

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

BRYNDON FISHER et al.,)	
)	
Plaintiffs,)	
)	
v.)	Nos. 13-608C & 13-672C
)	(Senior Judge Margaret M. Sweeney)
THE UNITED STATES,)	
)	
Defendant.)	

JOINT STATUS REPORT

Pursuant to the Court’s Order dated October 5, 2020 (ECF No. 83), the parties jointly and respectfully submit this joint status report regarding proceedings in this case.

The Court’s October 5, 2020 Order continued a stay of proceedings pending the outcome of interlocutory appeals of the Court’s decision in another case, *Fairholme Funds, Inc. v. United States*, No. 13-465C, granting in part and denying in part defendant’s motion to dismiss in that case. The Court required that, within 21 days after the completion of the interlocutory appeal process, the parties file a joint status report proposing further proceedings, if any are necessary.

On February 22, 2022, the United States Court of Appeals for the Federal Circuit issued its opinion and judgment in the *Fairholme* interlocutory appeals. *See Fairholme Funds, Inc. v. United States*, 26 F.4th 1274 (Fed. Cir. 2022), *cert. denied*, No. 22-100, 2023 WL 124023 (U.S. Jan. 9, 2023). The Federal Circuit affirmed this Court’s dismissal of some of plaintiffs’ claims and reversed the Court’s decision not to dismiss the others, holding that all of plaintiffs’ claims should be dismissed. *Id.* at 1305. The mandate issued on April 15, 2022. *Fairholme Funds, Inc. v. United States*, No. 13-465C, ECF No. 473.

The *Fairholme* appellants, among others, petitioned for a writ of certiorari from the Supreme Court. On January 9, 2023, the Supreme Court denied the petitions. *Fairholme Funds,*

Inc. v. United States, No. 22-100 (U.S.), 2023 WL 124023 (U.S. Jan. 9, 2023); *see also Owl Creek Asia I, L.P. v. United States*, No. 22-97, 2023 WL 124020 (U.S. Jan. 9, 2023); *Cacciapalle v. United States*, No. 22-98, 2023 WL 124021 (U.S. Jan. 9, 2023); *Barrett v. United States*, No. 22-99, 2023 WL 124022 (U.S. Jan. 9, 2023).

The Supreme Court's decision to deny the petitions completed the interlocutory appeal process in *Fairholme*. Plaintiffs, however, require additional time to review the decisions with counsel before determining whether further proceedings will be required in these cases. The parties jointly request, therefore, that the Court permit the parties to file another joint status report in 14 days, on February 13, 2023, regarding whether further proceedings will be required.

Respectfully submitted,

s/ Robert C. Schubert
ROBERT C. SCHUBERT
Counsel of Record for Plaintiffs
SCHUBERT JONCKHEER & KOLBE LLP
Three Embarcadero Ctr Ste 1650
San Francisco, CA 94111-4018
(415) 788-4220
(415) 788-0161 (fax)
rschubert@sjk.com

Of Counsel:
Amber L. Schubert
Miranda P. Kolbe
SCHUBERT JONCKHEER & KOLBE LLP

Edward F. Haber
SHAPIRO HABER & URMY LLP

Counsel for Plaintiffs

January 30, 2023

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

PATRICIA M. McCARTHY
Director

s/ Elizabeth M. Hosford
ELIZABETH M. HOSFORD
Assistant Director

s/ Anthony F. Schiavetti
ANTHONY F. SCHIAVETTI
Senior Trial Counsel
U.S. Department of Justice
Civil Division
Commercial Litigation Branch
PO Box 480, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 305-7572
anthony.f.schiavetti@usdoj.gov

Attorneys For Defendant