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 California Bankers Association,
 8 American Bankers Association,
 California Mortgage Bankers Association,
 9 and California Credit Union League

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 SAN FRANCISCO DIVISION

13 WELLS FARGO BANK, NATIONAL
 14 ASSOCIATION, as Trustee, et al.,

15 Plaintiffs,

16 v.

17 CITY OF RICHMOND, CALIFORNIA, a
 municipality; and MORTGAGE
 18 RESOLUTION PARTNERS, L.L.C.,

19 Defendants.

CASE NO. CV-13-03663-CRB

**NOTICE OF MOTION AND MOTION OF
 CALIFORNIA BANKERS ASSOCIATION,
 AMERICAN BANKERS ASSOCIATION,
 CALIFORNIA MORTGAGE BANKERS
 ASSOCIATION, AND CALIFORNIA
 CREDIT UNION LEAGUE FOR LEAVE
 TO PARTICIPATE AS *AMICI CURIAE*,
 AND TO FILE MEMORANDUM AS *AMICI
 CURIAE*, IN SUPPORT OF PLAINTIFFS'
 MOTION FOR PRELIMINARY
 INJUNCTION;**

[PROPOSED] ORDER;

**[PROPOSED] MEMORANDUM OF LAW
 AS *AMICI CURIAE* IN SUPPORT OF
 PLAINTIFFS' MOTION FOR A
 PRELIMINARY INJUNCTION; AND**

**[PROPOSED] REQUEST FOR JUDICIAL
 NOTICE**

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

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that the California Bankers Association, American Bankers
3 Association, California Mortgage Bankers Association, and California Credit Union League (the
4 “*Amici Curiae*”) respectfully request that the Court grant them leave to participate as *amici curiae*
5 in this action, and to file the accompanying Memorandum and Request for Judicial Notice in
6 support of Plaintiffs’ Motion for a Preliminary Injunction and in opposition to Defendants’
7 Motion to Dismiss. This Motion is based on this Notice of Motion and Motion, the
8 accompanying Memorandum of the *Amici Curiae* and Request for Judicial Notice, and such oral
9 argument as the Court may allow.

10 **I. DISCLOSURES**

11 The *Amici Curiae* are non-profit trade associations. None of them are more than 10%
12 owned by any public corporation. The Plaintiffs in this case are members of one or more of the
13 *Amici Curiae*, but only in the capacity of dues-paying members, with no special ownership
14 interest nor dues-paying beyond that of other members. No party to this case, nor its counsel,
15 authored this brief in whole or in part, nor contributed money intended to fund the preparation or
16 submission of this brief. No other person contributed money intended to fund the preparation or
17 submission of this brief.

18 **II. STANDARD FOR MOTION FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE***

19 In *Perry v. Schwarzenegger*, No. 9-cv-2292-JW (N.D. Cal.) (Dkt. 630, Apr. 21, 2010),
20 then-Chief Judge Walker granted leave in the Proposition 8 case for the filing of more than 20
21 separate *amicus* briefs by more than 40 *amici*:

22 The court may welcome *amicus curiae* submissions “concerning legal issues that
23 have potential ramifications beyond the parties directly involved or if the *amicus*
24 has unique information or perspective that can help the court beyond the help that
the lawyers for the parties are able to provide.”

25 *Id.* at p.2, quoting *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F.Supp.2d 1061, 1067
26 (N.D. Cal. 2005); *see also Sonoma Falls Devs. LLC v. Nev. Gold & Casinos, Inc.*, 272 F.Supp.2d
27 919, 925 (N.D. Cal. 2003); *Craigslist, Inc. v. 3Taps, Inc.*, No. 12-cv-3816-CRB (N.D. Cal.)

1 (Dkt. 93, June 20, 2013) (Order granting leave to file amicus brief).

2 This is a “modest standard” which is readily satisfied in this case, which involves
3 fundamental constitutional issues and potential material adverse economic effects on most
4 residents of California. *Perry v. Schwarzenegger*, No. 9-cv-2292-JW (Dkt. 630), *supra* at p. 2.

5 **III. RESPONSE OF THE PARTIES TO REQUESTS FOR CONSENT**

6 Plaintiffs have consented to *amicus* participation and filing of the accompanying
7 Memorandum by the *Amici Curiae* in support of Plaintiffs’ Motion for a Preliminary Injunction,
8 provided that the filing does not cause a delay in the hearing on that motion (which it should not).
9 On August 27, 2013, the undersigned counsel, and counsel for the other proposed *amici curiae*,
10 spoke by telephone with Scott A. Kronland, Esq., counsel for Defendants, and requested
11 Defendants’ consent to the filing of *amicus* briefs by the following *amici* represented by the
12 following counsel:

- 13 • Structured Finance Industry Group, Inc., represented by Dentons US LLP;
- 14 • Securities Industry and Financial Markets Association and the United States Chamber
15 of Commerce, represented by Sidley Austin LLP; and
- 16 • California Bankers Association, American Bankers Association, and California
17 Mortgage Bankers Association, represented by DLA Piper LLP (US). DLA Piper also
18 represents proposed *amicus* California Credit Union League, who joined the existing
19 group of *amici* after the initial telephonic request to Defendants’ counsel.

20 These requests were confirmed by counsel to Mr. Kronland by e-mail, also on August 23,
21 2013. On August 28, 2013, Defendants’ counsel sent an e-mail declining to consent, stating:
22 “Defendants do not consent to the filing of amicus briefs. They would be untimely and unfair
23 because Defendants already filed their opposition to the preliminary injunction motion.”

24 In response, on August 29, 2013, the undersigned counsel suggested by e-mail to Mr.
25 Kronland: “Your concern about timing may be resolved by a stipulation, subject to the approval
26 of the Court, that Defendants may have one week, to September 4 (or September 5, if that works
27 for the Court) to reply to the short amicus brief.”

1 Defendants' counsel replied just 8 minutes later, without any attempt to negotiate a
2 schedule, that "Defendants' position re amicus briefs remains unchanged."

3 The accompanying proposed Order includes a provision granting Defendants until
4 September 5, 2013 to reply to the *Amici Curiae's* brief. That schedule, if acceptable to the Court,
5 will ensure that the date of the preliminary injunction hearing is not affected. The proposed *Amici*
6 *Curiae* submit that their proposed schedule would give Defendants ample time to reply, comport
7 with due process, and would allow the present hearing schedule (which the *Amici Curiae* do not
8 seek to change) to remain in place.

9 **IV. STATEMENT OF IDENTITY AND INTEREST OF *AMICI CURIAE*:**
10 **THE CALIFORNIA BANKERS ASSOCIATION**

11 California Bankers Association ("CBA") is a non-profit association established in 1891
12 that represents most of the federally insured depository financial institutions in California. The
13 CBA's members are California-based banks, mortgage lenders, loan originators and loan
14 servicers whose primary interest is in the economic health of California. All of CBA's members
15 are affected or will be affected by the City of Richmond's Home Preservation Program (the
16 "Taking Program"), if it were not enjoined by this Court.

17 CBA is a leading voice for mortgage relief legislation in California, and has consistently
18 supported tax relief and other legislation to benefit California homeowners. In 2013, the CBA co-
19 sponsored (with the California Association of Realtors ("CAR")) a bill currently pending before
20 the California state legislature, S.B. 30, which would re-extend California tax relief for residential
21 mortgage debt forgiveness. The CBA and CAR co-sponsored a companion bill, A.B. 42, in the
22 state Assembly.

23 The CBA has also actively participated in discussions on the use of eminent domain by
24 California cities as a solution to the foreclosure crisis, as asserted by defendant Mortgage
25 Resolution Partners, LLC ("MRP"). Representatives of the CBA have attended meetings and
26 MRP presentations in cities throughout California and have dialogued with principals of MRP
27 regarding the concerns discussed in the moving and reply papers of the Plaintiff bank trustees.
28

1 **THE AMERICAN BANKERS ASSOCIATION**

2 The American Bankers Association (“ABA”) is the largest national trade association of
3 the banking industry in the United States. It represents banks and bank holding companies of all
4 sizes in each of the fifty states and the District of Columbia, including community, regional, and
5 large money center banks. The ABA also represents savings associations, trust companies, and
6 savings banks. ABA members hold approximately 95% of the United States banking industry’s
7 domestic assets. The ABA frequently appears in litigation, either as a party or *amicus curiae*, to
8 protect and promote the interests of the banking industry and its members.

9 **THE CALIFORNIA MORTGAGE BANKERS ASSOCIATION**

10 The California Mortgage Bankers Association (“CMBA”), founded in 1955, is a non-
11 profit trade association dedicated to representing the interests of California mortgage bankers and
12 real estate finance professionals and companies whose primary business is the origination and
13 servicing of residential and commercial mortgage loans in California. The CMBA represents
14 over 220 member companies and the thousands of employees that run those entities. In 2012,
15 CMBA’s residential members originated over \$80 billion and serviced over \$37 billion in home
16 mortgages. Its commercial members originated over \$9 billion and serviced over \$20 billion in
17 commercial mortgages.

18 The CMBA seeks to promote a business, economic and legal environment conducive to
19 the efficient and ethical conduct of all aspects of mortgage banking and real estate finance. It
20 regularly advocates for its members before the California Legislature, with California regulators,
21 and in California courts. It is a periodic contributor of *amicus curiae* briefs in state and federal
22 courts on matters that have a significant impact on mortgage bankers and the California real estate
23 finance industry.

24 **THE CALIFORNIA CREDIT UNION LEAGUE**

25 The California Credit Union League (“CCUL”) is the largest state trade association for
26 credit unions in the United States and for more than 75 years has played an important role in
27 ensuring the sustained health of credit unions. The CCUL represents almost 300 credit unions
28 with over \$120 billion in assets and nine million members in California. Credit unions are

1 financial cooperatives that are not-for-profit institutions, owned by the members of the credit
2 union.

3 **V. REASONS WHY THE EXPERTISE OF THESE *AMICI CURIAE* ARE**
4 **BENEFICIAL TO THIS COURT**

5 The *Amici Curiae* are, quite literally, the voice of the mortgage lending and banking
6 industries in California and nationally. Their expertise in the areas of mortgage lending and real
7 estate transactions, and their status as the largest and most established mortgage lending and
8 banking industry groups in California and in the United States, makes them uniquely situated to
9 address the potential effects of the Taking Program.

10 The attached proposed brief of the *Amici Curiae* will provide analysis not otherwise
11 available to the Court regarding the economic effects of uncertainty created by the Taking
12 Program, which will chill or prevent mortgage lending in Richmond and in California generally,
13 depress property values and stifle economic recovery, and create ruinous tax consequences for
14 participant homeowners. In particular, the proposed brief explains:

- 15 1. The Federal Housing Finance Agency, the conservator of Fannie Mae, Freddie
16 Mac, and the Federal Home Loan Banks has issued a detailed General Counsel
17 Memorandum explaining that, for both constitutional and safety and soundness
18 reasons, it may be required to direct its conservatees and regulated institutions to
19 refuse to buy new mortgages potentially subject to the Taking Program.
- 20 2. While the legal uncertainty based on constitutional challenges to the Taking
21 Program exists, title insurance companies will refuse to insure New Loans
22 refinanced under the Taking Program, leaving Richmond with a portfolio of seized
23 loans that it cannot afford to keep, and homeowners with homes that are
24 impossible to sell.
- 25 3. Loan principal reductions under the Taking Program may—and likely will—leave
26 affected homeowners with ruinous tax liability because there is no exception to
27 taxation for such loan forgiveness in California (despite the CBA’s efforts), and
28 the Federal exemption expires in three months. Thus, homeowners who opted-in

1 to the Taking Program, which does not provide for cash-out proceeds to the
2 homeowners, would have tax liabilities that most of them could not pay.

- 3 4. The mass revaluation of more than 600 homes in Richmond would depress
4 neighboring real estate values throughout that City, to the detriment of all
5 Richmond homeowners, and would result in downward tax reassessments that
6 would drastically reduce Richmond's tax base, to the detriment of all Richmond
7 residents.
- 8 5. Historical experience, including the 1978 decision of *Wellenkamp v. Bank of*
9 *America*, 21 Cal. 3d 943 (1978), shows that interference in real estate contract
10 terms will decrease availability and increase costs of home loan credit, causing real
11 estate illiquidity.

12 **VI. CONCLUSION**

13 The *Amici Curiae* respectfully request that the Court grant their motion for leave to
14 participate as *amici curiae*, and to file the accompanying Memorandum and Request for Judicial
15 Notice in support of Plaintiffs' Motion for a Preliminary Injunction.

16 Respectfully submitted,

17
18 Dated: August 29, 2013

DLA PIPER LLP (US)

19
20 By /s/ Paul J. Hall

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28 CALIFORNIA MORTGAGE
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