

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

THOMAS SAXTON, IDA SAXTON,
BRADLEY PAYNTER,

Plaintiffs,

v.

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

JOINT MOTION TO SET BRIEFING SCHEDULE AND PAGE LIMITATIONS

The parties to the above-captioned action respectfully request that the Court enter an order granting the Federal Housing Finance Agency (“FHFA”) and Melvin L. Watt (together, the “FHFA Defendants”) leave to file a Supplemental Brief in Support of its March 18, 2016 Motion to Dismiss the Plaintiffs’ Amended Complaint and setting a briefing schedule for (1) FHFA’s Supplemental Brief, (2) the resistance of Plaintiffs to the March 18, 2016 Motions to Dismiss (which shall include any response to the arguments in the Supplemental Brief), and (3) the replies of the FHFA Defendants and Defendant Department of the Treasury (“Treasury”) in support of the March 18, 2016 Motions to Dismiss (which shall include their replies regarding the arguments in the Supplemental Brief). In addition, the parties request that the Court enter an order granting the parties leave to exceed page limitations for their briefs in connection with those motions.

In support of this joint motion, the parties state as follows:

1. On February 9, 2016, the Court granted Plaintiffs' request for permission to file an Amended Complaint and vacated the pending motions to dismiss as moot. Doc. # 60. The Clerk of Court filed Plaintiffs' Amended Complaint under seal on the same day. Doc. # 61.
2. On February 29, 2016, pursuant to a joint motion of the parties, the Court entered an Order setting a briefing schedule in connection with the Amended Complaint and extending the page limits for the parties' briefs as follows: 45 pages for the FHFA Defendants' motion to dismiss brief; 35 pages for Treasury's motion to dismiss brief; 80 pages for Plaintiffs' resistance to Defendants' motions to dismiss; and 25 pages each for the FHFA Defendants' reply and Treasury's reply in support of the motions to dismiss. Doc. # 68.
3. On March 18, 2016, Defendants FHFA and Treasury each filed a motion to dismiss the Amended Complaint. Docs. # 76, 77.
4. On March 31, 2016, the Court granted Defendants' Joint Motion to Stay these proceedings pending a decision by the Judicial Panel on Multidistrict Litigation ("JPML") on FHFA's Motion to Transfer this case pursuant to 28 U.S.C. § 1407. Doc. # 79.
5. On June 2, 2016, after the JPML denied the Motion to Transfer, the Court issued an order requiring Plaintiffs to respond to the Motions to Dismiss by June 16, 2016.
6. FHFA plans to file a Supplemental Brief in support of its Motion to Dismiss. FHFA's Supplemental Brief will address the effect of 12 U.S.C. § 4623(d) on the court's subject matter jurisdiction over the plaintiff's challenge to FHFA's actions. Section 4623(d) provides that "no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subchapter (other than appointment of a conservator under section 4616 or 4617 of this title . . .) or to review, modify,

suspend, terminate, or set aside such classification or action.” After FHFA filed its motion to dismiss Plaintiffs’ Amended Complaint in this action, the D.C. Circuit requested supplemental briefing on § 4623(d) from the parties to an appeal involving similar challenges to the Third Amendment, *Perry Capital LLC v. Lew, et al.*, Nos. 14-5243, 14-5254, 14-5260, 14-5262 (D.C. Cir.). FHFA requests a page limit of eight pages for the Supplemental Brief. Plaintiffs do not oppose FHFA’s request for a Supplemental Brief of eight pages, provided that they receive an additional eight pages for their resistance beyond the 80 pages that the Court allowed them in its February 29, 2016 order.

7. The parties have conferred and agree—subject to the Court’s approval—to the following modifications concerning the briefing deadlines and page limitations in connection with Defendants’ Motions to Dismiss:

- a) FHFA’s Supplemental Brief in Support of its Motion to Dismiss shall be filed on or before June 16, 2016.
- b) The Supplemental Brief shall not exceed eight pages.
- c) Plaintiffs’ resistance to Defendants’ Motions to Dismiss (including any response to the arguments in the Supplemental Brief) shall be filed on or before June 30, 2016.
- d) Plaintiffs’ resistance to Defendants’ motions to dismiss shall not exceed 88 pages.
- e) Defendants’ replies in support of their motions to dismiss (including any replies regarding the arguments in the Supplemental Brief) shall be filed on or before August 1, 2016.
- f) Defendants’ replies in support of their motions to dismiss shall not exceed 25 pages each.

8. Good cause supports the foregoing modification of the briefing schedule and page limitations. The Court granted two prior extensions of briefing deadlines and page limitations in this case, in connection with Defendants' motions to dismiss Plaintiffs' original Complaint, Doc. # 12 (July 13, 2015), and in connection with Defendants' motions to dismiss Plaintiffs' Amended Complaint, Doc. # 68 (Feb. 29, 2016). The modifications to page limitations requested herein are similar to those that the Court granted in connection with the original Complaint and Amended Complaint, except that FHFA shall be permitted to file a Supplemental Brief of eight pages, and Plaintiffs shall have an additional eight pages beyond the 80 pages authorized in the February 29, 2016 Order, for a total of 88 pages. The requested extensions to the deadlines are similar to those granted in connection with the original Complaint.

WHEREFORE, the parties pray the Court enter an order—substantially in the form of the proposed order attached hereto—permitting FHFA to file a Supplemental Brief in Support of its Motion to Dismiss, setting the briefing schedule for the Supplemental Brief and other briefs related to the Motions to Dismiss, and granting the parties leave to exceed page limitations for their briefs.

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
ajohnson@brownwinick.com
moore@brownwinick.com

Attorneys for Plaintiffs

/s/ Matthew C. McDermott
Matthew C. McDermott
Stephen H. Locher
BELIN MCCORMICK, P.C.
666 Walnut Street, Suite 2000
Des Moines, Iowa 50309-3989
Telephone: (515) 243-7100
Facsimile: (515) 558-0643
mmcdermott@belinmccormick.com
shlocher@belinmccormick.com

*Attorneys for Defendants Federal Housing
Finance Agency and Director Melvin L.
Watt*

/s/ Thomas D. Zimpleman
Thomas D. Zimpleman
Deepthy C. Kishore
U.S. DEPARTMENT OF JUSTICE
CIVIL DIVISION
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
Telephone: 202.514.2988
Facsimile: 202.616.8460
Thomas.D.Zimpleman@usdoj.gov
Deepthy.C.Kishore@usdoj.gov

*Attorneys for the Department of the
Treasury*

/s/ Howard N. Cayne
Howard N. Cayne* (D.C. Bar # 331306)
Asim Varma* (D.C. Bar # 426364)
David B. Bergman* (D.C. Bar # 435392)
ARNOLD & PORTER LLP
601 Massachusetts Avenue N.W.
Washington, D.C. 20001
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
Howard.Cayne@aporter.com
Asim.Varma@aporter.com
David.Bergman@aporter.com

* admitted *pro hac vice*

*Attorneys for Defendants Federal Housing
Finance Agency and Director Melvin L.
Watt*

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June 2016, 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/ Howard N. Cayne
Howard N. Cayne* (D.C. Bar # 331306)
ARNOLD & PORTER LLP
601 Massachusetts Avenue N.W.
Washington, D.C. 20001
Telephone: (202) 942-5000
Facsimile: (202) 942-5999
Howard.Cayne@aporter.com

* admitted *pro hac vice*

*Attorney for Defendants Federal Housing Finance
Agency and Director Melvin L. Watt*

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

THOMAS SAXTON, IDA SAXTON,
BRADLEY PAYNTER,

Plaintiffs,

v.

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

[PROPOSED] ORDER

This matters comes before the Court on the parties' Joint Motion to Set Briefing Schedule and Page Limitations. Upon consideration of the motion, it is hereby ORDERED that briefing on Defendants' Motions to Dismiss shall proceed as follows:

- a) FHFA's Supplemental Brief in Support of its Motion to Dismiss shall be filed on or before June 16, 2016.
- b) The Supplemental Brief shall not exceed eight pages.
- c) Plaintiffs' resistance to Defendants' Motions to Dismiss (including any response to the arguments in the Supplemental Brief) shall be filed on or before June 30, 2016.
- d) Plaintiffs' resistance to Defendants' motions to dismiss shall not exceed 88 pages.

- e) Defendants' replies in support of their motions to dismiss (including any replies regarding the arguments in the Supplemental Brief) shall be filed on or before August 1, 2016.
- f) Defendants' replies in support of their motions to dismiss shall not exceed 25 pages each.

Dated: _____, 2016

United States District Judge