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18
 19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**
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.
 28

Case No. CV-13-3663-CRB

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

Date: Sept. 12, 2013
 Time: 10:00 am
 Place: Courtroom 6, 17th Floor
 The Hon. Charles R. Breyer

1 jurisdiction.¹ 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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21 ¹ At the hearing, the Banks misrepresented the process for adopting a resolution of necessity as
22 "ministerial." A resolution of necessity is a legislative action that can be taken only after a
23 noticed public hearing, and the point of such a public hearing is to provide the legislative body
24 with information to decide whether, among other things, "public interest and necessity" justify the
25 use of eminent domain authority. See *Santa Cruz Cnty. Redevelopment Agency v. Izant*, 37
26 Cal.App.4th 141, 148-51 (1995) ("the resolution of necessity is a legislative act"); *id.* at 149 (it
27 would be a "gross abuse of discretion" for the legislative body to "irrevocably commit[] itself to
28 the taking of the property regardless of the evidence presented" at the public hearing); *Anaheim
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 *no facts* 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 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.

1 Dated: September 13, 2013

Respectfully submitted,

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