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N.A., as Trustee, *et al.*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

CITY OF RICHMOND, CALIFORNIA, a
municipality; and MORTGAGE
RESOLUTION PARTNERS LLC, a Delaware
limited liability company,

Defendants.

Case No. CV-13-3663-CRB

**[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER
JURISDICTION**

Honorable Charles R. Breyer

1 **[PROPOSED] ORDER**

2 Having considered the papers and arguments submitted in support of, and in opposition to,
3 Defendants' motion to dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction ("Dismissal
4 Motion"), the Court hereby DENIES the Dismissal Motion.

5 Defendants seek dismissal of the Complaint based primarily on their assertion that Plaintiffs'
6 challenge to Defendants' plan to seize certain targeted mortgage loans through Richmond's eminent
7 domain power is merely "hypothetical" and "speculative" (Def. Mem. at 7) and therefore not ripe for
8 review by this Court. But the evidence – including Richmond's public statements and internal
9 Richmond and MRP emails and memoranda – is to the contrary, and establishes that Defendants
10 already have taken substantial steps in implementing their Loan Seizure Program in accordance with a
11 pre-determined plan, and have rejected all requests to hold it in abeyance pending this Court's
12 adjudication of Plaintiffs' significant constitutional challenges.

13
14 In the face of that evidence, Defendants rest primarily on the fact that no resolution of
15 necessity has yet been approved by the Richmond City Council. But the fact remains that
16 Defendants are proceeding with their Program to seize loans by eminent domain, just as the plan
17 previously adopted by the City Council provides. Although Defendants have now briefed the issue
18 of ripeness multiple times, they have come forward with nothing to contradict Plaintiffs' evidence
19 that they already have targeted specific loans for seizure, have made offers to acquire those loans
20 under threat of seizure, and are preparing to effectuate those seizures by initiating state court
21 condemnation proceedings.

22 The law is well settled that Plaintiffs need not wait until Defendants complete every step in
23 their Loan Seizure Program before seeking injunctive relief in this Court. *See Regional Railroad*
24 *Reorganization Act Cases*, 419 U.S. 102, 142 (1974) (holding that the subject of an unconstitutional
25 taking does "not have to await the consummation of threatened injury to obtain preventive relief,"
26 even where the legislative body still "can reject the first plan," where many of the targeted properties
27 "could be eliminated from the [takings program]," where certain of the program's terms "remain to
28 be decided," or where any takings might not occur for many years); *see also Hawaii Hous. Auth. v.*

1 *Midkiff*, 467 U.S. 229, 234 (1984) (suit ripe for adjudication after compulsory negotiations, a
2 statutory prerequisite step to condemnation, had occurred, despite the fact that compulsory
3 arbitration, the following prerequisite step, had not); *99 Cents Only Stores v. Lancaster*
4 *Redevelopment Agency*, 237 F. Supp. 2d 1123, 1128 (C.D. Cal. 2001) (holding that action to enjoin
5 eminent domain program was justiciable, despite rescission of Resolutions of Necessity by the city),
6 *aff'd in relevant part, appeal dismissed on mootness grounds due to changed facts*, 60 Fed. Appx.
7 123 (9th Cir. 2003). Plaintiffs' constitutional challenges to the Program are thus ripe for review.
8 Indeed, Defendants have, by their very conduct, demonstrated that the seizure of loans from the
9 Plaintiff Trusts is imminent, and that the real purpose of their supposed "ripeness" challenge is to
10 avoid federal court review.

11
12 Absent prompt federal court review, the Trusts and their investors will suffer immediate
13 harm. The value of their certificates, traded in federally-regulated national securities markets, will
14 fall to reflect the risk that the anticipated income stream from performing loans in the pool targeted
15 for seizure by Richmond (and other municipalities that implement MRP's Loan Seizure Program)
16 will be stripped from the pools in exchange for a payment worth far less than the income stream that
17 they will generate – less, even, than the foreclosure value of the home securing the loan. This would
18 be an immediate and dramatic reduction in the value of those mortgage securities that could never be
19 compensated through the California eminent domain process. *See Eastern Enterprises v. Apfel*, 524
20 U.S. 498, 521 (1998) (the Declaratory Judgment Act "allows individuals threatened with a taking to
21 seek a declaration of the constitutionality of the disputed governmental action before potentially
22 uncompensable damages are sustained.").

23 Plaintiffs' Reply Memorandum in further support of Plaintiffs' Motion for Preliminary
24 Injunction ("PI Motion") contains a lengthy discussion of the significant harm to the Plaintiff Trusts
25 and their investors absent a Preliminary Injunction. That harm is real and it is imminent, and is "in no
26 way hypothetical or speculative." *Regional Railroad*, 419 U.S. at 143. This action is ripe for review
27 now, and this Court therefore denies the Dismissal Motion in its entirety.
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IT IS SO ORDERED.

Dated: _____

The Honorable Charles R. Breyer
United States District Judge