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17 **UNITED STATES DISTRICT COURT**

18 **NORTHERN DISTRICT OF CALIFORNIA**

19 **SAN FRANCISCO DIVISION**

21 WELLS FARGO BANK, NATIONAL
22 ASSOCIATION, as Trustee, *et al.*,

23 Plaintiffs,

24 v.

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

27 Defendants.

Case No. CV-13-3663-CRB

**REPLY IN SUPPORT OF *EX PARTE*
MOTION RE: SCHEDULING OF
PRELIMINARY INJUNCTION MOTION**

Honorable Charles R. Breyer

1 Plaintiffs do not dispute that the City of Richmond cannot institute an eminent domain
2 action because its City Council has not adopted a resolution of necessity. Plaintiffs rely on the
3 Mayor's statements but the Mayor is only one vote on the City Council, and a super-majority vote
4 is required to adopt a resolution of necessity.

5 Nonetheless, Plaintiffs argue that the Court should not put off setting a preliminary
6 injunction hearing until such time as the City Council should actually adopt a proposed resolution
7 of necessity, or even until the City gives the required advance notice that the City Council intends
8 to consider a proposed resolution of necessity, because California law has a "quick take"
9 procedure. But the California procedure for "possession before judgment" requires that a lawsuit
10 be filed and a motion be made with at least *60-days advance notice* (Cal. Code Civ. Prov.
11 §1255.410(b)), and that, if the property owner opposes the motion, the Court find that "[t]he
12 plaintiff is entitled to take the property by eminent domain"; that full compensation has been
13 deposited; and that the balance of hardships favors the grant of provisional relief. *Id.*
14 §1255.410(d)(2).

15 In short, the so-called "quick-take" procedure provides no reason a preliminary injunction
16 hearing should be scheduled now when Plaintiffs have not even received notice the City Council
17 intends to consider a resolution of necessity that relates to property in which they claim an interest.

18 Dated: August 16, 2013

Respectfully submitted,

19 /s/ Scott A. Kronland
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