

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL ROP, *et al.*,

Plaintiffs,

v.

FEDERAL HOUSING FINANCE
AGENCY, *et al.*,

Defendants.

No. 1:17-cv-00497

**DEFENDANTS’ JOINT MOTION TO
VACATE DEFENDANTS’ ANSWER DEADLINE**

Defendants, with Plaintiffs’ consent, respectfully request that the Court vacate their February 21, 2025 answer deadline pending resolution of Plaintiffs’ forthcoming motion for leave to amend. Good cause supports this motion, as set forth below.

1. Plaintiffs initiated this lawsuit on June 1, 2017 against the Federal Housing Finance Agency (“FHFA”), FHFA’s Director, and the U.S. Department of the Treasury (“Treasury”). *See* ECF No. 1. On July 27, 2017, they filed their First Amended Complaint. ECF No. 17

2. Treasury and the FHFA Defendants moved to dismiss the First Amended Complaint, Plaintiffs cross moved for summary judgment, and the Court entered an order on September 8, 2020 that granted Defendants’ motions and dismissed the case in its entirety. ECF No. 66.

3. Following an appeal to the Sixth Circuit Court of Appeals, the case was remanded to this Court for the narrow purpose of determining whether the removal restriction on FHFA’s Director that the Supreme Court determined to be unconstitutional in *Collins v. Yellen*, 594 U.S.

220 (2021), “inflicted compensable harm on shareholders entitling them to retrospective relief.” *Rop v. FHFA*, 50 F.4th 562, 577 (6th Cir. 2022).

4. After meeting and conferring about further litigation following the remand, Plaintiffs moved for leave to file an amended complaint on August 11, 2023. ECF No. 79. Attached as an exhibit to that motion was a document labeled “Plaintiffs’ First Amended Complaint for Declaratory and Injunctive relief.” ECF No. 79-1. The proposed amended complaint sought to add allegations related to Plaintiffs’ theory that they were “harmed by the unconstitutional removal restriction” and “add claims alleging that FHFA’s funding structure violates the Constitution’s Appropriations Clause.” *See* ECF No. 80 at 6. Defendants objected to the proposed amended complaint to the extent that it sought to add claims under the Appropriations Clause. *See* ECF Nos. 83 & 84.

5. On December 11, 2024, the Court entered an order denying Plaintiffs’ motion for leave to amend, finding that Plaintiffs’ proposed new Appropriations Clause claim exceeded the scope of the Sixth Circuit’s mandate. *See* ECF No. 87. The proposed First Amended Complaint that Plaintiffs filed with their August 2023 motion for leave to amend was never separately docketed.

6. On January 24, 2025, the Court entered an order requiring Defendants to “file their answers to the first amended complaint” by February 21, 2025. As noted above, the “First Amended Complaint” is ECF No. 17, which was filed on July 27, 2017.

7. Following the Court’s order, the parties met and conferred, and on February 10, Plaintiffs’ counsel informed undersigned counsel that Plaintiffs intend to seek leave to file another amended complaint. To facilitate Defendants’ consideration, Plaintiffs shared a draft of their proposed amended complaint on February 13.

8. The FHFA Defendants recently informed Plaintiffs that they will oppose the intended motion for leave to file an amended complaint, while Treasury has taken no position on the motion.

9. Given these circumstances, Defendants request that the Court vacate the current February 21 answer deadline pending resolution of Plaintiffs' forthcoming motion for leave to amend. Defendants respectfully submit that the most efficient course in light of Plaintiffs' intended motion would be for the Court to determine which complaint will be operative before requiring Defendants to respond, and that granting the requested abeyance would conserve resources and prevent potentially duplicative proceedings.

10. Defendants propose that within 10 days of the Court's order resolving Plaintiffs' motion to amend, the parties meet and confer and propose a schedule for further proceedings including, if appropriate, a schedule for briefing any motions to dismiss whichever complaint is determined to be operative by the Court's decision on that motion.

11. Defendants have conferred with Plaintiffs' counsel, who represent that they consent to the relief requested in this motion.

12. For the foregoing reasons, Defendants respectfully request that the Court grant this motion and vacate their February 21, 2025 deadline to respond to Plaintiffs' complaint pending resolution of Plaintiffs' forthcoming motion for leave to file an amended complaint.

Dated: February 20, 2025

Respectfully submitted,

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/s/ R. Charlie Merritt

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