

1 MAYER BROWN LLP
 DONALD M. FALK (SBN 150256)
 2 *dfalk@mayerbrown.com*
 Two Palo Alto Square, Suite 300
 3 3000 El Camino Real
 Palo Alto, CA 94306-2112
 4 Tel: 650-331-2000
 Fax: 650-331-2060

5 MAYER BROWN LLP
 6 BRONWYN F. POLLOCK (SBN 210912)
bpollock@mayerbrown.com
 7 NOAH B. STEINSAPIR (SBN 252715)
nsteinsapir@mayerbrown.com
 8 MICHAEL D. SHAPIRO (SBN 271912)
mshapiro@mayerbrown.com
 9 350 S. Grand Ave., 25th Floor
 Los Angeles, CA 90071-1503
 10 Tel: 213-229-9500
 Fax: 213-625-0248

11 Attorneys for Plaintiffs
 12 THE BANK OF NEW YORK MELLON (f/k/a The
 Bank of New York) and THE BANK OF NEW
 13 YORK MELLON TRUST COMPANY, N.A. (f/k/a
 The Bank of New York Trust Company, N.A.), as
 14 Trustees for the trusts listed on Exhibit A of the
 Second Amended Complaint

15 [Additional counsel listed on signature page]
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17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**

19 THE BANK OF NEW YORK MELLON
 20 (f/k/a The Bank of New York), *et al.*

21 Plaintiffs,

22 v.

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

27 Defendants.
 28

Case No. 13-cv-3664-CRB

**OBJECTION TO DEFENDANTS' REPLY
 EVIDENCE BY PLAINTIFF TRUSTEES**

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

1 **OBJECTION TO REPLY EVIDENCE**

2 Pursuant to Civil Local Rule 7-3(d)(1), the Trustees object to new evidence set forth in connection
3 with Defendants’ Reply in Support of Motion for Rule 11 Sanctions (D.E. #68) (the “Reply”).¹ Relying
4 on the accompanying Declaration of Stacey Leyton in Support of Defendants’ Reply in Support of Motion
5 for Rule 11 Sanctions (D.E. #68-1-7), the Reply introduces material not set forth in Defendants’ Motion
6 for Rule 11 Sanctions (D.E. #55) (the “Rule 11 Motion”), concerning the purported time spent and costs
7 associated with litigating Defendants’ motion to dismiss and Rule 11 Motion and the supposed
8 reasonableness of Defendants’ attorneys’ fees.

9 As noted in the Trustees’ Opposition to Motion for Rule 11 Sanctions (D.E. #59), it is well
10 established that presenting new information in a reply brief is improper because it deprives the opposing
11 party an opportunity to respond to that material. *See, e.g., Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273
12 n.3 (9th Cir. 1993) (refusing to consider new information because it was “improper[ly]” submitted in a
13 reply brief); *BoomerangIt Inc. v. ID Armor Inc.*, 104 U.S.P.Q.2d 1081, 1085 n.1 (N.D. Cal. 2012) (same);
14 *Contratto v. Ethicon, Inc.*, 227 F.R.D. 304, 308 n.5 (N.D. Cal. 2005) (refusing to consider a declaration
15 because “Defendants’ attempt to introduce new evidence in connection with their reply papers [was]
16 improper”); *see also* Civ. L.R. 7-3(d)(1).

17 The same result should attach here. Defendants’ tactic of saving this information for their reply
18 brief is precluded by well-settled precedent. The Court should strike from the Reply and the
19 accompanying affidavit new material concerning the purported time spent and costs associated with
20 litigating Defendants’ motion to dismiss and Rule 11 Motion and supposed reasonableness of Defendants’
21 attorneys’ fees, and disregard all such information in deciding Defendants’ motion.

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25 ¹ Trustees The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., U.S.
26 Bank National Association, Wilmington Trust Company, and Wilmington Trust, National Association are
27 referred to collectively herein as the “Trustees.” Defendants the City of Richmond, Richmond City
28 Council, Mortgage Resolution Partners L.L.C., and Gordian Sword LLC are referred to collectively herein
as the “Defendants.”

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Respectfully submitted,

Dated: December 27, 2013

MAYER BROWN LLP
DONALD M. FALK
BRONWYN F. POLLOCK
NOAH B. STEINSAPIR
MICHAEL D. SHAPIRO

By: /s/ Bronwyn F. Pollock
Bronwyn F. Pollock

Attorneys for Plaintiffs
THE BANK OF NEW YORK MELLON (f/k/a The Bank of New York) and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (f/k/a The Bank of New York Trust Company, N.A.), as Trustees for the Trusts listed on Exhibit A to the Second Amended Complaint

Dated: December 27, 2013

ALSTON & BIRD LLP
KURT OSENBAUGH (SBN 106132)
kurt.osenbaugh@alston.com
WHITNEY CHELGREN (SBN 285362)
whitney.chelgren@alston.com
333 South Hope Street, Sixteenth Floor
Los Angeles, CA 90071
Tel: 213-576-1000
Fax: 213-576-1100

By: /s/ Kurt Osenbaugh
Kurt Osenbaugh

Attorneys for Plaintiffs
WILMINGTON TRUST COMPANY and
WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustees for the Trusts listed in Exhibit C to the Second Amended Complaint

Dated: December 27, 2013

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

JONES DAY
MATTHEW A. MARTEL (*pro hac vice*)
mmartel@jonesday.com
JOSEPH B. SCONYERS (*pro hac vice*)
jsconyers@jonesday.com
100 High Street, 21st Floor
Boston, MA 02110
Telephone: 617-960-3939

1 Facsimile: 617-449-6999

2 By: /s/ Brian D. Hershman

3 Brian D. Hershman
4 Attorneys for Plaintiff
5 U.S. BANK NATIONAL ASSOCIATION,
6 as Trustee for the Trusts listed in Exhibit B to the Second
7 Amended Complaint

8 **SIGNATURE ATTESTATION**

9 I, Bronwyn F. Pollock, attest that the concurrence in the filing of Objection to Reply Evidence has
10 been obtained from Kurt Osenbaugh and Brian D. Hershman.

11 By: /s/ Bronwyn F. Pollock

12 Bronwyn F. Pollock
13 Attorneys for Plaintiffs
14 THE BANK OF NEW YORK MELLON
15 (f/k/a The Bank of New York) and THE BANK OF NEW
16 YORK MELLON TRUST COMPANY, N.A. (f/k/a The
17 Bank of New York Trust Company, N.A.), as Trustees