

ORIGINAL

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Rocky C. Tsai (SBN 221452)  
(rocky.tsai@ropesgray.com)  
ROPES & GRAY LLP  
Three Embarcadero Center  
San Francisco, CA 94111-4006  
Telephone: (415) 315-6300  
Facsimile: (415) 315-6350

John C. Ertman  
(john.ertman@ropesgray.com)  
(Pro hac vice applications pending)  
Lee S. Gayer  
(lee.gayer@ropesgray.com)  
Evan P. Lestelle  
(evan.lestelle@ropesgray.com)  
ROPES & GRAY LLP  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Telephone: (212) 596-9000  
Facsimile: (212) 596-9090

Douglas H. Hallward-Driemeier  
(douglas.hallward-driemeier@ropesgray.com)  
(Pro hac vice application pending)  
ROPES & GRAY LLP  
One Metro Center  
700 12th Street, NW  
Suite 900  
Washington, DC 20005-3948  
Phone: 202-508-4600

Daniel V. McCaughey  
(daniel.mccaughey@ropesgray.com)  
Nick W. Rose  
(nick.rose@ropesgray.com)  
ROPES & GRAY LLP  
800 Boylston St.  
Boston, MA  
Phone: 617-951-7000

*Attorneys for all Plaintiffs*

THOMAS O. JACOB (SBN 125665)  
tojacob@wellsfargo.com  
**WELLS FARGO & COMPANY**  
Office of General Counsel  
45 Fremont Street, Twenty-Sixth Floor  
MAC A0194-266  
San Francisco, CA 94105  
Telephone: (415) 396-4425  
Facsimile: (415) 975-7864

*Attorney for Wells Fargo Bank, solely in its trustee capacity*

**FILED**  
AUG 07 2013  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**CRB**

**CV 13 3663**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION, solely in its capacity as  
Trustee for  
ABFC 2002-OPT1 Trust, ABFC 2005-OPT1  
Trust, ABFC 2006-OPT1 Trust, Asset Backed  
Securities Corporation Home Equity Loan  
Trust, Series 2003-HE6, Asset Backed**

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

1 Securities Corporation Home Equity Loan  
Trust, Series 2004-HE2, Asset Backed  
2 Securities Corporation Home Equity Loan  
Trust, Series AMQ 2007-HE2, Banc of America  
3 Funding 2005-B Trust, Banc of America  
4 Funding 2005-G Trust, Banc of America  
5 Funding 2006-E Trust, Banc of America  
6 Funding 2007-E Trust, BCAP LLC TRUST  
2006-AA1, BNC Mortgage Loan Trust 2007-4,  
7 Banc of America Alternative Loan Trust 2003-  
8, Banc of America Alternative Loan Trust  
8 2006-5, Banc of America Alternative Loan  
9 Trust 2003-10, Banc of America Alternative  
10 Loan Trust 2003-11, Banc of America  
11 Alternative Loan Trust 2003-4, Banc of  
12 America Alternative Loan Trust 2003-5, Banc  
13 of America Alternative Loan Trust 2003-6,  
14 Banc of America Alternative Loan Trust 2003-  
15 8, Banc of America Alternative Loan Trust  
16 2003-9, Banc of America Alternative Loan  
17 Trust 2004-1, Banc of America Alternative  
18 Loan Trust 2004-11, Banc of America  
19 Alternative Loan Trust 2004-6, Banc of  
20 America Alternative Loan Trust 2004-7, Banc  
21 of America Alternative Loan Trust 2005-6,  
22 Banc of America Alternative Loan Trust 2005-  
23 7, Banc of America Alternative Loan Trust  
24 2006-2, Banc of America Alternative Loan  
25 Trust 2006-3, Banc of America Alternative  
26 Loan Trust 2006-5, Banc of America  
27 Alternative Loan Trust 2006-7, Banc of  
28 America Mortgage 2003-6 Trust, Banc of  
America Mortgage 2003-D Trust, Banc of  
America Mortgage 2003-H Trust, Banc of  
America Mortgage 2003-K Trust, Banc of  
America Mortgage Trust 2004-11, Banc of  
America Mortgage Trust 2004-6, Banc of  
America Mortgage Trust 2004-8, Banc of  
America Mortgage Trust 2004-9, Banc of  
America Mortgage 2004-B Trust, Banc of  
America Mortgage 2004-C Trust, Banc of  
America Mortgage 2004-D Trust, Banc of  
America Mortgage 2004-I Trust, Banc of  
America Mortgage 2004-K Trust, Banc of  
America Mortgage 2004-L Trust, Banc of  
America Mortgage Trust 2005-10, Banc of

1 America Mortgage Trust 2005-11, Banc of  
 2 America Mortgage Trust 2005-4, Banc of  
 3 America Mortgage Trust 2005-7, Banc of  
 4 America Mortgage 2005-A Trust, Banc of  
 5 America Mortgage 2005-E Trust, Banc of  
 6 America Mortgage 2005-J Trust, Banc of  
 7 America Mortgage 2007-1 Trust, Banc of  
 8 America Mortgage 2007-2 Trust, Banc of  
 9 America Mortgage 2004-J Trust, Banc of  
 10 America Mortgage 2005-D Trust, Banc of  
 11 America Mortgage 2005-E Trust, Banc of  
 12 America Mortgage 2007-3 Trust, Bear Stearns  
 13 Asset Backed Securities, Inc. 2000-2, Bear  
 14 Stearns Mortgage Funding Trust 2006-AR1,  
 15 Bear Stearns Mortgage Funding Trust 2006-  
 16 AR2, Bear Stearns Mortgage Funding Trust  
 17 2006-AR3, Bear Stearns Mortgage Funding  
 18 Trust 2006-AR4, Bear Stearns Mortgage  
 19 Funding Trust 2006-AR5, Bear Stearns  
 20 Mortgage Funding Trust 2007-AR1, Bear  
 21 Stearns Mortgage Funding Trust 2007-AR2,  
 22 Bear Stearns Mortgage Funding Trust 2007-  
 23 AR3, Bear Stearns Mortgage Funding Trust  
 24 2007-AR4, Bear Stearns Mortgage Funding  
 25 Trust 2007-AR5, Bear Stearns ARM Trust  
 26 2007-3, Carrington Mortgage Loan Trust,  
 27 Series 2006-FRE2, Carrington Mortgage Loan  
 28 Trust, Series 2006-NC2, Carrington Mortgage  
 Loan Trust, Series 2006-NC3, Carrington  
 Mortgage Loan Trust, Series 2006-NC3,  
 Carrington Mortgage Loan Trust, Series 2006-  
 NC5, Carrington Mortgage Loan Trust, Series  
 2006-OPT1, Carrington Mortgage Loan Trust,  
 Series 2006-RFC1, First Franklin Mortgage  
 Loan Trust 2004-FF11, First Franklin Mortgage  
 Loan Trust 2006-FF15, Freddie Mac Securities  
 REMIC Trust 2005-S001, GMACM Home  
 Equity Loan Trust 2003-HE2, GreenPoint MTA  
 Trust 2005-AR3, GreenPoint Mortgage Funding  
 Trust 2005-AR4, GreenPoint Mortgage Funding  
 Trust 2005-AR5, GreenPoint Mortgage Funding  
 Trust 2006-AR1, GreenPoint Mortgage Funding  
 Trust 2006-AR2, GreenPoint Mortgage Funding  
 Trust 2006-AR3, HarborView Mortgage Loan  
 Trust 2006-10, HarborView Mortgage Loan  
 Trust 2006-12, HarborView Mortgage Loan

1 Trust 2007-1, HarborView Mortgage Loan  
2 Trust 2007-3, Impac CMB Trust Series 2004-  
3 11, Impac CMB Trust Series 2004-6, Impac  
4 CMB Trust Series 2005-6, Irwin Home Equity  
5 Loan Trust 2007-1, Impac Secured Assets  
6 Corp., Mortgage Pass- Through Certificates,  
7 Series 2005-2, Lehman Mortgage Trust 2006-9,  
8 Lehman Mortgage Trust 2007-4, MASTR Asset  
9 Backed Securities Trust 2003-OPT2, MASTR  
10 Asset Backed Securities Trust 2007-NCW,  
11 Merrill Lynch Mortgage Investors Trust, Series  
12 2004-WMC5, Merrill Lynch Mortgage  
13 Investors Trust, Series 2005-WMC2, Merrill  
14 Lynch Mortgage Investors Trust Series MLCC  
15 2004-B, Merrill Lynch Mortgage Investors  
16 Trust Series MLCC 2006-1, Merrill Lynch  
17 Mortgage Investors Trust Mortgage Loan  
18 Asset-Backed Certificates, Series 2006-HE1,  
19 Morgan Stanley ABS Capital I Inc. Trust 2005-  
20 WMC2, Morgan Stanley ABS Capital I Inc.  
21 Trust 2005-WMC3, Morgan Stanley ABS  
22 Capital I Inc. Trust 2005-WMC4, Morgan  
23 Stanley ABS Capital I Inc. Trust 2006-WMC1,  
24 MSCC HELOC Trust 2007-1, National City  
25 Mortgage Capital Trust 2008-1, Option One  
26 Mortgage Loan Trust 2003-5, Option One  
27 Mortgage Loan Trust 2003-6, Option One  
28 Mortgage Loan Trust 2005-3, Option One  
Mortgage Loan Trust 2005-4, Option One  
Mortgage Loan Trust 2006-1, Option One  
Mortgage Loan Trust 2007-1, Option One  
Mortgage Loan Trust 2007-3, Option One  
Mortgage Loan Trust 2007-4, Option One  
Mortgage Loan Trust 2007-5, Option One  
Mortgage Loan Trust 2007-6, Option One  
Mortgage Loan Trust 2007CP1, Option One  
Mortgage Loan Trust 2007-FXD2, Park Place  
Securities, Inc., Asset-Backed Pass-Through  
Certificates, Series 2004-MCW1, Park Place  
Securities, Inc., Asset-Backed Pass-Through  
Certificates, Series 2004-WHQ1, Park Place  
Securities, Inc., Asset-Backed Pass-Through  
Certificates, Series 2004-WHQ2, Park Place  
Securities, Inc., Asset-Backed Pass-Through  
Certificates, Series 2005-WCH1, Park Place  
Securities, Inc., Asset-Backed Pass-Through

1 Certificates, Series 2005-WCW2, Park Place  
2 Securities, Inc., Asset-Backed Pass-Through  
3 Certificates, Series 2005-WCW2, Park Place  
4 Securities, Inc., Asset-Backed Pass-Through  
5 Certificates, Series 2005-WHQ1, Park Place  
6 Securities, Inc., Asset-Backed Pass-Through  
7 Certificates, Series 2005-WHQ3, Park Place  
8 Securities, Inc., Asset-Backed Pass-Through  
9 Certificates, Series 2005-WHQ4, RESI Finance  
10 Limited Partnership 2003-B, RESI Finance  
11 Limited Partnership 2003-C, RESI Finance  
12 Limited Partnership 2003-CB1, RESI Finance  
13 Limited Partnership 2003-D, RESI Finance  
14 Limited Partnership 2004-B, RESI Finance  
15 Limited Partnership 2004-C, RESI Finance  
16 Limited Partnership 2005-A, RESI Finance  
17 Limited Partnership 2005-B, RESI Finance  
18 Limited Partnership 2005-C, RESI Finance  
19 Limited Partnership 2005-D, RESI Finance  
20 Limited Partnership 2006-A, RMAC Pass-  
21 Through Trust, Series 2010-A, Securitized  
22 Asset Backed Receivables LLC Trust 2006-  
23 HE1, Securitized Asset Backed Receivables  
24 LLC Trust 2006-HE2, SABR Mortgage Loan  
25 2008-1 Grantor Trust, Structured Asset  
26 Investment Loan Trust 2003-BC12, Structured  
27 Asset Mortgage Investments II Trust 2007-  
28 AR4, Structured Adjustable Rate Mortgage  
Loan Trust, Series 2004-10, Structured  
Adjustable Rate Mortgage Loan Trust, Series  
2004-16, Structured Adjustable Rate Mortgage  
Loan Trust, Series 2004-18, Structured  
Adjustable Rate Mortgage Loan Trust, Series  
2004-9XS, Structured Adjustable Rate  
Mortgage Loan Trust, Series 2005-12,  
Structured Adjustable Rate Mortgage Loan  
Trust, Series 2005-17, Structured Adjustable  
Rate Mortgage Loan Trust, Series 2007-3,  
Structured Adjustable Rate Mortgage Loan  
Trust, Series 2007-4, Structured Asset  
Securities Corporation Pass-Through  
Certificates, Series 2002-AL1, Structured Asset  
Securities Corporation Mortgage Pass-Through  
Certificates, Series 2003-15A, Structured Asset  
Securities Corporation Mortgage Pass-Through  
Certificates, Series 2003-26A, Structured Asset

1 Securities Corporation Mortgage Loan Trust  
2 2006-OPT1, Structured Asset Securities Corp.  
3 2007-BC1, SASI Finance Limited Partnership  
4 2006-A, Southern Pacific Secured Assets Corp.,  
5 Mortgage Loan Asset-Backed Pass-Through  
6 Certificates, Series 1998-2, Soundview Home  
7 Loan Trust 2007-OPT1, Soundview Home Loan  
8 Trust 2007-OPTS, Terwin Mortgage Trust,  
9 Series TMTS 2003-8HE, WaMu Mortgage  
10 Pass-Through Certificates Series 2004-PR1  
11 Trust, WaMu Mortgage Pass-Through  
12 Certificates Series 2004-PR2 Trust, WaMu  
13 Mortgage Pass-Through Certificates Series  
14 2005-PR1 Trust, WaMu Mortgage Pass-  
15 Through Certificates Series 2005-PR2 Trust,  
16 WaMu Mortgage Pass-Through Certificates  
17 Series 2005-PR4 Trust, WaMu Mortgage Pass-  
18 Through Certificates Series 2006-PR1 Trust,  
19 WaMu Mortgage Pass-Through Certificates  
20 Series 2006-PR2 Trust, WaMu Mortgage Pass-  
21 Through Certificates Series 2006-PR3 Trust,  
22 Waterfall Victoria Mortgage Trust 2010-1;

14 **DEUTSCHE BANK NATIONAL TRUST**  
15 **COMPANY, solely in its capacity as Trustee**  
16 *for*  
17 Alliance Securities Corp. 2007-OA1,  
18 Accredited Mortgage Loan Trust 2006-2,  
19 American Home Mortgage Investment Trust  
20 2005-2, American Home Mortgage Investment  
21 Trust 2005-3, American Home Mortgage  
22 Investment Trust 2006-1, American Home  
23 Mortgage Assets Trust 2006-5, American Home  
24 Mortgage Investment Trust 2007-1, American  
25 Home Mortgage Assets Trust 2007-1, American  
26 Home Mortgage Assets Trust 2007-2, American  
27 Home Mortgage Assets Trust 2007-4, American  
28 Home Mortgage Investment Trust 2007-SD2,  
Ameriquest Mortgage Securities Inc. 2006-R1,  
Argent Securities Inc. 2004-W8, Argent  
Securities Inc. 2005-W2, Argent Securities  
Trust 2006-W4, Argent Securities Trust 2006-  
M1, Argent Securities Trust 2006-M2, Asset  
Backed Securities Corporation Home Equity  
Loan Trust 2004-HE1, Barclays Capital Inc.,  
BCAP LLC Trust 2007-AA1, Carrington

1 Mortgage Loan Trust 2005-NC4, Carrington  
2 Mortgage Loan Trust 2005-NC5, Encore Credit  
3 Receivables Trust 2005-3, Downey Savings and  
4 Loan Association Mortgage Loan Trust 2004-  
5 AR2, Downey Savings and Loan Association  
6 Mortgage Loan Trust 2005-AR3, Soundview  
7 Home Equity Loan Trust 2005-OPT4, First  
8 Franklin Mortgage Loan Trust 2005-FFH3,  
9 HarborView Mortgage Loan Trust 2006-14,  
10 Downey Savings and Loan Association  
11 Mortgage Loan Trust 2006-AR1, Fremont  
12 Home Loan Trust 2006-3, HarborView  
13 Mortgage Loan Trust 2006-3, Soundview Home  
14 Equity Loan Trust 2006-OPT5, Soundview  
15 Home Loan Trust 2007-WMC1, Downey  
16 Savings and Loan Association Mortgage Loan  
17 Trust 2007-AR1, HarborView Mortgage Loan  
18 Trust 2007-4, HarborView Mortgage Loan  
19 Trust 2007-7, GSAA Home Equity Trust 2007-  
20 4, GSAA Home Equity Trust 2007-6, GSR  
21 Mortgage Loan Trust 2007-AR2, GSR  
22 Mortgage Loan Trust 2007-OA2, STARM  
23 Mortgage Loan Trust 2007-4, HSI Asset  
24 Securitization Corporation Trust 2005-OPT1,  
25 HSI Asset Securitization Corporation Trust  
26 2006-OPT1, HSI Asset Securitization  
27 Corporation Trust 2006-OPT2, HSI Asset  
28 Securitization Corporation Trust 2007-NC1,  
HSI Asset Securitization Corporation Trust  
2007-WF1, HSI Asset Securitization  
Corporation Trust 2007-HE1, Impac CMB  
Trust 2005-5, Impac Secured Assets Corp.  
2006-3, Impac Secured Assets Corp. 2006-5,  
Impac Secured Assets Corp. 2007-1, Impac  
Secured Assets Corp. 2007-2, IndyMac  
Residential Asset Securities Trust (RAST)  
2004-A5, IndyMac INDX Mortgage Loan Trust  
2005-AR1, IndyMac INDX Mortgage Loan  
Trust 2005-AR8, IndyMac INDX Mortgage  
Loan Trust 2005-AR12, IndyMac INDX  
Mortgage Loan Trust 2005-AR13, IndyMac  
INDX Mortgage Loan Trust 2005-AR14,  
IndyMac INDX Mortgage Loan Trust 2005-  
AR25, IndyMac INDA Mortgage Loan Trust  
2006-AR2, IndyMac INDX Mortgage Loan  
Trust 2006-AR6, IndyMac INDX Mortgage

1 Loan Trust 2006-AR14, IndyMac INDX  
2 Mortgage Loan Trust 2006-AR29, IndyMac  
3 INDA Mortgage Loan Trust 2006-AR3,  
4 IndyMac Residential Asset Securities Trust  
5 (RAST) 2007-A3, IndyMac INDX Mortgage  
6 Loan Trust 2007-AR5, IndyMac INDX  
7 Mortgage Loan Trust 2007-AR211P, IndyMac  
8 INDA Mortgage Loan Trust 2007-AR1,  
9 IndyMac INDA Mortgage Loan Trust 2007-  
10 AR8, IndyMac INDX Mortgage Loan Trust  
11 2007-FLX1, IndyMac INDX Mortgage Loan  
12 Trust 2007-FLX6, J.P. Morgan Mortgage  
13 Acquisition Trust 2007-CH3, J.P. Morgan  
14 Mortgage Acquisition Trust 2007-CH5, Long  
15 Beach Mortgage Loan Trust 2005-WL1, Long  
16 Beach Mortgage Loan Trust 2005-WL2, Long  
17 Beach Mortgage Loan Trust 2006-6, Long  
18 Beach Mortgage Loan Trust 2006-7, Long  
19 Beach Mortgage Loan Trust 2006-8, Long  
20 Beach Mortgage Loan Trust 2006-10, Long  
21 Beach Mortgage Loan Trust 2006-WL1, Long  
22 Beach Mortgage Loan Trust 2006-WL2,  
23 Mortgage IT Trust 2005-3, Morgan Stanley  
24 ABS Capital I Trust 2004-NC7, Morgan  
25 Stanley ABS Capital I Trust 2004-HE8, Morgan  
26 Stanley ABS Capital I Trust 2006-NC3,  
27 Morgan Stanley ABS Capital I Trust 2006-  
28 NC5, Morgan Stanley ABS Capital I Trust  
2006-HE5, Morgan Stanley ABS Capital I Trust  
2006-HE7, Morgan Stanley ABS Capital I Trust  
2006-HE8, Morgan Stanley ABS Capital I Trust  
2006-WMC2, Morgan Stanley Home Equity  
Loan Trust 2006-1, Morgan Stanley Home  
Equity Loan Trust 2006-2, Morgan Stanley  
ABS Capital I Trust 2007-NC4, Morgan  
Stanley ABS Capital I Trust 2007-HE7, New  
Century Home Equity Loan Trust 2005-4, New  
Century Home Equity Loan Trust 2005-B, New  
Century Home Equity Loan Trust 2005-D,  
Novastar Mortgage Funding Trust 2007-1,  
Saxon Asset Securities Trust 2007-2, Thornburg  
Mortgage Securities Trust 2004-4, WaMu  
Mortgage Pass- Through Certificates, Series  
2004-AR6, WaMu Mortgage Pass-Through  
Certificates, Series 2005-AR6, WaMu  
Mortgage Pass- Through Certificates, Series



1 2005-AR11, WaMu Mortgage Pass-Through  
2 Certificates, Series 2005-AR12, WaMu  
3 Mortgage Pass- Through Certificates, Series  
4 2005-AR13, WaMu Mortgage Pass-Through  
5 Certificates, Series 2005-AR15, WaMu  
6 Mortgage Pass-Through Certificates, WMALT  
7 Series 2006-AR1, Washington Mutual  
8 Mortgage Pass-Through Certificates, WMALT  
9 Series 2006-AR5, WaMu Asset-Backed  
10 Certificates 2007-HE; and

11 **DEUTSCHE BANK TRUST COMPANY**  
12 **AMERICAS**, *solely in its capacity as Trustee*  
13 *for*

14 Residential Accredit Loans Inc. 2005-QA10,  
15 Residential Accredit Loans Inc. 2006-QO2,  
16 Residential Accredit Loans Inc. 2006-QO3,  
17 Residential Accredit Loans Inc. 2006-QO4,  
18 Residential Accredit Loans Inc. 2006-QO6,  
19 Residential Accredit Loans Inc. 2006-QO10,  
20 Residential Accredit Loans Inc. 2006-QS3,  
21 Residential Accredit Loans Inc. 2006-QS10,  
22 Residential Accredit Loans Inc. 2006-QS17,  
23 Residential Accredit Loans Inc. 2007-QA3,  
24 Residential Accredit Loans Inc. 2007-QO1,  
25 Residential Accredit Loans Inc. 2007-QO4,  
26 Residential Accredit Loans Inc. 2007-QO5,  
27 Residential Accredit Loans Inc. 2007-QS3,  
28 Residential Funding Mortgage Securities I  
2007-S4, Saxon Asset Securities Trust 2003-3,  
Saxon Asset Securities Trust 2006-3;

Plaintiffs,

v.

CITY OF RICHMOND, CALIFORNIA, a  
municipality; and MORTGAGE  
RESOLUTION PARTNERS LLC;

Defendants.



1 Richmond homeowners would receive a windfall by having their debt permanently discharged  
2 because they meet a borrowing profile that is profitable to Richmond and MRP.

3           3.       The Program is a profit-driven strategy designed to enrich Richmond, a  
4 private investment firm (MRP) and its financial backers, and select Richmond homeowners, at  
5 the expense of private-label RMBS trusts located outside of Richmond and the beneficiaries of  
6 those trusts. Such a program does not involve a legitimate “public use” for which the  
7 government’s eminent domain power is expressly reserved. Additionally, the entire business  
8 model that drives the profits generated by the Program is predicated on paying for the seized  
9 performing loans at artificially low prices that are substantially less than the loan’s actual value.  
10 Thus, the Richmond Seizure Program would, if allowed to proceed, result in huge losses to the  
11 Trusts and their beneficiaries and violate the constitutional requirement of “just compensation”  
12 for any taking.

13           4.       Moreover, implementing the Richmond Seizure Program would result in  
14 a massive transfer of wealth from the beneficial owners of the mortgage loans targeted by the  
15 Program (who are all located outside of Richmond and the vast majority of whom are located  
16 outside of California) to a few preferred private parties, and would threaten to severely disrupt  
17 the United States mortgage industry – a major sector of interstate commerce. Thus, the Program  
18 also violates state and federal constitutional prohibitions against the extraterritorial reach of  
19 Richmond’s regulatory authority.

20           5.       Richmond and MRP seek to disguise the Program as a legitimate public  
21 use of eminent domain power by asserting that they are aiming to seize “underwater” mortgages  
22 (i.e., those where the value of the home is less than the outstanding principal amount of the  
23 mortgage), which they claim will prevent future defaults and foreclosures in Richmond, and  
24 therefore prevent their attendant consequences of home abandonment, blight, and economic  
25 depression. But that characterization is a mere facade, as the Program principally targets  
26 performing loans – i.e., the loans of homeowners who have been making their monthly  
27 payments for years despite being “underwater,” and who have good credit ratings, as opposed to  
28 those loans that are in default or at serious risk of default. The Program targets performing

1 loans *because they are not at serious risk of default* and therefore can be easily re-financed with  
2 a new Federal Housing Authority (“FHA”) insured loan for an amount significantly greater than  
3 the price paid by Richmond to seize the original loan. Thus, contrary to Defendants’ assertions,  
4 the vast majority of the loans at issue are not at imminent risk of default, and the homeowners in  
5 question are not at risk of having their loans foreclosed and having to move out of their homes.  
6 Indeed, it is the relative safety of these loans that allows the Defendants to generate the huge  
7 profits they seek, which is the actual purpose of the Program.

8           6. Federal agencies have expressed serious concerns about the  
9 constitutionality of the Program and its potential impacts on the U.S. mortgage industry if it is  
10 allowed to go forward. In a public statement dated August 9, 2012, the Federal Housing  
11 Finance Administration (“FHFA”), the conservator of Fannie Mae and Freddie Mac (the two  
12 Government–Sponsored Enterprises (“GSEs”) that are among the largest investors in RMBS  
13 trusts), stated that “FHFA has significant concerns about the use of eminent domain to revise  
14 existing financial contracts” and that “resulting losses from such a program would represent a  
15 cost ultimately borne by taxpayers” and would have “a chilling effect on the extension of credit  
16 to borrowers seeking to become homeowners and on investors that support the housing market.”  
17 77 FR 47652 (August 9, 2012). FHFA noted that “[a]mong questions raised regarding the  
18 proposed use of eminent domain are the constitutionality of such use,” “the effects on holders of  
19 existing securities,” “the impact on millions of negotiated and performing mortgage contracts,”  
20 and “critical issues surrounding the valuation by local governments of complex contractual  
21 arrangements that are traded in national and international markets.” *Id.*

22           7. Likewise, the U.S. House of Representatives, House Financial Services  
23 Committee, recently issued a draft reform bill, one of the stated purposes of which is: “To  
24 combat constitutionally-suspect ‘eminent domain’ schemes by local municipalities to seize  
25 mortgages out of legally binding securities for purposes of rewriting their terms, prohibit the  
26 GSEs from purchasing or guaranteeing loans originated in municipalities where such practices  
27 have been employed during the last ten years.” Executive Summary of the Protecting American  
28

1 Homeowners (PATH) Act, July 11, 2013, available at  
2 <http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=342165>, at 2.

3 8. The concerns expressed by FHFA and by the House Financial Services  
4 Committee are well founded. The Program violates numerous provisions of the United States  
5 Constitution, the California Constitution, and California state law. Defendants' own public  
6 statements concerning the purpose of the Program and the details of how it would be used to  
7 target performing loans and then flip them to generate profits for MRP confirm that it would  
8 violate the "public use" and "just compensation," requirements of the "Takings Clause" of the  
9 U.S. and California Constitutions. U.S. Const. amend. V; Cal. Const. art. I, § 1. Moreover,  
10 because the mortgage loans that would be seized are notes held in locations outside of  
11 Richmond by non-Richmond creditors, the Program would also violate the Takings Clause and  
12 California statutory prohibitions against extraterritorial seizures. The implementation of the  
13 Program should be enjoined for those reasons.

14 9. Additionally, the Program, if fully implemented, would have a significant  
15 impact on interstate commerce, and therefore would violate the U.S. Constitution's Commerce  
16 Clause and Contract Clause in a number of ways.

17 10. First, the Program would violate the dormant Commerce Clause, which  
18 prevents local governments from discriminating against out-of-state investors or otherwise  
19 erecting barriers to interstate commerce to benefit in-state economic interests. As noted above,  
20 Richmond, MRP, and MRP's financial backers would realize huge profits from this scheme by  
21 sharing in the spread between the price at which the homeowner's current mortgage loan is  
22 seized and the revenue gained by Richmond/MRP by giving the homeowner a new smaller  
23 mortgage loan and then selling that loan to a government-backed securitized pool. The select  
24 Richmond homeowners chosen to participate in the Program – because they meet a borrowing  
25 profile that would be profitable to Richmond and MRP – also would profit by having their  
26 underwater loans and mortgage debts extinguished and replaced with newly refinanced loans.  
27 But these economic benefits to a relatively small group of investors and Richmond homeowners  
28 would come at the expense of RMBS Trusts located outside of Richmond, and ultimately their

1 certificateholders. These RMBS Trusts and their certificateholders would experience significant  
2 losses as a result of each loan seized: losses of approximately the unpaid principal balance of  
3 the seized loans or more, minus the price paid by Richmond for the seizure. Such losses could  
4 amount to many tens of millions of dollars. This transfer of wealth from the beneficiaries of  
5 RMBS Trusts, who in most cases are located entirely outside of California, to Richmond and  
6 MRP, not only violates the Commerce Clause of the U.S. Constitution; it also violates the  
7 Contract Clause of the U.S. Constitution, which prohibits a local government from abrogating  
8 debts of local residents held by creditors.

9           11.       Second, while the actual benefits of the Program to Richmond as a whole  
10 are questionable (as the Program primarily targets performing loans at low risk of default and  
11 has the potential to harm the community by limiting available future mortgage financing), the  
12 potential negative effects of the Richmond Seizure Program on the national mortgage industry  
13 would be significant and widespread. The number of loans meeting the MRP profile in  
14 Richmond alone – approximately 1,000 to 2,000 mortgage loans – would cause many tens of  
15 millions of dollars in losses, potentially \$200 million or more if the Program is allowed to go  
16 forward. If Richmond were allowed to proceed, other local governments would follow suit,  
17 with the result that these damages across RMBS trusts would exceed billions of dollars. Upon  
18 information and belief, several other local governments – including, among others, the  
19 municipalities of North Las Vegas, Nevada; El Monte, California; La Puente, California; San  
20 Joaquin, California; Orange Cove, California; Newark, New Jersey; and Seattle, Washington –  
21 are seriously considering the Program or have already engaged MRP or otherwise taken steps  
22 toward implementing the Program. This wealth transfer from the RMBS Trusts and their  
23 beneficiaries to MRP, local governments, and select homeowners, would seriously adversely  
24 impact the national housing market.

25           12.       Richmond would advance its local concerns at the expense of an entire  
26 sector of interstate commerce that is critical to the health of the national economy. The Program  
27 would severely disrupt the interstate market for mortgage-backed securities, which, in turn, is an  
28 essential part of the home loan industry that enables a large percentage of Americans to realize

1 the dream of owning their own homes. Lenders enter into mortgage loans, and those loans are  
2 conveyed to RMBS trusts in interstate commerce, with the expectation that a large percentage of  
3 homeowners will stay in their homes and continue to pay their mortgages or pay them off early  
4 at full value, even as the housing market goes through cycles. These expectations are based on  
5 careful analysis of historical payment trends. The Program being carried out in Richmond, by  
6 itself, poses a direct threat to the economic expectations and underpinnings of the RMBS  
7 market, but the threat is even more dire when coupled with the prospect that other cities around  
8 the Nation would enter into similar agreements with MRP. If even the highest performing  
9 mortgage loans are at risk of being seized at substantial discounts from face value whenever the  
10 housing market enters a downward cycle, then the market will reflect that risk by sharply  
11 reducing the price at which secondary-market buyers will be willing to purchase mortgage loans  
12 in general. If the value of loans on the secondary market plummets, then lending banks likely  
13 will reflect that change by offering new loans on more onerous terms than those currently  
14 offered. And such more demanding terms will exclude many would-be home purchasers from  
15 the market. Thus, by participating in the Program, Richmond would be using its sovereign  
16 powers in a manner that effectively compels lenders to alter the terms of credit they offer to  
17 account for greater risk. It is beyond question that Richmond could not directly adopt  
18 regulations governing the interstate market in home mortgage loans that would have so  
19 devastating an effect on the Nation's economy, and it cannot do so indirectly, under the guise of  
20 "taking" the contract rights that are at the core of this important sector of interstate commerce.

21           13. The beneficiaries of the RMBS Trusts include state and local pension  
22 plans, 401(k) plans, college savings plans, insurance companies, mutual funds, university  
23 endowments, and government sponsored enterprises. The economic harm would extend to  
24 those entities and ultimately to their individual participants, including a vast number of  
25 individual retirees nationwide.

26           14. At the very least, the Program, if permitted to go forward, would have a  
27 serious negative effect on the housing market and the local economy of Richmond. Among  
28 other things, lenders will take into account Richmond's capricious use of eminent domain

1 powers to seize performing mortgage loans by reducing the available residential mortgage loan  
2 credit to Richmond borrowers and increasing interest rates for residential mortgage loans. The  
3 Program provides a windfall to a select group of Richmond residents who are paying their  
4 mortgages, but harms the residential real estate market in Richmond across the board, and  
5 effectively appropriates assets from, among others, a vast number of individual retirees  
6 nationwide whose retirement vehicles are beneficiaries of RMBS trusts.

7 15. As is noted above, the Plaintiffs are the trustees for the RMBS Trusts  
8 (also listed on Schedules A-C hereto), which hold mortgage loans of homeowners in Richmond  
9 that are being targeted by the Program. Plaintiffs request declaratory and injunctive relief  
10 against Defendants' implementation of the Program. Moreover, because Defendants have taken  
11 substantial steps toward implementing the Program, including sending offer letters to the  
12 Plaintiffs and loan servicers for the RMBS Trusts to acquire the loans and publicly declaring  
13 their intentions to soon begin seizing mortgage loans using Richmond's eminent domain  
14 powers, Defendants should be preliminarily enjoined from implementing the Program, which  
15 would be exceedingly difficult, if not impossible, to unwind after it has begun.

## 16 THE PARTIES

### 17 **A. Plaintiffs**

18 16. Plaintiff Wells Fargo Bank, National Association ("Wells Fargo"), as  
19 trustee for each of the RMBS Trusts listed on Schedule A hereto, is a national banking  
20 association organized under the laws of the United States with its main office in South Dakota  
21 and its principal place of trust administration in Maryland. Plaintiff Deutsche Bank National  
22 Trust Company ("DBNTC"), as trustee for the RMBS trusts listed on Schedule B hereto, is a  
23 national banking association organized to carry on the business of a limited purpose trust  
24 company under the laws of the United States with its main office in Los Angeles, California,  
25 and its principal place of trust administration in Santa Ana, California. Plaintiff Deutsche Bank  
26 Trust Company Americas ("DBTCA"), as trustee for the RMBS Trusts listed on Schedule C  
27 hereto, is a New York Banking Corporation organized and existing under New York law with  
28 its principal place of business and its principal place of trust administration in New York.



1                   17.     None of Wells Fargo, DBTCA, or DBNTC is incorporated in California  
2 or otherwise organized under the laws of California. None of the Trustees is headquartered in  
3 Richmond, or has any corporate trust services office or employees in Richmond. Of the three  
4 Plaintiff trustees, only DBNTC has a principal place of corporate trust administration in  
5 California.

6                   18.     The Plaintiffs serve as trustees for the RMBS Trusts, which hold  
7 mortgage loans targeted by the Richmond Seizure Program due to their geographic location and  
8 loan profile. The beneficiaries or certificateholders of the RMBS Trusts include a variety of  
9 institutional investors investing in the Trusts for their own accounts and on behalf of clients,  
10 including federal, state and local pension plans, 401(k) plans, college savings plans, insurance  
11 companies, mutual funds, university endowments and other institutional or individual investors.

12                   19.     Although, as of the time of filing of this Complaint, Plaintiffs do not  
13 know all of the loans the Program will target, loans of the type being targeted by the Richmond  
14 Seizure Program are held in approximately 1,100 RMBS trusts, including the Trusts listed on  
15 Schedules A-C hereto.

16                   20.     The physical notes evidencing the targeted mortgage loans held by the  
17 Trusts all are located outside of Richmond, and in most cases, are located outside of California.

18                   21.     The certificateholders or beneficial owners of the Trusts are located  
19 across the country and the world.

20     **B.     Defendants**

21                   22.     The Defendants – including MRP, a San Francisco-based investment firm  
22 – are located in California.

23                   23.     Defendant MRP is a limited liability company registered under the laws  
24 of Delaware, and its registered agent for service of process in Delaware is The Corporation  
25 Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware, 19801. It  
26 is headquartered in San Francisco, California.

27                   24.     MRP is a privately-owned, for-profit company that seeks to partner with  
28 local governments to seize certain residential mortgage loans under the power of eminent

1 domain and to then restructure those loans. On information and belief, MRP has no other  
2 business operations.

3 25. To date, MRP has attempted to partner with numerous municipalities in  
4 California and other states to implement its program. While several of these municipalities have  
5 taken steps towards implementing MRP's program, Richmond is believed to be furthest along.

6 26. MRP proposes to manage and facilitate the loan restructuring process,  
7 including (a) raising funds to finance the seizures of the mortgage loans; (b) identifying  
8 mortgage loans to be acquired through eminent domain; and (c) arranging for the refinancing of  
9 the seized loans. MRP and its investors would profit handsomely from this arrangement with  
10 municipalities. MRP would receive a \$4,500 fee for each loan seized and refinanced. In  
11 addition, on information and belief, MRP's investors would receive the profit spread between  
12 the seizure price and the price at which the new loan to the homeowner is refinanced and sold to  
13 a securitized pool, net of MRP's fee, the fee paid the City of Richmond, and any expenses  
14 incurred with the seizure of the loan that MRP has agreed to pay.

15 27. On or about April 2, 2013, Richmond, through its City Council and upon  
16 the recommendation of its City Manager, voted to enter into an "Advisory Services Agreement"  
17 with MRP, under which MRP would advise Richmond about avenues of mortgage relief for  
18 Richmond homeowners, including the possibility of acquiring existing mortgage loans through  
19 eminent domain. It is not clear whether this is the only written agreement between Richmond  
20 and MRP or if there are other undisclosed oral or written arrangements or understandings  
21 between them.

22 28. Defendant City of Richmond, a municipality, is located in Contra Costa  
23 County in the State of California.

#### 24 **JURISDICTION**

25 29. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331  
26 (federal question jurisdiction) and 1343(a)(3) and (4) (jurisdiction over actions for violations of  
27 constitutional and federal rights secured by 42 U.S.C. § 1983), and over Plaintiffs' declaratory  
28 relief causes of action under 28 U.S.C. §§ 2201 and 2202. Plaintiffs' state law claims are so

1 related to their federal law claims that they form part of the same case or controversy.  
2 Accordingly, this Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant  
3 to 28 U.S.C. § 1367(a).

4 30. This Court has personal jurisdiction over Defendant Richmond, as a  
5 municipality located in this judicial district. The Court also has personal jurisdiction over  
6 Richmond because Plaintiffs' claims arise out of actions taken by Richmond in this judicial  
7 district.

8 31. The Court has personal jurisdiction over Defendant MRP, because MRP  
9 is an investment firm doing business in this judicial district, and Plaintiffs' claims arise out of  
10 MRP's transaction of business in this judicial district.

#### 11 VENUE

12 32. Venue is proper in this judicial district based on 28 U.S.C. § 1391(b).  
13 Defendant Richmond resides in this district, Defendant MRP conducts business in this judicial  
14 district, and a substantial part of the events or omissions giving rise to the claims asserted herein  
15 occurred in this district.

#### 16 INTRADISTRICT ASSIGNMENT

17 33. Pursuant to Civil Local Rules 3-2(c) and 3-2(d), this action is properly  
18 assigned to either the San Francisco or Oakland Division of this Court, because a substantial  
19 part of the events giving rise to the claims asserted herein occurred in Contra Costa County  
20 (where Richmond is located) and the County of San Francisco (where MRP is headquartered).

#### 21 FACTUAL BACKGROUND

##### 22 I. Richmond and MRP's Profit Scheme

23 34. Defendants Richmond and MRP seek to enrich themselves through a  
24 profit-driven scheme under which Richmond would use its eminent domain powers, and the  
25 threat of eminent domain litigation, primarily to seize performing residential mortgage loans  
26 owned by outside-of-Richmond RMBS Trusts and their beneficiaries at steeply and unjustifiably  
27 discounted prices that do not reflect the current value of the loans, and then refinance those  
28

1 loans with new federally insured loans for amounts substantially above the amounts paid by  
2 Richmond to seize the homeowners' existing loans.

3 35. Richmond and MRP would profit by sharing in the spread between the  
4 price paid by Richmond to seize the loans and the proceeds received by Richmond (through  
5 MRP) for selling the new refinanced loans to the homeowners to a new securitized pool. The  
6 outside-of-Richmond RMBS Trusts whose mortgage loans would be seized under this Program  
7 would lose significant value – potentially hundreds of thousands of dollars on some seized loans  
8 – causing substantial harm to the Trusts and their certificateholders. Thus, the Program amounts  
9 to a seizure and transfer of wealth from private parties outside of Richmond, on the one hand, to  
10 other private parties, on the other hand, with Richmond receiving a small cut of the profits as its  
11 fee for renting out its eminent domain powers.

12 **A. The Richmond Seizure Program's Targeting of Performing Loans**

13 36. The Program primarily targets, for eminent domain seizure, mortgage  
14 loans that meet a specific profile: (a) performing loans (meaning the borrower is not in default);  
15 (b) that are underwater (meaning that the loan value is worth more than the underlying home  
16 value); and (c) that are held by "private-label" securitization trusts (meaning that the trusts are  
17 sponsored by a private entity, rather than by a government-sponsored enterprise).<sup>1</sup>

18 37. The Program seeks to cherry-pick loans held by borrowers with the best  
19 credit ratings. In MRP's own words, it seeks loans that are "relatively current (not in default),"  
20 and only from "*borrowers who appear likely to repay their loans.*" Exhibit A (MRP  
21 Homeownership Protection Program Presentation) at 9 (emphasis added). Thus, as MRP  
22 admits, the Program does not target loans for which there is a serious risk of default (much less  
23 a serious risk of foreclosure).

24 38. The reasons why MRP is targeting performing loans with low risks of  
25 default are obvious and implicit in the MRP business model. Under that model, a loan seizure

26 <sup>1</sup> The Program has been described in several public sources, including in presentations by MRP  
27 to Richmond and others, attached hereto as Exhibits A (MRP Homeownership Protection  
28 Program Presentation), B (MRP FAQ Sheet), C (Richmond CARES Presentation), and D (North  
Las Vegas CARES Presentation).

1 cannot be profitable unless the seized loan can be refinanced. Without such refinancing, the  
2 amount paid to compensate the targeted RMBS Trust and its certificateholders for the eminent  
3 domain seizure would be unreimbursed (and the City would remain the de facto holder of the  
4 seized mortgage loan). Thus, the Program necessarily targets homeowners who can qualify for  
5 new loans with good credit ratings that could be sold to a new securitized trust guaranteed by  
6 the Federal Housing Administration (“FHA”).

7 39. To put it simply, MRP cannot realize the huge profits it seeks on the  
8 backend of its strategy unless it targets performing homeowners with good credit ratings and  
9 repayment histories. Otherwise, MRP will not be able to sell the new loan to a securitized pool  
10 and obtain the revenue from that sale that provides MRP with the profit spread for this scheme.

11 40. For similar strategic reasons, the Program targets loans held only by  
12 private-label RMBS trusts, which are located outside of Richmond. On information and belief,  
13 MRP believes the RMBS Trusts are too dispersed, and their certificateholders too dispersed, to  
14 coordinate any meaningful resistance to MRP’s scheme.

15 41. The Program, by contrast, avoids seizing loans held by trusts sponsored  
16 and guaranteed by Freddie Mac or Fannie Mae, in order to avoid provoking the ire of the federal  
17 government. It similarly avoids seizing loans held directly by banks.

18 42. In addition, MRP and Richmond attempt to justify the Program as  
19 correcting what they claim to be a market inefficiency that exists with respect to loans held in  
20 private-label RMBS Trusts: that the governing documents of some RMBS trusts prohibit the  
21 loan servicers for the Trusts from permanently reducing a borrower’s principal balance. *See,*  
22 *e.g.,* Exhibit C (Richmond CARES Presentation), at 5.

23 43. Finally, while the Program targets “underwater” loans, to purportedly  
24 avoid foreclosures and their attendant economic costs, this justification is a false pretense for the  
25 Program’s money-making scheme. The performing loans targeted by the Program are unlikely  
26 to go into default, let alone foreclosure, and the targeted homeowners are not about to abandon  
27 or be forced out of their homes.

28

1                   **B.     The Seizure and Refinancing of the Targeted Loans**

2                   44.     Under the Program, once a loan is selected, Richmond will attempt to  
3 seize the loan through eminent domain powers for approximately 80% or less of the underlying  
4 *home value*. Because these are underwater loans (i.e., those with home values below the  
5 outstanding principal balance of the mortgage), a payment of 80% of the home value is far  
6 lower than the unpaid principal balance of the loan.

7                   45.     Because the mortgage loans targeted by Richmond are performing and  
8 have a low risk of default, and (as is described below) generally cannot legally be sold out of the  
9 RMBS Trusts, those loans are properly valued at an amount worth substantially above the  
10 underlying current home value. A proper valuation of the loans would take into account their  
11 remaining principal and interest payments. The actual value of such loans would be the loan's  
12 unpaid principal balance, which for most of the targeted loans far exceeds 80% of the home's  
13 current value.

14                  46.     Additionally, it is unclear that the Program will even assess the current  
15 value of the underlying home at a fair market value for purposes of pricing its compensation for  
16 the seizure. Because Defendants are incentivized to pay as low a seizure price as possible, the  
17 Program could value the underlying home at an artificial or deflated price, leading to an even  
18 lower seizure price.

19                  47.     On information and belief, once Defendants secure the loan at a steeply  
20 discounted price, they then intend to replace it with a new loan to be sold into a FHA securitized  
21 pool in an amount equal to approximately 95% of the underlying home value. Richmond, MRP,  
22 and their investors and partners thus would instantly profit by sharing in the spread between the  
23 80% seizure price and the 95% refinancing price.

24                  48.     In an example provided by MRP, an underwater loan on a home worth  
25 \$200,000 would be seized by eminent domain for \$160,000 (or 80% of the home's value), and  
26 then refinanced into a new FHA loan for \$190,000 (or 95% of the home's value). The \$30,000  
27 spread between the seizure price and the refinancing price would be divided (after expenses)  
28 among Richmond, MRP, and MRP's investors.

1                   49.     In this example, Richmond would receive a flat fee of 5% of the  
2 refinancing value (or \$9,500), MRP would receive a flat fee of \$4,500 for each loan seizure, and  
3 MRP's investors would receive the remainder of the spread between the seizure price and the  
4 refinancing price. *See* Ex. C hereto. MRP may also be entitled to additional compensation in  
5 connection with the Program, including fees for arranging the financing for the seizure and/or in  
6 connection with the refinancing.

7                   50.     MRP has claimed that the loans the Program seeks to target do actually  
8 trade, and one can pull the trading histories and determine that, for example, a performing  
9 \$300,000 loan on a \$200,000 house is worth about 80% of the value of the house. But this is  
10 inaccurate. There is no trading market for performing underwater loans held by private-label  
11 RMBS trusts. Indeed, the Trusts are structured under federal tax laws as "real estate mortgage  
12 investment conduits," or "REMICs," and, as such, are prohibited from selling performing loans.  
13 Regardless, the value of such performing loans to the RMBS Trusts is clearly not the current  
14 value of the underlying home.

15                  51.     Additionally, the entire Program is premised on undercompensating the  
16 owners of the loans. It could not function in any other way, because the Program is profitable  
17 for its participants only because the loans are seized for heavily discounted prices and are then  
18 refinanced with a new loan purportedly worth more than the amount for which the homeowner's  
19 existing loan was seized. The new loan can be sold to a new securitized pool, creating a profit  
20 spread. So compensation for the seized loans under the Program must, *ipso facto*, be at an  
21 artificially deflated value – and hardly the "just" compensation that is constitutionally required.

22                  52.     In fact, not only is the 80% price not a fair value for a performing  
23 underwater loan with a low risk of default owned by an RMBS Trust, it would not even be a fair  
24 price for Richmond loans not part of RMBS Trusts that are in default or foreclosure. On  
25 information and belief, *defaulted* residential mortgage loans available for sale have recently  
26 traded at far above 80% of the underlying home value.

1           **C.     The Program Will Have a Minimal Impact on Richmond’s Foreclosure Rate**

2           53.     MRP and the City attempt to justify the Program as a proper use of the  
3 City’s eminent domain powers by asserting that the seizure of underwater mortgage loans will  
4 prevent defaults and foreclosures in Richmond, and thus reduce the economic fallout from the  
5 mortgage crisis, which began in 2008. Additionally, Richmond and MRP have touted the  
6 Program as fixing a “traditional” type of “market failure”: the inability of borrowers to obtain a  
7 reduction in the principal balance of loans held by private-label RMBS trusts.

8           54.     For example, Richmond claims that the Program will reduce foreclosures  
9 in Richmond, create “more stable neighborhoods,” add “more money in our local economy to  
10 stimulate community wealth,” and save homeowners money on their mortgage payments and  
11 put that money in “homeowners’ pockets” to spend on local businesses. Likewise, the Program  
12 would purportedly “preserv[e] home ownership, restor[e] homeowner equity and stabiliz[e] the  
13 communities’ housing market and economy by allowing many homeowners to remain in their  
14 homes.” Exhibit E (MRP Advisory Services Agreement) at 1. MRP claims that the homes that  
15 would be seized under the Program are “highly likely” to be foreclosed upon.

16           55.     But such purported justifications for the Program are inconsistent with the  
17 Program’s business model, which, as noted above, primarily targets performing loans that are  
18 not at serious risk of default, let alone foreclosure.

19           56.     These are loans where the borrowers have not gone into foreclosure or  
20 otherwise walked away from their mortgages throughout a serious economic downturn that  
21 started in 2008. The likelihood that such borrowers would default and be foreclosed upon now,  
22 after weathering a years-long financial storm, with property values on the rise nationwide  
23 (including in California), is minimal. With real estate prices in California having risen  
24 significantly in the past year and expected to increase in the next 12 months, homeowners who  
25 have performed their mortgage loan contracts for years have no reason to suddenly walk away  
26 from their homes.

27           57.     The actual reality in Richmond contradicts the parade of horrors – of  
28 widespread defaults, foreclosures, home abandonments, blight and economic depression – that



1 MRP and Richmond claim will occur if they are not allowed to seize performing underwater  
2 loans and refinance them for their own profit.

3 58. For example, MRP claims that *50% of the private label mortgages in*  
4 *Richmond will go into foreclosure*, and that “[t]hese foreclosures will cost Richmond \$25  
5 million.” Exhibit C (Richmond CARES Presentation) at 2. This is a gross exaggeration that is  
6 completely inconsistent with historical trends and experts’ predictions for what will occur in the  
7 future.

8 59. The probability that a performing loan being targeted by Richmond and  
9 MRP will go into default over the next year is exceptionally low, and any such default would  
10 almost certainly be due to a change in economic circumstances of the borrower, like the  
11 unexpected loss of a job, and not due to a decision by the homeowner to abandon their home  
12 because it is currently underwater. Any loan that were to go into default in Richmond in the  
13 next year would most likely qualify to obtain a modification or other type of work-out, and  
14 would not be foreclosed upon. Indeed, on information and belief, a significant percentage of the  
15 Richmond loans being targeted by the Program have already been modified or refinanced since  
16 2008. Under current California law, lenders are required to attempt to negotiate a modification  
17 with homeowners before they can resort to foreclosure. In the rare case where a modification or  
18 work-out cannot be done, it currently takes a minimum of one year in California before any  
19 defaulting loan can be foreclosed upon.

20 60. Thus, the Richmond Seizure Program would have little or no effect on the  
21 foreclosure rate in Richmond, and would instead cause substantial economic harm in Richmond  
22 and beyond.

23 **D. MRP and The City Have Taken Substantial Steps Towards Implementing**  
24 **the Program**

25 61. To date, several other municipalities (in California and other states) have  
26 contemplated entering into a partnership with MRP to implement its Program.

27 62. MRP first targeted municipalities in California as potential partners for its  
28 Program. The California local governments of San Bernardino County and the Cities of

1 Fontana and Ontario were the first to consider the Program. They formed a Joint Powers  
2 Authority (“JPA”) to study the issue. After more than seven months of extensive review, the  
3 JPA Board voted unanimously on January 24, 2013 not to consider any proposals that involved  
4 the use of eminent domain.

5 63. At the time, JPA Board Chairman Greg Devereaux publicly remarked that  
6 the JPA Board’s decision was informed by the fact that experts warned that the use of eminent  
7 domain would destabilize an already weak local housing market and worsen the mortgage crisis,  
8 and that few local homeowners and other stakeholders expressed support for the use of eminent  
9 domain, with many affirmatively opposing such a strategy.

10 64. Although, to Plaintiffs’ knowledge, no loans have yet been seized by  
11 Richmond, Defendants have taken substantial steps toward implementing the Program and  
12 seizing the loans. In April 2013, Richmond entered into an “Advisory Services Agreement”  
13 with MRP, which apparently is the operative agreement between Richmond and MRP with  
14 respect to the Program.

15 65. On multiple occasions over the past months, the Mayor of Richmond or  
16 other Richmond officials have publicly discussed Richmond’s implementation of the Program,  
17 including confirming that the City Council entered into a partnership with MRP to implement  
18 the Program and discussing MRP and Richmond’s readiness to begin implementing the  
19 Program.

20 66. On or about July 31, 2013, Richmond sent letters to the Plaintiffs and  
21 other trustees and loan servicers making offers to purchase loans held in RMBS trusts, which  
22 offers are a prerequisite under California eminent domain law before a local government can  
23 seize property. The offer letters purported to attach a list of 624 mortgage loans held by various  
24 RMBS trusts (including many held by the RMBS Trusts for which Plaintiffs serve as trustees)  
25 that Defendants offered to acquire, “at the present time.” Upon information and belief,  
26 approximately two-thirds of the loans on this list are performing, thus indicating that the  
27 Program seeks to target performing loans. It is unclear whether Richmond intends to seize the  
28 nonperforming loans listed on the offer letters. The letters state that the offers are nonbinding

1 on Richmond, and provide a deadline of August 13, 2013 for responses to the offers, after which  
2 Richmond may “decide[] to proceed with the acquisition of the loans through eminent domain.”  
3 Upon information and belief, Richmond’s offer letters constitute a first wave of offers, and if  
4 Defendants are successful in acquiring or seizing these loans, it is expected that they will  
5 attempt to acquire or seize many other loans that meet their targeted profile.

6 67. If the offers to sell the loans are not accepted, Richmond could quickly  
7 seize possession of the loans. Richmond must first hold a condemnation hearing, and  
8 immediately thereafter could file an eminent domain lawsuit in California state court and use a  
9 California state law procedure known as a “Quick Take” to immediately obtain a court order  
10 giving Richmond possession of the property. MRP has indicated that the “Quick Take”  
11 procedure is a critical component of its scheme. *See* Exhibit B (MRP FAQ Sheet), at 3. Once  
12 Richmond receives possession of the loans, it could then extinguish, restructure, and refinance  
13 them, causing immediate and irreparable harm to the Trusts that will be exceedingly difficult, if  
14 not impossible, to unwind.

15 68. Thus, there is a high likelihood that Defendants will soon exercise the  
16 City’s eminent domain powers to seize possession of the mortgage loans under the Program.

17 **II. Implementation of the Richmond Seizure Program Would Result in Significant**  
18 **Economic Harm to Plaintiffs and Will Impact Interstate Commerce**

19 **A. Economic Harm to the Trusts and their Beneficiaries**

20 **1. Organization of the Trusts**

21 69. Defendants intend to potentially target for seizure under the Program any  
22 performing loan secured by property in Richmond that is held by a “private label” RMBS trust.  
23 MRP has estimated that approximately 1,500 such mortgage loans exist in Richmond. *See*  
24 Exhibit C (Richmond CARES Presentation) at 2.

25 70. The RMBS Trusts are investment vehicles created as part of the  
26 residential mortgage loan securitization process, whereby financial and economic risks are  
27 distributed by pooling mortgage loans and issuing securities or certificates for which the  
28 mortgages serve as collateral. Certificates of the RMBS Trusts are issued to certificateholders

1 on whose behalf Plaintiffs hold the mortgage loans. Under the typical governing documents for  
2 the RMBS Trusts, the Plaintiffs, solely in their trustee capacity, hold legal title to the mortgage  
3 loans on behalf of and for the benefit of the Trusts' certificateholders.

4 71. The most common form of securitization of mortgage loans involves a  
5 "sponsor" – an entity that acquires or originates the mortgage loans and initiates the  
6 securitization. A "private label" securitization is one that is sponsored by a private entity, rather  
7 than a GSE such as Fannie Mae or Freddie Mac.

8 72. Sponsors do not always originate the mortgage loans themselves, but  
9 frequently acquire the mortgage loans from loan originators or others that have title to the loans.  
10 For a loan to be conveyed from the point of origination to an RMBS trust involves a complex  
11 series of sales transactions that often occur across state lines.

12 73. The prices paid for the mortgage loans that are deposited into the RMBS  
13 Trusts are contingent on the quality and value of the mortgage loans. Economic and financial  
14 risk are distributed because the pool of loans in an RMBS trust typically is geographically  
15 diverse. Thus, the Trusts do not exclusively contain loans secured by California real property  
16 (or exclusively loans from any other single state), but rather each Trust contains mortgage loans  
17 secured by real property located in a variety of states and localities.

18 74. The certificates issued by the Trusts represent beneficial ownership  
19 interests in the principal and interest from the cash flow generated by the mortgage loan pool in  
20 accordance with specific payment rules. The assets of the Trusts are serviced by "loan  
21 servicers" whose responsibilities include collecting payments by borrowers and managing  
22 borrower defaults.

23 75. The certificates are purchased by investors – typically referred to as  
24 "certificateholders" – who seek a particular risk profile of the Trust's mortgage loans. The  
25 certificates in the Trusts typically are issued pursuant to offering memoranda, which explain the  
26 general structure of the investment and the risks involved and contain detailed descriptions of  
27 the collateral groups underlying the certificates.

28

1                    76. Pursuant to the governing documents for the Trusts, the performing loans  
2 held by the Trusts generally cannot be sold. Therefore, there is no trading market for  
3 performing private-label loans like those targeted by Richmond and MRP. Investors in RMBS  
4 trusts expect those loans to perform until maturity, unless the loan is paid off by the borrower  
5 early or goes into default.

6                    **2. Harm to the Trusts and their Beneficiaries**

7                    77. If implemented, the Richmond Seizure Program would cause significant  
8 harm to the RMBS Trusts and their certificateholders, who ultimately bear the substantial harm  
9 imposed by the Takings Program.

10                    78. First, the targeting of performing loans within the Trusts' portfolios  
11 would, by itself, completely upend the purpose of the securitization process, which is based  
12 upon loan diversification and on the stable and non-saleable nature of performing loans within  
13 the pool.

14                    79. Second, the number of loans targeted in Richmond alone – hundreds of  
15 mortgage loans – would cause tens of millions of dollars in losses to the RMBS Trusts for which  
16 Plaintiffs serve as trustees, and other RMBS trusts holding those loans (with an average  
17 estimated loss of approximately \$100,000 to \$200,000 per seized loan), potentially as high as  
18 \$66 million or more in losses to the Trusts for which the Plaintiffs are trustees, and \$200 million  
19 or more to all RMBS trusts. Indeed, upon information and belief, the first wave of 624 loans  
20 targeted by Defendants could potentially cause losses to RMBS trusts holding those loans of  
21 \$90 million or more.

22                    80. Third, on information and belief, Richmond is a test case for the Program.  
23 Many municipalities have been approached by MRP, but, upon information and belief,  
24 Richmond has taken the most significant steps towards seizing loans under the Program. On  
25 information and belief, those municipalities, and many others, are watching to see whether  
26 Richmond is able to carry out its scheme. If even a few other municipalities of Richmond's size  
27 implement the Program, then losses could range in the billions of dollars. If more than a few  
28 implement the Program, losses could mount far higher. This widespread transfer of substantial

1 wealth from the RMBS Trusts and their certificateholders, on the one hand, to MRP, local  
2 governments, and select local homeowners, on the other hand, could destabilize the national  
3 housing market.

4 **B. The Effect on Interstate Commerce and the National Housing Market**

5 81. The Program would also cause significant harm to interstate commerce  
6 and the national housing market. In addition to the damages caused to RMBS Trusts and their  
7 beneficiaries by the seizure of performing residential mortgage loans at artificially low prices,  
8 the Program would have a chilling effect on the future extension of mortgage credit to  
9 homeowners. Lenders would have reduced willingness to underwrite mortgages in Richmond  
10 or other municipalities in which they perceive a risk that similar programs will be implemented.  
11 To the extent lenders chose to continue lending in such municipalities at all, they necessarily  
12 would lower the loan-to-value (of the home) ratio at which they would lend, and charge a higher  
13 interest rate on the loans they do make, to take into account the new risk that the loan would be  
14 seized by eminent domain whenever the housing market enters a cyclical downturn. Potential  
15 borrowers in those jurisdictions would therefore suffer by the tightening of credit in their  
16 communities. With diminished access to credit, many prospective homeowners would be  
17 unable to obtain loans, and housing prices would fall across the board.

18 82. Further, the Program would undermine investor confidence in the  
19 residential mortgage-backed securities market, and by extension, the national housing market  
20 and national economy. The securitization market would be upended, as investors in residential  
21 mortgage-backed securities would be unable to adequately evaluate underlying mortgage pools  
22 that collateralize their investment, and prices for affected securities would decrease. A broad  
23 range of investors hold interests in residential mortgage-backed securitizations as part of  
24 common diversification strategies. Thus, the detrimental effects of a valuation crisis as to the  
25 securities evidencing those interests would flow through the national housing market, and  
26 likewise, the national economy.

1           83.     Likewise, industries dependent on a vibrant housing market and an active  
2 home lending environment would suffer, such as the home building, construction, and realty  
3 industries.

4           84.     In comments published in the Federal Register, 77 FR 47652 (August 9,  
5 2012) discussing the “Use of Eminent Domain To Restructure Performing Loans,” the FHFA  
6 recognized the harm that programs like the Richmond Seizure Program would cause. Among  
7 other things, FHFA has explained that the GSEs, as well as the multiple Federal Home Loan  
8 Banks for which FHFA acts as a regulator, because they are substantial holders of RMBS,  
9 would be harmed, as well as the communities themselves that attempt to use eminent domain.  
10 According to FHFA:

11           FHFA has significant concerns about the use of eminent domain to revise existing  
12 financial contracts and the alteration of the value of Enterprise or Bank securities  
13 holdings. In the case of the Enterprises, resulting losses from such a program  
14 would represent a cost ultimately borne by taxpayers. At the same time, FHFA  
15 has significant concerns with programs that could undermine and have a chilling  
16 effect on the extension of credit to borrowers seeking to become homeowners and  
17 on investors that support the housing market.

18           FHFA has determined that action may be necessary on its part as conservator for  
19 the Enterprises and as regulator for the Banks to avoid a risk to safe and sound  
20 operations and to avoid taxpayer expense.

21           Among questions raised regarding the proposed use of eminent domain are the  
22 constitutionality of such use; the application of federal and state consumer  
23 protection laws; the effects on holders of existing securities; the impact on  
24 millions of negotiated and performing mortgage contracts; the role of courts in  
25 administering or overseeing such a program, including available judicial  
26 resources; fees and costs attendant to such programs; and, in particular, critical  
27 issues surrounding the valuation by local governments of complex contractual  
28 arrangements that are traded in national and international markets.

23           85.     Likewise, the U.S. House of Representatives Financial Services  
24 Committee, which has oversight of Fannie Mae and Freddie Mac, recently issued a draft reform  
25 bill, a stated purpose of which is to implement the following reform: “To combat  
26 constitutionally-suspect ‘eminent domain’ schemes by local municipalities to seize mortgages  
27 out of legally binding securities for purposes of rewriting their terms, prohibit the GSEs from  
28 purchasing or guaranteeing loans originated in municipalities where such practices have been

1 employed during the last ten years.” Executive Summary of the Protecting American  
2 Homeowners (PATH) Act, July 11, 2013, at 2.

3 86. The concerns expressed by the FHFA and the House Financial Services  
4 Committee are well-founded. Indeed, if fully implemented, the Program could have a  
5 devastating effect on interstate commerce, including on the mortgage-backed securities market  
6 and the national housing market, and would detrimentally affect both borrowers and lenders.

7 **C. The Damages to the City of Richmond and Its Homeowners**

8 87. Richmond, and its citizens, would not be spared from the harm caused by  
9 Richmond’s wrongful use of eminent domain powers to seize mortgage loans under the  
10 Program. Lenders would be less willing to write mortgages for Richmond citizens, and property  
11 values would plummet and homeownership rates would drop.

12 88. The relatively small number of select Richmond homeowners who could  
13 receive a windfall under the Program by having their underwater mortgages refinanced will not  
14 offset the devastation to the local housing market and economy due to the Program’s chilling  
15 effect on future mortgage credit.

16 **III. Injunctive Relief Is Necessary to Prevent the Immediate and Irreparable Harm**  
17 **That Will Occur if the Program Is Allowed to Go Forward**

18 89. Defendants should be enjoined from implementing the Richmond Seizure  
19 Program. As demonstrated herein, the Program would cause significant and widespread  
20 economic harm, and, if carried out, the transactions that the Program contemplates will be  
21 exceedingly difficult, if not impossible, to unwind.

22 90. Under the Program, once new loans are issued to refinance the original  
23 loans, they would be securitized: sold by Richmond/MRP to another residential mortgage loan  
24 pool backed by the FHA. Thus, to unwind these transactions would require extinguishing the  
25 new loan, thereby harming the FHA trust that holds that loan, and its certificateholders. The  
26 homeowner whose loan has been seized and refinanced would be put in a situation where their  
27 underwater mortgage has been extinguished, refinanced for a lower rate, and then reinstated  
28 again at the old rate and their new home equity from the refinancing taken away.





1                   97.     42 U.S.C. § 1983 provides that any person, acting under the color of state  
2 law, that subjects or causes to be subjected any citizen of the United States or other person  
3 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the  
4 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper  
5 proceeding for redress.

6                   98.     California Constitution article I, § 19 provides that private property may  
7 be taken only for a “public use.”

8                   99.     The Richmond Seizure Program is carried out by Defendants under the  
9 color of state law.

10                  100.    The Program violates the “public use” requirement of the Takings Clause  
11 of the Fifth and Fourteenth Amendments and of the California Constitution. The Program is not  
12 implemented for a public purpose, but rather for the purpose of seizing property from one set of  
13 private entities (the Trusts and their beneficiaries) to enrich MRP, a private investment firm, and  
14 its investors. The stated justifications for the Program – to reduce foreclosures and their  
15 attendant economic effects – are mere pretexts for this profit-driven scheme. Indeed, the fact  
16 that the Program principally targets performing loans shows that it is not designed to reduce  
17 foreclosures or their economic consequences, but rather to confer private benefits on a select set  
18 of individuals.

19                  101.    In addition, the Program would not benefit Richmond’s citizens as a  
20 whole, but would instead lead to windfalls for the select group of homeowners that meet a loan  
21 profile profitable to Defendants and their investors, to the detriment of all others. The Program  
22 expressly excludes many borrowers and principally targets performing mortgage loans that are  
23 not in default or foreclosure. If the Program is fully implemented and performing loans are  
24 seized for well-below their unpaid principal balance, and thus at significant losses to the Trusts  
25 holding those loans and their beneficiaries, future lenders will be unwilling to extend credit in  
26 Richmond at the current level, creating, at a minimum, a chilling effect on the local home  
27 lending environment. This will have severe consequences for current and prospective  
28 Richmond homeowners.

1                   102. None of the allegations in this Complaint should be construed in any way  
2 as an attempt to threaten or restrain any of Defendants' constitutional rights of freedom of  
3 speech or rights to petition government for the redress of grievances. Any allegations in this  
4 Complaint that discuss statements made or actions taken by Defendants or any of their  
5 representatives are included in this Complaint solely for the purposes of pleading a basis for  
6 Plaintiffs' claims for relief (all of which are independent of Defendants' rights to free speech or  
7 to petition government), including, among other things, by showing how the Richmond Seizure  
8 Program works and identifying Defendants' purported and actual justifications for the Program  
9 and intent to improperly use eminent domain powers. In short, the Complaint targets  
10 Defendants' unconstitutional and unlawful use of eminent domain, not Defendants' statements  
11 about it.

12                   103. Accordingly, Plaintiffs respectfully request that the Court issue a  
13 judgment for declaratory and injunctive relief against Defendants, declaring that the  
14 implementation of the Richmond Seizure Program would violate the Fifth and Fourteenth  
15 Amendments of the U.S. Constitution and article I, § 19 of the California Constitution, and  
16 permanently enjoining Defendants from implementing any aspect of the Program.

17                   **COUNT II**

18                   **(VIOLATION OF THE PROHIBITIONS AGAINST EXTRATERRITORIAL**  
19                   **SEIZURES UNDER THE TAKINGS CLAUSES OF THE U.S. AND CALIFORNIA**  
20                   **CONSTITUTIONS AND THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND**  
21                   **CLAIM UNDER 42 U.S.C. § 1983)**

22                   **(AGAINST ALL DEFENDANTS)**

23                   104. Plaintiffs repeat and reallege the allegations contained in each preceding  
24 paragraph as if fully set forth herein.

25                   105. The Fifth Amendment to the U.S. Constitution prohibits a local  
26 government from extraterritorially seizing property pursuant to eminent domain powers. This  
27 requirement is incorporated and made applicable to the states and their political subdivisions  
28 and actors by the Fourteenth Amendment of the U.S. Constitution.

1                   106. 42 U.S.C. § 1983 provides that any person, acting under the color of state  
2 law, that subjects or causes to be subjected any citizen of the United States or other person  
3 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the  
4 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper  
5 proceeding for redress.

6                   107. Article I, § 1 of the California Constitution prohibits local governments  
7 from extraterritorially seizing property pursuant to eminent domain powers.

8                   108. Under Cal. Civ. Pro. Code § 1240.050, a local public entity may acquire  
9 by eminent domain only property located within its territorial limits. Under Cal. Civ. Pro. Code  
10 § 1250.020, an eminent domain proceeding shall be commenced in the county in which the  
11 property sought to be taken is located.

12                   109. The Richmond Seizure Program is carried out by Defendants under the  
13 color of state law.

14                   110. Defendants' implementation of the Program violates prohibitions against  
15 extraterritorial property seizures under the Fifth and Fourteenth Amendments of the U.S.  
16 Constitution and Article I, § 1 of the California Constitution, and violates Cal. Civ. Pro. Code §  
17 1240.050 and § 1250.020. The mortgage loans that Defendants target under the Program are not  
18 located within the territorial borders of Richmond, California, but are held in Trusts located  
19 outside of Richmond. Because the situs of a debt for eminent domain purposes is deemed to be  
20 the location of the creditor, Defendants have no power to seize these outside-of-Richmond  
21 debts.

22                   111. In addition, the notes evidencing the mortgage loans are physically held  
23 by custodians in locations outside of Richmond. Thus, Defendants have no power to effect  
24 extraterritorial seizures of those tangible instruments. Indeed, the many of the RMBS Trusts  
25 holding Richmond loans and the notes evidencing those loans are not even located inside the  
26 State of California.

27                   112. Accordingly, Plaintiffs respectfully request that the Court issue a  
28 judgment for declaratory and injunctive relief against Defendants, declaring that the

1 implementation of the Richmond Seizure Program would violate the Fifth and Fourteenth  
2 Amendments of the U.S. Constitution, article I, § 1 of the California Constitution, and Cal. Civ.  
3 Pro. Code § 1240.050 and § 1250.020, and permanently enjoining Defendants from  
4 implementing any aspect of the Program.

5 **COUNT III**

6 **(VIOLATION OF THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION AND**  
7 **CLAIM UNDER 42 U.S.C. § 1983)**

8 **(AGAINST ALL DEFENDANTS)**

9 113. Plaintiffs repeat and reallege the allegations contained in each preceding  
10 paragraph as if fully set forth herein.

11 114. Article I, § 8, cl. 3 of the U.S. Constitution (the “Commerce Clause”)  
12 gives Congress the power to regulate commerce among the several states. Under the doctrine of  
13 the “dormant Commerce Clause,” states and their political subdivisions are prohibited from  
14 taking action designed to benefit in-state economic interests by burdening out-of-state interests.  
15 That doctrine prohibits direct regulation of interstate commerce by the states and their political  
16 subdivisions, and permits incidental regulation only where the burden imposed on such  
17 commerce is not excessive in comparison with the putative local benefits.

18 115. 42 U.S.C. § 1983 provides that any person, acting under the color of state  
19 law, that subjects or causes to be subjected any citizen of the United States or other person  
20 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the  
21 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper  
22 proceeding for redress.

23 116. The Richmond Seizure Program is carried out by Defendants under the  
24 color of state law.

25 117. Defendants violate the Commerce Clause of the U.S. Constitution by  
26 implementing the Program, which is designed to benefit certain local economic interests – i.e.,  
27 those of a relatively small number of Richmond homeowners selected to participate in the  
28 Program, and of the San Francisco-based investment firm MRP that would profit under the

1 Program – at the expense of out-of-Richmond and out-of-state interests, including the Trusts  
2 that hold the mortgage loans targeted for seizure and the beneficiaries of those Trusts.

3 118. In addition, the Program is a direct regulation of interstate commerce by  
4 Richmond. The Program expressly targets for seizure private-label mortgage loans held by out-  
5 of-Richmond and out-of-state Trusts and their beneficiaries, precisely because of Richmond’s  
6 belief that there is a “market failure” in this sector of the interstate economy. The Trusts are  
7 investment vehicles designed to distribute economic and financial risk by holding a diversified  
8 collateral base of mortgage loans, including loans that are diverse based on, among other  
9 factors, their geographic and risk profiles. Thus, the Trusts do not hold only loans secured by  
10 real property located in Richmond or California, but by real property located in a variety of  
11 states and localities.

12 119. Also, the private-label mortgage loans targeted by MRP were acquired by  
13 a private sponsor, who securitized them in a private-label RMBS Trust, in which the loans are  
14 serviced, and mortgage payments flow through the Trusts to be ultimately distributed to the  
15 Trusts’ certificateholders. Therefore, the Program would directly regulate an investment  
16 structure that by its very nature depends on a pool of collateral located in different states, and on  
17 the interstate flows of proceeds from homeowners, to loan servicers, to the Trusts, and then  
18 ultimately to the Trusts’ certificateholders.

19 120. Furthermore, the residential mortgage-backed securities market is a  
20 national industry that crosses state lines, with investors and other market participants located  
21 throughout the country. The Program would significantly and directly regulate this market by  
22 seizing its underlying assets, and not for a fair market value, but for steeply discounted  
23 valuations unilaterally determined by the local government.

24 121. Moreover, the burden imposed on interstate commerce by the Program  
25 would be excessive, and would greatly outweigh any purported benefits to the Richmond  
26 community. Among other things, the Program could cause hundreds of millions of dollars in  
27 losses to the Trusts that hold the targeted mortgage loans and the beneficiaries of those Trusts.  
28 It would also upend the heavily negotiated investment structures used across the national

1 residential mortgage backed securitization industry, diminish investor confidence in such  
2 structures, and have a chilling effect on mortgage credit (in Richmond and elsewhere). In  
3 addition, the purported benefits to Richmond – of reducing foreclosures and their local  
4 consequences – are minimal or non-existent. The Program principally does not aim to seize  
5 loans in default or at serious risk of default or foreclosure, but performing loans at low risk of  
6 default, which would not even address the harms that it purports to prevent. The benefits to the  
7 relatively small number of Richmond homeowners receiving a windfall under the Program  
8 would not outweigh the harm that the Program would cause to the Trusts, their beneficiaries,  
9 and others, on both a local and national scale.

10 122. Accordingly, Plaintiffs respectfully request that the Court issue a  
11 judgment for declaratory and injunctive relief against Defendants, declaring that the  
12 implementation of the Richmond Seizure Program would violate the Commerce Clause of the  
13 U.S. Constitution, and permanently enjoining Defendants from implementing any aspect of the  
14 Program.

15 **COUNT IV**

16 **(VIOLATION OF THE CONTRACTS CLAUSE OF THE U.S. CONSTITUTION AND**  
17 **CLAIM UNDER 42 U.S.C. § 1983)**

18 **(AGAINST ALL DEFENDANTS)**

19 123. Plaintiffs repeat and reallege the allegations contained in each preceding  
20 paragraph as if fully set forth herein.

21 124. Article I, § 10 of the U.S. Constitution – the “Contracts Clause” –  
22 prohibits states from “impairing the Obligation of Contracts.” The Contracts Clause prevents  
23 states and their political subdivisions from passing any law that would abrogate debts of their  
24 citizens, where that law would impair commercial intercourse and threaten the existence of  
25 credit.

26 125. 42 U.S.C. § 1983 provides that any person, acting under the color of state  
27 law, that subjects or causes to be subjected any citizen of the United States or other person  
28 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the

1 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper  
2 proceeding for redress.

3 126. Defendants violate the Contracts Clause by implementing a scheme that  
4 would severely impair the Trusts' contractual rights to receive full payments of unpaid principal  
5 from borrowers. In exchange, the Program provides cash payments worth significantly less than  
6 the rights abrogated by Defendants. The purpose of this significant impairment of contractual  
7 rights is improper and without a legitimate public purpose or necessity: to abrogate debts held  
8 by a small, select group of that jurisdiction's citizen while enriching a private investment firm  
9 and its backers.

10 127. In addition, the Program impairs commercial intercourse and threatens  
11 the existence of credit for current and prospective homeowners, in Richmond and elsewhere in  
12 California and throughout the country. In Richmond, the Program would have a chilling effect  
13 on home lending, as lenders would be unable to quantify the risk of seizures into pricing for  
14 future mortgage loans and would consequently reduce the availability of credit and negatively  
15 impact the credit terms on the loans actually made going forward. That underwriting problem  
16 would spread to any other jurisdictions that lenders believe are at risk of adopting MRP's  
17 scheme, causing property values and homeownership rates to decrease.

18 128. Accordingly, Plaintiffs respectfully request that the Court issue a  
19 judgment for declaratory and injunctive relief against Defendants, declaring that the  
20 implementation of the Richmond Seizure Program would violate the Contracts Clause of the  
21 U.S. Constitution, and permanently enjoining Defendants from implementing any aspect of the  
22 Program.

23  
24  
25  
26  
27  
28



**COUNT V**

**(VIOLATION OF THE "JUST COMPENSATION" REQUIREMENTS OF THE  
TAKINGS CLAUSE OF THE U.S. AND CALIFORNIA CONSTITUTIONS AND  
CLAIM UNDER 42 U.S.C. § 1983)**

**(AGAINST ALL DEFENDANTS)**

1  
2  
3  
4  
5           129. Plaintiffs repeat and reallege the allegations contained in each preceding  
6 paragraph as if fully set forth herein.

7           130. The Fifth Amendment to the U.S. Constitution provides that "private  
8 property" shall not be "taken for public use, without just compensation." This requirement is  
9 incorporated and made applicable to the states and their political subdivisions and actors by the  
10 Fourteenth Amendment of the U.S. Constitution.

11           131. In addition, under the U.S. and California Constitutions, where only a  
12 portion of property is condemned (referred to as a "partial" taking), the measure of just  
13 compensation includes both the value of the thing condemned and the loss in value to the  
14 remaining, non-condemned portion of the property.

15           132. 42 U.S.C. § 1983 provides that any person, acting under the color of state  
16 law, that subjects or causes to be subjected any citizen of the United States or other person  
17 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the  
18 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper  
19 proceeding for redress.

20           133. A property owner is entitled to just compensation for any taking under  
21 Article I, § 1 of the California Constitution. California Code of Civil Procedure § 1263.320  
22 provides that the test for assessing "fair market value" for purposes of the "just compensation"  
23 requirement is the highest price that a hypothetical buyer and seller would agree to in the  
24 marketplace, assuming both were willing and able to complete the transaction but had no  
25 particular or urgent necessity to do so.

26           134. The Richmond Seizure Program is carried out by Defendants under the  
27 color of state law.

28

1                   135. Defendants violate the just compensation requirements of the Takings  
2 Clause of the U.S. Constitution and California Constitution, and also violate California statutory  
3 law. The Program is a for-profit scheme that proposes seizing performing mortgage loans at  
4 fractions of their unpaid principal balance, prices that are below the fair market value for even  
5 loans that are in default. Thus, the Program would unjustly compensate the Trusts for the loan  
6 seizures by seizing loans at prices far less than their actual or fair market values. This  
7 unconstitutional feature of the Program is not merely a question of the valuation of a single  
8 property, but instead is the central premise of the Program itself. Indeed, the Program is only  
9 financially feasible, and profitable to Defendants and the Program's other participants, if loans  
10 are seized at deeply discounted values and then refinanced at higher prices (with Defendants  
11 profiting from the price spread).

12                   136. In addition, the Program violates the just compensation requirements of  
13 the Takings Clause of the U.S. Constitution and California Constitution, and also violates  
14 California statutory law, by constituting a "partial" taking of the Trusts' remaining assets for  
15 which no compensation is provided. The loans targeted by the Program are held by the Trusts  
16 as part of a pool consisting of numerous loans. The Program cherry-picks and seizes the most  
17 profitable loans from that pool – i.e., performing loans – leaving the Trusts with a pool  
18 containing a higher concentration of non-performing loans, thereby diminishing the value of the  
19 Trusts' remaining, non-condemned assets.

20                   137. Accordingly, Plaintiffs respectfully request that the Court issue a  
21 judgment for declaratory and injunctive relief against Defendants, declaring that the  
22 implementation of the Richmond Seizure Program would violate the Takings Clause of the U.S.  
23 Constitution and California Constitution, and permanently enjoining Defendants from  
24 implementing any aspect of the Program.

25  
26  
27  
28

**COUNT VI**

**(VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE U.S. AND CALIFORNIA CONSTITUTIONS AND CLAIM UNDER 42 U.S.C. § 1983)**

**(AGAINST ALL DEFENDANTS)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

138. Plaintiffs repeat and reallege the allegations contained in each preceding paragraph as if fully set forth herein.

139. The Fourteenth Amendment to the U.S. Constitution provides that no state shall deny to any person within its jurisdiction equal protection of its laws (the "Equal Protection Clause"). The Equal Protection Clause prohibits states or their subdivisions from discriminating against similarly situated individuals, where the discrimination is not rationally related to a legitimate purpose.

140. 42 U.S.C. § 1983 provides that any person, acting under the color of state law, that subjects or causes to be subjected any citizen of the United States or other person within its jurisdiction to the deprivation of any rights, privileges, or immunities under the Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress.

141. Article I, § 7 of the California Constitution provides that a person may not be denied equal protection of the laws.

142. The Richmond Seizure Program is carried out by Defendants under the color of state law.

143. Defendants violate the Equal Protection Clause of the U.S. and California Constitutions because the Program discriminates against certain holders of mortgage loans (including the Trusts), as well as certain classes of Richmond homeowners, and such discrimination is not rationally related to any legitimate purpose.

144. The Program is discriminatory because, among other reasons, it (a) solely targets loans held by private-label RMBS trusts, and does not target loans held by other holders, including GSE trusts or banks, (b) primarily targets performing loans, and primarily excludes defaulted loans, including loans in foreclosure, and (c) targets first-lien mortgages and not

1 second-lien mortgages. Defendants' purported justifications for the Program, of reducing  
2 foreclosures and their attendant economic consequences (even if a legitimate purpose for the  
3 abuse of eminent domain powers, which they are not), are in no way furthered by targeting  
4 performing first-lien loans held in private-label RMBS trusts, to the exclusion of other loans,  
5 such as defaulting loans or loans held by GSE trusts or banks.

6 145. Additionally, under the Program, some few select Richmond homeowners  
7 would benefit from the Program, whereas many more would be harmed by it. Some Richmond  
8 homeowners would receive an unjustified windfall by having their loans refinanced because  
9 they meet a borrowing profile profitable to Defendants, whereas no benefit would be bestowed  
10 upon the other homeowners who are not eligible for refinancing. Indeed, the homeowners not  
11 selected for the Program will suffer harm by, among other reasons, being subjected to the  
12 chilling effect on credit in the Richmond community caused by Richmond's implementation of  
13 an eminent domain program that arbitrarily seizes mortgage loans. There is no rational basis for  
14 providing a windfall to select homeowners at the expense of other homeowners.

15 146. The lack of a rational basis for Richmond's discrimination among  
16 homeowners between those who will reap the windfall benefits of the Program and those who  
17 will not is underscored by the fact that Richmond does not itself identify which loans will be  
18 condemned. Rather, Richmond delegates this responsibility to MRP – a private, for-profit  
19 investment firm – to identify which loans will best further its own purpose of enriching itself at  
20 the expense of the Trusts and their beneficiaries.

21 147. Accordingly, Plaintiffs respectfully request that the Court issue a  
22 judgment for declaratory and injunctive relief against Defendants, declaring that the  
23 implementation of the Richmond Seizure Program would violate the Equal Protection Clause of  
24 the U.S. Constitution and California Constitution, and permanently enjoining Defendants from  
25 implementing any aspect of the Program.

**COUNT VII**

**(PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND DECLARATORY RELIEF)**

**(AGAINST ALL DEFENDANTS)**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

148. Plaintiffs repeat and reallege the allegations contained in each preceding paragraph as if fully set forth herein.

149. Defendants have taken substantial steps toward seizing loans under the Richmond Seizure Program, and Plaintiffs have every reason to expect that such seizures are imminent. If those seizures occur, the Trusts will be irreparably harmed. As part of the Program, Defendants would restructure the seized mortgages and refinance them with new loans. The new loans would then be sold into new mortgage-backed securities pools. Securities would be issued based on these pools to investors, and the securities would trade. Those transactions will be exceedingly difficult, if not impossible, to unwind after the fact, and to do so could cause harm to a variety of parties, including the Trusts currently holding Richmond loans that are seized and the investors in those Trusts, the issuer of the new mortgage loan, the trust holding the new loan and the investors in that trust, and the homeowners whose loans are restructured and refinanced.

150. Moreover, for all of the reasons discussed herein, Plaintiffs have a likelihood of success on the merits of their claims, and the balance of equities tips decidedly in favor of granting temporary relief to Plaintiffs. There will be no serious harm to Defendants caused by a delay in implementing the Program if it is preliminarily enjoined, as the Program targets loans of homeowners who are not in imminent danger of losing their homes if the Program is subject to a preliminary injunction. On the other hand, if implemented, the Program would have a chilling effect on the extension of credit to Richmond borrowers, along with consequential negative effects on Richmond's housing market and economy. Such effects could spread through California and the country, especially if other municipalities take steps toward implementing similar programs. Additionally, the Program would cause tens of millions of losses to the Trusts, and, if it spreads beyond Richmond, could have a destabilizing effect on the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

mortgage-backed securities market, and the national housing market more broadly. There is a significant public interest in enjoining the Program both permanently and preliminarily, while the serious issues of constitutionality and legality raised by this Complaint are decided.

151. In addition, with respect to all of the claims for relief asserted in this Complaint, and for all of the reasons asserted herein, there is an actual controversy between Plaintiffs and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

152. Accordingly, Plaintiffs are entitled to preliminary and permanent injunctive relief and declaratory relief restraining Defendants from implementing the Richmond Seizure Program and declaring the Program unlawful.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor on all claims asserted in the Complaint and that the Court:

A. Declare that Defendants' implementation of the Richmond Seizure Program violates the Takings Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States, and enjoin Defendants from implementing the Program on that basis;

B. Declare that Defendants' implementation of the Richmond Seizure Program violates the Commerce Clause of the Constitution of the United States, and enjoin Defendants from implementing the Program on that basis;

C. Declare that Defendants' implementation of the Richmond Seizure Program violates the Contracts Clause of the Constitution of the United States, and enjoin Defendants from implementing the Program on that basis;

D. Declare that Defendants' implementation of the Richmond Seizure Program violates the Equal Protection Clause of the Constitution of the United States, and enjoin Defendants from implementing the Program on that basis;

E. Declare that Defendants' implementation of the Richmond Seizure Program violates Article I, § 19 of the Constitution of the State of California, and enjoin Defendants from implementing the Program on that basis;

F. Declare that Defendants' implementation of the Richmond Seizure Program violates Article I, § 7 of the Constitution of the State of California, and enjoin Defendants from implementing the Program on that basis;

G. Declare that Defendants' implementation of the Richmond Seizure Program violates Cal. Civ. Pro. Code § 1263.320, and enjoin Defendants from implementing the Program on that basis;

H. Declare that Defendants' implementation of the Richmond Seizure Program violates Cal. Civ. Pro. Code § 1240.050, and enjoin Defendants from implementing the Program on that basis;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I. Declare that Defendants' Implementation of the Richmond Seizure Program constitutes a violation of 42 U.S.C. § 1983, and enjoin Defendants from implementing the Program on that basis;

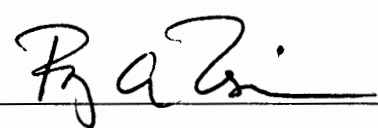
J. Issue preliminary and permanent injunctions restraining Defendants, their officers, employees, agents, successors, and assigns from implementing the Richmond Seizure Program;

K. Award to Plaintiffs the costs and expenses of suit and counsel fees pursuant to 42 U.S.C. § 1988;

L. Award to Plaintiffs such other and further relief as this Court may deem just and proper.

Respectfully submitted,

August 7, 2013

By 

**ROPES & GRAY LLP**  
Attorneys for Plaintiffs  
Rocky C. Tsai (SBN 221452)  
(rocky.tsai@ropesgray.com)  
**ROPES & GRAY LLP**  
Three Embarcadero Center  
San Francisco, CA 94111-4006  
Telephone: (415) 315-6300  
Facsimile: (415) 315-6350



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Thomas O. Jacob (SBN 125665)  
tojacob@wellsfargo.com  
**WELLS FARGO & COMPANY**  
Office of General Counsel  
45 Fremont Street, Twenty-Sixth Floor  
MAC A0194-266  
San Francisco, CA 94105  
Telephone: (415) 396-4425  
Facsimile: (415) 975-7864  
  
*Attorney for Wells Fargo Bank*

John C. Ertman  
(john.ertman@ropesgray.com)  
(Pro hac vice applications pending)  
Lee S. Gayer  
(lee.gayer@ropesgray.com)  
Evan P. Lestelle  
(evan.lestelle@ropesgray.com)  
**ROPES & GRAY LLP**  
1211 Avenue of the Americas  
New York, NY 10036-8704  
Telephone: (212) 596-9000  
Facsimile: (212) 596-9090

Douglas H. Hallward-Driemeier  
(douglas.hallward-driemeier@ropesgray.com)  
(Pro hac vice application pending)  
**ROPES & GRAY LLP**  
One Metro Center  
700 12th Street, NW  
Suite 900  
Washington, DC 20005-3948  
Phone: 202-508-4600

Daniel V. McCaughey  
(daniel.mccaughey@ropesgray.com)  
Nick W. Rose  
(nick.rose@ropesgray.com)  
**ROPES & GRAY LLP**  
800 Boylston St.  
Boston, MA  
Phone: 617-951-7000

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Schedule A**  
**Wells Fargo Bank, National Association**

ABFC 2002-OPT1 Trust	ABFC 2005-OPT1 Trust
ABFC 2006-OPT1 Trust	Asset Backed Securities Corporation Home Equity Loan Trust, Series 2003-HE6
Asset Backed Securities Corporation Home Equity Loan Trust, Series 2004-HE2	Asset Backed Securities Corporation Home Equity Loan Trust, Series AMQ 2007-HE2
Banc of America Funding 2005-B Trust	Banc of America Funding 2005-G Trust
Banc of America Funding 2006-E Trust	Banc of America Funding 2007-E Trust
BCAP LLC TRUST 2006-AA1	BNC Mortgage Loan Trust 2007-4
Banc of America Alternative Loan Trust 2003-8	Banc of America Alternative Loan Trust 2006-5
Banc of America Alternative Loan Trust 2003-10	Banc of America Alternative Loan Trust 2003-11
Banc of America Alternative Loan Trust 2003-4	Banc of America Alternative Loan Trust 2003-5
Banc of America Alternative Loan Trust 2003-6	Banc of America Alternative Loan Trust 2003-8
Banc of America Alternative Loan Trust 2003-9	Banc of America Alternative Loan Trust 2004-1
Banc of America Alternative Loan Trust 2004-11	Banc of America Alternative Loan Trust 2004-6
Banc of America Alternative Loan Trust 2004-7	Banc of America Alternative Loan Trust 2005-6
Banc of America Alternative Loan Trust 2005-7	Banc of America Alternative Loan Trust 2006-2
Banc of America Alternative Loan Trust 2006-3	Banc of America Alternative Loan Trust 2006-5
Banc of America Alternative Loan Trust 2006-7	Banc of America Mortgage 2003-6 Trust
Banc of America Mortgage 2003-D Trust	Banc of America Mortgage 2003-H Trust
Banc of America Mortgage 2003-K Trust	Banc of America Mortgage Trust 2004-11
Banc of America Mortgage Trust 2004-6	Banc of America Mortgage Trust 2004-8
Banc of America Mortgage Trust 2004-9	Banc of America Mortgage 2004-B Trust
Banc of America Mortgage 2004-C Trust	Banc of America Mortgage 2004-D Trust
Banc of America Mortgage 2004-I Trust	Banc of America Mortgage 2004-K Trust
Banc of America Mortgage 2004-L Trust	Banc of America Mortgage Trust 2005-10

1	Banc of America Mortgage Trust 2005-11	Banc of America Mortgage Trust 2005-4
2	Banc of America Mortgage Trust 2005-7	Banc of America Mortgage 2005-A Trust
3	Banc of America Mortgage 2005-E Trust	Banc of America Mortgage 2005-J Trust
4	Banc of America Mortgage 2007-1 Trust	Banc of America Mortgage 2007-2 Trust
5	Banc of America Mortgage 2004-J Trust	Banc of America Mortgage 2005-D Trust
6	Banc of America Mortgage 2005-E Trust	Banc of America Mortgage 2007-3 Trust
7	Bear Stearns Asset Backed Securities, Inc. 2000-2	Bear Stearns Mortgage Funding Trust 2006-AR1
8	Bear Stearns Mortgage Funding Trust 2006-AR2	Bear Stearns Mortgage Funding Trust 2006-AR3
9	Bear Stearns Mortgage Funding Trust 2006-AR4	Bear Stearns Mortgage Funding Trust 2006-AR5
10	Bear Stearns Mortgage Funding Trust 2007-AR1	Bear Stearns Mortgage Funding Trust 2007-AR2
11	Bear Stearns Mortgage Funding Trust 2007-AR3	Bear Stearns Mortgage Funding Trust 2007-AR4
12	Bear Stearns Mortgage Funding Trust 2007-AR5	Bear Stearns ARM Trust 2007-3
13	Carrington Mortgage Loan Trust, Series 2006-FRE2	Carrington Mortgage Loan Trust, Series 2006-NC2
14	Carrington Mortgage Loan Trust, Series 2006-NC3	Carrington Mortgage Loan Trust, Series 2006-NC3
15	Carrington Mortgage Loan Trust, Series 2006-NC5	Carrington Mortgage Loan Trust, Series 2006-OPT1
16	Carrington Mortgage Loan Trust, Series 2006-RFC1	First Franklin Mortgage Loan Trust 2004-FF11
17	First Franklin Mortgage Loan Trust 2006-FF15	Freddie Mac Securities REMIC Trust 2005-S001
18	GMACM Home Equity Loan Trust 2003-HE2	GreenPoint MTA Trust 2005-AR3
19	GreenPoint Mortgage Funding Trust 2005-AR4	GreenPoint Mortgage Funding Trust 2005-AR5
20	GreenPoint Mortgage Funding Trust 2006-AR1	GreenPoint Mortgage Funding Trust 2006-AR2
21	GreenPoint Mortgage Funding Trust 2006-AR3	HarborView Mortgage Loan Trust 2006-10
22	HarborView Mortgage Loan Trust 2006-12	HarborView Mortgage Loan Trust 2007-1
23	HarborView Mortgage Loan Trust 2007-3	Impac CMB Trust Series 2004-11
24	Impac CMB Trust Series 2004-6	Impac CMB Trust Series 2005-6
25	Irwin Home Equity Loan Trust 2007-1	Impac Secured Assets Corp., Mortgage Pass- Through Certificates, Series 2005-2
26	Lehman Mortgage Trust 2006-9	Lehman Mortgage Trust 2007-4
27		
28		

SCHEDULE A

Case No.

1	MASTR Asset Backed Securities Trust 2003-OPT2	MASTR Asset Backed Securities Trust 2007-NCW
2	Merrill Lynch Mortgage Investors Trust, Series 2004-WMC5	Merrill Lynch Mortgage Investors Trust, Series 2005-WMC2
3	Merrill Lynch Mortgage Investors Trust Series MLCC 2004-B	Merrill Lynch Mortgage Investors Trust Series MLCC 2006-1
4	Merrill Lynch Mortgage Investors Trust Mortgage Loan Asset-Backed Certificates, Series 2006-HE1	Morgan Stanley ABS Capital I Inc. Trust 2005-WMC2
5	Morgan Stanley ABS Capital I Inc. Trust 2005-WMC3	Morgan Stanley ABS Capital I Inc. Trust 2005-WMC4
6	Morgan Stanley ABS Capital I Inc. Trust 2006-WMC1	MSCC HELOC Trust 2007-1
7	National City Mortgage Capital Trust 2008-1	Option One Mortgage Loan Trust 2003-5
8	Option One Mortgage Loan Trust 2003-6	Option One Mortgage Loan Trust 2005-3
9	Option One Mortgage Loan Trust 2005-4	Option One Mortgage Loan Trust 2006-1
10	Option One Mortgage Loan Trust 2007-1	Option One Mortgage Loan Trust 2007-3
11	Option One Mortgage Loan Trust 2007-4	Option One Mortgage Loan Trust 2007-5
12	Option One Mortgage Loan Trust 2007-6	Option One Mortgage Loan Trust 2007CP1
13	Option One Mortgage Loan Trust 2007-FXD2	Park Place Securities, Inc. Asset-Backed Pass-Through Certificates, Series 2004-MCW1
14	Park Place Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-WHQ1	Park Place Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2004-WHQ2
15	Park Place Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-WCHI	Park Place Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-WCW2
16	Park Place Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-WCW2	Park Place Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-WHQ1
17	Park Place Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-WHQ3	Park Place Securities, Inc., Asset-Backed Pass-Through Certificates, Series 2005-WHQ4
18	RESI Finance Limited Partnership 2003-B	RESI Finance Limited Partnership 2003-C
19	RESI Finance Limited Partnership 2003-CB1	RESI Finance Limited Partnership 2003-D
20	RESI Finance Limited Partnership 2004-B	RESI Finance Limited Partnership 2004-C
21	RESI Finance Limited Partnership 2005-A	RESI Finance Limited Partnership 2005-B
22	RESI Finance Limited Partnership 2005-C	RESI Finance Limited Partnership 2005-D
23		
24		
25		
26		
27		
28		

SCHEDULE A  
Case No.

1	RESI Finance Limited Partnership 2006-A	RMAC Pass-Through Trust, Series 2010-A
2	Securitized Asset Backed Receivables LLC Trust 2006-HE1	Securitized Asset Backed Receivables LLC Trust 2006-HE2
3	SABR Mortgage Loan 2008-1 Grantor Trust	Structured Asset Investment Loan Trust 2003-BC12
4	Structured Asset Mortgage Investments II Trust 2007-AR4	Structured Adjustable Rate Mortgage Loan Trust, Series 2004-10
5		
6	Structured Adjustable Rate Mortgage Loan Trust, Series 2004-16	Structured Adjustable Rate Mortgage Loan Trust, Series 2004-18
7		
8	Structured Adjustable Rate Mortgage Loan Trust, Series 2004-9XS	Structured Adjustable Rate Mortgage Loan Trust, Series 2005-12
9	Structured Adjustable Rate Mortgage Loan Trust, Series 2005-17	Structured Adjustable Rate Mortgage Loan Trust, Series 2007-3
10		
11	Structured Adjustable Rate Mortgage Loan Trust, Series 2007-4	Structured Asset Securities Corporation Pass-Through Certificates, Series 2002-AL1
12	Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2003-15A	Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2003-26A
13		
14	Structured Asset Securities Corporation Mortgage Loan Trust 2006-OPT1	Structured Asset Securities Corp. 2007-BC1
15	SASI Finance Limited Partnership 2006-A	Southern Pacific Secured Assets Corp.
16	Mortgage Loan Asset-Backed Pass-Through Certificates, Series 1998-2	Soundview Home Loan Trust 2007-OPT1
17		
18	Soundview Home Loan Trust 2007-OPTS	Terwin Mortgage Trust, Series TMTS 2003-8HE
19	WaMu Mortgage Pass-Through Certificates Series 2004-PR1 Trust	WaMu Mortgage Pass-Through Certificates Series 2004-PR2 Trust
20		
21	WaMu Mortgage Pass-Through Certificates Series 2005-PR1 Trust	WaMu Mortgage Pass-Through Certificates Series 2005-PR2 Trust
22	WaMu Mortgage Pass-Through Certificates Series 2005-PR4 Trust	WaMu Mortgage Pass-Through Certificates Series 2006-PR1 Trust
23		
24	WaMu Mortgage Pass-Through Certificates Series 2006-PR2 Trust	WaMu Mortgage Pass-Through Certificates Series 2006-PR3 Trust
25	Waterfall Victoria Mortgage Trust 2010-1	
26		
27		
28		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Schedule B**  
**Deutsche Bank National Trust Company**

Alliance Securities Corp. 2007-OA1	Accredited Mortgage Loan Trust 2006-2
American Home Mortgage Investment Trust 2005-2	American Home Mortgage Investment Trust 2005-3
American Home Mortgage Investment Trust 2006-1	American Home Mortgage Assets Trust 2006-5
American Home Mortgage Investment Trust 2007-1	American Home Mortgage Assets Trust 2007-1
American Home Mortgage Assets Trust 2007-2	American Home Mortgage Assets Trust 2007-4
American Home Mortgage Investment Trust 2007-SD2	Ameritrust Mortgage Securities Inc. 2006-R1
Argent Securities Inc. 2004-W8	Argent Securities Inc. 2005-W2
Argent Securities Trust 2006-W4	Argent Securities Trust 2006-M1
Argent Securities Trust 2006-M2	Asset Backed Securities Corporation Home Equity Loan Trust 2004-HE1
Barclays Capital, Inc.	BCAP LLC Trust 2007-AA1
Carrington Mortgage Loan Trust 2005-NC4	Carrington Mortgage Loan Trust 2005-NC5
Encore Credit Receivables Trust 2005-3	Downey Savings and Loan Association Mortgage Loan Trust 2004-AR2
Downey Savings and Loan Association Mortgage Loan Trust 2005-AR3	Soundview Home Equity Loan Trust 2005-OPT4
First Franklin Mortgage Loan Trust 2005-FFH3	HarborView Mortgage Loan Trust 2006-14
Downey Savings and Loan Association Mortgage Loan Trust 2006-AR1	Fremont Home Loan Trust 2006-3
HarborView Mortgage Loan Trust 2006-3	Soundview Home Equity Loan Trust 2006-OPT5
Soundview Home Loan Trust 2007-WMC1	Downey Savings and Loan Association Mortgage Loan Trust 2007-AR1
HarborView Mortgage Loan Trust 2007-4	HarborView Mortgage Loan Trust 2007-7
GSAA Home Equity Trust 2007-4	GSAA Home Equity Trust 2007-6
GSR Mortgage Loan Trust 2007-AR2	GSR Mortgage Loan Trust 2007-OA2
STARM Mortgage Loan Trust 2007-4	HSI Asset Securitization Corporation Trust 2005-OPT1

1	HSI Asset Securitization Corporation Trust 2006-OPT1	HSI Asset Securitization Corporation Trust 2006-OPT2
2	HSI Asset Securitization Corporation Trust 2007-NC1	HSI Asset Securitization Corporation Trust 2007-WF1
3	HSI Asset Securitization Corporation Trust 2007-HE1	Impac CMB Trust 2005-5
4	Impac Secured Assets Corp. 2006-3	Impac Secured Assets Corp. 2006-5
5	Impac Secured Assets Corp. 2007-1	Impac Secured Assets Corp. 2007-2
6	IndyMac Residential Asset Securities Trust (RAST) 2004-A5	IndyMac INDX Mortgage Loan Trust 2005-AR1
7		
8	IndyMac INDX Mortgage Loan Trust 2005-AR8	IndyMac INDX Mortgage Loan Trust 2005-AR12
9	IndyMac INDX Mortgage Loan Trust 2005-AR13	IndyMac INDX Mortgage Loan Trust 2005-AR14
10	IndyMac INDX Mortgage Loan Trust 2005-AR25	IndyMac INDA Mortgage Loan Trust 2006-AR2
11	IndyMac INDX Mortgage Loan Trust 2006-AR6	IndyMac INDX Mortgage Loan Trust 2006-AR14
12	IndyMac INDX Mortgage Loan Trust 2006-AR29	IndyMac INDA Mortgage Loan Trust 2006-AR3
13	IndyMac Residential Asset Securities Trust (RAST) 2007-A3	IndyMac INDX Mortgage Loan Trust 2007-AR5
14	IndyMac INDX Mortgage Loan Trust 2007-AR211P	IndyMac INDA Mortgage Loan Trust 2007-AR1
15	IndyMac INDA Mortgage Loan Trust 2007-AR8	IndyMac INDX Mortgage Loan Trust 2007-FLX1
16	IndyMac INDX Mortgage Loan Trust 2007-FLX6	J.P. Morgan Mortgage Acquisition Trust 2007-CH3
17	J.P. Morgan Mortgage Acquisition Trust 2007-CH5	Long Beach Mortgage Loan Trust 2005-WL1
18	Long Beach Mortgage Loan Trust 2005-WL2	Long Beach Mortgage Loan Trust 2006-6
19	Long Beach Mortgage Loan Trust 2006-7	Long Beach Mortgage Loan Trust 2006-8
20	Long Beach Mortgage Loan Trust 2006-10	Long Beach Mortgage Loan Trust 2006-WL1
21	Long Beach Mortgage Loan Trust 2006-WL2	Mortgage IT Trust 2005-3
22	Morgan Stanley ABS Capital I Trust 2004-NC7	Morgan Stanley ABS Capital I Trust 2004-HE8
23	Morgan Stanley ABS Capital I Trust 2006-NC3	Morgan Stanley ABS Capital I Trust 2006-NC5
24	Morgan Stanley ABS Capital I Trust 2006-HE5	Morgan Stanley ABS Capital I Trust 2006-HE7
25	Morgan Stanley ABS Capital I Trust 2006-HE8	Morgan Stanley ABS Capital I Trust 2006-WMC2
26	Morgan Stanley Home Equity Loan Trust 2006-1	Morgan Stanley Home Equity Loan Trust 2006-2
27		
28		

SCHEDULE B  
Case No.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Morgan Stanley ABS Capital I Trust 2007-NC4	Morgan Stanley ABS Capital I Trust 2007-HE7
New Century Home Equity Loan Trust 2005-4	New Century Home Equity Loan Trust 2005-B
New Century Home Equity Loan Trust 2005-D	Novastar Mortgage Funding Trust 2007-1
Saxon Asset Securities Trust 2007-2	Thornburg Mortgage Securities Trust 2004-4
WaMu Mortgage Pass- Through Certificates, Series 2004-AR6	WaMu Mortgage Pass-Through Certificates, Series 2005-AR6
WaMu Mortgage Pass- Through Certificates, Series 2005-AR11	WaMu Mortgage Pass-Through Certificates, Series 2005-AR12
WaMu Mortgage Pass- Through Certificates, Series 2005-AR13	WaMu Mortgage Pass-Through Certificates, Series 2005-AR15
WaMu Mortgage Pass-Through Certificates, WMALT Series 2006-AR1	Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2006-AR5
WaMu Asset-Backed Certificates 2007-HE	

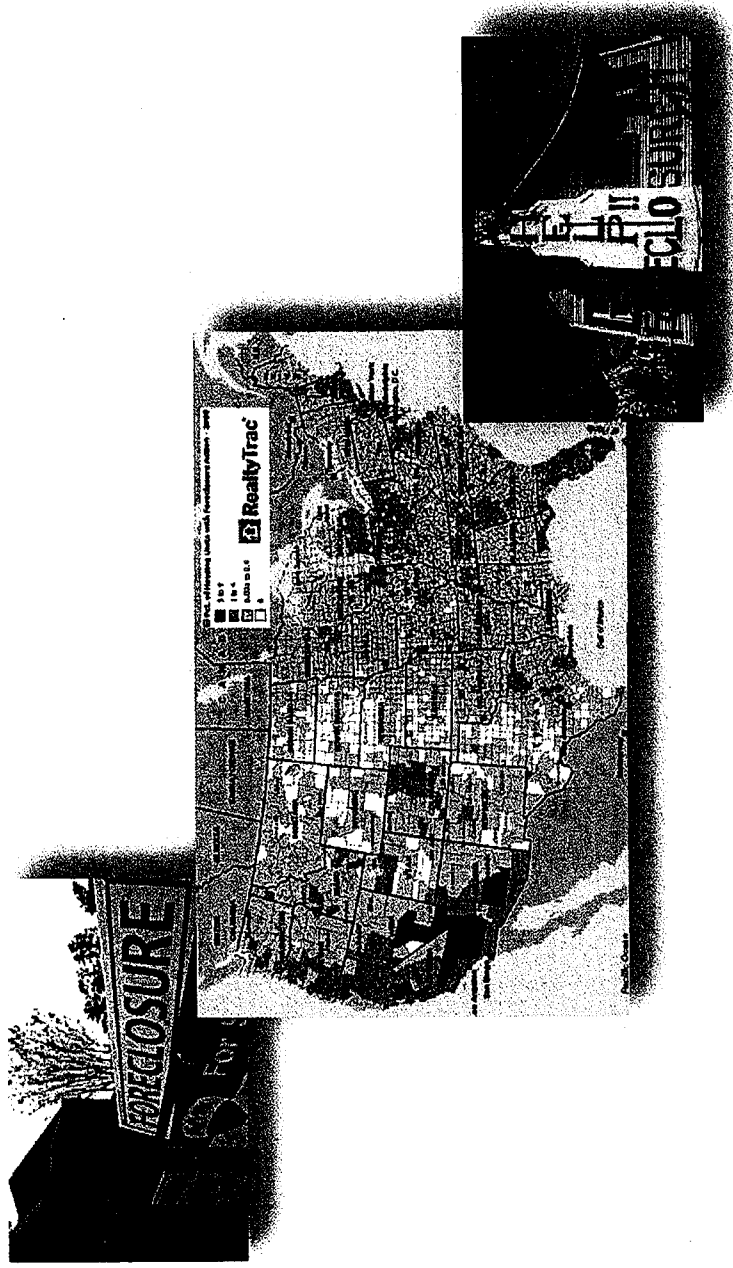


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Schedule C**  
**Deutsche Bank Trust Company Americas**

Residential Accredit Loans Inc. 2005-QA10
Residential Accredit Loans Inc. 2006-QO2
Residential Accredit Loans Inc. 2006-QO3
Residential Accredit Loans Inc. 2006-QO4
Residential Accredit Loans Inc. 2006-QO6
Residential Accredit Loans Inc. 2006-QO10
Residential Accredit Loans Inc. 2006-QS3
Residential Accredit Loans Inc. 2006-QS10
Residential Accredit Loans Inc. 2006-QS17
Residential Accredit Loans Inc. 2007-QA3
Residential Accredit Loans Inc. 2007-QO1
Residential Accredit Loans Inc. 2007-QO4
Residential Accredit Loans Inc. 2007-QO5
Residential Accredit Loans Inc. 2007-QS3
Residential Funding Mortgage Securities I 2007-S4
Saxon Asset Securities Trust 2003-3
Saxon Asset Securities Trust 2006-3

# **EXHIBIT A**



# Homeownership Protection Program

A Solution to a Critical Problem

Mortgage Resolution  
**PARTNERS**

# Homeownership Protection Program

This presentation has been prepared for discussion purposes only and does not constitute a legally binding commitment or obligation of any of the referenced entities herein to enter into the transactions described. The terms and conditions outlined herein are not a comprehensive statement of the applicable terms and conditions that would be contained in the definitive documentation for the transactions contemplated herein. This presentation should not be deemed a comprehensive disclosure of risks or other implications of the transactions discussed herein.

A program term sheet and FAQ is intended to be part of this presentation and contains additional information.

# The Real State of U.S. Housing Today

## Home prices continue to deteriorate, jeopardizing mortgage loans and homeowners

- In June of 2006, U.S. residential housing prices hit their peak. Now, nearly six years later, the market is once again at a record post-2006 low (down 33.8% from peak as of year-end 2011).
- Over 22% of the 52.5 million U.S. homes that are mortgaged had “underwater” mortgage loans at the beginning of 2012.
- Such mortgages are generally concentrated in states that experienced acute housing price increases during the bubble -- Arizona, California, Florida and Nevada, to name but a few.
- After short-lived and shallow periods of home price appreciation in mid 2010 and again in 2011, recent pricing trends have turned decidedly negative (the S&P Case Shiller 20 City Index is down 7.5% nationwide from its previous post-crash high in May of 2010).
- The National Association of Realtors, in its December 2011 survey, found that foreclosure sales averaged a discount of 22% compared with non-distressed home sales (up from 20% a year earlier). Short sales, with the cooperation of the lender, averaged 13% below market value. RealtyTrac found even larger differences in 2011.
- **Despite hopes to the contrary, the situation is not materially improving.**

# The Homeownership Protection Program Will Help End this National Nightmare

Empowering communities to do what Washington  
and the private sector have been unable to

- The Program employs the ultimate right of local communities and governments – *through the constitutionally guaranteed power of eminent domain* – to retake control over the welfare of their neighborhoods and their fiscal solvency.
- Organized by Mortgage Resolution Partners – in public/private ventures with cities and counties that have been most affected by the mortgage and housing crisis – the Program will force lenders to surrender their mortgage loans to governments for full and fair value as determined by local courts in condemnation proceedings.
- As the current fair market value of such mortgage loans is considerably less than the face amount thereof, governments will be able to restructure the mortgage loans acquired through eminent domain and refinance severely underwater homeowners (with the ability and creditworthiness to make payments on their restructured loans) into new loans to be sold to large, private sector investors as FHA GinnieMae securities.
- **No taxpayer funds will be used in connection with the Program and the Program requires no state or federal legislation, or administrative action.**

# Communities are the Principal Drivers of the Homeownership Protection Program

Municipalities have enormous incentives to adopt and execute the Program

- Defaulted mortgages are typically associated with the cessation of real estate tax payments and other ratable and usage charges payable to localities. This stresses local budgets and financing.
- Throughout the mortgage crisis, underwater loans have demonstrated high default levels – regardless of other borrower circumstances. This tendency poses a threat to areas continuing to see price depreciation.
- Large volumes of defaulted mortgages result in neighborhood blight, abandonment, unkempt property and transience. These factors exacerbate the already compromised housing economics in affected areas and accelerate price depreciation.
- Municipal, county and state governments, and agencies, have a public interest in halting defaults and consequent neighborhood deterioration.
- **The Program provides a practical and efficient solution to this intractable dilemma.**

# A Grass Roots Crisis That Demands a Solution

The impact on cities must be resolved locally as broader national policies have proven inadequate

- Post-crash, cities and towns have suffered greatly, often in seldom understood ways:
- For example, when a foreclosed home is sold by a lender in foreclosure, the home's respective tax assessment is permanently reset in many communities.
  - Consider, for example, a home that was purchased for \$400,000 with a \$360,000 mortgage and has a current tax assessment of the purchase price.

*If that home sells in foreclosure for \$200,000, its tax assessment is reset, and can only increase by a small amount each year in many communities. The rate of increase may be tied to inflation, which erodes tax revenues until the home is again sold.*

- Conversely, consider what would happen if the same homeowner refinanced the mortgage and (quite reasonably) contested its real estate tax assessment.

*The home's assessment may be reduced to \$200,000, but the assessment could float freely back up to \$400,000 as markets recover. Of course, once the assessment reaches \$400,000, the rate of increase will be limited on an annual basis in many communities.*