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

THOMAS SAXTON, et al.,	)	
Plaintiffs,	)	Civil Action No. 1:15-cv-00047-LLR
v.	)	
	)	FAIRHOLME'S OPPOSED MOTION
THE FEDERAL HOUSING FINANCE	)	FOR LEAVE TO FILE SEALED
AGENCY, et al.,	)	AMICUS BRIEF AND APPENDIX IN
	)	SUPPORT OF PLAINTIFFS'
Defendants.	)	OPPOSITION TO DEFENDANTS'
	)	MOTIONS TO DISMISS

Fairholme Funds, Inc. ("Fairholme") hereby moves for leave to appear as amicus curiae and file under seal a brief and appendix in support of Plaintiffs' opposition to Defendants' motions to dismiss. Fairholme's proposed sealed amicus brief outlines materials produced in discovery in the United States Court of Federal Claims relating to the Net Worth Sweep, the administrative action at issue in this case. These materials are subject to a protective order in the Court of Federal Claims and therefore have not been made available to Plaintiffs and must be filed under seal in this Court. As required under LR 7(*l*), Fairholme consulted counsel for all parties about this motion. Plaintiffs support Fairholme's motion, but Defendants oppose it. This motion should be granted for the reasons explained in Fairholme's attached brief in support of its motion. As contemplated by LR 5(c), Fairholme is e-mailing the Clerk of the Court a copy of its proposed sealed amicus brief and appendix concurrently with the filing of this motion.

October 15, 2015

Respectfully submitted,

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Counsel for Prospective Amicus Curiae Fairholme Funds, Inc.

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on October 15, 2015, I electronically filed this foregoing with the Clerk of Court using the ECF system, and to my knowledge a copy of this document will be served on the parties or attorneys of record by the ECF system.

/s/ Matt M. Dummermuth
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Attorney for Fairholme Funds, Inc.

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

THOMAS SAXTON, et al.,	
Plaintiffs,	) Civil Action No. 1:15-cv-00047-LLR
V.	)
	) FAIRHOLME'S BRIEF IN SUPPORT
THE FEDERAL HOUSING FINANCE	OF ITS OPPOSED MOTION FOR
AGENCY, et al.,	) LEAVE TO FILE SEALED AMICUS
	) BRIEF AND APPENDIX IN SUPPORT
Defendants.	OF PLAINTIFFS' OPPOSITION TO
	) MOTIONS TO DISMISS

Fairholme Funds, Inc. ("Fairholme") hereby submits this brief in support of its motion to appear as amicus curiae and file under seal an amicus brief and appendix. In support of its motion, Fairholme states as follows:

- Fairholme owns a substantial number of shares of both preferred and common stock
  issued by Fannie Mae and Freddie Mac ("the Companies"). If the administrative action
  that Plaintiffs challenge in this case—the "Net Worth Sweep"—survives judicial review,
  the shares owned by Fairholme and all other private investors will have no economic
  value.
- 2. Fairholme is currently challenging the Net Worth Sweep on Takings Clause grounds in the United States Court of Federal Claims. *See Fairholme Funds, Inc. v. United States*, No. 13-465 (Fed. Cl.). The court in that case authorized Fairholme to take discovery into a variety of topics relating to the Net Worth Sweep. *See* Order, *Fairholme Funds v. United States*, No. 13-465 (Fed. Cl. Feb. 26, 2014), ECF No. 32. Through discovery, Fairholme has obtained a number of 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. Those materials are described in detail in Fairholme's amicus brief.
- 3. Although materials disclosed through discovery in Fairholme's Court of Federal Claims case are subject to a strict protective order, *see* Order, *Fairholme Funds*, *Inc. v. United States*, No. 13-465 (Fed. Cl. July 29, 2015), ECF No. 217, the court authorized Fairholme to file those materials under seal in this and other cases that concern the Net Worth Sweep, Order, *Fairholme Funds*, *Inc. v. United States*, No. 13-465 (Fed. Cl. Sept. 30, 2015), ECF No. 246. As contemplated by LR 5(c), Fairholme is e-mailing the Clerk of the Court a copy of its proposed sealed amicus brief and appendix concurrently with the filing of its motion.
- 4. This Court has "broad inherent authority to permit or deny an appearance as amicus curiae in a given case." *Mausolf v. Babbitt*, 158 F.R.D. 143, 148 (D. Minn. 1994), *rev'd on other grounds*, 85 F.3d 1295 (8th Cir. 1996). Fairholme submits that the Court should exercise its discretion to allow it to file the proposed amicus brief and appendix. Fairholme's participation as an amicus is proper because it has expertise on the Net Worth Sweep, including access to materials that currently are not available to Plaintiffs, and because, as a shareholder in the Companies, Fairholme could be affected by the outcome of this litigation. *See Shain v. Veneman*, 278 F. Supp. 2d 1006, 1008 n.2 (S.D. Iowa 2003) (explaining that leave to participate as amici was granted "given the obvious interest" of amici in outcome of litigation); Order at 2, *Carlson v. Cady*, No. 10-587 (S.D. Iowa Jan. 4, 2011), ECF No. 34 ("After reviewing the ACLU of Iowa's motion, the Court is satisfied that the ACLU of Iowa possesses knowledge, experience and perspective on the issues raised in this case that may assist the Court in its resolution of those issues.").

5. Fairholme's motion should also be granted because consideration of the *Fairholme* discovery materials will further this Court's truth-finding function. Plaintiffs do not currently have access to the *Fairholme* discovery materials, and without those materials they were forced to draft the complaint using only information available in the public domain—information that the *Fairholme* discovery materials show to be incomplete. Accordingly, Plaintiffs may wish to amend the complaint in light of the *Fairholme* discovery materials. And regardless of how Plaintiffs decide to use these materials, many of the arguments in Defendants' motions to dismiss depend on factual premises that the *Fairholme* discovery materials demonstrate to be misleading and, in important respects, false. With these materials readily available, there is no reason for the Court to allow Defendants to litigate this case based on a misleading and incomplete description of the relevant facts.

October 15, 2015

Respectfully submitted,

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