

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**

LOUISE RAFTER, JOSEPHINE RATTIEN, STEPHEN RATTIEN, PERSHING SQUARE CAPITAL MANAGEMENT, L.P., on behalf of Pershing Square, L.P., Pershing Square II, L.P., Pershing Square Holdings, Ltd., and Pershing Square International, Ltd., PERSHING SQUARE, L.P., PERSHING SQUARE II, L.P., PERSHING SQUARE HOLDINGS, LTD., and PERSHING SQUARE INTERNATIONAL, LTD.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant,

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Nominal Defendant.

Case No. 14-740C

Judge Margaret M. Sweeney

**PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE OMNIBUS AND SUPPLEMENTAL OPPOSITION BRIEFS AND TO EXCEED PAGE LIMIT**

Pursuant to Rules 5.4(b)(1) and 7 of the Rules of the United States Court of Federal Claims (“**RCFC**”), Plaintiffs Louise Rafter, Josephine Rattien, Stephen Rattien, Pershing Square Capital Management, L.P., Pershing Square, L.P., Pershing Square II, L.P., Pershing Square Holdings, Ltd., and Pershing Square International, Ltd. (together, the “**Rafter Plaintiffs**”) respectfully request that the Court grant leave: (1) to plaintiffs in *Rafter v. United States*, No. 14-740C (Fed. Cl.), *Fairholme Funds, Inc. v. United States*, No. 13-465C (Fed. Cl.), *Cacciapalle v. United States*, No. 13-446C (Fed. Cl.), *Fisher v. United States*, No. 13-608C (Fed. Cl.), *Reid v. United States*, No. 14-152C (Fed. Cl.), and *Arrowood Indemnity Co. v. United States*, No. 13-

698C (Fed. Cl.) (together, the “**Related Cases**”) to file a coordinated brief up to 75 pages in length (the “**Omnibus Opposition Brief**”) in opposition to the Defendants’ Amended Omnibus Motion to Dismiss (ECF No. 35) (the “**Omnibus Motion to Dismiss**”) to address common issues; and (2) to plaintiffs in each of the Related Cases to file a supplemental brief up to 15 pages in length (the “**Supplemental Opposition Briefs**”) in opposition to the Defendant’s Omnibus Motion to Dismiss to address case-specific issues. Counsel for the *Rafter* Plaintiffs conferred with counsel for plaintiffs in the Related Cases, each of whom consents to, and joins in, this request.<sup>1</sup> Counsel for the Defendant in the Related Cases has also confirmed that Defendant does not oppose this motion.<sup>2</sup> Plaintiffs’ responses to the Defendant’s Omnibus Motion to Dismiss are due on November 2, 2018. *See* Order dated October 10, 2018 (ECF No. 38).

Good cause exists to grant the requested relief. Defendant sought leave to file an 85-page omnibus brief, and its Omnibus Motion to Dismiss is 81 pages. Many of the issues raised by Defendant’s Omnibus Motion to Dismiss are common to the Related Cases, and it is most efficient—for the parties and the Court—to address those common issues through one proposed 75-page Omnibus Opposition Brief. To the extent Defendant’s Omnibus Motion to Dismiss also raises issues that are specific to the *Rafter* Plaintiffs, and to plaintiffs the Related Cases, it is most efficient—for the parties and the Court—to address those case-specific issues in separate proposed Supplemental Opposition Briefs not to exceed 15 pages each. For these reasons, the *Rafter* Plaintiffs respectfully request that the Court grant this unopposed motion for leave to

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<sup>1</sup> Pete Patterson on behalf of the *Fairholme* plaintiffs, James Kraehenbuehl on behalf of the *Cacciapalle* plaintiffs, Patrick Vallely on behalf of the *Fisher* and *Reid* plaintiffs, and Richard Zuckerman on behalf of the *Arrowood* plaintiffs, each gave the consent, and joinder, on behalf of those plaintiffs.

<sup>2</sup> Elizabeth Hosford stated that the Defendant does not object by email on October 26, 2018.

exceed the page limitation in Rule 5.4(b)(1) of the RCFC and to file one Omnibus Opposition Brief not to exceed 75 pages, and separate Supplemental Opposition Briefs not to exceed 15 pages, in this action and the Related Cases.<sup>3</sup>

Dated: October 29, 2018

By: /s/ Gregory P. Joseph

Gregory P. Joseph  
*Counsel of Record*

*Of Counsel*  
Mara Leventhal  
Sandra M. Lipsman  
Christopher J. Stanley  
Roman Asudulayev

JOSEPH HAGE AARONSON LLC  
485 Lexington Avenue, 30th Floor  
New York, New York 10017  
Tel. (212) 407-1200  
Fax. (212) 407-1280  
Email: gjoseph@jha.com

*Counsel for Louise Rafter,  
Josephine, Stephen Rattien,  
Pershing Square Capital Management, L.P.,  
Pershing Square, L.P., Pershing Square II,  
L.P., Pershing Square Holdings, Ltd., and  
Pershing Square International, Ltd.*

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<sup>3</sup> Assuming the *Rafter* Plaintiffs and the plaintiffs in each of the Related Cases were to each file a 40 page opposition brief to the Omnibus Motion to Dismiss under Rule 5.4(b)(1) of the RCFC, there would be 240 unique pages of briefs filed to this Court. By comparison, pursuant to this motion, the *Rafter* Plaintiffs and the plaintiffs in the Related Cases seek leave to file up to only 165 unique pages of briefs to this Court in opposition to the Omnibus Motion to Dismiss.

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Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

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FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Nominal Defendant.

Case No. 14-740C

Judge Margaret M. Sweeney

**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR LEAVE TO FILE OMNIBUS AND SUPPLEMENTAL OPPOSITION BRIEFS AND TO EXCEED PAGE LIMIT**

On October 29, 2018, Plaintiffs filed an unopposed motion for leave: (1) to file a coordinated brief up to 75 pages in length (the “**Omnibus Opposition Brief**”) in opposition to the Defendants’ Amended Omnibus Motion to Dismiss (ECF No. 35) (the “**Omnibus Motion to Dismiss**”) on behalf of plaintiffs in *Rafter v. United States*, No. 14-740C (Fed. Cl.), *Fairholme Funds, Inc. v. United States*, No. 13-465C (Fed. Cl.), *Cacciapalle v. United States*, No. 13-446C (Fed. Cl.), *Fisher v. United States*, No. 13-608C (Fed. Cl.), *Reid v. United States*, No. 14-152C (Fed. Cl.), and *Arrowood Indemnity Co. v. United States*, No. 13-698C (Fed. Cl.) (together, the “**Related Cases**”) to address common issues; and (2) for plaintiffs in each of the Related Cases

to file a supplemental brief up to 15 pages in length (the “**Supplemental Opposition Briefs**”) in opposition to the Defendant’s Omnibus Motion to Dismiss to address case-specific issues. For good cause shown, the motion is GRANTED.

IT IS HEREBY ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2018.