

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

JOSEPH CACCIAPALLE, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	No. 13-466C
)	(Chief Judge Sweeney)
THE UNITED STATES,)	
)	
Defendant.)	

JOINT MOTION TO STAY BRIEFING OF PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION

The parties respectfully request that the Court stay briefing of plaintiffs’ motion for class certification until the Court has resolved the Government’s pending and earlier-filed omnibus motion to dismiss the complaints in *Fairholme Funds, Inc. v. United States*, No. 13-465C, and the 11 other cases that have been coordinated with *Fairholme* for briefing.¹

The Court’s “power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). The “court’s discretion to stay its proceedings is broad and well established.” *Farmer v. United States*, 132 Fed. Cl. 343, 345 (2017) (citing *Cherokee Nation of Oklahoma v. United States*, 124 F.3d 1413, 1426 (Fed. Cir. 1997) (“The power of a federal trial court to stay its proceedings, even for an

¹ On August 1, 2018, the Government filed an omnibus motion to dismiss complaints in the following twelve cases: *Fairholme Funds, Inc. v. United States*, No. 13-465C; *Arrowood Indemnity Co. v. United States*, No. 13-698C; *Cacciapelle et al. v. United States*, Nos. 13-466C, 13-496C, 13-542C; *Fisher et al. v. United States*, Nos. 13-608C, 13-672C; *Washington Federal v. United States*, No. 13-385C; *Reid v. United States*, 14-152C; *Rafter v. United States*, No. 14-740C; *Owl Creek Asia I, L.P. et al. v. United States*, No. 18-281C; *Akanthos Opportunity Master Fund, L.P. v. United States*, No. 18-369C; *Appaloosa Investment Limited Partnership I et al. v. United States*, No. 18-370C; *CSS, LLC v. United States*, No. 18-371C; and *Mason Capital L.P. et al. v. United States*, No. 18-529C.

indefinite period of time, is beyond question.”)). In deciding whether to stay proceedings, “a court must exercise its judgment by considering the most orderly course of justice and the interests of the parties, weighing any competing interests.” *UnionBanCal Corp. & Subsidiaries v. United States*, 93 Fed. Cl. 166, 167 (2010) (citing *Landis*, 299 U.S. at 255). “The orderly course of justice and judicial economy is served when granting a stay simplifies the ‘issues, proof and questions of law which could be expected to result from a stay.’” *Id.* (citing *CMAX, Inc. v. Hall*, 300 F.3d 265, 268 (9th Cir. 1962)).

On August 16, 2018, plaintiffs moved for an order certifying two classes of shareholders. Pls. Mot. for Class Certification, ECF No. 73. Plaintiffs filed this motion to defend against a potential argument that claims by unnamed class members are barred by the applicable statute of limitations should a class not be certified. The Government takes no position on this issue at this time. The parties request that the Court stay briefing on class certification until the resolution of the Government’s omnibus motion to dismiss (ECF No. 72). In that motion, the Government seeks dismissal of the entirety of the case such that, should the Court rule in favor of the Government, any further briefing on class certification will be moot and an unnecessary expenditure of the parties’ resources. Should the Court deny the Government’s motion to dismiss, the parties will meet and confer regarding a briefing schedule for class certification.

The parties respectfully submit that staying briefing on class certification until the Court resolves the motion to dismiss, at which point the parties will meet and confer on a briefing schedule to the extent that one is necessary, is the most efficient use of the Court’s and the parties’ resources. The process will preserve the *status quo* while also not prejudicing either plaintiffs’ right to renew their motion for class certification at the appropriate time or the Government’s right

to oppose such a motion. *See Farmer*, 132 Fed. Cl. at 345 (granting a motion for stay where it would serve the valuable purpose of preserving the resources of the parties and the Court).

CONCLUSION

For the foregoing reasons, the Court should grant the parties' joint motion for a stay of briefing of plaintiffs' motion for class certification.

Respectfully Submitted,

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