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 6 Attorneys for Plaintiffs Wells Fargo Bank, N.A.,  
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 8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN FRANCISCO DIVISION**

12 **WELLS FARGO BANK, NATIONAL**  
 13 **ASSOCIATION, as Trustee, *et al.***  
 14 **Plaintiffs,**  
 15 **v.**  
 16 **CITY OF RICHMOND, CALIFORNIA, a**  
 17 **municipality, and MORTGAGE RESOLUTION**  
 18 **PARTNERS LLC;**  
 19 **Defendants.**

Case No. CV-13-3663-CRB

**DECLARATION OF JOHN C. ERTMAN IN  
 FURTHER SUPPORT OF PLAINTIFFS'  
 MOTION FOR A PRELIMINARY  
 INJUNCTION AND IN OPPOSITION TO  
 DEFENDANTS' MOTION TO DISMISS**

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

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1 I, John C. Ertman, Esq., hereby declare, pursuant to 28 U.S.C. § 1746 and under penalty of  
2 perjury under the laws of the United States, that the following is true and correct:

3 1. I am member of the law firm Ropes & Gray LLP, attorneys for Plaintiffs Wells Fargo  
4 Bank, National Association, Deutsche Bank Trust Company Americas, and Deutsche Bank National  
5 Trust Company. I submit this declaration in further support of Plaintiffs' motion for a preliminary  
6 injunction (Dkt. No. 8) (the "PI Motion") and in opposition to Defendants' Motion to Dismiss  
7 Plaintiffs' Complaint (Dkt. No. 38) (the "Dismissal Motion"), in order to present certain materials  
8 relevant to the Court's adjudication of these matters.

9 **A. Documents Received from the City of Richmond**

10 2. In a letter dated June 25, 2013, Michael H. Leifer, Esq., submitted a Public Record  
11 Act request (the "PRA Request") pursuant to Government Code section 6250 *et seq.* to the City of  
12 Richmond, California ("Richmond" or the "City"), to obtain copies of documents regarding  
13 Mortgage Resolution Partners' ("MRP") and Richmond's program to seize residential mortgage  
14 loans through eminent domain (the "Loan Seizure Program"). Attached hereto as Exhibit A is a true  
15 and correct copy of that letter.

16 3. In a letter dated July 2, 2013, Carlos A. Privat, Assistant City Attorney for the City of  
17 Richmond, responded to Mr. Leifer that the City Attorney's Office would make the records available  
18 electronically no later than August 1, 2013. Attached hereto as Exhibit B is a true and correct copy  
19 of that letter.

20 4. Mr. Leifer received the requested records from Richmond and subsequently made  
21 them available to Plaintiffs and Ropes & Gray LLP. Attached hereto as Exhibits C through Q are a  
22 number of the documents obtained through the PRA Request, which are described in the following  
23 paragraphs.

24 5. Attached hereto as Exhibit C is an August 16, 2012, e-mail from Susan Boreliz of  
25 MRP to Gayle McLaughlin, Mayor of the City of Richmond, and others, providing "background"  
26 about MRP. The e-mail states that: "MRP is an organization formed to advise local governments on  
27 how to remedy the foreclosure crisis through the creation of private-public partnerships utilizing the  
28 constitutional power of eminent domain."

1           6.       Attached hereto as Exhibit D is an August 23, 2012, e-mail from Bruce Goodmiller,  
2 the City Attorney for the City of Richmond, forwarding an e-mail from MRP (and its attachments) to  
3 multiple City employees, including City Manager Lindsay. Included among the attached marketing  
4 materials for MRP's Loan Seizure Program is a document entitled "Public Purpose" that appears to  
5 be a draft "resolution on necessity" for San Bernardino County.

6           7.       Attached hereto as Exhibit E is a December 5, 2012, e-mail from Mayor McLaughlin  
7 to City employees explaining that MRP is "working with cities and counties *to exercise powers of*  
8 *eminent domain* to purchase 'underwater mortgages.' It's unique in that it's not purchase of the  
9 house but purchase of the mortgage. Then, after the city or county has the mortgage in its hands, it  
10 can refinance the loan at more favorable terms for the borrower." (emphasis added).

11           8.       Attached hereto as Exhibit F is a December 12, 2012, e-mail from Bill Higgins of  
12 MRP to City Manager Lindsay attaching MRP marketing materials that were discussed during a  
13 meeting between MRP and the City on the previous day. Included in the marketing materials was a  
14 presentation entitled "Saving Homes, Saving Cities Solving the Mortgage Crisis Locally." The  
15 presentation states (p. 8) that the "Method of PLS Principal Reduction" requires the use of the City's  
16 "constitutional power of eminent domain," because "[s]ecuritization agreements and tax laws  
17 prohibit the sale of PLS mortgages except when the mortgages are condemned." The presentation  
18 also states (p. 12) that of the \$30,000 "gain on each loan," the City will receive \$9,500.

19           9.       Attached hereto as Exhibit G is an April 3, 2013, e-mail from City Manager Lindsay  
20 to Graham Williams of MRP regarding the City Council vote to approve the Advisory Services  
21 Agreement between the City and MRP. The e-mail states that the City Council unanimously  
22 approved the agreement and "[t]o the extent that any of the Councilmembers had concerns, they had  
23 to do with the new mortgages that property owners would enter into (usurious interest rates, etc.) . . .  
24 . In any case, they would like more information about this, although they gave approval for the  
25 program to start."

26           10.       Attached hereto as Exhibit H is an April 8, 2013, e-mail from Graham Williams of  
27 MRP to City employees, including City Manager Lindsay, attaching a timeline of the steps of the  
28 Loan Seizure Program (a "Gantt Chart for California JPA Initial Program"). The timeline includes

1 the following steps, among others: “MRP, on behalf of JPA, makes offers to servicers”; “MRP  
2 prepares [the] Resolution of Necessity”; “JPA approves RON”; “JPA Files Motion”; “Eminent  
3 Domain Trial”; and “Loans Acquired, WAM deposits purchase price.”

4 11. Attached hereto as Exhibit I is an April 8, 2013, e-mail from Graham Williams of  
5 MRP to City employees, including City Manager Lindsay, attaching an annotated list of steps in the  
6 Loan Seizure Program, entitled the “MRP High Level Project Plan Template,” which appear to be  
7 generally consistent with the timeline discussed above.

8 12. Attached hereto as Exhibit J is an April 10, 2013, e-mail from David Sharples of the  
9 Alliance of Californians for Community Empowerment (“ACCE”) to Mayor McLaughlin attaching  
10 talking points for a press conference in which the Mayor had agreed to participate. Mr. Sharples  
11 stated: “We don’t want to emphasize too much the eminent domain issue because we know it is very  
12 controversial and we don’t really want to tip our hands to the opposition.”

13 13. Attached hereto as Exhibit K is an April 22, 2013, e-mail from Graham Williams of  
14 MRP to City Manager Lindsay and City Housing Director Patrick Lynch with the subject:  
15 “Foreclosure prevention progress report and next steps.” Mr. Williams states that: “We have  
16 completed the discovery of underwater PLS homeowners in your city. This list is available to you upon  
17 request. The next step in our process is to prepare for your approval an offer to buy these mortgages, we  
18 expect to deliver the proposed offer to you in the next 3 weeks. If you approve this offer then we intend  
19 to present it along with all other offers in one package to the 20 servicers of these mortgages.”

20 14. Attached hereto as Exhibit L is an April 30, 2013, e-mail from City Manager Lindsay  
21 to Graham Williams of MRP, noting a meeting with “representatives of Bank of America and Wells  
22 Fargo” and stating that: “I have not heard any new arguments presented that suggest that we should not  
23 move forward with your program.”

24 15. Attached hereto as Exhibit M is a May 14, 2013, e-mail from Graham Williams of  
25 MRP to City Manager Lindsay and Housing Director Lynch stating that he is attaching “a list of  
26 [R]ichmond mortgages which we feel should be the first to be purchased. They are 731 current,  
27 underwater, PLS mortgages without second trust deeds.” (The email’s attachment is omitted.)  
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1           16. Attached hereto as Exhibit N is a May 16, 2013, e-mail from David Sharples of  
2 ACCE to Councilmembers Beckles, Rogers, Butt, and Myrick, containing an invitation to attend a  
3 “Webinar and strategy session on Using Eminent Domain to End the Foreclosure Crisis,” where Mayor  
4 McLaughlin was one of the featured panelists. Mr. Sharples also attaches a document titled  
5 “Eminent Domain as a Tool for Preserving Homeownership, Resetting Mortgages, and Aiding Local  
6 Economies, Frequently Asked Questions.” That document states: “These homes are not in fact being  
7 sold. The loan is being sold, or taken through eminent domain,” and “This program is being proposed in  
8 response to the current crisis. This use of eminent domain only makes sense, and meets the legal bar of a  
9 ‘public purpose’, because of the large numbers of homeowners who are deeply underwater.”

10           17. Attached hereto as Exhibit O is a May 17, 2013, e-mail from Graham Williams of  
11 MRP to City Manager Lindsay and Housing Director Lynch attaching “corrected slides” from a  
12 presentation previously sent to Messrs. Lindsay and Lynch. The slides note that “MRP has arranged  
13 the \$46 million of financing that is required to implement the initial CARES program in Richmond,  
14 CA. More funding is available to Richmond when needed.” The slides further note that in the initial  
15 phase of the program, \$1,623,623 will be “Paid to City,” with the “City’s Proceed per Resolution”  
16 listed as \$7,404. The “Funders Return on Capital” is listed as “10%.”

17           18. Attached hereto as Exhibit P is a June 10, 2013, e-mail from Graham Williams of  
18 MRP to Mayor McLaughlin, City Manager Lindsay, and Housing Director Lynch discussing the  
19 “next steps for acquiring underwater securitized loans.”

20           19. Attached hereto as Exhibit Q is a July 22, 2013, e-mail from Mayor McLaughlin to  
21 Katy Miessner, a candidate for the Vallejo City Council, stating: “You can certainly tell folks in  
22 Vallejo that Richmond is 100 percent on board with this. Here’s an article in *The Nation* about  
23 Richmond and our commitment to this program.” Mayor McLaughlin also included a link to the  
24 article, “To Rescue Local Economies, Cities Seize Underwater Mortgages Through Eminent  
25 Domain” by Peter Dreier from *The Nation*.

26           **B. Public Statements by Richmond Officials**

27           20. Set forth below are numerous public statements made by Richmond officials  
28 concerning the Loan Seizure Program.

1           21.     Prior to the City Council’s vote to approve the ASA on April 2, 2013, City Manager  
2 Lindsay discussed MRP’s program and the eminent domain process with the City Council,  
3 explaining that if there was not a “negotiated purchase” of a targeted mortgage, “the City would be  
4 asked to use eminent domain to acquire the mortgage.” City Manager Lindsay further informed the  
5 City Council that, as part of this program, “the City Council would be asked to make a finding that it  
6 is in the public interest to actually acquire that mortgage for the purposes of restructuring.” After  
7 extensive discussion, the City Council unanimously voted 6-0 to approve entering into the  
8 partnership with MRP, with one member absent. *See* Recording of Richmond City Council Meeting  
9 at 4:17:38–4:19:40 (Apr. 2, 2013), available at  
10 [http://richmond.granicus.com/MediaPlayer.php?view\\_id=11&clip\\_id=3218](http://richmond.granicus.com/MediaPlayer.php?view_id=11&clip_id=3218).

11           22.     Attached hereto as Exhibit R is an opinion editorial co-authored by Mayor  
12 McLaughlin and Reverend Marvin Webb, from *The San Francisco Chronicle*, dated June 17, 2013,  
13 titled “Richmond’s Plan to Battle Foreclosures,” in which the authors write: “Wall Street banks and  
14 their lobbyists are lining up to oppose this project and pressure communities to back off. The same  
15 Wall Street banks that targeted our communities with predatory loans are now trying to scare and  
16 bully us. But we are not backing down. We have a local solution to a national crisis Wall Street  
17 created. We are moving forward to do what’s best for Richmond, not Wall Street.” (accessed at  
18 [http://www.sfchronicle.com/opinion/openforum/article/Richmond-s-plan-to-battle-foreclosures-](http://www.sfchronicle.com/opinion/openforum/article/Richmond-s-plan-to-battle-foreclosures-4604029.php)  
19 [4604029.php](http://www.sfchronicle.com/opinion/openforum/article/Richmond-s-plan-to-battle-foreclosures-4604029.php)).

20           23.     In a June 18, 2013, San Francisco CBS news segment, Mayor McLaughlin said in an  
21 interview “I expect the implementation to be moving forward very quickly, ready to go in days.”  
22 *See* KPIX 5, CBS San Francisco News broadcast, available at  
23 [http://sanfrancisco.cbslocal.com/2013/06/18/richmond-considers-eminent-domain-as-a-path-to-](http://sanfrancisco.cbslocal.com/2013/06/18/richmond-considers-eminent-domain-as-a-path-to-home-loan-restructuring/)  
24 [home-loan-restructuring/](http://sanfrancisco.cbslocal.com/2013/06/18/richmond-considers-eminent-domain-as-a-path-to-home-loan-restructuring/)

25           24.     In a July 15, 2013 radio interview, Mayor McLaughlin stated that “If the lender will  
26 not sell the house at fair market value, . . . we, the City, take the mortgage through eminent domain.”  
27 *See* KALW Local Public Radio broadcast, available at [http://kalw.org/post/richmond-mayor-gayle-](http://kalw.org/post/richmond-mayor-gayle-mclaughlin-citys-bold-plan-stem-foreclosures)  
28 [mclaughlin-citys-bold-plan-stem-foreclosures](http://kalw.org/post/richmond-mayor-gayle-mclaughlin-citys-bold-plan-stem-foreclosures).

1           25. Attached hereto as Exhibit S is a copy of an article by Shaila Dewan, from *The New*  
2 *York Times*, dated July 29, 2013, titled “A City Invokes Seizure Laws to Save Homes” (accessed at  
3 [http://www.nytimes.com/2013/07/30/business/in-a-shift-eminant-domain-saves-](http://www.nytimes.com/2013/07/30/business/in-a-shift-eminant-domain-saves-homes.html?_r=1&)  
4 [homes.html?\\_r=1&](http://www.nytimes.com/2013/07/30/business/in-a-shift-eminant-domain-saves-homes.html?_r=1&)). According to the article, Mayor McLaughlin stated that “We’re not willing to  
5 back down on this.”

6           26. Attached hereto as Exhibit T is a copy of an article by Michael B. Marois, from  
7 *Bloomberg.com*, dated August 2, 2013, titled “California Mayor Attacks ‘Greed’ With Eminent  
8 Domain Bid” (accessed at [http://www.bloomberg.com/news/2013-08-02/california-mayor-attacks-](http://www.bloomberg.com/news/2013-08-02/california-mayor-attacks-greed-with-eminant-domain-bid.html)  
9 [greed-with-eminant-domain-bid.html](http://www.bloomberg.com/news/2013-08-02/california-mayor-attacks-greed-with-eminant-domain-bid.html)). According to the article, Mayor McLaughlin emailed a  
10 statement to Bloomberg that read: “The banks and financial institutions are not helping. . . . Their  
11 greed caused the problem and they have no solution for cities like Richmond. . . . Cities like  
12 Richmond have a right and obligation to utilize such a program for the public benefit.”

13           27. Attached hereto as Exhibit U is a copy of an article by Nick Timiraos, from *The Wall*  
14 *Street Journal*, dated August 9, 2013, titled “Richmond Mayor Says Lawsuit Won’t Deter Loan  
15 Seizures” (accessed at [http://blogs.wsj.com/developments/2013/08/09/richmond-mayor-says-](http://blogs.wsj.com/developments/2013/08/09/richmond-mayor-says-lawsuit-wont-deter-loan-seizures/)  
16 [lawsuit-wont-deter-loan-seizures/](http://blogs.wsj.com/developments/2013/08/09/richmond-mayor-says-lawsuit-wont-deter-loan-seizures/)). According to the article, Mayor McLaughlin said she was not  
17 deterred by recent events – including the filing of this action – from moving ahead with Richmond’s  
18 plan to forcibly purchase mortgage loans under eminent domain.

19           28. Attached hereto as Exhibit V is a copy of an article by Robert Rogers, from *The*  
20 *Contra Costa Times*, dated August 15, 2013, titled “Richmond Mayor, Protesters Turned Away at  
21 Wells Fargo Headquarters in San Francisco” (accessed at [http://www.contracostatimes.com/west-](http://www.contracostatimes.com/west-county-times/ci_23870501/richmond-mayor-protesters-turned-away-at-wells-fargo)  
22 [county-times/ci\\_23870501/richmond-mayor-protesters-turned-away-at-wells-fargo](http://www.contracostatimes.com/west-county-times/ci_23870501/richmond-mayor-protesters-turned-away-at-wells-fargo).) According to  
23 the article, on the same day Defendants filed their *ex parte* Motion in which they assert that  
24 Plaintiffs’ claims are not ripe for review, Mayor McLaughlin “said that the city will not be dissuaded  
25 from its plan to use eminent domain to seize underwater mortgages,” and stated “I am absolutely not  
26 backing down.”

27           **C. Meet and Confer Discussions**  
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1           29.     On August 8, 2013, the day after this action was filed and the day the PI Motion was  
2 filed, Plaintiffs sent a letter to Defendants asking if they were willing to immediately suspend further  
3 implementation of the Loan Seizure Program concerning the RMBS Trusts pending adjudication of  
4 the PI Motion. Attached hereto as Exhibit W is a copy of that letter.

5           30.     On August 12, 2013, during a meet-and-confer teleconference with Defendants’  
6 counsel, counsel for Plaintiffs again asked if Defendants would be willing to halt the Loan Seizure  
7 Program pending adjudication of the PI Motion, including holding off on initiating state court  
8 eminent domain proceedings. Defendants’ counsel would not confirm whether Defendants were  
9 willing to halt the Program.

10          31.     On August 13, 2013, Defendants’ counsel sent us a letter in which they asserted that  
11 the PI Motion is not ripe for review and that requested that Plaintiffs withdraw the PI Motion.  
12 Again, Defendants’ counsel would not confirm that Defendants were willing to halt the Loan Seizure  
13 Program pending adjudication of the PI Motion, but instead stated only that Richmond would agree  
14 to give 15 days advance notice, *as required under California statutory law*, before holding a hearing  
15 on adopting a resolution of necessity with respect to loans held by the RMBS Trusts. Attached  
16 hereto as Exhibit X is a copy of that letter.

17          32.     On August 14, 2013, I sent a letter to Defendants’ counsel confirming that they are  
18 unwilling to halt the Loan Seizure Program pending adjudication of the PI Motion. Attached hereto  
19 as Exhibit Y is a copy of that letter. The Defendants did not respond to my August 14, 2013 letter,  
20 except to file their *ex parte* motion to strike the PI motion from the Court’s calendar on the following  
21 day.

22           **D. Other Documents**


23          33.     On August 7, 2013, the Federal Housing Finance Agency issued a memorandum  
24 entitled “Summary of Comments and Additional Analysis Regarding Input on Use of Eminent  
25 Domain to Restructure Mortgages.” Attached hereto as Exhibit Z is a copy of that memorandum.

26          34.     Recently, Plaintiffs sent letters in response to the offer letters issued by Richmond,  
27 which decline the offers based on the fact that the loans cannot be sold, among other reasons.  
28 Attached hereto as Exhibit AA is one such letter, dated August 13, 2013.



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Date: New York, New York  
August 29, 2013



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John C. Ertman