiffs' claim against Treasury for breach of fiduciary duty, is there a grant of subject matter jurisdiction and a waiver of sovereign immunity that is not the Federal Tort Claims Act?
2. Regarding all the class plaintiffs' other claims:
  - a. Is each defendant subject to suit absent a waiver of sovereign immunity and, if not, is there such a waiver? The answer to this question should include a discussion of whether the FHFA's challenged actions were taken solely in the agency's capacity as conservator for Fannie Mae and Freddie Mac, or whether they were taken in whole or in part in a regulatory capacity.
  - b. What is the source of subject matter jurisdiction over the claims?

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It is

**FURTHER ORDERED** that the following schedule apply for the filing of the supplemental briefs:

Brief for Class Plaintiffs (not to exceed 7,500 words)	07/01/16
Joint Brief for FHFA, Fannie Mae and Freddie Mac (not to exceed 5,000 words)	07/08/16
Brief for the Department of Treasury (not to exceed 2,500 words)	07/08/16
Reply Brief for Class Plaintiffs (not to exceed 2,500 words)	07/15/16

The parties are directed to hand file the paper copies of their submissions to the court by the date due.

**Per Curiam**

**FOR THE COURT:**

Mark J. Langer, Clerk

BY: /s/  
Michael C. McGrail  
Deputy Clerk