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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,  
 as Trustee; and WILMINGTON TRUST COMPANY  
 21 and WILMINGTON TRUST, NATIONAL  
 ASSOCIATION, as Trustees,  
 22

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

**EX PARTE MOTION TO CONTINUE  
 HEARING AND REPLY BRIEF ON  
 DEFENDANTS' MOTION FOR RULE  
 11 SANCTIONS**

Honorable Charles R. Breyer

1                   **EX PARTE MOTION TO CONTINUE HEARING AND REPLY BRIEF ON**  
2                   **DEFENDANTS' MOTION FOR RULE 11 SANCTIONS**

3                   Pursuant to Local Rule 6-3, Defendants hereby move this Court for an *ex parte* order  
4 continuing the hearing and reply brief on Defendants' Motion for Rule 11 Sanctions. Plaintiffs  
5 oppose this motion. Declaration of Eric Brown ¶10.

6                   This Court dismissed the instant case on November 6, 2013, on the ground that the case was  
7 not ripe under Article III. Doc. 53. Defendants have moved for Rule 11 attorneys' fees sanctions  
8 against Plaintiffs in connection with Plaintiffs' refusal to voluntarily withdraw their complaint after  
9 this Court dismissed the related case *Wells Fargo v. Richmond*, Case No. 13-3663-CRB, on  
10 ripeness grounds that presented no basis for distinguishing the instant case. Doc. 55. Defendants  
11 noticed the hearing on their motion for December 13, 2013. *Id.* This Court subsequently  
12 continued the hearing sua sponte to December 20, 2013, Doc. 56, and under the current briefing  
13 schedule Plaintiffs' opposition to the motion is due on November 22, 2013, and Defendants' reply  
14 is due on December 2, 2013.

15                  For the reasons explained in the accompanying Declaration of Eric Brown, both the new  
16 hearing date and the date that the reply brief is currently due pose significant problems for  
17 Defendants. Most importantly, all three of the partners at Altshuler Berzon LLP who are counsel  
18 in this case are also lead counsel for Respondent SEIU Healthcare Illinois and Indiana in *Harris v.*  
19 *Quinn*, Dkt. No. 11-681, before the United States Supreme Court. Brown Decl. ¶4. *Harris* is on a  
20 very tight schedule, as the Supreme Court granted certiorari in October and set argument for  
21 January 21, 2014. The Petitioners' brief in *Harris* is due on November 22, 2013, and the  
22 Respondents' brief, for which Scott Kronland has principal responsibility, but on which Mr.  
23 Berzon and Ms. Leyton are also working, is due on December 23, 2013. *Id.* Substantial work,  
24 including preparing, editing, and finalizing the brief and coordinating with several amici, will be  
25 required of all three partners during the interim period, and especially in the week before  
26 Respondents' brief is due.

27                  In addition, all of the Altshuler Berzon LLP attorneys who are counsel in this case have  
28 other commitments (some of which arose after Defendants' Rule 11 Motion was filed) that will

1 adversely affect their ability to meet the current December 2, 2013 due date for the reply brief.  
2 Since the motion was filed, Stephen Berzon had to take on responsibility for preparing and arguing  
3 *United Public Workers, AFSCME, Local 646 v. Abercrombie*, Case No. SCWC 12-0000505, before  
4 the Hawaii Supreme Court on December 5, 2013, which will require the majority of his time  
5 between now and then. Brown Decl. ¶6. Stacey Leyton has a major motion to dismiss due on  
6 November 25, 2013, in *Salas v. International Union of Operating Engineers*, Case No. 12-cv-  
7 10506 (C.D. Cal), a complex breach of fiduciary duty case involving a 119-page complaint (plus  
8 over 100 pages of exhibits). Brown Decl. ¶7. Ms. Leyton also will be filing attorneys' fees  
9 petitions in early December in two significant voting rights cases, *NEOCH v. Husted*, Case No.  
10 2:06-cv-00896 (S.D. Ohio), and *Service Employees International Union, Local 1 v. Husted*, Case  
11 No. 12-cv-00562 (S.D. Ohio), successfully litigated in the Sixth Circuit. Brown Decl. ¶7. Eric  
12 Brown has a reply brief due in *Carrillo v. Schneider Logistics*, Case No: 11-cv-8557 (C.D. Cal.), a  
13 case involving the mistreatment of warehouse workers on several grounds, on December 2, 2013,  
14 the same day that the reply brief on Defendant's Rule 11 Motion in this case is currently due.  
15 Brown Decl. ¶8. Additionally, Mr. Brown has a merits opposition brief in *Turtle Bay Exploration*  
16 *Park v. Baker*, Case No. 176864 (Cal. Superior Ct.), due on December 4, 2013, as well as a three-  
17 day arbitration before an administrative law judge of the California Public Employees' Relations  
18 Board scheduled for December 16, 17, and 18, which will require a significant amount of time to  
19 prepare between now and then. Brown Decl. ¶8. Mr. Brown also has a petition pending before the  
20 California Supreme Court in *United Teachers Los Angeles v. Superior Court*, Court of Appeal Case  
21 No. B251693, which will require a reply and substantial work in the coming weeks should it be  
22 granted. Brown Decl. ¶8. Finally, the Altshuler Berzon LLP attorneys have family commitments,  
23 some involving pre-paid travel, and some involving visits by out of town children and  
24 grandchildren over the week of the Thanksgiving holiday, which is the week before the reply brief  
25 is currently scheduled to be due.

26 Because there is no urgent reason why Defendants' Rule 11 motion for attorneys' fees  
27 sanctions must be heard on December 20, a short continuance for both the reply brief and hearing  
28 date are appropriate. Defendants therefore respectfully request that their reply be due on December

1 20, 2013, and that the hearing date be continued to January 24, 2013. (Defendants also have no  
2 objection to continuing Plaintiffs' opposition brief to December 6, 2013.) Should the January 24,  
3 2013 hearing date be unavailable, Defendants ask that the Court set another hearing date in January  
4 or February that it deems appropriate.

5 The only two previous time modifications in this case were to allow Defendants to delay  
6 responding to the Complaint until after the Court ruled on the pending motion to dismiss in the  
7 *Wells Fargo* case, Doc. 23, and this Court's recent sua sponte continuance of the hearing on  
8 Defendants' Rule 11 motion, Doc. 56.

9 For the foregoing reasons, the Court should grant Defendants' motion to continue the  
10 hearing date and briefing schedule.

11 Dated: November 18, 2013

Respectfully submitted,

12 /s/ Stacey M. Leyton  
13 Stacey M. Leyton

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