

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

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.

Civil Action No. 1:15-cv-00047

**PLAINTIFFS' RESPONSE TO DEFENDANTS' RESISTANCE TO FAIRHOLME'S
MOTION FOR LEAVE TO FILE SEALED AMICUS BRIEF AND APPENDIX**

Plaintiffs Thomas Saxton, Ida Saxton, and Bradley Paynter ("Plaintiffs") respectfully submit this response to Defendants' Resistance to Fairholme's Motion for Leave to File a Sealed Amicus Brief and Appendix (Doc. 36) ("Defendants' Resistance"). Plaintiffs support Fairholme's motion and disagree with many of the points made in Defendants' Resistance, but they offer this short response to make two points in particular:

First, if given the opportunity to review the evidence Fairholme seeks to put before this Court, Plaintiffs would likely seek leave to amend the Complaint. Plaintiffs drafted the Complaint in this case using only publicly available information about the Net Worth Sweep, most of which was disclosed by Defendants. Fairholme's non-sealed filings in this and other cases say that the public record regarding the Net Worth Sweep is incomplete and misleading in ways that are material to claims like those at issue here. Accordingly, Plaintiffs should be given

access to the Fairholme evidence and afforded an opportunity to amend the Complaint. Furthermore, Plaintiffs believe that this Court should grant Fairholme's motion to make clear that it will consider the Fairholme evidence to the extent that it is relevant.

Second, Defendants' Resistance says that "Plaintiffs have already conceded that Defendants' rationales for the Third Amendment are legally *irrelevant* for purposes of resolving Defendants' motions to dismiss." Defendants' Resistance at 5. This is a gross misrepresentation of Plaintiffs' position. In urging the Court to follow its usual practice of requiring the defendant agencies to promptly produce administrative records in this case, Plaintiffs argued that doing so would allow them to move for summary judgment on the ground that the effect of the Net Worth Sweep—stripping the Companies of capital and preventing them from returning to normal business operations—violates the Housing and Economic Recovery Act and the Administrative Procedure Act. *See* Plaintiffs' Response to Defendants' Motion to Stay Submission of Scheduling Order at 4, Doc. 21. Plaintiffs did not concede, and they do not agree, with Defendants' contention that the Court may dismiss this case without considering Defendants' reasons for imposing the Net worth Sweep. Plaintiffs' response to Defendants' motions to dismiss—filed three days before Defendants' Resistance—explains at length why this Court cannot simply ignore the Complaint's allegation that Defendants undertook the Net Worth Sweep to enrich themselves while deliberately crippling Fannie and Freddie. Plaintiffs' Response to Motions to Dismiss at 42–43, 59–60, Doc. 35. Despite Defendants' attempts to make Plaintiffs' position into a strawman, Plaintiffs have not and will not concede that Defendants are free to disavow the purposes of conservatorship and take Fannie's and Freddie's profits for themselves with legal impunity.

Dated: November 5, 2015

Respectfully submitted,

/s/ Alexander M. Johnson

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November 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