UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHRISTOPHER ROBERTS and THOMAS P. FISCHER, 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, JACOB J. LEW, in his official capacity as Secretary of the Treasury, and THE DEPARTMENT OF THE TREASURY, Defendants.	Civil Action No. 1:16-CV-02107

DEFENDANTS' JOINT SUPPLEMENTAL RESPONSE TO FAIRHOLME FUNDS' MOTION TO APPEAR AND TO FILE AN AMICUS BRIEF

Pursuant to the Court's November 10, 2016 Minute Order (Dkt. No. 62), Federal Housing Finance Agency, Melvin L. Watt, The Department of the Treasury, and Jacob J. Lew, respectfully submit this Joint Supplemental Response in opposition to Fairholme Funds' Motion to Appear and to File an Amicus Brief. Through this Supplement, Defendants attach as Exhibit A the Northern District of Iowa's December 3, 2015 Order referenced in Defendants' opposition brief at page two. (Dkt. No. 59.) Defendants also attach as Exhibit B the Northern District of Iowa's October 2, 2015 Order Regarding Filing Administrative Record in *Saxton v. FHFA*, No. C15-0047 (N.D. Iowa) (ECF No. 23), referenced in footnote five of Defendants' opposition

brief. And as Exhibit C, Defendants attach the Southern District of Iowa's August 5, 2014 Order on Plaintiff's Motion to Compel Production of the Administrative Record in *Cont'l W. Ins. Co. v. FHFA*, No. 4:14-cv-00042, cited at page six of Defendants' opposition brief.

Dated: November 11, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

On November 11, 2016, I, Kristen E. Hudson, the undersigned attorney, hereby certify that **Defendants' Joint Supplemental Response to Fairholme Funds' Motion to Appear and to File an Amicus Brief** was filed electronically using the Court's CM/ECF system, causing a true and correct copy to be served on all counsel of record.

By: s/ Kristen E. Hudson
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EXHIBIT A

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

THOMAS SAXTON et al., Plaintiffs, vs. FEDERAL HOUSING FINANCE AGENCY et al., Defendants.	No. 15-CV-47-LRR **ORDER**

The matter before the court is third party Fairholme Funds, Inc.'s ("Fairholme") "Motion for Leave to File Sealed Amicus Brief and Appendix in Support of Plaintiffs' Opposition to Defendants' Motions to Dismiss" ("Motion") (docket no. 29), which Fairholme filed on October 15, 2015. On October 29, 2015, Defendants filed a Resistance (docket no. 36). On November 2, 2015, Fairholme filed a Reply ("Fairholme Reply") (docket no. 41). On November 5, Plaintiffs filed a Response to the Resistance ("Plaintiffs Reply") (docket no. 42). No party has requested oral argument, and the court finds that oral argument is unnecessary. The matter is fully submitted and ready for decision.

In the Motion, Fairholme claims that, in litigation in the Court of Federal Claims that is similar to the instant action, it "has obtained a number of documents and other materials that are directly relevant to issues before th[e] [c]ourt and that show that Defendants' litigation-driven rationales for the Net Worth Sweep are highly misleading." Brief in Support of the Motion (docket no. 29-1) at 1-2. Fairholme contends that the materials will reveal that the factual premises in Defendants' pending Motions to Dismiss (docket nos. 19, 20) are misleading and false. *Id.* at 3.

In response, Defendants argue that the materials in Fairholme's possession are irrelevant to the pending Motions to Dismiss because the Motions to Dismiss concern legal

issues and not factual issues. Resistance at 4-7. Defendants contend that Fairholme's materials would have little effect because the factual allegations in the Plaintiff's complaint are already accepted as true for the purposes of resolving Motions to Dismiss. *Id.* Therefore, "Fairholme's attempt to submit evidence purportedly supporting Plaintiffs' allegations is . . . misplaced at this stage of the litigation." *Id.* at 5. Defendants also argue that admission of the materials would be improper because "an amicus curiae is a nonparty and may not submit evidence and litigate factual issues in a trial court." *Id.* at 3.

Fairholme responds that its materials are highly relevant and that the court should grant the Motion to "give Plaintiffs an opportunity to amend their complaint to fully reflect key facts that are not in the public domain." Fairholme Reply at 2. Fairholme contends that the factual contents of its amicus brief are properly admitted because the information is under a protective order and not otherwise accessible to Plaintiffs. *Id.* at 2-3. Furthermore, Fairholme argues that "there is no rule against amici introducing evidence and making factual arguments." *Id.* at 5. Plaintiffs state that they will "likely seek leave to amend the Complaint" if the court grants the Motion. Plaintiffs Reply at 1. Plaintiffs also assert that Defendants' rationales for the Net Worth Sweep are relevant to resolving the pending Motions to Dismiss. *Id.* at 2.

The court has broad discretion to accept or deny participation by an amicus. *See Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000) ("Whether to permit a nonparty to submit a brief, as amicus curiae, is . . . a matter of judicial grace."); *United States ex rel. Gudur v. Deloitte Consulting LLP*, 512 F. Supp. 2d 920, 927-28 (S.D. Tex. 2007); *Mausolf v. Babbitt*, 158 F.R.D. 143, 148 (D. Minn. 1994), *rev'd on other grounds,* 85 F.3d 1295 (8th Cir. 1996). "No statute, rule, or controlling case defines a federal district court's power to grant or deny leave to file an amicus brief . . . ." *Gudur*, 512 F. Supp. 2d at 927 (emphasis omitted). Among the factors the court

considers is whether "the information offered [by the amicus] is 'timely and useful'" to the pending action. *Waste Mgmt. of Pa., Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995) (quoting *Yip v. Pagano*, 606 F. Supp. 1566, 1568 (D.N.J. 1985)). The court should also consider whether "the brief will assist the judge[] by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs." *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003).

When the Motion was initially filed, Plaintiffs filed a Motion to Stay (docket no. 31). Plaintiffs' intention was to directly petition the Court of Federal Claims for access to Fairholme's materials, which are currently under a protective order, and subsequently seek leave to amend the Complaint (docket no. 1). Brief in Support of Motion to Stay (docket no. 31-1) at 2. The court denied the Motion to Stay, finding that Plaintiffs' reason was insufficient to justify delaying the timely adjudication of Defendants' Motions to Dismiss. *See* Oct. 21, 2015 Order (docket no. 34) at 2. Now, Plaintiffs state that they "will likely seek leave to amend the Complaint" if they are granted access to the evidence contained in the Motion. Plaintiff Reply at 1.

Defendants' Motions to Dismiss are facial challenges to the court's jurisdiction under Federal Rule of Civil Procedure 12(b)(1). *See* Brief in Support of Treasury's Motion to Dismiss (docket no. 19-1) at 10-11; Brief in Support of FHFA's Motion to Dismiss (docket no. 20-1) at 12. In a facial attack on the complaint, the factual allegations concerning jurisdiction are presumed to be true and the motion will fail unless the plaintiff fails to allege some element necessary to invoke the court's jurisdiction. *Branson Label, Inc. v. City of Branson, Mo.*, 793 F.3d 910, 914 (8th Cir. 2015). The court must limit its review to the face of the pleadings alone, "and the non-moving party receives the same protections at it would defending against a motion brought under Rule 12(b)(6)." *Id.* (quoting *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990)) (internal quotation marks omitted); *accord Quality Refrigerated Servs., Inc. v. City of Spencer*, 908

F. Supp. 1471, 1481-82 (N.D. Iowa 1995). Both the Fairholme Reply and the Plaintiffs Reply demonstrate 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.[1] Accordingly, the Motion (docket no. 29) is **DENIED**.

IT IS SO ORDERED.

DATED this 3rd day of December, 2015.

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA

[1] Although the court finds that amicus participation is currently improper, it is not foreclosing the possibility of amicus participation at a later stage in the proceedings.

EXHIBIT B

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

THOMAS SAXTON, IDA SAXTON, BRADLEY PAYNTER, **Plaintiffs,** **vs.** **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.**	**No. C15-0047** **ORDER REGARDING FILING ADMINISTRATIVE RECORD**

This matter comes before the Court on the Motion to Stay Submission of Proposed Scheduling Order Regarding Filing of Administrative Record (docket number 18) filed by the Defendants on August 26, 2015, the Response (docket number 21) filed by the Plaintiffs on September 14, and the Reply (docket number 22) filed by the Defendants on September 22. Defendants ask that they not be required to file the administrative record until after the Court rules on their pending motions to dismiss. Pursuant to Local Rule 7.c, the motion will be decided without oral argument.

I. BACKGROUND

On May 28, 2015, Plaintiffs Thomas Saxton, Ida Saxton, and Bradley Paynter filed a complaint seeking declaratory and injunctive relief and damages against Defendants

Federal Housing Finance Agency ("FHFA"), its director, Melvin L. Watt, and the Department of the Treasury ("Treasury"). In their five-count complaint, Plaintiffs allege Defendants unlawfully adopted a "Net Worth Sweep to expropriate for the federal government the value of Fannie and Freddie shares held by private investors."

Both sides believe the case can be disposed of summarily. Defendants timely filed motions to dismiss on September 4, 2015. The deadline for Plaintiffs to file a resistance is October 26, with Defendants' replies due not later than November 23. Plaintiffs intend to file a "cross-motion" for summary judgment.

The parties disagree, however, on the manner in which the case should proceed. In their motion for stay, Defendants ask the Court to "defer consideration of whether and when an administrative record should be filed" until after it has ruled on the motions to dismiss. Plaintiffs intend to seek summary judgment, and argue they "should be permitted to respond to the motions to dismiss by cross-moving for summary judgment." Plaintiffs claim the administrative record "would support the factual predicate for Plaintiffs' summary judgment motion."

II. DISCUSSION

In an action for judicial review based on an administrative record, Local Rule 16.i requires the parties to confer and submit a proposed scheduling order within 90 days after the filing of the complaint, setting forth deadlines for the filing of the administrative record and briefs. Defendants argue that their motions to dismiss may be decided without reference to the administrative record and, therefore, they should be spared the time and effort of compiling the administrative record at this time. According to Defendants, "FHFA was not required to — and did not — create or maintain an administrative record" relating to the so-called Third Amendment to the agreement with Treasury, which authorized the "net worth sweep." Defendants also worry that production of an administrative record would inevitably lead to disputes regarding the completeness of the

administrative record and would "threaten to derail the briefing schedule" for the motions to dismiss.[1]

In response, Plaintiffs assert that if Defendants file an administrative record which is substantially similar to those they have already filed in other cases, "that will be enough to enable Plaintiffs to present the dispositive legal arguments they contemplate making in a motion for summary judgment."[2] That is, Plaintiffs pledge in their resistance that they "will raise any concerns they have about the completeness of the records concurrently with their motion for summary judgment, and in no event will Plaintiffs seek discovery into the adequacy of the record for the resolution of the motions to dismiss."[3]

In their motions to dismiss, Defendants argue that Plaintiffs' claims are precluded by the Housing and Economic Recovery Act ("HERA"), which established FHFA as an independent agency to supervise and regulate Fannie Mae and Freddie Mac. Judge Royce C. Lamberth addressed similar issues in *Perry Capital LLC v. Lew*, 70 F. Supp. 3d 208

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[1] In ruling on a motion to compel in a similar action, United States Magistrate Judge Ross A. Walters recognized similar concerns:

> The time necessary to put together an administrative record, the inevitable disputes about its adequacy, requests for additional discovery at which [the plaintiff] hints, and the time required to digest and incorporate the administrative record in what promises to be extensive briefing, all portend months of delay in resolving the motions to dismiss to no obvious benefit or purpose.

Continental Western Ins. Co. v. The Federal Housing Finance Agency, et al., No. 4:14-cv-00042-RP-RAW (S.D. Iowa Aug. 5, 2014).

[2] Plaintiffs' Response (docket number 21) at 5.

[3] *Id.* at 2.

(D.D.C. 2014).[4] Judge Lamberth concluded that challenges to the Third Amendment, permitting the net worth sweep, were prohibited by the language adopted by Congress in HERA. *Id.* at 246 ("HERA's unambiguous statutory provisions, coupled with the unequivocal language of the plaintiffs' original GSE stock certificates, compels the dismissal of all of the plaintiffs' claims.").[5]

Defendants recognize that in considering their motions to dismiss, the Court must assume the truth of all of the allegations contained in the detailed 49-page complaint. Defendants contend that they are nonetheless entitled to summary dismissal of the complaint. In their response, Plaintiffs concede that if the Court accepts the truth of the allegations in the complaint and "ignores substantial portions of the motions to dismiss at odds with the Complaint's factual allegations," then the Court can adjudicate the motions to dismiss "without consulting an administrative record."[6] Nonetheless, Plaintiffs argue that the "most efficient course" is to require the filing of an administrative record and then consider Plaintiffs' motion for summary judgment together with Defendants' motions to dismiss.

Having thoroughly reviewed the file and the authorities cited by counsel, I conclude the Court should first consider Defendants' motions to dismiss. Both sides agree that in considering the motions to dismiss, the Court must assume the truth of the allegations set

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[4] The Court notes that the case was before the court on motions to dismiss or, in the alternative, motion for summary judgment filed by the defendants, as well as a cross-motion for summary filed by the plaintiffs. 70 F. Supp. 3d at 213-14.

[5] Judge Robert W. Pratt dismissed similar claims in *Continental Western Ins. Co. v. Federal Housing Finance Agency*, 83 F. Supp. 3d 828 (S.D. Iowa, 2015). There, the Court concluded that Continental Western's complaint must be dismissed on the basis of issue preclusion, because its parent corporation was a plaintiff in the *Perry Capital* litigation.

[6] Plaintiffs' Response (docket number 21) at 3.

forth in the complaint. Furthermore, assuming the truth of the allegations in the complaint, both sides agree the issues raised in Defendants' motions to dismiss may be addressed without resort to an administrative record.[7] Accordingly, I find the requirement for filing an administrative record may be stayed pending the Court's resolution of the motions to dismiss. If the motions to dismiss are denied, then the Court will set a deadline for filing the administrative record and, presumably, the parties will file motions for summary judgment.

ORDER

IT IS THEREFORE ORDERED that the Motion to Stay Submission of a Proposed Scheduling Order Regarding the Filing of an Administrative Record (docket number 18) is **GRANTED**. Defendants are not required to file an administrative record until after the Court has ruled on the pending motions to dismiss.

DATED this 2nd day of October, 2015.

JON STUART SCOLES
CHIEF MAGISTRATE JUDGE
NORTHERN DISTRICT OF IOWA

[7] In *Perry Capital*, Judge Lamberth concluded that the administrative record was "irrelevant" to a determination of whether HERA permitted a challenge to the Third Amendment. 70 F. Supp. 3d at 225-26. Judge Walters reached the same conclusion in ruling on the plaintiff's motion to compel in the *Continental Western* case. *See* Defendants' Motion to Stay, Ex. A at 6 (docket number 18-2 at 6).

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CONTINENTAL WESTERN INSURANCE COMPANY, Plaintiff, vs. THE FEDERAL HOUSING FINANCE AGENCY, MELVIN L. WATT, in his official capacity as Director of the Federal Housing Finance Agency, and THE DEPARTMENT OF THE TREASURY, Defendants.	)	4:14-cv-00042-RP-RAW RULING ON PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF THE ADMINISTRATIVE RECORD AND FOR SUSPENSION OF THE BRIEFING SCHEDULE AND DISCOVERY-RELATED DEADLINES

The above resisted motion [31] is before the Court following hearing. Plaintiff Continental Western Insurance Company ("Continental Western") brings this action against The Federal Housing Finance Agency and its Director (collectively "FHFA") and The Department of The Treasury ("Treasury"). Counts I - IV of the Complaint are under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551-706, and challenge the conduct of the agency and department relating to FHFA's conservatorships of the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") (collectively, "the Companies") under the authority of the Housing and Economic Recovery Act of 2008 ("HERA"), 12 U.S.C. §§ 1455, 1719, 4617. In addition, under the Court's supplemental jurisdiction the Complaint includes a number of common law claims against FHFA for breach of contract, the associated covenant of good faith and fair dealing,

and breach of fiduciary duty (Counts V - VII). Both defendants have filed motions to dismiss for lack of subject matter jurisdiction [23][24]. Fed. R. Civ. P. 12(b)(1). Alternatively defendants urge the Court should transfer this case to the U.S. District Court for the District of Columbia where some ten similar, earlier-filed actions are pending, or stay this case until the resolution of the actions in that court.[1]

By the present motion Continental Western seeks an order compelling production of an administrative record, suspending briefing on the motions to dismiss until the record is produced, and suspending discovery-related deadlines. Defendants do not resist suspending discovery-related deadlines (to include submission of a proposed scheduling order and discovery plan) but do resist the motion to compel and to suspend briefing on their motions to dismiss.

In 2008 Congress enacted HERA in response to the financial crisis at that time which had much to do with the housing market. HERA authorized FHFA to place the Companies into

[1] As the Court understands it, in one of the District of Columbia cases in which Continental Western's parent is a party (and Continental Western's current counsel are involved), FHFA has filed a motion to dismiss or in the alternative for summary judgment which, according to FHFA, raises many of the same arguments presented by defendants in their motions to dismiss in this Court. The motion is fully briefed. Given the summary judgment context FHFA agreed to provide a compilation of documents in the District of Columbia case, the adequacy of which is disputed and currently the subject of a motion before that court. (Tr. [40] at 10, 18-19, 20).

conservatorship and that is what FHFA did in September 2008. FHFA, as conservator, subsequently entered into preferred stock purchase agreements with Treasury under which Treasury committed billions of dollars to the Companies in exchange for senior preferred stock. For reasons the validity of which is in dispute, Treasury and FHFA in 2012 entered into a Third Amendment to the preferred stock agreements which altered the dividend structure to accomplish what Continental Western refers to as a "net worth sweep."[2] The sweep resulted in all of the Companies' future profits going to Treasury, effectively, as Continental Western characterizes it, nationalizing the Companies and resulting in the confiscation of the value of Continental Western's preferred stock. The core of Continental Western's Complaint is that FHFA, at Treasury's prompting, acted in excess of its HERA statutory authority and without legitimate motive when it agreed to the net worth sweep, an action therefore arbitrary and capricious entitling Continental Western to relief under the APA.

In their motions to dismiss defendants argue the Court lacks jurisdiction because HERA prohibits the relief sought in the Complaint. Specifically, 12 U.S.C. § 4617(f) states that "[e]xcept as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of

[2] The Complaint states FHFA's then-acting Director used this phrase in describing the Third Amendment. (Complaint [1] ¶ 12).

powers or functions of the Agency as a conservator or a receiver," a provision defendants contend precludes judicial review of FHFA's exercise of its powers as conservator. Defendants further argue that FHFA's succession to the rights and privileges of the Companies and their stockholders as provided in 12 U.S.C. § 4617(b)(2)(A)(i) divests Continental Western of the ability as stockholder to sue for damages directly or derivatively. For this and other reasons defendants argue Continental Western lacks standing.

Continental Western's 56-page Complaint is highly fact specific. The Complaint alleges the net worth sweep was not necessary, other options were available, and the sweep was the product of a Treasury directive aimed simply at giving Treasury all of the Companies' profits. The present motion is prompted by the fact that in their briefs on the motions to dismiss defendants make factual assertions about the necessity and purpose of the net worth sweep inconsistent with the Complaint's allegations on the same subjects. In particular, Continental Western targets statements in defendants' briefs which justify the net worth sweep as necessary to save the Companies from insolvency. (Treasury Motion to Dismiss Brief [24-1] at 9-10; FHFA Motion to Dismiss Brief [23-13] at 9-10). Continental Western argues it needs an administrative record to rebut defendants' assertions about the necessity and purpose of the net worth sweep and to support its contrary factual assertions,

and until then briefing on the motions to dismiss should be suspended. Defendants respond that their motions make only a facial challenge to subject matter jurisdiction and that even accepting all of the many facts stated in the Complaint as true, they are nonetheless entitled to dismissal.

There are two types of challenges to subject matter jurisdiction, a "facial" challenge and a "factual" challenge. *See Titus v. Sullivan*, 4 F.3d 590, 593 (8th Cir. 1993). A facial challenge analyzes the face of the Complaint, the jurisdiction-related factual allegations of which are taken as true. *Smith v. Dep't of Agriculture*, 888 F. Supp. 2d 945, 948 (S.D. Iowa 2012)(citing *Biscanin v. Merrill Lynch & Co.*, 407 F.3d 905, 907 (8th Cir. 2005)*); Dolls, Inc. v. City of Coralville, Iowa*, 425 F. Supp. 2d 958, 969 (S.D. Iowa 2006)(also citing *Biscanin*). In a factual challenge the Court may look outside the pleadings to determine its jurisdiction, and the facts of the complaint are not presumed to be true. *Dolls, Inc.*, 425 F. Supp. 2d at 970 (citing *Osborn v. United States*, 918 F.2d 724, 729-30 n.6 (8th Cir. 1990). *See* 2 *Moore's Federal Practice* § 12.30[4] at 12-46 - 12-47 (3d ed. 2014); 5B Charles Wright and Arthur Miller, *Federal Practice and Procedure: Civil*, § 1350 at 187-98 (3d ed. 2004).

As noted, defendants contend that they make only a facial challenge to the Complaint.[3] It is true that in their briefing they describe the net worth sweep in positive terms as a means to save the Companies from the insolvency they were facing under the dividend structure in effect prior to the Third Amendment. It is natural they would explain the sweep from their perspective in view of the allegations in the Complaint about the invalidity of the sweep, but that does not mean defendants make a factual challenge to jurisdiction. At bottom the motions to dismiss do appear to advance purely legal arguments. Defendants having disclaimed a factual challenge, the Court must take Continental Western's factual assertions bearing on its jurisdictional theory -- that the net worth sweep was unnecessary and improperly motivated -- as true. There is no need to adjudicate the truth of the matter in order to determine the motions to dismiss.

The other issues raised by the motions, whether HERA or other standing principles deprive the Court of jurisdiction to consider Continental Western's common law claims, and the alternative request for transfer, clearly present purely legal issues which may be decided without resort to an administrative record.

The Court is also concerned with the practical consequences to the progression of the case if Continental

[3] *See* Tr. [40] at 17-18, 33-34.

Western's motion is granted. The time necessary to put together an administrative record, the inevitable disputes about its adequacy, requests for additional discovery at which Continental Western hints, and the time required to digest and incorporate the administrative record in what promises to be extensive briefing, all portend months of delay in resolving the motions to dismiss to no obvious benefit or purpose.

Continental Western's motion to compel production of the administrative record and for suspension of briefing schedule and discovery-related deadlines [31] is **granted in part and denied in part.** The motion is granted to the extent that discovery-related deadlines including the deadline under the local rules for submission of a proposed scheduling order and discovery plan are **stayed**. In all other respects the motion is denied. Continental Western may have to and including **August 29, 2014** to submit its response to defendants' motions to dismiss.

IT IS SO ORDERED.

Dated this 5th day of August, 2014.

ROSS A. WALTERS
UNITED STATES MAGISTRATE JUDGE