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	SAUTRAIUR		
21	WELLS FARGO BANK, NATIONAL	Case No. CV-13-3663-CRB	
22	ASSOCIATION, as Trustee, et al.,	DEFENDANTS' SUPPLEMENTAL	
23	Plaintiffs,	MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF	
24	v.	JURISDICTION (DOC. 38)	
		Date: Sept. 12, 2013	
25	CITY OF RICHMOND, CALIFORNIA, a municipality, and MORTGAGE	Time: 10:00 am	
26	RESOLUTION PARTNERS LLC,	Place: Courtroom 6, 17th Floor The Hon. Charles R. Breyer	
27	Defendente	The Holl. Charles K. Breyer	
28	Defendants.		
	Defs' Suppl. Memo in Support of Motio	n to Dismiss, Case No. CV-13-3663-CRB	

Фос. 7

## DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF JURISDICTION (DOC. 38)

The Court allowed supplemental briefing on two questions: 1) whether the Court has
authority to do anything other than dismiss claims over which it lacks subject matter jurisdiction,
and 2) whether the Court should grant the Banks leave to amend their Complaint. The answer to
both questions is no.

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## 1. The Court Must Dismiss This Case

B Defendants have moved to dismiss this case for lack of subject matter jurisdiction. The
9 lack of jurisdiction is obvious. As the Court correctly observed at the September 12, 2013 hearing,
10 the Article III standing/ripeness issue is a "no brainer." The Court recognized that this case
11 involves legislative action that has not yet occurred. Therefore, the Court must grant the motion to
12 dismiss and does not have discretion to do anything else.

13 "Without jurisdiction the court cannot proceed at all ... the only function remaining to the court is that of announcing the fact and dismissing the cause." Steel Co. v. Citizens for a Better 14 Environment, 523 U.S. 83, 94 (1998) (quoting Ex parte McCardle, 74 U.S. 506 (1868)); see also 15 Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter 16 jurisdiction, the court must dismiss the action.") (emphasis supplied); Herman Family Revocable 17 Trust v. Teddy Bear, 254 F.3d 802, 807 (9th Cir. 2001) ("[o]nce the district court reached the 18 conclusion that it had no underlying original subject matter jurisdiction, there was nothing left to 19 do but to dismiss the case . . . [jurisdiction is not] a matter of equity or discretion"). 20

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## 2. The Banks Should Not Be Granted Leave to Amend

A Court considering a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) is not limited to reviewing the pleadings. *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). Defendants presented uncontroverted evidence that the Richmond City Council has not adopted a resolution of necessity to authorize the use of eminent domain authority to condemn mortgage loans, nor is such a resolution even on the City Council's agenda. Lindsay Decl. ¶22 (Doc. 33). The Banks conceded at the hearing that these facts are true. As such, any amendment would be futile because it would not change the conclusion that the Court lacks subject matter

1	jurisdiction. <sup>1</sup> The Court should not grant leave to amend when the amendment would be futile.		
2	The Court should also bear in mind that this case is a SLAPP suit. The Banks filed this		
3	case even though the lack of subject matter jurisdiction is obvious and the Banks' arguments to the		
4	contrary are Rule 11 frivolous. Simply having a lawsuit on file serves the Banks' purpose of		
5	chilling the political process. While a lawsuit is pending, financial institutions are reluctant to		
6	negotiate in good faith with the City on a principal reduction solution. While a lawsuit is pending,		
7	other municipalities are reluctant to join a Joint Powers Authority to consider solutions to the		
8	underwater mortgage crisis. Dragging out the dismissal of this SLAPP suit would be an		
9	impediment to full consideration of potential solutions to a serious problem adversely affecting		
10	numerous Richmond homeowners. These solutions may or may not involve the use of eminent		
11	domain authority, and they will be subject to judicial review if and when the time is ripe.		
12	CONCLUSION		
13	The Court should dismiss this case forthwith for lack of jurisdiction.		
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20	$\frac{1}{1}$ At the hearing, the Banks misrepresented the process for adopting a resolution of necessity as		
21	"ministerial." A resolution of necessity is a legislative action that can be taken only after a noticed public hearing, and the point of such a public hearing is to provide the legislative body with information to decide whether, among other things, "public interest and necessity" justify the		
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23	use of eminent domain authority. <i>See Santa Cruz Cnty. Redevelopment Agency v. Izant</i> , 37 Cal.App.4th 141, 148-51 (1995) ("the resolution of necessity is a legislative act"); <i>id.</i> at 149 (it would be a "gross abuse of discretion" for the legislative body to "irrevocably commit[] itself to the taking of the property regardless of the evidence presented" at the public hearing); <i>Anaheim</i> <i>Redevelopment Agency v. Dusck</i> , 193 Cal.App. 3d 249, 260 (1987) ("the decision to condemp		
24			
25	Redevelopment Agency v. Dusek, 193 Cal.App.3d 249, 260 (1987) ("the decision to condemn property [presents] 'a fundamental political question'"; "[t]hese considerations are inherently legislative"). As such, there are <i>no facts</i> the Banks could allege that would make this case ripe. Moreover, as the Banks acknowledge, the most recent action by the Richmond City Council was to "direct stoff to vork to set up a Loint Powers. Authority with other interested		
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27	to "direct staff to work to set up a Joint Powers Authority with other interested municipalities," so the entity that may or may not be called upon to consider a hypothetical proposed resolution of necessity may not even exist yet.		
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	Defs' Suppl. Memo in Support of Motion to Dismiss, Case No. CV-13-3663-CRB		
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1	Dated: September 13, 2013	Respectfully submitted,	
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