

ORAL ARGUMENT HELD ON APRIL 15, 2016**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PERRY CAPITAL LLC,

Appellant,

v.

JACOB J. LEW, et al.,

Appellees.

Nos. 14-5243 (L),

14-5254 (con.),

14-5260 (con.),

14-5262 (con.)

**APPELLANT FAIRHOLME’S UNOPPOSED MOTION TO UNSEAL ITS
FIRST MOTION FOR JUDICIAL NOTICE, SUPPORTING REPLY BRIEF,
AND PORTIONS OF THE ACCOMPANYING APPENDIX**

Pursuant to Circuit Rule 47.1(c), Plaintiffs-Appellants in No. 14-5254 (“Fairholme”) hereby file this unopposed motion to unseal Fairholme’s Motion for Judicial Notice and Supplementation of the Record (July 29, 2015), and Fairholme’s Reply in Support of Its Motion for Judicial Notice and Supplementation of the Record (Aug. 31, 2015). Fairholme also moves to unseal in their entirety Exhibits 4, 9, 10, 11, 12, 13, 18, 20, 21, 24, 25, 26¹, 27, 28, 29, 30, 31, and 32 to the appendix to its motion for judicial notice and to unseal redacted versions of Exhibits 8, 22, 23,

¹ The United States agreed to remove the “Protected Information” designation from Exhibit 26—excerpts from the deposition transcript of Timothy Bowler—on the condition that the public version of these excerpts include the errata sheet from Mr. Bowler’s deposition. Accordingly, Fairholme will include that errata sheet in the new appendix it will file if this motion is granted.

and 34 of that appendix. The Court previously unsealed Exhibits 3, 5, 6, 7, 17, 19, and 33 to Fairholme's motion, Order of April 14, 2016, and Exhibits 1, 2, 14, 15, and 16 were included in the original public redacted version of the appendix that Fairholme filed with the Court on August 19, 2015. Thus, if this motion is granted, all of the documents included in the sealed appendix to Fairholme's first motion for judicial notice would be available on the public docket in either complete or redacted form.

Fairholme has provided in a separate sealed filing the redacted versions of Exhibits 8, 22, 23, and 34 that it moves to unseal. If the Court grants this motion, Fairholme will file a new public redacted version of the appendix to its first motion for judicial notice that will include all information from the original sealed appendix that is now public. In support of its motion, Fairholme states as follows:

1. On July 29, 2015, Fairholme filed a motion asking the Court to take judicial notice of, and supplement the record with, a number of documents that had been produced to it in related litigation in the Court of Federal Claims (CFC). Because those documents were subject to a protective order in the CFC litigation, Fairholme filed its motion, accompanying appendix, and supporting reply brief under seal.
2. On April 11, 2016, the CFC issued an order that authorized the public disclosure of seven documents that were included in the appendix to

Fairholme's motion for judicial notice as Exhibits 3, 5, 6, 7, 17, 19, and 33.

On April 14, 2016, this Court unsealed those exhibits to the appendix to Fairholme's motion.

3. Paragraph 15 of the protective order that applies to documents produced in the CFC litigation permits a party that produces a document to remove the "Protected Information" designation from that document, thus allowing its public disclosure. Second Amended Protective Order ¶ 15, *Fairholme Funds, Inc. v. United States*, No. 13-465 (Fed. Cl. Nov. 9, 2015), Doc. 256. In recent weeks, the relevant producing parties in the CFC litigation have agreed to remove in their entirety the "Protected Information" designations from the following exhibits to the appendix to Fairholme's motion for judicial notice: Exhibits 4, 9, 10, 11, 12, 13, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, and 32.
4. In addition, the relevant producing parties in the CFC litigation have agreed to remove the "Protected Information" designations from redacted versions of Exhibits 8, 22, 23, and 34 to the appendix to Fairholme's motion for judicial notice. Redacted versions of those exhibits that are no longer shielded from public disclosure under the CFC protective order appear in the separate sealed filing that accompanies this motion.
5. In view of the CFC producing parties' agreement to remove the "Protected Information" designations from these materials, all of the information in

Fairholme's motion for judicial notice and its reply brief in support of that motion is now in the public domain. Pursuant to Circuit Rule 47.1(c), Fairholme respectfully requests that the Court unseal those filings as well as all of the information that is now public and that appears in the exhibits to the appendix to its first motion for judicial notice. For the convenience of the Court, if this motion is granted, Fairholme will file a new public redacted version of the appendix that reflects the agreement of the parties regarding what information in the exhibits is now public. Good cause exists for granting this motion because it will enable the Court to discuss relevant information in Fairholme's earlier filings without the need to issue its opinion under seal.

6. Fairholme has consulted counsel for all other parties in these consolidated appeals, and this motion is unopposed.

July 13, 2016

Respectfully submitted,

/s/ Charles J. Cooper

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CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of July, 2016, I electronically filed the original of the foregoing document with the clerk of this Court by using the CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: July 13, 2016

/s/ Charles J. Cooper
Charles J. Cooper