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16 **UNITED STATES DISTRICT COURT**
 17 **NORTHERN DISTRICT OF CALIFORNIA**

18 THE BANK OF NEW YORK MELLON (f/k/a The
 Bank of New York) and THE BANK OF NEW
 19 YORK MELLON TRUST COMPANY, N.A. (f/k/a
 The Bank of New York Trust Company, N.A.), as
 20 Trustees; U.S. BANK NATIONAL ASSOCIATION,
 21 as Trustee; and WILMINGTON TRUST COMPANY
 and WILMINGTON TRUST, NATIONAL
 22 ASSOCIATION, as Trustees,

23 Plaintiffs,

24 v.

25 CITY OF RICHMOND, CALIFORNIA, a
 municipality; RICHMOND CITY COUNCIL;
 26 MORTGAGE RESOLUTION PARTNERS LLC, a
 Delaware limited liability company; and
 27 GORDIAN SWORD LLC, a Delaware limited
 liability company,

28 Defendants.

Case No. CV-13-3664-CRB

**DECLARATION OF ERIC P. BROWN
 IN SUPPORT OF EX PARTE MOTION
 AND MOTION TO DISMISS**

Honorable Charles R. Breyer

1 attached hereto as Exhibits E and F.

2 7. On September 16, 2013, this Court issued a written order dismissing the *Wells*
3 *Fargo* case as unripe and therefore lacking subject matter jurisdiction. (Dkt. 78). A true and
4 correct copy of that order is attached hereto as Exhibit G. A true and correct copy of the Court's
5 judgment, (Dkt. 79), issued the same day, is attached hereto as Exhibit H.

6 8. After the Court issued its ruling dismissing the *Wells Fargo* case as unripe, I again
7 contacted Plaintiffs' counsel by electronic mail. My message explained that the grounds for the
8 dismissal presented no distinction from this case and asked that Plaintiffs agree to voluntary
9 dismissal by Tuesday to avoid the need to file an unnecessary motion to dismiss and thereby waste
10 the resources of the parties and the Court. Plaintiffs' counsel responded that they would confer
11 with their clients and respond later in the week.

12 9. In response, I sent an electronic mail message reiterating that there was no non-
13 frivolous basis to distinguish the Article III issues in this case from *Wells Fargo* and no legitimate
14 purpose to keeping this case on file, so the only conceivable purpose in doing so would be to chill
15 the political process. Therefore, I explained, Defendants intended to move to dismiss by the end of
16 this week and to request an order shortening time on the briefing schedule, and needed to know by
17 Wednesday whether Plaintiffs would voluntarily withdraw the complaint, rendering preparation of
18 a motion to dismiss unnecessary. Plaintiffs did not respond to this message.

19 10. On the morning of Thursday, September 19, 2013, I sent another electronic mail
20 message to Plaintiffs' counsel stating that, as we had not heard confirmation that Plaintiffs would
21 voluntarily withdraw their complaint, we were preparing a motion to dismiss and application to
22 shorten time to be filed Friday, September 20, 2013. I set forth the proposed schedule (opposition
23 due Wednesday, September 25, and reply due Friday, September 27) and informed Plaintiffs that
24 Defendants would ask the Court to forego a hearing and rule on the papers, and asked for
25 Plaintiffs' position on these requests by Friday at 12 p.m.

26 11. On Friday, September 20, 2013, Plaintiffs responded that they will not voluntarily
27 dismiss their Complaint and that they oppose Defendants' motion for an expedited briefing
28 schedule and Defendants' request that the Court forego oral argument and rule on the papers.

1 Plaintiffs' response does not identify any reason why the ripeness analysis in this case would be
2 any different from that in *Wells Fargo*.

3 Dated: September 20, 2013

Respectfully submitted,

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/s/ Eric P. Brown

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Eric P. Brown

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Stephen P. Berzon

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Scott A. Kronland

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Stacey M. Leyton

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Eric P. Brown

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