

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

FAIRHOLME FUNDS, INC., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 13-465C
)	(Chief Judge Sweeney)
THE UNITED STATES,)	
)	
Defendant.)	

DEFENDANT’S UNOPPOSED MOTION FOR AN ENLARGEMENT OF TIME TO RESPOND TO PLAINTIFFS’ MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

Pursuant to Rules 6(b), 6.1, and 7 of the Rules of the United States Court of Federal Claims (RCFC), the United States respectfully requests a 14-day enlargement of time, to and including Friday, August 31, 2018, within which to respond to the motion for leave to file a second amended complaint (*Mot. To Amend*, ECF No. 412) filed by plaintiffs, Fairholme Funds, Inc. *et al.*, (Fairholme). Our response to Fairholme’s motion is due today, August 17, 2018. We have conferred with counsel for Fairholme, who represents that Fairholme does not oppose the additional time requested.

Good cause exists to grant this motion. This case is one of 18 pending actions in which shareholders of Fannie Mae and Freddie Mac allege that an amendment to a funding agreement between the Department of the Treasury and the Federal Housing Finance Agency, acting as conservator for Fannie Mae and Freddie Mac, effected a Fifth Amendment taking of shareholders’ “economic interests” in Fannie Mae and Freddie Mac stock. Twelve of those actions have been coordinated for briefing of the Government’s omnibus motion to dismiss (ECF No. 411), which we filed on August 1, 2018. In its motion for leave, Fairholme seeks to file a second amended complaint so that it may add a new legal theory in support of its illegal exaction

claim. Specifically, Fairholme seeks to assert that FHFA's structure, which requires for-cause removal of the agency's director, violates the separation-of-powers doctrine. Fairholme also requests that the Court amend the schedule for briefing our omnibus motion to dismiss to require the Government to address the new illegal exaction theory in a supplemental brief to be filed on October 1, 2018.¹

Yesterday, on August 16, 2018, plaintiffs in four of the other actions that are implicated in the coordinated briefing on the omnibus motion to dismiss filed amended complaints as a matter of right, and a fifth moved for leave to amend, adding a new theory identical to the separation-of-powers theory that Fairholme seeks leave to assert in its second amended complaint. Those plaintiffs also filed a joint motion to amend the schedule for briefing our omnibus motion to dismiss, proposing a schedule identical to that proposed by Fairholme in its motion. *See, e.g.*, Pls. Joint Mot. to Modify the Briefing Schedule, *Owl Creek Asia I, L.P. et al., v. United States*, No. 18-281C (Fed. Cl. Aug. 16, 2018), ECF No. 17 (an identical joint motion was filed in other actions).

Given that we are now required to respond to two motions seeking to require the Government to address a new legal theory in its omnibus motion to dismiss briefing, we require an additional two weeks to coordinate our responses to the motions and confer with the affected agencies.

For these reasons, we respectfully request that the Court grant our unopposed motion for a 14-day enlargement of time, to and including August 31, 2018, within which the Government shall file its response to Fairholme's motion for leave to file its second amended complaint.

¹ On June 21, 2018, the Court issued an order (ECF No. 408) that adopted the briefing schedule that was agreed upon by the Government and the plaintiffs in all of the cases participating in the omnibus motion to dismiss briefing.

Respectfully submitted,

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