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12 **UNITED STATES DISTRICT COURT**
 13 **NORTHERN DISTRICT OF CALIFORNIA**

14 THE BANK OF NEW YORK MELLON (f/k/a
 15 The Bank of New York), as Trustee, on behalf
 of the Trusts listed in Exhibit A; and U.S.
 16 BANK NATIONAL ASSOCIATION, as
 Trustee, on behalf of the Trusts listed in Exhibit
 17 B,

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

**AMENDED COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE
 RELIEF**

18 Plaintiffs,

19 v.

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

24 Defendants.

1 Plaintiffs allege as follows based on information and belief:

2 **INTRODUCTION**

3 1. This is a case about the misuse of public power for private benefit.

4 2. Following a scheme devised by a mortgage investment firm that stands to profit
5 handsomely from the deal, the City of Richmond (the “City”) has made clear that it imminently
6 plans to seize residential mortgages—mortgages that are current on their payments—at deep
7 discounts and then refinance the properties at reduced loan values. The borrowers would retain
8 their homes with a lower debt load. The City and the investment firm each would receive certain
9 fees generated by the refinancing transactions, and then the firm and its investors would profit
10 from reselling federally guaranteed loans. And the trusts and their investors, including pension
11 funds and other institutional investors, who held current, performing loans that had financed the
12 purchase of homes in the City would be left holding the bag, losing tens of millions of dollars in
13 loan principal.

14 3. The contemplated use of the eminent domain power in this seizure and refinance
15 scheme violates the constitutions of both the United States and California, along with several
16 California statutes.

17 4. Plaintiffs The Bank of New York Mellon and U.S. Bank National Association are
18 the Trustees of certain trusts that were created to hold residential mortgage loans (collectively,
19 the “Trusts”). The Trusts subject to this action for which The Bank of New York Mellon and
20 U.S. Bank National Association are Trustee are listed respectively in Exhibits A and B hereto.
21 The Trusts’ beneficiaries include both municipal and private pension plans, 401(k) plans, mutual
22 funds, and other investors.

23 5. Defendants City and Mortgage Resolution Partners L.L.C. (“MRP”) have entered
24 into an agreement, pursuant to which they will use the City’s eminent domain power to seize
25 performing debt instruments—which are not located in Richmond and are held by out-of-state
26 trusts—at deeply discounted prices. Defendants would then profit by refinancing and
27 resecuritizing those loans, while paying fees to MRP and to the City. MRP’s investors—whose
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1 funds will be used to acquire the loans—will reap substantial profits. Defendants’ mortgage loan
2 seizure program is referred to herein as the “Seizure Program.”

3 6. Defendants attempt to justify the Seizure Program as one that will help
4 homeowners and communities in Richmond that are struggling with foreclosures, but the Seizure
5 Program actually targets performing loans and does nothing to help homeowners in foreclosure.
6 These loans, which have survived the recession and housing crisis intact, are the ones for which
7 seizure will be most valuable to MRP’s investors but least likely to generate any public benefit.
8 Even if the City did intend to take high-risk loans, the Seizure Program still could not create any
9 public benefit, because the Trusts’ servicers already can and do forgive principal where doing so
10 would make the loan more valuable, by reducing the risk of default enough to justify the loss of
11 principal.

12 7. The Seizure Program is unlawful and unconstitutional and violates numerous
13 federal, state and local laws, including the City’s own Charter. Nevertheless, in connection with
14 its agreement with MRP, the City intends to employ the Seizure Program and has taken
15 substantial steps in its furtherance.

16 8. Defendants have already selected over 230 mortgage loans that they wish to seize
17 from the Trusts. The City has nominally offered to “purchase” the loans on behalf of MRP. The
18 offers, however, are not in good faith: Defendants’ valuation method is designed to produce
19 values that are far below any reasonable level because they give no value to homeowners’ steady
20 payment record. And MRP has stated publicly that federal law precludes the Trusts from selling
21 the loans through the voluntary purchase proposal offered by Defendants.

22 9. The low offers are no accident, nor are they the beginning of a constructive
23 negotiation. Defendants cannot simply purchase the loans consensually from their owners (*i.e.*,
24 the Trusts), because the Seizure Program does not work if the City actually pays fair value.
25 MRP and its investors do not plan to hold the loans for the long-term and collect principal and
26 interest from borrowers. The Seizure Program is pure financial engineering. MRP and its
27 investors, with the critical assistance of City’s purported power of eminent domain, intend to
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1 take the loans for a fraction of their value and then flip them, reselling them in a new
2 securitization.

3 10. Defendants do not plan to do anything to enhance the value of the mortgaged
4 properties, to bear market risk, or to work with borrowers to improve their ability to pay. In fact,
5 the only modification that they plan is to *write off* much of each loan's balance before acquiring
6 the loans.

7 11. The Seizure Program purportedly is intended to assist homeowners at risk of
8 defaulting on their mortgage loans and thereby somehow avoid urban blight. But the design and
9 implementation of the Seizure Program show that the rationale is a pretext. The Seizure Program
10 actually is intended to generate significant sums for MRP and its investors, with payments to the
11 City in exchange for the use of its eminent domain powers. The Seizure Program also generates
12 private benefits for the homeowners who are selected for it.

13 12. Many of the Trusts' existing guidelines and practices, implemented by the
14 servicers, of modifying loans is further proof that undercompensation, not modification, is the
15 source of the Seizure Program's profit. The true value of the loans already reflects the Trusts'
16 ability to enhance their value through modification. There is no indication that MRP, which
17 describes itself as a "community advisory firm," will be as qualified as experienced servicers.
18 Indeed, the blanket modifications that Defendants plan are unlikely to increase the price of the
19 loans in a resale. For example, while it is sometimes possible to increase a loan's value with a
20 carefully considered modification, it rarely makes sense to reduce the loan balance when the
21 borrower is making the existing, agreed payments. Nor is it often the case that a loan will be
22 more valuable if its principal is reduced below the value of the house. That MRP expects to
23 profit nonetheless demonstrates that undercompensation of the Trusts is an essential element of
24 the Seizure Program.

25 13. There are numerous reasons that this scheme is unconstitutional. As outlined
26 above, the Seizure Program cannot be successful on its own terms if the Trusts receive fair
27 market value. Thus, this case is more than a dispute about valuation of individual loans. The
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1 takings also are manifestly not for public use—indeed, the Seizure Program specifically carves
2 out loans whose modification might avoid foreclosure, in apparent recognition that many Trusts
3 already can conduct such modifications. Further, the Seizure Program involves the taking of
4 loans that are located outside of the City’s limits and therefore are beyond its eminent domain
5 power.

6 14. The Seizure Program violates other provisions of the U.S. and California
7 Constitutions as well. By coercing transactions across state lines and threatening massive
8 disruption to the national mortgage lending and securitization markets, it conflicts with federal
9 power under the Commerce Clause. It also runs afoul of the Contracts Clause, which bars States
10 and their political subdivisions like the City from modifying private contracts. In fact, the
11 Seizure Program is a paradigmatic example of the types of misconduct that each Clause was
12 intended to prevent. The City seeks to abrogate debts that its citizens owe to out-of-town entities
13 and permit a local speculator to reap the profits.

14 15. Already, the federal government has expressed its concerns about the
15 unconstitutional nature of the Seizure Program and the federal interest in avoiding havoc to
16 mortgage lending nationwide. In a public statement dated August 9, 2012, the Federal Housing
17 Finance Administration (“FHFA”), the conservator of Fannie Mae and Freddie Mac (the two
18 Government–Sponsored Enterprises (“GSEs”) that are among the largest investors in residential-
19 mortgage backed securitization (“RMBS”) trusts), stated that “FHFA has significant concerns
20 about the use of eminent domain to revise existing financial contracts” and that “resulting losses
21 from such a program would represent a cost ultimately borne by taxpayers” and would have “a
22 chilling effect on the extension of credit to borrowers seeking to become homeowners and on
23 investors that support the housing market.” 77 Fed. Reg. 47,652 (August 9, 2012). FHFA noted
24 that “[a]mong questions raised regarding the proposed use of eminent domain are the
25 constitutionality of such use,” “the effects on holders of existing securities,” “the impact on
26 millions of negotiated and performing mortgage contracts,” and “critical issues surrounding the
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1 valuation by local governments of complex contractual arrangements that are traded in national
2 and international markets.” *Id.*

3 16. As stated, the targeted loans are out-of-Richmond interests, held by out-of-
4 Richmond entities. Nevertheless, as an alternative, and to the extent that loans targeted by the
5 Seizure Program may be considered local interests (they are not), the Seizure Program also
6 violates the California Constitution, which, as amended by voter proposition in 2008, expressly
7 prohibits local governments from using eminent domain to seize owner-occupied residences for
8 the purpose of conveying it to a private person. Cal. Const. art. I, § 19(b). Specifically, as an
9 alternative basis, the Seizure Program is unlawful if the targeted mortgage loans constitute
10 interests in real property that are secured exclusively by owner-occupied residences and are
11 conveyed to private persons.

12 17. Injunctive and declaratory relief is necessary to avoid imminent and irreversible
13 harm, not only to the Trusts but to the national economy. The City intends to use California’s
14 “quick take” procedure, which allows it to condemn property first and ask the courts to
15 determine fair compensation second. Once each loan is taken, MRP will destroy it through
16 refinancing; a new loan would then be imposed on each borrower, and those new loans would be
17 hastily sold to other investors. If the Seizure Program is found unconstitutional afterwards, that
18 egg may prove impossible to unscramble, and certainly not without harming innocent
19 homeowners and investors. Moreover, because of the design of the Seizure Program, the
20 compensable losses to the Trusts will be far greater than the City realizes and may exceed its
21 ability to pay. MRP is indemnifying the City for these costs, but its financial resources are
22 unknown.

23 18. Moreover, several other municipalities—including North Las Vegas, Nevada; El
24 Monte, California; La Puente, California; Orange Cove, California; Pomona, California; and San
25 Joaquin, California—have entered into agreements with MRP. Litigating each taking
26 individually in state court while waiting for definitive guidance on federal constitutional issues
27 would be wasteful and protracted and lead to years of uncertainty.

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1 **B. Defendants**

2 27. Defendant MRP is a limited liability company organized and existing under the
3 laws of Delaware, and it is headquartered in San Francisco, California.

4 28. MRP is a privately-owned, for-profit company that will manage and facilitate the
5 loan restructuring process of the Seizure Program, including (a) raising funds to finance the
6 seizures; (b) identifying mortgage loans to be acquired by eminent domain; and (c) arranging for
7 the loan refinancing. MRP will receive a \$4,500 fee for each loan seized and refinanced. In
8 addition, MRP’s investors would receive the profit between the seizure price and price at which
9 the new loan to the homeowner is sold, net of MRP’s fee, the City’s fee, and any expenses
10 incurred by MRP. MRP has no other business operations.

11 29. Defendant Gordian Sword LLC is a limited liability company organized and
12 existing under the laws of Delaware, and it is headquartered in San Francisco, California. It was
13 established to create the Seizure Program and is the managing member that controls and directs
14 MRP. The name Gordian Sword is an apparent reference to the Gordian Knot, a legend and
15 metaphor for an intractable problem that is solved easily by cheating (*i.e.*, cutting the knot).

16 30. On or about April 2, 2013, the City, through its City Council and upon the
17 recommendation of its City Manager, voted to enter into an “Advisory Services Agreement” with
18 MRP, under which MRP would provide contractual services to the City regarding, among other
19 things, mortgage relief for City homeowners and the acquisition of existing mortgage loans
20 through eminent domain. It is not clear whether this is the only written agreement between the
21 City and MRP or if there are other undisclosed oral or written agreements between them.

22 31. Defendant City, a municipality, is located in Contra Costa County in the State of
23 California, with the territorial boundaries described in Article I, section 2 of the City’s Charter.

24 32. Defendant Richmond City Council (the “City Council”) is the City’s governing
25 body. Defendant City Council is the governing body with legal responsibility for making
26 decisions with respect to the City’s exercise of its eminent domain powers.

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1 **JURISDICTION AND VENUE**

2 33. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 (federal
3 question jurisdiction) and 1343(a)(3) and (4) (jurisdiction over actions for violations of
4 constitutional and federal rights secured by 42 U.S.C. § 1983), and over Plaintiffs’ declaratory
5 relief causes of action under 28 U.S.C. §§ 2201 and 2202. Plaintiffs’ state-law claims form part
6 of the same case or controversy as the federal claims. Accordingly, this Court has supplemental
7 jurisdiction over Plaintiffs’ state-law claims pursuant to 28 U.S.C. § 1367(a).

8 34. This Court has personal jurisdiction over Defendants City and City Council, as
9 municipalities or agents and officers of municipalities located in this judicial district. The Court
10 also has personal jurisdiction over those Defendants because Plaintiffs’ claims arise out of
11 actions taken by those Defendants in this judicial district.

12 35. The Court has personal jurisdiction over Defendants MRP and Gordian Sword
13 because they are headquartered in San Francisco, California, and Plaintiffs’ claims arise out of
14 MRP’s and Gordian Sword’s transaction of business in this judicial district.

15 36. Venue is proper in this judicial district based on 28 U.S.C. § 1391(b). Defendants
16 City and City Council reside in this judicial district, Defendants MRP and Gordian Sword
17 conduct business in this district, and a substantial part of the events or omissions giving rise to
18 the claims asserted herein occurred in this district.

19 **INTRADISTRICT ASSIGNMENT**

20 37. Pursuant to Civil Local Rules 3-2(c) and 3-2(d), this action is properly assigned to
21 either the San Francisco or Oakland Division of this Court, because a substantial part of the
22 events giving rise to the claims asserted herein occurred in Contra Costa County.

23 **FACTUAL BACKGROUND**

24 **I. DEFENDANTS’ SEIZURE PROGRAM**

25 38. Defendants seek to enrich themselves through an elaborate program under which
26 the City would use its eminent domain powers and litigation to seize residential mortgage loans,
27 secured by owner-occupied residences in the City, held by outsiders, at steeply and unjustifiably
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1 discounted prices. MRP would then refinance those loans with new federally insured loans and
2 sell the new loans at a substantial markup.

3 39. Defendants would profit by sharing in the spread between the price paid by the
4 City (by MRP's investors) to seize the loans and the proceeds received by the City (through
5 MRP) for selling the new loan to the homeowner to a third party. The outside-of-Richmond
6 Trusts whose mortgage loans would be seized under the Seizure Program would lose significant
7 value—potentially hundreds of thousands of dollars on some individual loans. Thus, the Seizure
8 Program amounts to a seizure and transfer of wealth from private parties outside of the City, on
9 the one hand, to other private parties, on the other hand, with the City receiving a payment as its
10 fee for renting out its eminent domain powers.

11 **A. The Seizure Program's Targeting of Performing Loans**

12 40. The Seizure Program primarily targets for eminent domain seizure mortgage loans
13 that meet a specific profile: (a) performing loans (meaning where the borrower is current on
14 payment); (b) underwater (meaning that the principal loan balance is greater than the underlying
15 home value); and (c) held by "private-label" securitization trusts (meaning that the trusts are
16 sponsored by a private entity, rather than by a Government-Sponsored Enterprise (GSEs), such a
17 Fannie Mae and Freddie Mac).¹

18 41. The Seizure Program seeks to cherry-pick loans that are "relatively current (not in
19 default)," and only from "*borrowers who appear likely to repay their loans.*" See Exhibit E at 9
20 (emphasis added).² Thus, the Seizure Program does not target loans where there is a serious risk
21 of default (much less a serious risk of foreclosure). Indeed, of the approximately 624 loans that
22 the City has offered to purchase, approximately 85% are not in any stage of the foreclosure
23 process and approximately 81% of the loans have never had a notice of default filed or are now
24 current. Of the 105 loans held by Plaintiff The Bank of New York Mellon as trustee, for
25 example, over 90% are not in any stage of the foreclosure process.

26 ¹ The Seizure Program has been described in several public sources, attached hereto as Exhibits
E and F.

27 ² Available at <http://online.wsj.com/public/resources/documents/EMINENT-powerpoint.pdf> (last
28 visited August 7, 2013).

1 42. The stated justifications for the Seizure Program—to prevent “blight” or some
2 other “public” harm caused by foreclosures—are mere pretexts for this profit-driven scheme.
3 Indeed, the fact that the Seizure Program primarily targets performing loans—loans that will be
4 the most profitable to restructure and sell but are the least likely to default—shows that the
5 Seizure Program is designed to create profits for MRP and its investors.

6 43. MRP has included a small percentage of loans in default or foreclosure for optics
7 only, in a thinly-veiled attempt to justify its scheme under the guise of public good. The Seizure
8 Program is not structured to help borrowers actually facing foreclosure because such borrowers
9 are a bad credit risk, unlikely to qualify for refinancing. In MRP’s own words, one of the “key
10 steps to the MRP process” is that “[h]omeowners who opt into the program, but do not qualify
11 for a refinance or a lease *will be dropped* from the eminent domain motion before their mortgage
12 is purchased.” *See* Exhibit F at 13 (emphasis added).³

13 44. Defendants attempt to justify the Seizure Program as correcting what they claim
14 to be a contractual bar on forgiving principal in securitization trusts *See, e.g.*, Exhibit F at 5. As
15 to the Trusts administered by Plaintiffs, that is simply false. But loan servicers can and do
16 forgive principal when doing so would maximize the value of the loan.

17 45. Another seemingly arbitrary provision is that the Seizure Program is limited to
18 loans held by private RMBS trusts, all located outside of the City of Richmond.

19 46. The Seizure Program excludes loans held by trusts sponsored and guaranteed by
20 Freddie Mac or Fannie Mae. It also excludes loans held directly by banks. These exceptions
21 demonstrate that the stated justifications are a pretext and appear intended to minimize
22 opposition from local banks and federal agencies.

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26 ³ Available at
27 [http://sireweb.ci.richmond.ca.us/sirepub/cache/2/mb1qpzgj4mcgl3zqu31kl0y3/36546408062013](http://sireweb.ci.richmond.ca.us/sirepub/cache/2/mb1qpzgj4mcgl3zqu31kl0y3/36546408062013071309684.PDF)
28 071309684.PDF (last visited August 7, 2013). This presentation is attached to explain the
Seizure Program, which would be unlawful if fully implemented.

1 **B. The Seizure and Refinancing of the Targeted Loans**

2 47. Having now selected loans held by the Trusts for seizure, the City will attempt to
3 seize the loan through eminent domain for a fraction of its value.⁴ The example frequently given
4 by MRP of its proposed valuation methodology is that for a loan with a principal balance of
5 \$300,000 secured by a home worth \$200,000, Defendants would seize the loan at \$160,000. *See*
6 Exhibit F at 7, 16-18.

7 48. Once Defendants expropriate each loan for less than fair market value, they then
8 intend to replace it with a new loan to be sold into a FHA securitized pool in an amount equal to
9 approximately 95% of the underlying home value. Defendants and MRP’s investors would
10 profit by sharing the spread between the discounted seizure price and the 95% refinancing price.
11 *See id.*

12 49. Because the loans are underwater (*i.e.*, the home value is less than the outstanding
13 principal balance), Defendants have calculated a discounted valuation that is far lower than the
14 unpaid principal balance of the loan.

15 50. The offers also are totally disconnected from, and far less than, any measure of
16 fair value. Defendants have primarily selected loans that are current and not in foreclosure. The
17 fair value of such loans includes the anticipated principal and interest payments over the life of
18 the loan. That is especially so for long-term holders of the loans like the Trusts, which were
19 designed to hold loans to maturity, not to trade them in the market.

20 **C. Defendants Have Taken Substantial Steps Towards Implementing the**
21 **Seizure Program.**

22 51. Defendants have taken substantial steps towards implementing the Seizure
23 Program. In April 2013, the City entered into an “Advisory Services Agreement” with MRP,

24 ⁴ In one instance, the City’s July 31, 2013 letter addressed to Plaintiff The Bank of New York
25 Mellon offered a mere 11% of the principal balance of the loan. *See* Exhibit C at Trustee Exhibit
26 B therein. While the City’s letter addressed to Plaintiff U.S. Bank National Association referred
27 to an “Attachment B” as setting forth the amount and basis for the City’s offer to acquire the
28 relevant mortgage loans, the letter mistakenly omitted that attachment. *See* Exhibit D.
Nonetheless, the balance of the City’s letter and other materials describing the Seizure Program
make clear that the purchase price for each mortgage loan in the missing “Attachment B” is
heavily discounted. Indeed, the success of the Seizure Program depends upon it.

1 which is an operative agreement between the City and MRP with respect to the Seizure Program,
2 attached hereto as Exhibits G (agreement) and H (City Council minutes indicating approval).
3 Recently, MRP began sending letters to Plaintiffs and other trustees and servicers for RMBS
4 trusts stating that unidentified California cities were interested in acquiring mortgage loans and
5 would soon be making purchase offers on the loans, one of the prerequisites under California
6 eminent domain law before a local government can seize property.

7 52. On multiple occasions over the past months, the Mayor of Richmond or other City
8 officials have publicly discussed the City's implementation of the Seizure Program, including
9 confirming that the City Council entered into a partnership with MRP to implement the Seizure
10 Program and discussing MRP and the City's readiness to begin implementing the Seizure
11 Program.

12 53. On or about July 31, 2013, Richmond sent letters to Plaintiffs (attached hereto as
13 Exhibits C and D) and other trustees and servicers for RMBS trusts making offers to purchase
14 loans from the Trusts. The offer letters attached a list of approximately 624 mortgage loans
15 purportedly held by RMBS trusts (including more than 230 held by the Trusts) that the City is
16 offering to acquire, "at the present time." The letters state that the offers are not binding on the
17 City but provide a deadline of August 13, 2013 for Plaintiffs to respond, after which the City
18 may "decide[] to proceed with the acquisition of the loans through eminent domain." After
19 sending the letters, the Mayor of Richmond reportedly declared: "If financial institutions do not
20 cooperate, the city will seize the loans using eminent domain." *See* Exhibit I hereto.⁵ The City's
21 offer letters constitute a first wave of offers, and if Defendants are successful in acquiring or
22 seizing these loans, it is expected that they will attempt to acquire or seize many other loans.

23 54. If the offers are not accepted, the City will attempt to quickly seize possession of
24 the loans. The City Council must first hold a condemnation hearing, and immediately thereafter
25 could file an eminent domain lawsuit in California and use an expedited procedure known as a
26 "quick take" to quickly obtain a court order giving the City possession of the loan. MRP has

27 ⁵ Available at <http://www.latimes.com/business/money/la-fi-mo-richmond-eminent-domain-20130730,0,7196420.story>.

1 indicated that the “quick take” procedure is a critical component of the Seizure Program. *See*
2 Exhibit J hereto at 3.⁶ Once the City receives possession of the loans, it could then extinguish,
3 restructure, and refinance them, causing immediate and irreparable harm to the Trusts that will
4 be exceedingly difficult, if not impossible, to unwind.

5 55. Thus, there is a high likelihood that Defendants will very soon exercise the City’s
6 eminent domain powers to seize possession of mortgage loans under the Seizure Program.

7 **II. IMPLEMENTATION OF THE SEIZURE PROGRAM WOULD RESULT IN**
8 **SIGNIFICANT HARM TO THE TRUSTS AND WILL AFFECT INTERSTATE**
9 **COMMERCE**

10 **A. Harm to the Trusts**

11 56. If implemented, the Seizure Program would cause significant harm to the Trusts.

12 57. First, the targeting of performing loans within the Trusts’ portfolios would, by
13 itself, completely upend the purpose of the securitization process. The structure and value of a
14 particular securitization trust is based upon diversification of loans, in both the terms of the loans
15 and the geographic location of the property secured by the loans, and the associated risks.
16 RMBS trusts are dependent on the stable and non-saleable nature of performing loans within the
17 pool. Cherry-picking performing loans from the Trusts disrupts the risk diversification on which
18 the Trusts were structured.

19 58. Second, the number of loans targeted in the City alone—hundreds of mortgage
20 loans—would cause significant direct losses to the Trusts and other RMBS trusts. Indeed, the
21 first wave of the approximately 624 loans targeted by Defendants could potentially cause losses
22 to the RMBS trusts holding those loans of over \$90 million or more.

23 59. Third, there is a risk that the takings could jeopardize the Trusts’ tax status. The
24 Trusts are organized as Real Estate Mortgage Investment Conduits (REMICs), a status that
25 Congress created to apply uniformly on a national basis to encourage securitization of static
26 pools of residential mortgage loans. The REMIC regulations do not permit the transfer of non-

27 _____
28 ⁶ Available at <http://online.wsj.com/public/resources/documents/EMINENT-faqs.pdf>.

1 defaulted loans out of the trusts without the imposition of potentially significant and adverse tax
2 consequences, nor do they contemplate the City's unprecedented seizure of mortgage loans from
3 securitized trusts. Particularly if the Seizure Program is copied by other municipalities, the IRS
4 may find that the Trusts are not REMIC-eligible. If as a result of the seizure of such loans, the
5 IRS concluded that the Trusts are no longer REMIC-eligible, the results of that finding would be
6 catastrophic: the Trusts, which currently pay no tax at the trust level, would be subject to a 35%
7 tax on all of their income. That tax liability could result in a sharp loss of income for pension
8 funds, retirees, and others who rely on regular payments from these securities.

9 60. Fourth, many other municipalities across the U.S. are watching to see whether
10 Defendants are able to carry out the Seizure Program. If even a few other municipalities of
11 City's size implement the Seizure Program, losses could range in the billions of dollars. If more
12 than a few implement the Seizure Program, far greater losses could mount. This widespread
13 transfer of substantial funds from the Trusts' beneficiaries, including municipal pension funds
14 and private retirement plans, on the one hand, to Defendants, on the other hand, could destabilize
15 the national housing market and the larger economy.

16 **B. The Effect on Interstate Commerce and the National Housing Market**

17 61. The Seizure Program also would cause significant harm to interstate commerce
18 and the national housing market. As a preliminary matter, because the Trusts and the loans are
19 located out of California, the Seizure Program would coerce interstate transactions.
20 Additionally, the Seizure Program is expressly designed to favor local interests—MRP and
21 underwater homeowners—at the expense of out-of-state creditors. Furthermore, in addition to
22 the losses suffered by the Trusts from the seizure of performing residential mortgage loans at
23 below fair market values, the Seizure Program would have a chilling effect on the extension of
24 credit to homeowners. The Seizure Program also will disrupt the national nature of the mortgage
25 market by subjecting investors to qualitatively different types of risk in different jurisdictions.
26 Mortgage rates would rise, and some prospective homeowners may be unable to obtain loans at
27 all, lowering housing prices across the country.

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1 62. Further, the Seizure Program would undermine investor confidence in the
2 residential mortgage-backed securities market, and by extension, the national housing market
3 and national economy. The securitization market would be upended, as investors in residential
4 mortgage-backed securities would be unable to adequately evaluate underlying mortgage pools
5 that collateralize their investment, and prices for affected securities would decrease. A broad
6 range of investors hold interests in residential mortgage-backed securitizations as part of
7 common diversification strategies. Thus, the detrimental effects of a valuation crisis as to the
8 securities evidencing such interests would flow through the national housing market, and
9 likewise, the larger economy.

10 63. Likewise, industries dependent on a vibrant housing market and an active home
11 lending environment would suffer, such as the home building, construction, and realty industries.

12 64. In comments published in the Federal Register, 77 Fed. Reg. 47,652 (August 9,
13 2012) discussing the “Use of Eminent Domain To Restructure Performing Loans,” the FHFA
14 recognized the harm that programs like the Seizure Program would cause. Among other things,
15 FHFA has explained that the GSEs, as well as the multiple Federal Home Loan Banks for which
16 FHFA acts as a regulator, because they are substantial holders of RMBS trusts, would be
17 harmed, as well as the communities themselves that attempt to use eminent domain. According
18 to FHFA:

19 FHFA has significant concerns about the use of eminent domain to revise
20 existing financial contracts and the alteration of the value of Enterprise or Bank
21 securities holdings. In the case of the Enterprises, resulting losses from such a
22 program would represent a cost ultimately borne by taxpayers. At the same time,
23 FHFA has significant concerns with programs that could undermine and have a
24 chilling effect on the extension of credit to borrowers seeking to become
25 homeowners and on investors that support the housing market.

26 FHFA has determined that action may be necessary on its part as conservator for
27 the Enterprises and as regulator for the Banks to avoid a risk to safe and sound
28 operations and to avoid taxpayer expense.

 Among questions raised regarding the proposed use of eminent domain are the
constitutionality of such use; the application of federal and state consumer
protection laws; the effects on holders of existing securities; the impact on
millions of negotiated and performing mortgage contracts; the role of courts in
administering or overseeing such a program, including available judicial
resources; fees and costs attendant to such programs; and, in particular, critical

1 issues surrounding the valuation by local governments of complex contractual
2 arrangements that are traded in national and international markets.

3 65. Likewise, the U.S. House of Representatives Financial Services Committee,
4 which has oversight of Fannie Mae and Freddie Mac, recently issued a draft reform bill, a stated
5 purpose of which is to implement the following reform: “To combat constitutionally-suspect
6 ‘eminent domain’ schemes by local municipalities to seize mortgages out of legally binding
7 securities for purposes of rewriting their terms, prohibit the GSEs from purchasing or
8 guaranteeing loans originated in municipalities where such practices have been employed during
9 the last ten years.” Executive Summary of the Protecting American Homeowners (PATH) Act,
10 July 11, 2013, at 2.⁷

11 66. The concerns expressed by the FHFA and the House Financial Services
12 Committee are well-founded. The Seizure Program will have a devastating effect on interstate
13 commerce, including on the mortgage-backed securities market and the national housing market,
14 and would detrimentally affect both borrowers and lenders.

15 **C. The Adverse Effects on the City and Its Homeowners**

16 67. The City, and its residents, would not be spared from the harm caused by the
17 Seizure Program. The Seizure Program will have negative consequences for borrowers and
18 prospective homeowners with respect to lending products in communities that seize mortgage
19 loans at unfairly reduced values through eminent domain. The risks associated with lending in
20 such communities will force lenders to place more stringent conditions on borrowers seeking a
21 mortgage. With less people qualifying for mortgages, homeownership rates would drop and
22 property values would plummet.

23 68. The relatively small number of select City homeowners who could potentially
24 receive a windfall under the Program by having their underwater mortgages refinanced will not
25 offset the devastation to the local housing market and economy due to the Seizure Program’s
26 chilling effect on credit.

27 ⁷ Available at
28 <http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=342165>.

1 69. City homeowners whose loans are in the Seizure Program actually may be
2 damaged by it. Debt forgiveness generally is treated as taxable income for both state and federal
3 income tax purposes. The Seizure Program intends to seize loans at a price that is hundreds of
4 thousands of dollars lower than the principal balance on the loan. This principal balance
5 reduction may be treated as debt forgiveness and subject to income tax. Thus, these select City
6 homeowners could owe upwards of six figures in income tax liability. Even more, unlike
7 mortgage debt, income tax debt is not necessarily dischargeable in bankruptcy. Instead of
8 creating more stable neighborhoods, having more money in our local economy to stimulate
9 community wealth, and saving homeowners money on their mortgage payments, as MRP and the
10 City claim will happen, the Seizure Program in fact may undermine the growing economy and
11 push the City back into recession. Although certain federal and state programs temporarily allow
12 for mortgage debt forgiveness to be excluded from taxable income, it is far from clear whether
13 the Seizure Program would qualify for any such exclusion or whether the Seizure Program would
14 complete the seizure process before the expiration of the tax holiday at the end of 2013.

15 **III. INJUNCTIVE RELIEF IS NECESSARY TO PREVENT IMMEDIATE AND**
16 **IRREPARABLE HARM.**

17 70. Defendants should be enjoined from implementing the Seizure Program. The
18 Seizure Program would cause significant and widespread harm, and the transactions that will
19 occur under the Seizure Program will be exceedingly difficult, if not impossible, to unwind.

20 71. Under the Seizure Program, once new loans are issued to refinance the original
21 loans, they would be securitized. Thus, to unwind these unlawful seizures would require
22 extinguishing the new loan—thereby harming the new trust that holds that loan, and its
23 beneficiaries—and then reinstating the homeowner’s old loan. It is doubtful that either step of
24 this process could occur—that is, that MRP could “claw back” the new loan, and any payments
25 that have been made, from the new trust and its investors, or that the Trusts could reinstate the
26 old loans.

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1 requirement is incorporated and made applicable to the states and their political subdivisions and
2 actors by the Fourteenth Amendment of the U.S. Constitution.

3 78. 42 U.S.C. § 1983 provides that any person, acting under the color of state law,
4 that subjects or causes to be subjected any citizen of the United States or other person within its
5 jurisdiction to the deprivation of any rights, privileges, or immunities under the Constitution,
6 shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding
7 for redress.

8 79. California Constitution Article I, section 19 provides that private property may be
9 taken only for a “public use.”

10 80. The Richmond City Charter Article II, section 19 provides that a private property
11 may be taken only for a “public use.”

12 81. The Seizure Program is carried out by Defendants, who are inextricably
13 intertwined, under the color of state law.

14 82. The Seizure Program violates the “public use” requirement of the Takings Clause
15 of the Fifth and Fourteenth Amendments, the California Constitution, and the Richmond City
16 Charter.

17 83. The Seizure Program is not implemented for a public purpose, but rather for the
18 purpose of seizing property from one set of private entities (the Trusts) to enrich MRP, a private
19 investment firm, and its investors. Even if individual homeowners do benefit, and those benefits
20 are not wiped out by, for example, federal tax liability, those homeowners are private parties as
21 well.

22 84. The stated justifications for the Seizure Program—to prevent “blight” or some
23 other “public” harm caused by foreclosures—are mere pretexts for this profit-driven scheme.
24 Indeed, the fact that the Seizure Program primarily targets performing loans—loans that will be
25 the most profitable to restructure and sell but are the least likely to default—shows that the
26 Seizure Program is designed to create profits for MRP and its investors. Furthermore, even if the
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1 purported justification of preventing future foreclosures were true, prevention of future blight or
2 harm is not a valid public use.

3 85. In addition, the Seizure Program would not benefit the City's citizens on a whole,
4 but would instead lead to windfalls for the select group of homeowners who meet a loan profile
5 profitable to MRP and its investors, to the detriment of all others. Even this small group of
6 intended beneficiaries may receive a severe tax burden that would offset any windfall and may
7 worsen the homeowners' financial situations. Further, the Seizure Program expressly excludes
8 many borrowers and primarily targets performing mortgage loans that are not in default or
9 foreclosure. If the Seizure Program is fully implemented and performing loans are seized for
10 well-below their unpaid principal balance, and thus at significant losses to the Trusts holding
11 those loans, lenders will be unwilling to extend credit in the City at the current level, creating, at
12 a minimum, a chilling effect on the local home lending environment. This will have severe
13 consequences for current and prospective City homeowners.

14 86. For all of the reasons asserted herein, there is an actual controversy between
15 Plaintiffs and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201
16 and 2202.

17 87. Defendants have taken substantial steps towards seizing loans under the Seizure
18 Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably
19 harmed.

20 88. Accordingly, Plaintiffs respectfully request that the Court issue a judgment for
21 declaratory and injunctive relief against Defendants, declaring that the implementation of the
22 Seizure Program would violate the Fifth and Fourteenth Amendments of the U.S. Constitution,
23 Article I, section 19 of the California Constitution, and Article II, section 19 of the Richmond
24 Charter, and permanently enjoining Defendants from implementing any aspect of the Seizure
25 Program.

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1 **SECOND CLAIM**

2 **(DECLARATORY RELIEF REGARDING VIOLATION OF THE PROHIBITIONS**
3 **AGAINST EXTRATERRITORIAL SEIZURES UNDER THE TAKINGS CLAUSES OF**
4 **THE U.S. AND CALIFORNIA CONSTITUTIONS AND THE CALIFORNIA CODE OF**
5 **CIVIL PROCEDURE, AND CLAIM UNDER 42 U.S.C. § 1983)**
6 **(AGAINST ALL DEFENDANTS)**

7 89. Plaintiffs repeat and reallege the allegations contained in each preceding
8 paragraph as if fully set forth herein.

9 90. The Fifth Amendment to the U.S. Constitution prohibits a local government from
10 extraterritorially seizing property pursuant to eminent domain powers. This requirement is
11 incorporated and made applicable to the states and their political subdivisions and actors by the
12 Fourteenth Amendment of the U.S. Constitution.

13 91. 42 U.S.C. § 1983 provides that any person, acting under the color of state law,
14 that subjects or causes to be subjected any citizen of the United States or other person within its
15 jurisdiction to the deprivation of any rights, privileges, or immunities under the Constitution,
16 shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding
17 for redress.

18 92. The California Constitution prohibits local governments from extraterritorially
19 seizing property pursuant to eminent domain powers.

20 93. Under section 1240.050 of the California Code of Civil Procedure, a local public
21 entity may acquire by eminent domain only property located within its territorial limits. Under
22 section 1250.020 of the California Code of Civil Procedure, an eminent domain proceeding must
23 be commenced in the county in which the property sought to be taken is located.

24 94. The Seizure Program is carried out by Defendants, who are inextricably
25 intertwined, under the color of state law.

26 95. Defendants' implementation of the Seizure Program violates prohibitions against
27 extraterritorial property seizures under the Fifth and Fourteenth Amendments of the U.S.

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1 Constitution, the California Constitution, and the California Code of Civil Procedure. The debt
2 instruments that Defendants target under the Seizure Program are not located within the
3 territorial boundaries of the City and are held by Trusts located outside of Richmond. Because
4 the situs of a debt instrument for eminent domain purposes is the location of the physical
5 instrument, and the situs of an intangible debt is the location of the creditor, Defendants have no
6 power to seize these outside-of-Richmond debts.

7 96. In addition, the notes evidencing the mortgage loans are held outside of the
8 territorial boundaries of the City. Defendants have no power to effect extraterritorial seizures of
9 those tangible instruments.

10 97. For all of the reasons asserted herein, there is an actual controversy between
11 Plaintiffs and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201
12 and 2202.

13 98. Defendants have taken substantial steps towards seizing loans under the Seizure
14 Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably
15 harmed.

16 99. Accordingly, Plaintiffs respectfully request that the Court issue a judgment for
17 declaratory and injunctive relief against Defendants, declaring that the implementation of the
18 Seizure Program would violate the Fifth and Fourteenth Amendments of the U.S. Constitution,
19 the California Constitution, and the California Code of Civil Procedure, and permanently
20 enjoining Defendants from implementing any aspect of the Seizure Program.

21 **THIRD CLAIM**

22 **(DECLARATORY RELIEF REGARDING VIOLATION OF THE COMMERCE**
23 **CLAUSE OF THE U.S. CONSTITUTION AND CLAIM UNDER 42 U.S.C. § 1983)**

24 **(AGAINST ALL DEFENDANTS)**

25 100. Plaintiffs repeat and reallege the allegations contained in each preceding
26 paragraph as if fully set forth herein.

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1 101. Article I, section 8, clause 3 of the U.S. Constitution (the “Commerce Clause”)
2 gives Congress the power to regulate commerce among the several states. The Commerce
3 Clause bars states and their political subdivisions from taking action designed to benefit in-state
4 economic interests by burdening out-of-state interests. Direct regulation of interstate commerce
5 by the states and their political subdivisions is prohibited, and incidental regulation is permissible
6 only where the burden imposed on such commerce is not excessive in comparison with the
7 putative local benefits.

8 102. 42 U.S.C. § 1983 provides that any person, acting under the color of state law,
9 that subjects or causes to be subjected any citizen of the United States or other person within its
10 jurisdiction to the deprivation of any rights, privileges, or immunities under the Constitution,
11 shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding
12 for redress.

13 103. The Seizure Program is carried out by Defendants, who are inextricably
14 intertwined, under the color of state law.

15 104. Defendants violate the Commerce Clause of the U.S. Constitution by
16 implementing the Seizure Program, which is designed to benefit local Defendants’ own
17 economic interests at the expense of out-of-Richmond and out-of-state interests, including the
18 Trusts that hold the mortgage loans targeted for seizure.

19 105. In addition, the Seizure Program is a direct regulation of interstate commerce by
20 the City. The Seizure Program expressly targets for seizure private-label mortgage loans held by
21 out-of-Richmond and out-of-state Trusts. The Seizure Program thus seeks to impermissibly
22 coerce interstate transactions. In addition, the Trusts are investment vehicles designed to
23 distribute economic and financial risk by holding a diversified collateral base of mortgage loans,
24 including loans that are diverse based on, among other factors, their geographic and risk profiles.
25 Thus, by design, the Trusts hold not only loans secured by property in the City or even
26 California, but from a variety of states and localities.

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1 106. Also, the private-label mortgage loans targeted by MRP at issue here were
2 acquired by a private sponsor, who securitized them in private RMBS Trusts, in which the loans
3 are serviced, and mortgage payments flow through the Trusts to be ultimately distributed to the
4 Trusts' beneficiaries. Therefore, the Seizure Program would directly regulate an investment
5 structure that by its very nature depends on a pool of collateral located in different states, and on
6 the interstate flows of proceeds from homeowners, to loan servicers, to the Trusts, and then
7 ultimately to the Trusts' investors.

8 107. Furthermore, the residential mortgage-backed securities market is a national
9 industry that crosses state lines, with investors and other market participants located throughout
10 the country. The Seizure Program would significantly and directly regulate, if not destroy, this
11 market by seizing assets from nationwide trusts.

12 108. Moreover, the burden imposed on interstate commerce by the Seizure Program
13 would be excessive, and would greatly outweigh any purported benefits to the City and its
14 residents. Among other things, the Seizure Program could cause tens of millions of dollars in
15 losses to the trusts that hold the approximately 624 targeted mortgage loans, which is just the
16 first wave of the Seizure Program. It also would upend the heavily negotiated investment
17 structures used across the national residential mortgage backed securitization industry, diminish
18 investor confidence in such structures, and have a chilling effect on credit and insurance of
19 mortgaged properties and loans throughout the U.S. Moreover, it could severely disrupt the
20 uniform application of the REMIC rules, which Congress enacted to encourage private
21 securitization. In addition, the purported benefits to the City—preventing foreclosures and their
22 local consequences—are non-existent. The Seizure Program does not aim to seize loans in
23 default or at serious risk of default or foreclosure, but performing loans at low risk of default,
24 which would not address the harms that the Seizure Program purports to prevent. The potential
25 benefits to the relatively small number of private City homeowners receiving a windfall under
26 the Seizure Program (should that windfall not be blown away by the tax liability) would not
27 outweigh the harm that the Seizure Program would cause to the Trusts and the national economy.
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1 and made applicable to the states and their political subdivisions and actors by the Fourteenth
2 Amendment of the U.S. Constitution.

3 122. 42 U.S.C. § 1983 provides that any person, acting under the color of state law,
4 that subjects or causes to be subjected any citizen of the United States or other person within its
5 jurisdiction to the deprivation of any rights, privileges, or immunities under the Constitution,
6 shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding
7 for redress.

8 123. A property owner is entitled to just compensation for any taking under Article I,
9 section 19 of the California Constitution. California Code of Civil Procedure § 1263.320
10 provides that the test for assessing “fair market value” for purposes of the “just compensation”
11 requirement is the highest price that a hypothetical buyer and seller would agree to in the
12 marketplace, assuming both were willing and able to complete the transaction but had no
13 particular or urgent necessity to do so.

14 124. The Seizure Program is carried out by Defendants, who are inextricably
15 intertwined, under the color of state law.

16 125. Defendants violate the just compensation requirements of the Takings Clause of
17 the U.S. Constitution and California Constitution. The Seizure Program proposes seizing
18 performing mortgage loans at fractions of their unpaid principal balance, prices that are below
19 the fair market value even if the loans would be in default. To achieve its profit goals, the
20 Seizure Program must compensate the Trusts inadequately by seizing loans at prices far less than
21 their actual or fair market values. This unconstitutional feature of the Seizure Program is not
22 merely a question of the valuation of a single property, but is central to the Seizure Program’s
23 financing and viability.

24 126. For all of the reasons asserted herein, there is an actual controversy between
25 Plaintiffs and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201
26 and 2202.

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1 or located in the manner that will be most compatible with the greatest public good and the least
2 public injury. (c) The property sought to be acquired is necessary for the project.”

3 137. The Seizure Program violates section 1240.030 because public interest and
4 necessity do not require the seizure of the Trusts’ loans under the Seizure Program, and it is not
5 planned in the manner that is the most compatible with the greatest public good and the least
6 private injury. Far from being required or from being implemented for the public good, the
7 Seizure Program has been devised for the purpose of seizing property from one set of private
8 entities (the Trusts) to enrich MRP, a private investment firm, and its investors. The fact that the
9 Seizure Program principally targets performing loans shows that it is not designed to prevent
10 foreclosures or their economic consequences, but rather to confer private benefits on a select set
11 of individuals.

12 138. In addition, the Seizure Program would not benefit the City’s residents as a
13 whole, but would instead lead to windfalls for the select group of homeowners that meet a loan
14 profile profitable to Defendants and MRP’s investors, to the detriment of all others. Even this
15 small group of intended beneficiaries may receive a severe tax burden that would offset any
16 windfall and may worsen their financial situations. Further, the Seizure Program expressly
17 excludes many borrowers and principally targets performing mortgage loans that are not in
18 default or foreclosure. If the Seizure Program is fully implemented and performing loans are
19 seized for well-below their unpaid principal balance, and thus at significant losses to the Trusts
20 holding those loans, future lenders will be unwilling to extend credit in Richmond at the current
21 level, creating, at a minimum, a chilling effect on the local home lending environment. This will
22 have severe consequences for current and prospective City homeowners.

23 139. As described above, the private injury that this Seizure Program would inflict will
24 vastly outweigh its minimal or nonexistent benefits.

25 140. For all of the reasons asserted herein, there is an actual controversy between
26 Plaintiffs and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201
27 and 2202.
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1 residence to convey to (and enrich) private entities including MRP, a private investment firm,
2 and its investors, which are funding the seizures. Indeed, the Seizure Program hinges on the City
3 exercising eminent domain solely to convey the interest seized to private entities and those
4 entities' supplying the City with the funds to conduct the seizure. Without these features, the
5 Seizure Program collapses.

6 147. As an alternative to the claims pleaded above, the Seizure Program does not
7 qualify for the exceptions to this prohibition because the stated justifications for the Seizure
8 Program—to prevent foreclosures and their attendant economic affects—are mere pretexts for
9 this profit-driven scheme. Furthermore, the Seizure Program will inflict significant harm, both
10 locally and nationally, with no likely benefit to the City or its residents.

11 148. For all of the reasons asserted herein, there is an actual controversy between
12 Plaintiffs and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201
13 and 2202.

14 149. Defendants have taken substantial steps towards seizing loans under the Seizure
15 Program, and such seizures are imminent. If those seizures occur, the Trusts will be irreparably
16 harmed.

17 150. Accordingly, Plaintiffs respectfully request that the Court issue a judgment for
18 declaratory and injunctive relief against Defendants, declaring that the implementation of the
19 Seizure Program would violate Article I, section 19(b) of the California Constitution, and
20 permanently enjoining Defendants from implementing any aspect of the Seizure Program.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their
23 favor on all claims asserted in the Complaint and that the Court:

24 A. Declare that Defendants' implementation of the Seizure Program violates the
25 Takings Clause of the Fifth and Fourteenth Amendments to the Constitution of the United States,
26 and enjoin Defendants from implementing the Seizure Program on that basis;

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1 B. Declare that Defendants’ implementation of the Seizure Program violates the
2 Commerce Clause of the Constitution of the United States, and enjoin Defendants from
3 implementing the Seizure Program on that basis;

4 C. Declare that Defendants’ implementation of the Seizure Program violates the
5 Contracts Clause of the Constitution of the United States, and enjoin Defendants from
6 implementing the Seizure Program on that basis;

7 D. Declare that Defendants’ implementation of the Seizure Program violates Article
8 I, section 19(a) of the Constitution of the State of California, and enjoin Defendants from
9 implementing the Seizure Program on that basis;

10 E. Alternatively, declare that Defendants’ implementation of the Seizure Program
11 violates Article I, section 19(b) of the California Constitution, and enjoin Defendants from
12 implementing the Seizure Program on that basis;

13 F. Declare that Defendants’ implementation of the Seizure Program violates Article
14 II, section 19 of the Richmond City Charter, and enjoin Defendants from implementing the
15 Seizure Program on that basis;

16 G. Declare that Defendants’ implementation of the Seizure Program violates section
17 1263.320 of the California Code of Civil Procedure, and enjoin Defendants from implementing
18 the Seizure Program on that basis;

19 H. Declare that Defendants’ implementation of the Seizure Program violates section
20 1240.050 of the California Code of Civil Procedure, and enjoin Defendants from implementing
21 the Seizure Program on that basis;

22 I. Declare that Defendants’ implementation of the Seizure Program violates section
23 1240.030 of the California Code of Civil Procedure, and enjoin Defendants from implementing
24 the Seizure Program on that basis;

25 J. Declare that Defendants’ implementation of the Seizure Program constitutes
26 tortious interference with contract and, enjoin Defendants from implementing the Seizure
27 Program on that basis;

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1 K. Declare that Defendants' Implementation of the Seizure Program constitutes a
2 violation of 42 U.S.C. § 1983 and, enjoin Defendants from implementing the Seizure Program on
3 that basis;

4 L. Issue a temporary restraining order and preliminary and permanent injunctions
5 restraining Defendants, their officers, employees, agents, successors, and assigns from
6 implementing the Seizure Program;

7 M. Award to Plaintiffs the costs and expenses of suit and counsel fees pursuant to 42
8 U.S.C. § 1988; and

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1 N. Award to Plaintiffs such other and further relief as this Court may deem just and
2 proper.

3 Dated: August 9, 2013

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DONALD M. FALK
BRONWYN F. POLLOCK

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SIGNATURE ATTESTATION

I, Bronwyn F. Pollock, attest that the concurrence in the filing of this Amended Complaint has been obtained from the other signatory on this document.

By: /s/ Bronwyn F. Pollock
Bronwyn F. Pollock
Attorneys for Plaintiff
THE BANK OF NEW YORK MELLON
(f/k/a The Bank of New York), as trustee