

UNITED STATES COURT OF FEDERAL CLAIMS

Wazee Street Opportunities Fund IV LP,
Douglas Whitley, and Lisa Brown, On Behalf
of Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Case No. 18-1124

PLAINTIFFS' STATUS REPORT

Plaintiffs in the above-captioned case provide this status report pursuant to this Court's March 9, 2020 Order (ECF No. 13), and in response to the status report filed by the United States on January 30, 2023 (ECF No. 20). Plaintiffs apologize that due to the press of other business and the need to deliberate with clients over the next steps in this case caused a delay in providing their position until today, rather than as part of a joint submission with the United States on January 30.

Plaintiffs recognize that the decision of the Federal Circuit in *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), constitutes binding precedent that requires this Court to dismiss the claims advanced in the above-captioned case. However, Plaintiffs wish to be clear that since they were not parties in any of the cases addressed in the *Fairholme* decision, that decision is not collateral estoppel or *res judicata*, but instead is merely binding precedent. We do not understand the United States to

be taking any different position on that. Accordingly, while Plaintiffs recognize that dismissal is required, Plaintiffs also state for the record that they do not consent to such dismissal, and assert that they retained full appellate rights, including the right to appeal to the *en banc* Federal Circuit to overturn its decision in *Fairholme*.

Plaintiffs are also considering seeking leave to amend their complaint before this Court, and respectfully ask the Court for 30 days in which to file any such motion to amend. Plaintiffs are mindful of the substantial time period in which this case has been pending, but given the magnitude of the interests at stake and the fact that Plaintiffs have the responsibility of representing a class with thousands of members, Plaintiffs respectfully request until February 27, 2023 to file any motion to amend the complaint (or a status report informing the Court that no such motion will be filed if that is the decision that is reached). Plaintiffs have discussed this requested 30 days with counsel for the United States, who has informed Plaintiffs that the United States does not object to the request for an additional 30 days to determine if further proceedings will be necessary.

Dated: February 3, 2023

Respectfully Submitted,

/s/ Hamish P.M. Hume

Hamish P.M. Hume

Attorney of Record

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