

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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WASHINGTON FEDERAL, <i>et al.</i> ,))	
))	
Plaintiffs,))	No. 13-385C
))	(Chief Judge Sweeney)
v.))	
))	
THE UNITED STATES,))	
))	
Defendant.))	
<hr/>)	
FAIRHOLME FUNDS, INC., <i>et al.</i> ,))	
))	
Plaintiffs,))	No. 13-465C
))	(Chief Judge Sweeney)
v.))	
))	
THE UNITED STATES,))	
))	
Defendant.))	
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**Additional plaintiffs on following pages*

**DEFENDANT’S NOTICE IDENTIFYING CLAIMS
ADDRESSED IN ITS OMNIBUS MOTION TO DISMISS**

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March 1, 2019

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CSS, LLC,)	
)	
Plaintiffs,)	No. 18-371C
)	(Chief Judge Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
<hr/>)	
MASON CAPITAL L.P., <i>et al.</i> ,)	
)	
Plaintiff,)	No. 18-529C
)	(Chief Judge Sweeney)
v.)	
)	
THE UNITED STATES,)	
)	
Defendant.)	
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GLOSSARY

Complaints

Akanthos	First Am. Compl., <i>Akanthos Opportunity Master Fund L.P. v. United States</i> , No. 18-369 (Fed. Cl. Aug. 16, 2018), ECF No. 14.
Appaloosa	Second Am. Compl., <i>Appaloosa Inv. Ltd. P'Ship I v. United States</i> , No. 18-370 (Fed. Cl. Aug. 16, 2018), ECF No. 17.
Arrowood	Second Am. Compl., <i>Arrowood Indemn. Co. v. United States</i> , No. 13-698 (Fed. Cl. Sept. 17, 2018), ECF No. 44.
Cacciapalle	Am. Consol. Class Action Compl., <i>Cacciapalle v. United States</i> , No. 13-466 (Fed. Cl. Mar. 8, 2018), ECF No. 67.
CSS	First Am. Compl., <i>CSS, LLC v. United States</i> , No. 18-371 (Fed. Cl. Aug. 16, 2018), ECF No. 14.
Fairholme	Second Am. Compl., <i>Fairholme Funds, Inc. v. United States</i> , No. 13-465 (Fed. Cl. Aug. 3, 2018), ECF No. 413.
Fisher	Second Am. Derivative Compl., <i>Fisher v. United States</i> , No. 13-608 (Fed. Cl. Mar. 8, 2018), ECF No. 36.
Mason	First Am. Compl., <i>Mason Cap. L.P. v. United States</i> , No. 18-529 (Fed. Cl. Aug. 16, 2018), ECF No. 14.
Owl Creek	First. Am. Compl., <i>Owl Creek Asia I, L.P. v. United States</i> , No. 18-281 (Fed. Cl. Aug. 16, 2018), ECF No. 16.
Rafter	Second Am. Verified Compl., <i>Rafter v. United States</i> , No. 14-740 (Fed. Cl. Mar. 8, 2018), ECF No. 25.
Reid	Am. Derivative Compl., <i>Reid v. United States</i> , No. 14-152 (Fed. Cl. Mar. 8, 2018), ECF No. 22.
WF	Am. Compl., <i>Washington Federal v. United States</i> , No. 13-385 (Fed. Cl. Mar. 8, 2018), ECF No. 57.

**DEFENDANT’S NOTICE IDENTIFYING CLAIMS
ADDRESSED IN ITS OMNIBUS MOTION TO DISMISS**

Pursuant to the Court’s Order, dated January 30, 2019 (ECF No. 432), defendant, the United States, respectfully submits this notice identifying which claims are the subject of each argument in its omnibus motion to dismiss.

DEFENDANT’S OMNIBUS MOTION TO DISMISS

II. The Court Lacks Jurisdiction To Entertain The Complaints Because FHFA Is Not The United States For Tucker Act Purposes When Acting As The Enterprises’ Conservator

- Akanthos – Counts I-IV
- Appaloosa – Counts I-IV
- Arrowood – Counts I-IV
- Cacciapalle – Counts I-VI
- CSS – Counts I-IV
- Fairholme – Counts I-XII
- Fisher – Counts I-III
- Mason – Counts I-IV
- Owl Creek – Counts I-IV
- Rafter – Counts I-VII
- Reid – Counts I-III

III. Under HERA’s Succession Clause, Enterprise Shareholders Lack Standing To Bring Derivative Suits

- Akanthos – Counts I-IV
- Appaloosa – Counts I-IV
- Arrowood – Counts I-IV
- Cacciapalle – Counts I-VI
- CSS – Counts I-IV
- Fairholme – Counts I-XII
- Fisher – Counts I-III
- Mason – Counts I-IV
- Owl Creek – Counts I-IV
- Rafter – Counts I-VII
- Reid – Counts I-III
- WF – Count I¹

¹ Although WF styles its first count as “Count One,” spelling out the numeral “one,” for consistency we are using Roman numerals and refer to WF’s single claim as “Count I” herein.

IV. This Court Does Not Possess Jurisdiction To Entertain Plaintiffs' Allegedly Direct Contract Claims Because No Plaintiff Is Party To A Contract With The United States

- Akanthos – Count IV
- Appaloosa – Count IV
- Arrowood – Count IV
- Cacciapalle – Counts IV and V
- CSS – Count IV
- Fairholme – Counts X-XII
- Mason – Count IV
- Owl Creek – Count IV
- Rafter –Counts IV-VII

V. The Court Lacks Jurisdiction To Entertain Claims That Sound In Tort

- Akanthos – Counts I-III
- Appaloosa – Counts I-III
- Arrowood – Counts I-III
- Cacciapalle – Counts I-III and VI
- CSS – Counts I-III
- Fairholme – Counts I-IX
- Fisher – Counts I-III
- Mason – Counts I-III
- Owl Creek – Counts I-III
- Rafter – Counts I-III
- Reid – Counts I-III
- WF – Count I

VI. Plaintiffs That Did Not Own Shares At The Time Of The Alleged Taking, Illegal Exaction, or Breach Lack Standing To Pursue Their Claims

- Fairholme – Counts I-XII²
- Rafter – Counts I-VII³

VII. Under 28 U.S.C. § 1500, The Court Lacks Jurisdiction To Entertain The *Fairholme*, *Cacciapalle*, And *Arrowood* Complaints

- Arrowood – Counts I-IV
- Cacciapalle – Counts I-VI
- Fairholme – Counts I-XII

² As to all plaintiffs except Berkley Insurance Company.

³ As to all plaintiffs except Louise Rafter and Josephine and Stephen Rattien.

VIII. Plaintiffs Fail To State A Plausible Takings Claim

- Akanthos – Count I
- Appaloosa – Count I
- Arrowood – Count I
- Cacciapalle – Counts I and II
- CSS – Count I
- Fairholme – Counts I-III
- Fisher – Count I
- Mason – Count I
- Owl Creek – Count I
- Rafter – Counts I and II
- Reid – Count I
- WF – Count I

IX. Plaintiffs Fail To State A Plausible Illegal Exaction Claim

- Akanthos – Count II
- Appaloosa – Count II
- Arrowood – Count II
- Cacciapalle – Count III
- CSS – Count II
- Fairholme – Counts IV-VI
- Fisher – Count II
- Mason – Count II
- Owl Creek – Count II
- Rafter – Count III
- Reid – Count II
- WF – Count I

X. Plaintiffs Fail To State A Plausible Breach Of Fiduciary Duty Claim

- Akanthos – Count III
- Appaloosa – Count III
- Arrowood – Count III
- Cacciapalle – Count VI
- CSS – Count III
- Fairholme – Counts VII-IX
- Fisher – Count III
- Mason – Count III
- Owl Creek – Count III
- Reid – Count III

XI. Plaintiffs Fail To State A Plausible Breach of Contract Claim

- Akanthos – Count IV
- Appaloosa – Count IV
- Arrowood – Count IV
- Cacciapalle – Counts IV and V
- CSS – Count IV
- Fairholme – Counts X-XII
- Mason – Count IV
- Owl Creek – Count IV
- Rafter—Counts IV-VII

XII. The *Washington Federal* Plaintiffs' Claims Stemming From FHFA's Appointment As Conservator Are Untimely Under HERA

- WF – Count I

Respectfully submitted,

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March 1, 2019

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