Exhibit A

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE RICHARD SEEBORG, JUDGE

BANK OF NEW YORK MELLON, as Trustee, et al., Plaintiff,	
v.	**C 13-3664 CRB**
City of Richmond, California, et al., Defendant.	**San Francisco, California Friday, November 1, 2013 (30 pages)**

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs (BNY):
Mayer Brown LLP
Two Palo Alto Square
Suite 300
3000 El Camino Real
Palo Alto, California 94306
BY: DONALD M. FALK
BRONWYN FITZGERALD POLLOCK

For Plaintiffs (U.S. Bank):
Jones Day
555 South FLower Street
50th Floor
Los Angeles, California 90071
BY: BRIAN D. HERSHMAN
MATTHEW ALEX MARTEL

For Plaintiffs (Wilmington):
Alston & Bird, LLP
333 South Hope Street
16th Floor
Los Angeles, California 90071
BY: MICHAEL E. JOHNSON
WHITNEY CHELGREN

APPEARANCES (cont.):

For Defendants: Altshuler, Berzon, LLP
177 Post Street
Suite 300
San Francisco, California 94108
BY: STEPHEN P. BERZON
SCOTT ALAN KRONLAND
STACEY M. LEYTON
ERIC PRINCE BROWN

For Defendants: City of Richmond
City Attorney's Office
Post Office Box 4046
Richmond, California 94804
BY: CARLOS AUGUSTO PRIVAT

For Defendants (MRP): Law Offices of William A. Falik
100 Tunnel Road
Berkeley, California 94705
BY: WILLIAM A. FALIK

quite concrete.

They have done something that is different -- that is different from the sort of eminent domain case where someone comes in and says, The city has this plan and it's going to involve taking our property, and we want to enjoin it. Or, We want some other kind of relief. And courts will say, Well, there's no threat of a suit out here.

But here there is threat of a suit. It's really no different from, in our view, it's no different from a patent suit where someone comes in and they say, They've sent us this letter that suggests we infringe; we need to know what our rights are. If the patentee came in and said, Wait a minute, your Honor, this isn't ripe; we haven't authorized a lawsuit yet --

THE COURT: Do you have any sense of how many cases would be in litigation if I had to monitor every single idea, no matter how absurd that idea may be, as presented by a legislator to the legislative body? In other words, Supervisor X, Councilman Y, Member of a Board of the Permanent Appeals of B thinks, I think it's a great idea to take over, do everything by eminent domain; I think we should just rule by eminent domain -- some idea like that -- and proposes some legislation to do that, which includes within it that, by the way, the eminent domain proceedings will be the ones that will be followed in the constitution or the charter or whatever it

is. And then in comes a party saying, This piece of legislation is so clearly unconstitutional, and so threatening, that you ought to jump in, Judge, and do something about it. Well, our courts -- our courts would be filled with lawsuits involving prospective legislation. You ought to see what the Congress of the United States does. You ought to see what the Board of Supervisors does. And I'm just talking about San Francisco -- and talk about Sacramento. You can talk about anything. Any legislator had -- has the right to introduce any kind of bill that legislator thinks is a good idea. And that bill may or may not include within it some recourse to the courts. And if courts have to jump in at the beginning of this process, we could fill the docket from morning to night, seven days a week. We might even be declared to be essential employees, so we'd get to stay open all the time =just to deal with prospective litigation.

So -- I'm sorry. I mean, I've got to tell you, I have actually thought about your argument, and it just to me, seems that that's exactly why you have a ripeness doctrine. Exactly why. And while you can cabin together a set of facts like you do with a patent litigation, where one party can do something and one party is threatening something, and I understand that's -- that is arguably, you know, something that a court might want to intervene in, and declaratory relief is always -- is so prospective anyway by its nature, by its

nature, but that doesn't mean that all declaratory relief is the same thing.

And what I've tried to say is, when you involve the legislative process, it becomes a different animal. Because there are any number of things which are uncertain about the legislative process that are not necessarily uncertain about the -- what I call the private party process. And the implications are quite different.

I don't for a moment quarrel with your factual scenario that letters have been sent out and that people are concerned about their homes and the lenders are concerned about the integrity of their loans, which have been collateralized or sold or whatever happens to these things. I'm certain that there is uncertainty. I'll grant you that. I'm certain that's a correct representation. There is -- there may be a certain amount of uncertainty about it, but that doesn't mean this, given the scenario, given the requirements, that the Court, at this juncture, jumps in.

MR. FALK: Your Honor, I think there are distinctions here. You do have a threat to sue. You have a threat to sue that was authorized as part of the -- that was essentially authorized when they agreed to turn things over to MRP and work with MRP to carry out this plan. Those threats to sue were not only authorized, but they were confirmed. The very same people that would have to vote to sue in order to go

forward with the program voted not to take those letters off the table. Which would, of course -- without that threat, this would be a very different case. But that is a distinguishing characteristic, and it's a very important distinguishing characteristic.

The other thing is that they -- the city and MRP have tried to make this all about some challenge to a legislative act, the resolution of necessity. What we're talking about here is the power to carry out their threat of litigation. In the Santa Cruz case that they cite, talking about resolution of necessity, it differentiates between a challenge to the resolution of necessity, which has lots of problems if you're trying to enjoin one of those, and a challenge to the power to take. And the power to take, the power to go in and take our property, they can pass anything they want. We're not trying to say that -- they can pass, you know, they can pass any ordinance they want. It may be constitutional, unconstitutional. We're not trying to get an advance ruling on some legislation. What we're trying to get an advance ruling on, and what is fully concrete, is the unconstitutionality and unlawfulness of the threat, threatened litigation that they are using right now to try to get, to the extent that our trustees and the other trustees can come to the table, which is limited, but to the extent that they can, they're using this threat of litigation coercively, and that

is the, at least on some of these claims, there is nothing that the resolution of necessity is going to tell us about the situs of these loans that isn't fully concrete now. That is as ripe as it's going to be.

We think the same applies to the purpose aspect. They can say whatever they want but there's plenty of context here and plenty of record that would -- that makes clear that the essential elements that would make the -- this a matter of private use rather than public use, the fact that it's essentially dividing up the banks' property and giving it -- dividing it between MRP and some Richmond @ voters, that is not going to change. They may change some things, they can change what they say, but that issue isn't going to change.

The situs, though, is very, very clear, and that just can't change. And that, in light of this threat of litigation which could be determined and could be nipped in the bud, as in our view it should be, is completely ripe. If they hadn't threatened litigation, this would be a very different case. But they have, and they've refused to withdraw that threat.

MR. KRONLAND: Scott Kronland for the defendants.

THE COURT: So that's the issue. It's different. You have your letters out there. You're threatening litigation that's very real, and therefore they should be able to argue for declaratory relief because of that distinction. How that distinguishes it from the other proceedings we've

had, I'm not sure it distinguishes -- it may be now there's a different argument that's being advanced -- I'm not sure that argument couldn't have been advanced the last time around, but it wasn't. Not to the extent that they've advanced it anyway.

MR. FALK: We weren't here, your Honor.

THE COURT: They weren't here. New day. New lawyer. New argument. There we go. Okay.

MR. KRONLAND: Putting aside the other case, which didn't involve declaratory relief claims and involved the same letters, I think your Honor's right, that the issue here is that legislative action is different. When the supposed threat depends upon legislative action, before it could be carried out, you don't have a ripe case. If someone says, If you don't do something, I'm going to go to Congress and I'm going to ask them to pass a law, the issue whether the law would be constitutional or not is not ripe.

And here, it's not the threat of litigation. In order to exercise eminent domain power, under California law, you'd have to adopt a resolution of necessity, which is a legislative act. Before you can do that under California law, you'd have to have a noticed public hearing, the purpose of which is to provide information about whether you should adopt a resolution of necessity. And here, there's been no resolution of necessity; there's been no hearing about whether to adopt a resolution of necessity; there's been no notice of

the setting of such a hearing. So it's entirely speculative in the meaning of Article III as to whether any injury would ever occur. And when the speculation is because of legislative action, as opposed to, you know, private party patent threat, there's not a single case that they have cited or we can find in which a federal court has ever adjudicated whether legislative action would be valid if it were adopted.

And in the New Orleans case, which is 100 percent directly on point, in which someone came to the Supreme Court and said, A city council is going to adopt an ordinance, I know it's going to happen, it's going to be blatantly unconstitutional, they've done it before, the Supreme Court dismissed the case for lack of jurisdiction. Said the Court shouldn't interfere by any order, in any mode. And they said, when it would be ripe, the quote was, When the city council shall pass an ordinance that violates the plaintiff's rights, they can come to federal court. And until -- since then, not a single case to the contrary that allows declaratory relief in advance of the formal legislative action that would allegedly violate the plaintiff's rights.

So I don't think that there could be a clearer case of lack of standing and ripeness than one in which the harm could only occur if the legislature does something that it hasn't done.

THE COURT: Well, I think counsel's argument, as I

understand it, is -- you're both right and wrong. He would say, Of course, we're very concerned about the ultimate harm that would occur if these proceedings proceeded. That is, in fact, if eminent domain proceeded. Yes, that would be terrible. That would be very harmful. But he says, But that doesn't mean that because the horrible thing has yet to occur, that something harmful is not occurring right now. And he's saying that -- as I understand it -- he's saying, The very -- the fact is that the city has notified, as I understand it, notified individuals or homeowners that their house may be subject to these proceedings -- is that correct? I haven't seen the letter; I don't know what's actually gone out.

MR. FALK: Notified the trustees of all the loans that they propose to take.

THE COURT: And that's the harm -- and that's a harm in and of itself that makes it ripe for determination.

MR. FALK: Notification with the threat of litigation. I mean, the city's engaged in negotiations over property all the time without threats of litigation. And when things go wrong --

THE COURT: Your cue card is coming up (referring to Mr. Johnson).

MR. FALK: Right. As my co-plaintiff's counsel points out, we are being asked to evaluate and accept offers. We're talking about something that's very present, and is

backed up by this threat of litigation. If the threat of litigation wasn't there, well then, the issue of the constitutionality of their acquisition, extraterritorial property, you know, wouldn't be ripe.

THE COURT: But the point about the threat of litigation, as I understand counsel, is that that doesn't become a real threat unless it's authorized by the council. That is to say, they have to first have a finding of necessity. And that can't occur before a public hearing. And we haven't had a public hearing on that. And the purpose of the public hearing is to try to convince, one way or the other, the council members either to enact the rule of necessity or not. And so that's part of the legislative process. And until that occurs, it becomes nothing more than an idea that is being proposed and considered.

And so that sort of takes me back full circle to where I was at the beginning. There are a lot of ideas out there. You may have three votes or four votes for the idea. But until -- but if the requirement is five votes for the idea, then you don't have that yet. And if the courts have to weigh in because three or four out of seven think it's a great idea, we would be tied up -- we could get -- an example would be legislation in which there are -- you could get legislation with, if you had almost everybody in Congress cosponsoring it and authoring it -- and I've seen those things not pass,

interestingly enough. Sure, I'll sign on, I'll sign on, and then it comes on for a vote, or it never comes up, too embarrassing or whatever. So it doesn't become the law because it's not enacted. It's real in the sense that, Oh, all the people that are necessary to vote for it have said they're going to vote for it, but they don't. Because the vote never takes place.

So I'm just saying that that's the way the -- that makes the legislative process so different and so unique.

And there's a whole nother thing that goes on around here which is that courts are supposed to give deference to the legislative process proceeding the way a legislative process is at least intended to proceed, which is public discourse. This is not -- what I do is not public discourse. It's a court acting, based upon the Court's judgment, as to what should be done. But it's not public discourse. It's done in public, but it's not public discourse.

But the legislative process embodies public discourse. And for the court to jump in because it is concerned that, if enacted, something would cause some unconstitutional harm, or concerned that the threat of harm is sufficient to then warrant intervention while the discourse is occurring, is very unusual. Counsel says there isn't a single case supporting your proposition.

MR. FALK: There also isn't a single case supporting

the proposition a palpable threat of litigation is insufficient to make a declaratory judgment action ripe. The issues he's talking about are not the same. Even the eminent domain cases say there's been no threat of litigation, where in some other piece of the process here -- and this is different for that reason, and they have had votes -- granted, yes, there's another vote to come, but they've had the vote to say go forward. And yes, what you did, the threat is fine, we stand behind it, by a super-majority. Those are quite different from any of the other cases.

Yes, this is a case that -- I mean, I will be very candid with the Court: This is falling between the pure legislation cases and the pure threat of litigation cases. No question, this case. But it is not an effort to enjoin a resolution of necessity or an ordinance. It is an effort to address a current present threat of litigation that -- of unconstitutional litigation. And the threats have been endorsed by the council. Yeah, they have to take another vote to bring the action, but this is about as -- this is as imminent as pretty much any other threatened litigation. You have a record here. It's not like this has just been proposed by Councilman So-and-so.

THE COURT: I understand. We have a record.

MR. KRONLAND: I would just comment that what the letter actually says, which is in the record, is, We'd like to

response they offer but maybe they don't have the power to take it -- we don't think they have the power to take it. They may not have the power to acquire it at all.

At a minimum, we would ask, if the Court is going to dismiss, it be with leave to amend for us to ask for a declaration as to situs of the property to see whether the offers or the threats --

THE COURT: You're talking about the situs of the property in terms of whether, since it's a mortgage, whether it follows the debtor? Whether it follows --

MR. FALK: Exactly.

THE COURT: By the way, those may or may not be complicated issues, but I don't have to get into any of that at this point. I may never have to get into that.

Okay. I think I understand the arguments. I will take a look -- I'll go back, at your suggestion, take a look at Exhibit F; take a look at the brochure that is attached.

MR. KRONLAND: I have to correct one thing: The statement they didn't have to include the brochure. Actually, they did. California law requires the brochure when there's a possibility eminent domain might be exercised in the future, and it's the standard brochure on the League of Cities website. So actually, they did have to include that, the brochure.

MR. FALK: If they want to threaten action, they did.

THE COURT: Well, if they want to proceed -- okay. Anyway, thank you very much. I will try to get this out as soon as I can. It will certainly be out by next week. Okay?

MR. FALK: Thank you, your Honor.

MR. KRONLAND: Thank you.

MR. JOHNSON: Thank you.

THE COURT: Thank you, appreciate it.

(Adjourned)

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CERTIFICATE OF REPORTER

I, Connie Kuhl, Official Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into written form.

SS:// Connie Kuhl_____

Connie Kuhl, RMR, CRR
Tuesday, November 5, 2013