

EXHIBIT D

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August 13, 2013

Via E-mail and U.S. Mail

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Re: *Wells Fargo Bank v. City of Richmond*, No. 13-3663 (N.D. Cal.)
The Bank of New York Mellon v. City of Richmond, No. 13-3664 (N.D. Cal.)

Dear Counsel:

I write on behalf of the City of Richmond to follow up on our telephone conversation yesterday about these two lawsuits.

The claims alleged in these lawsuits are not ripe. The suits seek declaratory and injunctive relief to prevent the City from exercising its eminent domain authority to condemn mortgage loans in which your clients assert an interest. But City officials could not possibly commence an eminent domain action unless the Richmond City Council had considered and adopted a resolution of necessity. Under California law:

A public entity may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity that meets the requirements of this article.

Cal. Code Civ. Proc. §1245.230 (emphasis supplied); *see also id.* §1245.230 (setting out the mandatory statutory findings required for a resolution of necessity).

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The City has extended offers to acquire mortgage loans to various trustees/servicers and intends to make every reasonable effort to acquire the loans through voluntary transactions. The City is interested in acquiring underwater mortgage loans for a public program to reduce principal balances and avoid foreclosures. If trustees/servicers are willing to negotiate in good faith, the City believes a purchase agreement can be negotiated that would be in the best interests of City residents and investors in the trusts. Such an agreement would require the approval of the City Council.

If the City is unable to acquire underwater mortgage loans through negotiations, then the City may consider whether the City should exercise eminent domain authority. Before an eminent domain action could be commenced, however, the matter would have to be brought before the seven-member City Council for consideration and debate at a public meeting, and a supermajority of the City Council would have to adopt a resolution of necessity that finds, among other things, that “[t]he public interest and necessity require the proposed project” and that “[t]he proposed project is planned . . . in the manner that will be most compatible with the greatest public good and the least private injury.” Cal. Code Civ. Proc. §1245.230. Only if such a resolution of necessity were adopted would City officials be permitted to commence an eminent domain action.

A proposed resolution of necessity that covers the mortgage loans at issue is not presently on the agenda for any upcoming City Council meeting and might never be considered or brought to a vote. Or a proposed resolution of necessity might be brought before the City Council for a vote and rejected. “A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Texas v. United States*, 523 U.S. 296, 300 (1998).

Moreover, the City will agree to give you at least 15 days advance notice if its City Council should intend in the future to hold a vote on the adoption of a proposed resolution of necessity that addresses any mortgage loans identified in the two complaints. *Cf.* Cal. Code Civ. Proc. §1245.235 (providing for at least 15 days advance notice to certain property owners if a governing body intends to vote on the adoption of a proposed resolution of necessity). If, at that point, your clients believe they are entitled to relief in federal court merely because a City Council intends to debate and possibly vote on a proposed resolution of necessity, your clients could seek relief at that time.

Accordingly, the City asks that you withdraw the unnecessary motion for preliminary injunction or withhold filing such motion, without prejudice to filing the motion at a later date. The City also asks that you dismiss these unripe lawsuits without prejudice.

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Please let us know by the close of business today if you will agree not to pursue a preliminary injunction at this time and let us know by the close of business on Friday whether you will dismiss the lawsuits without prejudice.

If your clients still intend to pursue an unnecessary preliminary injunction, then the City asks that the hearing be postponed from September 13 to October 11, the Judge's next available date, so the City has adequate time to respond. The City's agreement to give you advance notice if its City Council should intend to vote on a proposed resolution of necessity that addresses any of the mortgage loans at issue would enable you to advance the hearing date if necessary.

In closing, we reiterate that these lawsuits are not ripe and that there certainly is no basis for seeking injunctive relief against purely hypothetical actions. If your clients require the City to expend any resources responding to an unnecessary preliminary injunction motion or to an obviously unripe lawsuit, the City will seek whatever sanctions may be available.

Sincerely,



Scott A. Kronland