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 6 as Trustee, *et al.*

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 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN FRANCISCO DIVISION**

11 WELLS FARGO BANK, NATIONAL
 12 ASSOCIATION, as Trustee, *et al.*;
 13 Plaintiffs,
 14 v.
 15 CITY OF RICHMOND, CALIFORNIA, a
 16 municipality, and MORTGAGE
 17 RESOLUTION PARTNERS LLC;
 18 Defendants.
 19
 20
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Case No. CV-13-3663-CRB

DECLARATION OF KEVIN W. TROGDON

Date: September 13, 2013
 Time: 10:00 a.m.
 Judge: Hon. Charles R. Breyer

22 I, Kevin W. Trogdon, hereby declare, pursuant to 28 U.S.C. § 1746 and under penalty of
 23 perjury under the laws of the United States, that the following is true and correct:

- 24 1. I am, and since 2006 have been, employed by Plaintiff trustee, Wells Fargo
 25 Bank, N.A. (“Wells Fargo”), in its Corporate Trust Services Division as Vice President.
- 26 2. I respectfully submit this declaration in support of Plaintiffs’ motion for a
 27 preliminary injunction (the “Motion”). I base the facts stated in this declaration on my personal
 28 knowledge and experience, and also on my review of Plaintiffs’ Complaint, the papers

1 accompanying the Motion, and on other relevant materials, including publications by
2 Defendants City of Richmond, California (“Richmond”) and Mortgage Resolution Partners LLC
3 (“MRP”) that describe their program (the “Richmond Seizure Program”) to use eminent domain
4 to seize certain mortgage loans from various residential mortgage-backed securities (“RMBS”)
5 trusts, including RMBS trusts for which Wells Fargo serves as trustee.

6 3. A list of RMBS trusts for which Wells Fargo serves as trustee, and which hold
7 one or more mortgage loans of the type at risk of being targeted for eminent domain seizure by
8 Defendants (the “Wells Fargo Trusts” or “Trusts”), is annexed as Exhibit A hereto.
9 Specifically, Defendants have claimed that they seek primarily to target mortgage loans that are:
10 (i) secured by real property located within the geographic borders of Richmond, (ii)
11 “underwater” (meaning the loan value is worth more than the underlying home value), (iii)
12 performing (meaning that the borrower has not defaulted on the loans), and (iv) held by
13 “private-label” trusts (defined below). Based on available information, I estimate that the Wells
14 Fargo Trusts hold at least 325 mortgage loans within Richmond that fit the Richmond Seizure
15 Program’s publicly-stated loan profile, as described above.

16 4. The Wells Fargo Trusts, like all other “private-label” RMBS trusts, are passive
17 investment vehicles that were established as part of the residential mortgage loan securitization
18 process. This is a process by which financial and economic risks are distributed among
19 investors by acquiring and pooling mortgage loans and issuing securities – referred to as
20 certificates – for which the mortgages serve as collateral. The Trusts issue certificates and hold
21 mortgage loans solely for the benefit of their certificateholders, who are entitled to receive cash
22 flows from the underlying pool of mortgage loans.

23 5. The Wells Fargo Trusts are of the type referred to in the securitization industry as
24 “private-label,” meaning that a private entity, rather than a government-sponsored entity such as
25 Fannie Mae or Freddie Mac, “sponsored” the securitization. The sponsor’s role in the process is
26 to initiate the securitization, including originating or otherwise acquiring the mortgage loans and
27 conveying them to the Trusts in exchange for certificates, which are sold to investors.

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1 6. The investors in the Trusts' certificates typically include a wide range of
2 institutional and individual investors, including public and private pension plans, 401(k) plans,
3 college savings plans, insurance companies, mutual funds, and university endowments.

4 7. The Wells Fargo Trusts do not exclusively hold mortgage loans secured by real
5 property in Richmond, or in California, or in any other single state or local community, but
6 rather hold a geographically diverse portfolios of loans.

7 8. A substantial number of the Wells Fargo Trusts, like all other private-label
8 RMBS trusts, are structured under federal tax laws as "Real Estate Mortgage Investment
9 Conduits," or "REMICs." As such, it is my understanding that these trusts are prohibited from
10 selling any performing loans held within the pool.

11 9. The rights and obligations of the parties to the securitizations are normally
12 governed by "Pooling and Servicing Agreements" and related agreements (collectively, the
13 "PSAs"). The parties to the PSAs typically include sponsors, loan sellers, loan servicers, and
14 trustees. Under the PSAs, Wells Fargo and other trustees manage the assets of the Trusts and
15 are deemed the holders and owners of the mortgage loans, as well as of all of the rights relating
16 to the mortgage loans, on behalf of and for the benefit of the certificateholders.

17 10. The PSAs provide that the loan servicers are responsible for administering and
18 servicing the mortgage loans, including collecting mortgage loan payments, managing pool
19 assets, escrowing taxes and insurance, and handling loss mitigation and foreclosure. The PSAs
20 generally authorize loan servicers, in cases of borrower default, to modify loan terms or grant
21 other types of loan work-outs.

22 11. The Trusts are not incorporated or otherwise registered under the laws of any
23 jurisdiction. Upon information and belief, all or substantially all of the PSAs for the Trusts
24 expressly provide that the PSAs are governed by New York law. To my knowledge, none of the
25 PSAs is governed by California law.

26 12. Private-label RMBS trusts do not have their own places of business but operate
27 through their trustee's corporate trust services department. Wells Fargo's corporate trust
28 services department's principal office is located in Columbia, Maryland. Wells Fargo does not

1 maintain a corporate trust services department office or have any trust services personnel
2 located in Richmond. Likewise, the physical notes evidencing the mortgage loans held by the
3 Wells Fargo Trusts are not held within the geographic borders of Richmond and most are held
4 outside of California.

5 13. On or about August 1, 2013, I understand that Wells Fargo received an unsigned
6 letter from MRP on behalf of the City Manager's Office of the City of Richmond, dated July 31,
7 2013, "offering to acquire all rights" to certain mortgage loans, and advising that if Wells Fargo
8 does not agree to accept the offers, Richmond may "proceed with the acquisition of the Loans
9 through eminent domain." ("Offer Letter"). A copy of the Offer Letter is attached hereto as
10 Exhibit B. Attachment A to the Offer Letter sets forth a list of loans for which offers are being
11 made, and Attachment B to the Offer Letter sets forth the unpaid principal balance of each
12 mortgage loan and the price Richmond is offering to acquire each loan.

13 14. According to the Offer Letter, and the attachments thereto, Richmond has made
14 offers for at least 70 loans which are held by at least 50 Trusts of which Wells Fargo serves as
15 trustee. Based on our preliminary analysis, it appears that 80% of the loans identified in the
16 Offer Letter are performing loans in which the homeowners are either current on their mortgage
17 payments, or, if not current, delinquent by only 30 or 60 days, and thus fit within the Richmond
18 Seizure Program loan profile. It also appears that 20% of the loans are delinquent by more than
19 60 days. The inclusion of such loans appears to be inconsistent with the publicly-stated profile
20 of the loans targeted by the Richmond Seizure Program and, absent further information, Wells
21 Fargo does not know whether, or to what extent, Defendants intend to seize these loans as part
22 of the Richmond Seizure Program.

23 15. Based on our preliminary analysis of the Offer Letter, and other available
24 information, it appears that Richmond is offering to acquire all of the mortgage loans
25 (delinquent or nondelinquent) at steeply discounted prices that are, in most case, far below the
26 outstanding principal balances of the loans. In addition, based on my review of the terms of the
27 Richmond Seizure Program, it is likely that, in every case, Richmond is offering to acquire the
28 mortgage loans at prices far below the current market value of the homes.

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16. As mentioned above, a substantial number of the Wells Fargo Trusts are REMICs and, as such, it is my understanding that those trusts would be prohibited from selling any performing loans held within the pool. It is also my understanding that, under California eminent domain procedures, if an offer to acquire a loan is not accepted, Richmond may quickly commence a proceeding to seize the loan by eminent domain, where Richmond can obtain expedited possession of the loan in what is known as the "Quick Take." It is my understanding that under the Richmond Seizure Program, after Richmond obtains possession of the loans through the "Quick Take" procedure, the loans would be extinguished and refinanced with new loans, and those new loans would then be sold into a securitized pool. Thus, once seized by eminent domain, the prior loan is extinguished and cannot be restored and put back into the trust's pool.

17. The seizure and extinguishment of these performing loans from the pools will immediately affect the cash flows of the Trusts, causing immediate and irreparable harm to the Trusts and their beneficiaries, which cannot be undone.

Date: Raleigh, North Carolina
August 7, 2013



Kevin W. Trogdon