IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

DEFENDANT'S OPPOSITION TO ROBINSON'S
APPLICATIONS FOR ACCESS TO PROTECTED INFORMATION

Defendant, the United States, respectfully submits this opposition to the notice of filing of applications for access to protected information submitted by Arnetia Joyce Robinson. Ms. Robinson, who is not a party to any case pending in this Court, is a shareholder of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and plaintiff in *Robinson v. FHFA*, No. 15-109 (E.D. Ky.), an action challenging the net worth sweep provision of the Third Amendment to the Senior Preferred Stock Purchase Agreements between the Federal Housing Finance Agency (FHFA) and the United States Department of the Treasury.

Ms. Robinson requests that the Court grant her counsel access to protected information produced in this case so that she can amend her district court complaint, to which defendants have not yet responded, with information that, she alleges, the Government has "concealed from the public." Notice of Filing of Applications at 3, Dec. 11, 2015, ECF No. 276. The Court should deny the request because, while Ms. Robinson seeks access to *all* of the protected information produced in this case, the district court in which Ms. Robinson's complaint is pending has not determined that Ms. Robinson is entitled to any form of discovery. In fact,

several district courts have rejected other plaintiffs' attempts to conduct discovery in cases raising claims that are nearly identical to those that Ms. Robinson has raised in her complaint. *See Perry Capital LLC v. Lew*, No. 1:13-cv-1025, Order Denying Motion for Supplementation of the Record, ECF No. 53 (D.D.C. Sept. 30, 2014); *Cont'l W. Ins. Co. v. FHFA, et al.*, Civ. No. 4:14-00042, Order 6, ECF No. 18-2 (S.D. Iowa Aug. 5, 2014)).

The Government, therefore, requests that the Court deny Ms. Robinson's applications, as well as any other applications for access to protected information by district court plaintiffs unless the district court has determined that it will allow the parties to present such discovery materials. The Court has already applied this practice with regard to Perry Capital's request for access to protected information tendered to the Court of Appeals for the District of Columbia in *Perry Capital v. Lew, et al.*, No. 14-5243 (D.C. Cir.), permitting access only after the D.C. Circuit permitted the parties to reference the protected information in their filings. Thus, the Court has acknowledged that other courts should determine whether, and when, to permit the parties to use protected discovery materials in filings. This rule should apply to all cases pending in the district courts. The Court has recognized the need to protect sensitive information in this case. Paving the way for unfettered access to counsel for any party that files a complaint asserting other claims in different courts undermines the protective order.

In her request, Ms. Robinson references this Court's order granting access under the Second Amended Protective Order to counsel for plaintiffs in *Saxton v. FHFA*, 15-47 (N.D. Iowa). We respectfully maintain that the *Saxton* plaintiffs' request for access was improvidently granted and ask the Court to reconsider its position on similar requests for access. Indeed, on December 3, 2015, the Iowa district court denied Fairholme's motion for leave to file an amicus brief in *Saxton*. The court noted that "the purpose of the amicus brief is to inject new facts into

the pleadings. However, because the court will not consider facts and evidence outside of the pleadings in determining facial challenges to subject matter jurisdiction under Rule 12(b)(1), it will not admit or consider Fairholme's evidence in support of Plaintiffs' opposition to the Motions to Dismiss." Order at 4, dated Dec. 3, 2015, No. 15-47, *Saxton v. FHFA* (N.D. Iowa), ECF. No 48. Moreover, counsel for the *Saxton* plaintiffs was granted access only to the material that Fairholme had already submitted under seal to the district court; Ms. Robinson's counsel, in contrast, seeks access to *all* of the Protected Information produced thus far. Permitting Ms. Robinson's counsel, and others similarly situated, unfettered access to Protected Information will usurp the discretion of other courts to decide whether, and when, discovery should be permitted. Moreover, other plaintiffs who seek access to Protected Information generated in discovery in this case, regardless of the posture of their own case, are likely to cite the same language in the *Saxton* order to request access for themselves. The Court's order granting access to counsel for the *Saxton* plaintiffs might even encourage similarly situated shareholders (and perhaps others) to file complaints as a means to obtain access to the discovery materials.

Because the district court in Ms. Robinson's case has not been presented with a request to submit outside materials, much less granted such a request, granting access to these materials is not appropriate at this time. For these reasons, the Government respectfully requests that the Court deny Ms. Robinson's request for access.

Respectfully submitted,

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