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 11 THE BANK OF NEW YORK MELLON  
 (f/k/a The Bank of New York) and  
 12 THE BANK OF NEW YORK MELLON TRUST  
 COMPANY, N.A. (f/k/a The Bank of New York Trust  
 13 Company, N.A.) as Trustees for the Trusts listed on  
 Exhibit A to the Second Amended Complaint

14 [Additional counsel listed on signature page.]

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

17  
 18 THE BANK OF NEW YORK MELLON (f/k/a  
 The Bank of New York) *et al.*

19 Plaintiffs,

20 v.

21 CITY OF RICHMOND, CALIFORNIA, a  
 22 municipality; RICHMOND CITY COUNCIL;  
 23 MORTGAGE RESOLUTION PARTNERS  
 L.L.C., a Delaware limited liability company;  
 24 and GORDIAN SWORD LLC, a Delaware  
 limited liability company;

25 Defendants.  
 26

Case No. 3:13-cv-3664-CRB

**PLAINTIFFS' RESPONSE TO  
 CERTIFICATION OF INTERESTED  
 ENTITIES OR PERSONS BY  
 DEFENDANTS MORTGAGE  
 RESOLUTION PARTNERS L.L.C. AND  
 GORDIAN SWORD LLC (DKT. 44)**

Judge: Hon. Charles R. Breyer

Complaint filed: August 7, 2013

1 Plaintiffs The Bank of New York Mellon (f/k/a The Bank of New York), as trustee, The  
2 Bank of New York Mellon Trust Company, N.A. (f/k/a The Bank of New York Trust Company,  
3 N.A.), as trustee, U.S. Bank National Association, as trustee, Wilmington Trust Company, as  
4 trustee, and Wilmington Trust, National Association, as trustee (collectively, “Plaintiffs”),  
5 respond to the Certification of Interested Entities or Persons submitted by Defendants Mortgage  
6 Resolution Partners L.L.C. (“MRP”) and Gordian Sword LLC (“Gordian”) (Dkt. 44).

7 MRP and Gordian disclose that the two LLCs have about 60 members but intentionally  
8 withhold the identities of those members, and fail to disclose other individuals or entities that  
9 have a financial interest in MRP or Gordian, or an interest in the outcome of the case. Local  
10 Rule 3-16 requires MRP and Gordian to disclose any persons or entities that have “a financial  
11 interest (of any kind) in the subject matter in controversy or in a party to the proceeding” or “any  
12 kind of interest that could be substantially affected by the outcome of the proceeding.” L.R. 3-  
13 16(b)(1). “Financial interest” means “ownership of a legal or equitable interest, however small,”  
14 or “a relationship as director, advisor, or other active participant in the affairs of a party.” 28  
15 U.S.C. 455(d)(4); L.R. 3-16(b)(2). Defendants suggest that because they could not locate case  
16 law specific to LLCs that they somehow are exempt from full disclosure. But that turns the rule  
17 on its head—the rule requires broad disclosure unless exempted (*e.g.*, expressly exempted from  
18 the definition of “financial interest” is “[o]wnership in a mutual or common investment fund that  
19 holds securities . . . unless the judge participates in the management of the fund”). 28 U.S.C.  
20 § 455(d)(4)(i); L.R. 3-16(b)(2). Further, Delaware law, under which MRP and Gordian are  
21 incorporated, provides that a member’s interest in an LLC is the member’s personal property.  
22 Del. Code Ann. tit. 6, § 18-701. Members of MRP and Gordian therefore “own[] . . . a legal or  
23 equitable interest, however small” in MRP or Gordian and thus possess a financial interest that  
24 must be disclosed.

25 In addition, “the management of a limited liability company shall be vested in [all] its  
26 members.” Del. Code Ann. tit. 6, § 18-402. Managers of LLCs are analogous to directors.  
27 Members having “a relationship as a director, advisor” or who are otherwise an “active  
28

1 participant in the affairs of” MRP or Gordian have a financial interest that must be disclosed.

2 Other individuals or entities also have an “interest that could be substantially affected by  
3 the outcome of the proceeding.” L.R. 3-16(b)(1). For instance, MRP has secured at least \$46  
4 million of financing to implement Defendants’ loan seizure program. Dkt. 34-7 at 34 of 57. The  
5 investors providing this financing certainly have an interest that could be substantially affected  
6 by the outcome of this case. Yet MRP and Gordian have not disclosed these investors.

7 MRP and Gordian have intentionally failed to disclose the identities of their members, the  
8 loan seizure program’s investors, and anyone else who has a financial interest in MRP or  
9 Gordian, or an interest that could be substantially affected by the outcome of this case. At a  
10 minimum, their members have an ownership interest in the LLC and must be disclosed. L.R. 3-  
11 16(b); 28 U.S.C. § 455(d)(4); Del. Code Ann. tit. 6, § 18-701. The Court should require that they  
12 provide complete certifications.

13 Dated: October 31, 2013

Respectfully submitted,

14  
15 MAYER BROWN LLP  
DONALD M. FALK  
16 BRONWYN F. POLLOCK  
NOAH B. STEINSAPIR  
17 MICHAEL D. SHAPIRO

18 By: /s/ Bronwyn F. Pollock

Bronwyn F. Pollock

19 Attorneys for Plaintiffs

20 THE BANK OF NEW YORK MELLON

(f/k/a The Bank of New York) and

21 THE BANK OF NEW YORK MELLON TRUST

COMPANY, N.A.(f/k/a The Bank of New York

22 Trust Company, N.A.), as Trustees for the trusts

listed on Exhibit A of the Second Amended

23 Complaint

24 Dated: October 31, 2013

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By: */s/ Brian D. Hershman*  
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U.S. BANK NATIONAL ASSOCIATION,  
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Dated: October 31, 2013

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By: */s/ Kurt Osenbaugh*  
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Attorneys for Plaintiff  
WILMINGTON TRUST COMPANY and  
WILMINGTON TRUST, NATIONAL  
ASSOCIATION, as Trustees

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**SIGNATURE ATTESTATION**

I, Bronwyn F. Pollock, attest that the concurrence in the filing of this Plaintiffs’ response to Certification of Interested Entities or Persons by Defendants Mortgage Resolution Partners L.L.C. and Gordian Sword LLC (Dkt. 44) has been obtained from Brian D. Hershman and Kurt Osenbaugh.

By: /s/ Bronwyn F. Pollock  
Bronwyn F. Pollock  
Attorneys for Plaintiffs  
THE BANK OF NEW YORK MELLON  
(f/k/a The Bank of New York) and THE BANK  
OF NEW YORK MELLON TRUST  
COMPANY, N.A. (f/k/a The Bank of New York  
Trust Company, N.A.), as Trustees for the Trusts  
listed in Exhibit A to the Second Amended  
Complaint