

1 **JONES DAY**
 BRIAN D. HERSHMAN (SBN. 168175)
 2 bershman@jonesday.com
 555 South Flower Street, 50th Floor
 3 Los Angeles, CA 90071-2300
 Tel: 213-489-3939
 4 Fax: 213-243-2539

5 **JONES DAY**
 MATTHEW A. MARTEL (*pro hac vice*)
 6 mmartel@jonesday.com
 JOSEPH B. SCONYERS (*pro hac vice*)
 7 jsconyers@jonesday.com
 100 High Street, 21st Floor
 8 Boston, MA 02110-1781
 Tel: 617-960-3939
 9 Fax: 617-449-6999

10 Attorneys for Plaintiff
 U.S. BANK NATIONAL ASSOCIATION, as
 11 Trustee for the trusts listed on Exhibit B to the
 Second Amended Complaint
 12

13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15

16 THE BANK OF NEW YORK MELLON
 17 (f/k/a The Bank of New York), *et al.*
 18 Plaintiffs,
 19 v.
 20 CITY OF RICHMOND, CALIFORNIA, a
 municipality, *et al.*
 21 Defendants.
 22

Case No. 13-cv-3664-CRB

**DECLARATION OF BRIAN D.
 HERSHMAN IN SUPPORT OF
 TRUSTEES' OPPOSITION TO
 MOTION FOR RULE 11 SANCTIONS**

Date: January 24, 2014
 Time: 10:00 a.m.
 Judge: Hon. Charles R. Breyer
 Courtroom 6, 17th Floor

24
 25
 26
 27
 28

1 I, Brian D. Hershman, declare as follows:

2 1. I am a partner in the Los Angeles office of the law firm Jones Day, counsel for U.S.
3 Bank National Association as trustee for the trusts listed in Exhibit B to the Second Amended
4 Complaint in this lawsuit. I am an active member in good standing of the United States District
5 Court for the Northern District of California. This declaration is made in support of Trustees'
6 Opposition to Motion for Rule 11 Sanctions. I have personal knowledge of the matters set forth in
7 this declaration, and, if called as a witness, could and would testify competently thereto.

8 2. Attached hereto as Exhibit A is a true and correct copy of relevant excerpts from
9 the transcript of the November 1, 2013 hearing before the Honorable Charles R. Breyer
10 regarding the motion to dismiss filed by Defendants City of Richmond, California, Richmond
11 City Council, Mortgage Resolution Partners L.L.C. ("MRP"), and Gordian Sword LLC.

12 3. Attached hereto as Exhibit B is a true and correct copy of an article from Reuters,
13 dated September 5, 2013 and titled "Nevada City Rejects Eminent Domain Plan for Mortgages,"
14 accessed from Reuters' website on November 20, 2013.

15 4. Attached hereto as Exhibit C is a true and correct copy of an article from The
16 Wall Street Journal, dated January 24, 2013 and titled "Eminent Domain Bid for California
17 Mortgages Rejected," accessed from The Wall Street Journal's website on November 20, 2013.

18 5. Attached hereto as Exhibit D is a true and correct copy of the MRP Advisory
19 Agreement that the Richmond City Council considered and approved on April 2, 2013 and which
20 was executed by the City Manager on July 25, 2013, available at
21 <http://www.ci.richmond.ca.us/documentcenter/view/27354> (last visited Nov. 20, 2013).

22 6. Attached hereto as Exhibit E is a true and correct copy of the Richmond City
23 Council minutes from the April 2, 2013 meeting in which they approved the Advisory
24 Agreement with MRP, available at
25 <http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/5138> (last visited Nov. 20, 2013).

26 7. I am informed and believe that, by letter dated June 28, 2013, Defendant MRP
27 requested information from The Bank of New York Mellon and The Bank of New York Mellon
28 Trust Company (collectively, "The Bank of New York Mellon") concerning the potential

1 acquisition of mortgage loans “by several California cities that are interested in acquiring
2 mortgage loans from private securitization trusts . . . of which you are or may be the
3 [trustee/servicer].” (Brackets in original.) A true and correct copy of MRP’s letter dated
4 June 28, 2013 is attached hereto as Exhibit F.

5 8. I am informed and believe that, by letter dated June 28, 2013, Defendant MRP
6 requested information from U.S. Bank National Association (“U.S. Bank”) concerning the
7 potential acquisition of mortgage loans “by several California cities that are interested in
8 acquiring mortgage loans from private securitization trusts . . . of which you are or may be the
9 [trustee/servicer].” (Brackets in original.) A true and correct copy of MRP’s letter dated
10 June 28, 2013 is attached hereto as Exhibit G.

11 9. I am informed and believe that on or about July 30, 2013, The Bank of New York
12 Mellon received a letter (the “Offer Letter”) dated July 31, 2013 from Defendant City of
13 Richmond, through its City Manager, “offer[ing] to acquire all rights” to specifically identified
14 mortgage loans held by trusts referenced therein, and informing The Bank of New York Mellon
15 that if it did not accept the offer, the City could “proceed with the acquisition of the Loans
16 through eminent domain.” A true and correct copy of the Offer Letter is attached hereto as
17 Exhibit H.

18 10. I am informed and believe that on or about August 1, 2013, U.S. Bank received a
19 letter (the “Offer Letter”) dated July 31, 2013 from Defendant City of Richmond, through its
20 City Manager, “offer[ing] to acquire all rights” to specifically identified mortgage loans held by
21 trusts referenced therein, and informing U.S. Bank that if it did not accept the offer, the City
22 could “proceed with the acquisition of the Loans through eminent domain.” While the Offer
23 Letter purported to include an “Attachment B,” stating the price Defendant City of Richmond is
24 offering to acquire each loan, Attachment B was omitted from the Offer Letter as it was received
25 by U.S. Bank. A true and correct copy of the Offer Letter is attached hereto as Exhibit I.

26 11. I am informed and believe that on or about August 1, 2013, Wilmington Trust
27 Company and Wilmington Trust Company National Association (collectively, “Wilmington
28 Trust”) received a letter (the “Offer Letter”) dated July 31, 2013 from Defendant City of

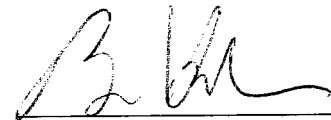
1 Richmond, through its City Manager, “offer[ing] to acquire all rights” to specifically identified
2 mortgage loans held by trusts referenced therein, and informing Wilmington Trust that if it did
3 not accept the offer, the City could “proceed with the acquisition of the Loans through eminent
4 domain.” A true and correct copy of the Offer Letter is attached hereto as Exhibit J.

5 12. Attached hereto as Exhibit K is a true and correct copy of the Richmond City
6 Council minutes from the September 10, 2013 meeting, available at
7 <http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/5412> (last visited Nov. 20, 2013).

8 13. Attached hereto as Exhibit L is a true and correct copy of a letter dated
9 October 15, 2013 from Matthew A. Martel to Stacey M. Leyton regarding Defendants’ repeated
10 threats to seek Rule 11 sanctions.

11 I declare under penalty of perjury that the foregoing is true and correct to the best of my
12 knowledge.

13 Executed on November 22, 2013.



14 _____
15 Brian D. Hershman
16
17
18
19
20
21
22
23
24
25
26
27
28