

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION**

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THOMAS SAXTON, IDA SAXTON,  
BRADLEY PAYNTER,

Plaintiffs,

vs.

THE FEDERAL HOUSING FINANCE  
AGENCY, in its capacity as Conservator of the  
Federal National Mortgage Association and the  
Federal Home Loan Mortgage Corporation,  
MELVIN L. WATT, in his official capacity as  
Director of the Federal Housing Finance  
Agency, and THE DEPARTMENT OF THE  
TREASURY,

Defendants.

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Civil Action No. 1:15-cv-00047

**EXPEDITED RELIEF REQUESTED**

**PLAINTIFFS' MOTION TO STAY BRIEFING ON MOTIONS TO DISMISS**

Plaintiffs Thomas Saxton, Ida Saxton, and Bradley Paynter hereby move this Court to stay briefing on Defendants' motions to dismiss. As explained in Plaintiffs' brief in support of this motion, a stay is justified in light of the motion for leave to file an amicus curiae brief filed by Fairholme Funds, Inc. on October 15, 2015. Opposing counsel has indicated that Defendants will oppose this motion.

Pursuant to LR 7(j), Plaintiffs request expedited relief. Under the current briefing schedule, their response to Defendants' motions to dismiss is due on October 26, 2015. Plaintiffs respectfully request a ruling on their motion to stay briefing before that date or, alternatively, an order temporarily suspending the briefing schedule during the Court's consideration of Plaintiffs' stay motion.

Dated: October 19, 2015

Respectfully submitted,

/s/ Alexander M. Johnson

Alexander M. Johnson, AT0004024

Sean P. Moore, AT0005499

BROWN, WINICK, GRAVES, GROSS,  
BASKERVILLE AND SCHOENEBAUM, P.L.C.

666 Grand Avenue, Suite 2000

Des Moines, IA 50309-2510

Telephone: 515-242-2400

Facsimile: 515-283-0231

E-mail: [ajohnson@brownwinick.com](mailto:ajohnson@brownwinick.com)

[moore@brownwinick.com](mailto:moore@brownwinick.com)

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of October 2015, I caused a true and correct copy of the foregoing to be filed electronically using the Court's CM/ECF system, causing a true and correct copy to be served on all counsel of record.

/s/ Alexander M. Johnson

Alexander M. Johnson

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Civil Action No. 1:15-cv-00047

**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION TO STAY BRIEFING ON  
MOTIONS TO DISMISS**

In support of their motion to stay briefing on Defendants' motions to dismiss, Plaintiffs Thomas Saxton, Ida Saxton, and Bradley Paynter state as follows:

At issue in this case is the federal government's unprecedented action of declaring itself exclusively entitled to the existing net worth and future profits of Fannie Mae and Freddie Mac, two private, shareholder-owned companies. To date, this "Net Worth Sweep" has profited the federal government by over \$130 billion, and it has transferred the economic rights of Plaintiffs and Fannie's and Freddie's other private shareholders to the federal government. The Defendant agencies have moved to dismiss the case, arguing that federal law immunizes the government's self-dealing from judicial scrutiny and precludes Fannie's and Freddie's shareholders from seeking to vindicate their rights in court. Plaintiffs' response to the motions to dismiss currently is due on October 26.

On October 15, Fairholme Funds, Inc. filed a motion for leave to file a sealed amicus brief in support of Plaintiffs. *See* Doc. 29. Like Plaintiffs, Fairholme owns shares of Fannie and Freddie stock and, also like Plaintiffs, Fairholme is challenging the Net Worth Sweep in court. Unlike Plaintiffs, however, Fairholme has been given the opportunity to take discovery relating to the government's adoption of the Net Worth Sweep. According to Fairholme, that discovery has brought to light "documents and other materials that are directly relevant to issues before this Court and that show that Defendants' litigation-driven rationales for the Net Worth Sweep are highly misleading." Doc. 29-1 at 1-2.

If Fairholme's description of the discovery materials is accurate, Plaintiffs very likely would seek to amend their complaint to incorporate this newly discovered information. The federal rules declare that "[t]he court should freely give leave [to amend] when justice so requires," FED. R. CIV. P. 15(a)(2), and the Supreme Court has made clear that "this mandate is to be heeded," *Foman v. Davis*, 371 U.S. 178, 182 (1962). Leave to amend is particularly appropriate when the amendment seeks to incorporate facts that were not known to the plaintiff when the complaint was filed. *See, e.g., Arthur v. Maersk, Inc.*, 434 F.3d 196, 205 (3d Cir. 2006); *Island Creek Coal Co. v. Lake Shore, Inc.*, 832 F.2d 274, 279 (4th Cir. 1987); *Sweetheart Plastics, Inc. v. Detroit Forming, Inc.*, 743 F.2d 1039, 1044-45 (4th Cir. 1984).

Before Plaintiffs can seek to amend the complaint, however, they must first be able to review and assess the evidence that Fairholme asserts is relevant to the claims before this Court. And in order to do that, Plaintiffs must obtain leave to access information subject to the protective order entered in Fairholme's litigation in the United States Court of Federal Claims. Plaintiffs intend to petition the Court of Federal Claims for such access forthwith.

In the meantime, Plaintiffs request that proceedings on Defendants' motions to dismiss in this Court be stayed. Plaintiffs respectfully submit that this is the most just and efficient way to manage proceedings in this case. If Plaintiffs are granted leave to access protected information from the Court of Federal Claims, they will make a determination as to whether to amend and seek leave to file any such amended complaint within two weeks of being granted access to such material. If Plaintiffs seek and are granted leave to amend their complaint, the amended complaint will "supercede[ ] [the] original complaint and render[ ] the original complaint without legal effect." *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 928 (8th Cir. 2005). It would be highly inefficient to expend additional resources litigating whether to dismiss a complaint that may soon become obsolete.

Furthermore, staying proceedings on the motions to dismiss will not prejudice Defendants in any way. This Court already has made clear that Defendants will not be required to produce an administrative record or respond to a motion for summary judgment until their motions to dismiss are decided, *see* Doc. 23, and granting Plaintiffs' stay motion will not do anything to change that. If Plaintiffs do amend the complaint, Plaintiffs, of course, would not oppose the Defendants having an opportunity to make any changes they deem necessary to their motions to dismiss. And if for whatever reason the complaint is not amended, proceedings can simply continue on the existing motions to dismiss at that time.

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their motion to stay briefing on Defendants' motions to dismiss.

Dated: October 19, 2015

Respectfully submitted,

/s/ Alexander M. Johnson

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