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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DAISEY TRUST, by and through its trustee,  
Eddie Haddad; CAPE JASMINE CT. TRUST, by  
and through its trustee, Eddie Haddad; and  
SATICOY BAY LLC, SERIES 10007 LIBERTY  
VIEW,

Plaintiffs,

vs.

FEDERAL HOUSING FINANCE AGENCY;  
and SANDRA L. THOMPSON, in her official  
capacity as Director of the Federal Housing  
Finance Agency,

Defendants.

Case No.: 2:23-cv-00978-APG-EJY

**JOINT STATUS REPORT [ECF NO. 43]**

Plaintiffs Daisey Trust, Cape Jasmine Ct. Trust, and Saticoy Bay LLC, Series 10007 Liberty View (“Plaintiffs”) and Defendants Federal Housing Finance Agency and Sandra L. Thompson in her official capacity as Director (collectively, “FHFA”), through their undersigned counsel of record, submit the following joint status report pursuant to the Court’s May 16, 2024 Order. ECF No. 43.

On May 16, 2024, the Court ordered the parties to meet and confer about how the Supreme Court’s decision in *Consumer Financial Protection Bureau v. Community Financial Services Association of America, Ltd.*, 601 U.S. 416 (2024) (“CFPB”) impacts this case. ECF No. 40. Specifically, the Court requested the parties’ positions on whether the decision “requires amendment of the first amended complaint, withdrawal and refile of the pending motion to dismiss, or some

1 other action.” *Id.* The parties have met and conferred but were unable to reach consensus. As a  
2 result, the parties set forth their respective positions below.

3 **Plaintiffs’ Position**

4 The Supreme Court’s *CFPB* decision answered many – but not all – questions raised by this  
5 litigation. Most directly, the Supreme Court defined the meaning of an “appropriation” under the  
6 Appropriations Clause as a law specifying an amount, for a specific purpose, from a specific source.  
7 *CFPB*, 601 U.S. at 429-32. The presence of funding and spending caps played a prominent role in  
8 the Court’s historical analysis and its decision to uphold the CFPB’s funding structure.

9 For instance, the Court noted that early English “[s]tatutes grant[ed] money often stated that  
10 the Crown could spend ‘any Sum not exceeding’ a particular amount.” *Id.* at 429 (quotations  
11 omitted). The Court also observed that in American colonial practice “[s]ome appropriations  
12 required expenditure of a particular amount, while others allowed the recipient of the appropriated  
13 money *to spend up to a cap.*” *Id.* at 431 (emphasis added). The Court continued, “Congress’ first  
14 annual appropriations law, for instance, divided Government expenditures into four broad categories  
15 and *authorized disbursements up to certain amounts for these purposes.*” *Id.* at 432 (emphasis  
16 added). “The appropriation of ‘sums not exceeding’ a specified amount did not by itself mandate  
17 that the Executive spend that amount; as was the case in England, such appropriations instead  
18 provided the Executive discretion over how much to spend *up to a cap.*” *Id.*” (emphasis added).

19 Ultimately, the Court held that CFPB’s funding structure fit within the definition of  
20 appropriation because “[t]he statute authorizes the Bureau to draw public funds from a particular  
21 source ... *in an amount not exceeding an inflation-adjusted cap.*” *Id.* at 435 (emphasis added). The  
22 Court repeatedly emphasized the importance of the cap on CFPB’s constitutionality *Id.* (“In design,  
23 the Bureau’s authorization to draw an amount that the Director deems reasonably necessary to carry  
24 out the agency’s responsibilities, *subject to a cap*, is similar to the First Congress’ lump-sum  
25 appropriations”) (emphasis added); *id.* at 436 (“Congress determined the amount for the Bureau’s  
26 annual funding *by imposing a statutory cap* ... The only sense in which the Bureau decides its own  
27 funding, then, is by exercising its discretion to draw less than the *statutory cap.*”) (emphases added).

1 Unlike the CFPB, the FHFA’s funding structure has no cap. Instead, the sole limitation on  
2 FHFA’s power to spend is its own Director’s unbounded judgment of what is a “reasonable”  
3 amount. *See* 12 U.S.C.A. § 4516(a). Thus, FHFA’s structure remains unconstitutional under *CFPB*’s  
4 reasoning and holding.

5 To be sure, Plaintiffs’ First Amended Complaint and the pending motion practice reference  
6 the lack of a similar cap as one reason for unconstitutionality among the then-many reasons. But the  
7 FHFA’s missing cap was not as central to Plaintiffs’ arguments as their competing definition of  
8 “appropriation.” *CFPB* has now narrowed the disputed issues in this case substantially and elevated  
9 the importance of the lack of funding and spending caps. In several ways, the case has become more  
10 straightforward and there are fewer issues for this Court to resolve. The Court no longer needs to  
11 address many issues in the currently pending motions to dismiss for which the Court granted excess  
12 pages.

13 Therefore, an amendment to the pleadings is necessary to remove the resolved issues and to  
14 develop more fully the spending cap infirmities in the FHFA’s structure. An amendment – with  
15 more targeted motion practice to follow – will streamline this case and create a cleaner appellate  
16 record. It will be too procedurally convoluted for this Court and any reviewing court to shoehorn  
17 additional analysis into the current pending motions without a more fulsome underlying complaint.  
18 Accordingly, because Defendants refused to stipulate, Plaintiffs intend to file a motion for leave to  
19 file an amended complaint with the accompanying pleading on or before July 31, 2024. Plaintiffs  
20 remain willing to stipulate to any reasonable briefing schedule thereafter.

### 21 **FHFA’s Position**

22 FHFA submits that the *CFPB* decision is straightforward and dispositive. The Supreme  
23 Court explained that “[b]ased on the Constitution’s text, the history against which that text was  
24 enacted, and congressional practice immediately following ratification, we conclude that  
25 appropriations need only identify a source of public funds and authorize the expenditure of those  
26 funds for designated purposes to satisfy the Appropriations Clause.” *Op.* at 6. In arriving at that  
27 conclusion, the Court repeatedly stated that a valid appropriation consists of two elements—namely,  
28 (1) a specified source and (2) a designated purpose. Here, as discussed in the Motion to Dismiss,

1 FHFA’s funding provision satisfies both requirements for a valid appropriation: It specifies a source  
2 of funding (assessments on the entities regulated by FHFA) and authorizes expenditure of that  
3 funding for a designated purpose (to provide for the “reasonable costs” of FHFA). *See* ECF No. 36  
4 at 17-21 (discussing 12 U.S.C. § 4516(a) and applicable cases); *see also* ECF No. 42 at 18-25 (same).

5 During the June 11 meet-and-confer session, Plaintiffs’ counsel argued that *CFPB* does not  
6 control, purportedly because FHFA’s statutory funding, unlike *CFPB*’s, is not subject to a fixed  
7 dollar cap; counsel also asserted that Plaintiffs wished to amend the complaint for a second time to  
8 incorporate that theory.

9 No amendment is needed. Plaintiffs’ operative amended complaint already alleges that  
10 FHFA’s statutory funding mechanism violates the Appropriations Clause. Plaintiffs’ submissions  
11 discuss the underlying Fifth Circuit decision and acknowledge that the Supreme Court’s ruling was  
12 imminent; the ruling is no surprise. Plaintiff’s “cap” theory is a legal argument purportedly  
13 supporting their Appropriations Clause theory, but a complaint need not articulate the plaintiff’s  
14 precise legal theory. *See, e.g., Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014). And in any  
15 event, Plaintiffs’ own submissions to the Court confirm that the Amended Complaint *already*  
16 incorporates the “cap” theory. For example, in opposing FHFA’s motion to dismiss the existing  
17 amended complaint, Plaintiffs argued that “the missing cap removes all doubt that FHFA’s structure  
18 is unconstitutional no matter the outcome of *CFPB*.” ECF No. 39 at 11 n.1.

19 Allowing Plaintiffs yet another opportunity to amend their complaint—ostensibly to  
20 elaborate on a theory Plaintiffs have already asserted—would not only waste the parties’ and the  
21 Court’s time, but would also allow Plaintiffs’ affiliates to continue to improperly and vexatiously  
22 record *lis pendens* based on the untenable theory that this action somehow affects the title of absent  
23 putative class members. *See* ECF No. 44. Under the circumstances, this case can—and should—  
24 advance expeditiously to a ruling on the legal insufficiency of Plaintiffs’ claim without the need to  
25 start all over again, for the second time, with a new complaint.

26 FHFA believes that *CFPB* is fully dispositive, but recognizes that Plaintiffs disagree and  
27 that some explanation of the grounds for each side’s position would benefit the Court in resolving  
28 the case justly. FHFA believes that limited supplemental briefing on the pending motion to dismiss

1 would allow the parties to explain their positions fully, and thereby allow the Court to consider the  
2 parties' positions on the new decision. FHFA believes that two rounds of simultaneous briefing—  
3 limited to *CFPB*'s effect on Plaintiffs' claims—would suffice.

4 Accordingly, FHFA respectfully proposes that the Court enter an Order setting the following  
5 schedule:

- 6 • 21 days after Court enters its Order, each party will file an opening  
7 supplemental brief of up to eight pages, limited to the effect of the *CFPB*  
8 decision on Plaintiffs' claims; and,
- 9 • 42 days after the Court enters its Order, each party may file a response of up  
10 to four pages, limited to matters addressed in the opposing party's opening  
11 supplemental brief.

12 \* \* \*

13 The parties jointly and respectfully submit this as their report under the Court's May 16,  
14 2024 Order.

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17 DATED this 21st day of June, 2024.

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15  
16  
17 DATED this 21st day of June, 2024.

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