

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

MICHAEL E. KELLY, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 21-1949C
	)	(Judge Kathryn C. Davis)
THE UNITED STATES,	)	
	)	
Defendant.	)	

**JOINT STATUS REPORT**

Pursuant to the Court’s Order dated November 29, 2021 (ECF No. 8), the parties jointly and respectfully submit this joint status report, including a proposed schedule for further proceedings in this case.

In its order, the Court stayed proceedings in this case pending the final disposition of the appeal before the United States Court of Appeals for the Federal Circuit in *Washington Federal, et al. v. United States*, No. 20-2190. ECF No. 8. The Court ordered the parties to “file a joint status report, which will include a proposed schedule of further proceedings, within 30 days of the date on which the Federal Circuit’s decision in that case becomes final and not subject to further appellate review.” *Id.*

On February 22, 2022, the Federal Circuit affirmed the decision of the Court of Federal Claims dismissing Washington Federal’s complaint. *Washington Fed. v. United States*, 26 F.4th 1253, 1270 (Fed. Cir. 2022). Washington Federal, therefore, faced a deadline of May 22, 2022, to seek further appellate review by filing a petition for a writ of certiorari with the Supreme Court of the United States. U.S. Sup. Ct. R. 13. Because Washington Federal filed no such petition by the deadline, the Federal Circuit’s decision in *Washington Federal* is now final and

not subject to further appellate review. The parties agree that further proceedings in this case, therefore, are now appropriate.

The United States anticipates responding to the complaint filed by plaintiffs, Michael E. Kelly, *et al.*, with a motion to dismiss. In the United States' view, the Federal Circuit's decision in *Washington Federal*, along with its decision in a related case, *Fairholme Funds, Inc. v. United States*, 26 F.4th 1274 (Fed. Cir. 2022),<sup>1</sup> among other reasons, compel the dismissal of plaintiffs' complaint. Plaintiffs disagree, and intend to respond to the United States' motion. The parties have conferred and respectfully propose that the Court enter the following schedule for the briefing of the United States' motion:

ACTION	DATE
United States Files Motion to Dismiss	September 2, 2022
Plaintiffs File Response to United States' Motion to Dismiss	October 14, 2022
United States Files Reply in Support of Its Motion to Dismiss	November 10, 2022

<sup>1</sup> The parties considered whether a further stay of proceedings until the Federal Circuit's decision in *Fairholme* is final and non-appealable would be appropriate. Although the mandate has issued and that decision is now final and precedential, *Fairholme* has sought and received an extension of its deadline to petition for a writ of certiorari until July 22, 2022. Although *Fairholme* is important precedent that is relevant in this case, the parties do not believe that further stay of proceedings is warranted based on *Fairholme*. The parties note, however, that 12 other cases pending in this Court remain stayed until after the *Fairholme* decision becomes final and non-appealable. *Fairholme Funds, Inc. v. United States*, No. 13-465C (Fed. Cl.); *Fisher v. United States*, No. 13-605C (Fed. Cl.) (lead case); *Shipmon v. United States*, No. 13-672C (Fed. Cl.) (consolidated under *Fisher*); *Reid v. United States*, No. 14-152C (Fed. Cl.); *Rafter v. United States*, No. 14-740C (Fed. Cl.); *638 Capital Partners, LP v. United States*, No. 18-711C (Fed. Cl.); *Patt v. United States*, No. 18-712C (Fed. Cl.); *Wazee St. Opportunities Fund IV LP v. United States*, No. 18-1124C (Fed. Cl.); *CRS Master Fund, L.P. v. United States*, No. 18-1155C (Fed. Cl.); *Perry Capital LLC v. United States*, No. 18-1226C (Fed. Cl.); *Quinn Opportunities Master LP v. United States*, No. 18-1240C (Fed. Cl.); *Angel v. United States*, No. 20-737C (Fed. Cl.). If the Court prefers to continue the stay of proceedings in this case until the Federal Circuit's decision in *Fairholme* becomes final and non-appealable, to keep this case on the same schedule as these other related cases, the parties do not object.

**CONCLUSION**

For the foregoing reasons, the parties respectfully request that the Court enter the above schedule of proceedings in this case.

Respectfully submitted,

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