

David R. Carpenter (SBN 230299)
Email: drcarpenter@sidley.com
Collin P. Wedel (SBN 278461)
Email: cwedel@sidley.com
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013
Telephone: (213) 896-6604
Facsimile: (213) 896-6600

Carter G. Phillips
(*pro hac vice application pending*)
Email: cphillips@sidley.com
Jonathan F. Cohn
(*pro hac vice application pending*)
Email: jfcohn@sidley.com
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

*Attorneys for Amici Curiae Securities Industry and
Financial Markets Association and Chamber of
Commerce of the United States of America*

Ira D. Hammerman
Kevin Carroll
SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 962-7382

*Of counsel for amicus curiae Securities
Industry and Financial Markets Association*

Rachel L. Brand
Steven P. Lehotsky
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, NW
Washington, DC 20062
Telephone: (202) 463-5337

*Of counsel for amicus curiae Chamber of
Commerce of the United States of America*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee, *et al.*

Plaintiffs,

vs.

CITY OF RICHMOND, CALIFORNIA, a
municipality; and MORTGAGE
RESOLUTION PARTNERS LLC,

Defendants.

Case No. CV-13-3663-CRB

**MOTION OF SECURITIES INDUSTRY
AND FINANCIAL MARKETS
ASSOCIATION AND CHAMBER OF
COMMERCE OF THE UNITED STATES
OF AMERICA FOR LEAVE TO
PARTICIPATE AS *AMICI CURIAE*, AND
TO FILE MEMORANDUM, AS *AMICI
CURIAE*, IN SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION; [PROPOSED] *AMICI
CURIAE* MEMORANDUM IN SUPPORT;
[PROPOSED] ORDER**

Date: September 13, 2013
Time: 10:00 a.m.
Judge: Hon. Charles R. Breyer

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

PLEASE TAKE NOTICE THAT the Securities Industry and Financial Markets Association (“SIFMA”) and the Chamber of Commerce of the United States of America (the “Chamber”) respectfully request leave to participate in this action as *amici curiae*, and to file a Memorandum in support of Plaintiffs’ motion for a preliminary injunction. *Amici* request leave to help explain the substantial ramifications of the eminent domain plan at issue for the financial and housing markets and also because *amici* have communicated extensively with City of Richmond officials relating to the challenged plan and have Richmond-specific mortgage data relevant to this case. *Amici* thus request that the Court consider its Memorandum and exhibits thereto so as to assist the Court on the substantive merits and as to why the dispute is ripe.

I. STANDARD FOR MOTION FOR LEAVE TO FILE MEMORANDUM OF AMICI CURIAE

District courts have discretion to permit third parties to participate in an action as *amici curiae*. *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005). Such discretion is generally exercised liberally, as “[t]here are no strict prerequisites that must be established prior to qualifying for *amicus* status.” *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana*, 751 F. Supp. 608, 620 (E.D. La. 1990)). Rather, “an individual seeking to appear as *amicus* must merely make a showing that his participation is useful to or otherwise desirable to the court.” *Id.* District courts frequently accept *amicus* briefs from non-parties where the legal issues in a case “have potential ramifications beyond the parties directly involved or if the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *NGV Parties*, 355 F. Supp. 2d at 1067 (quotation omitted).

II. STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

SIFMA brings together the shared interests of hundreds of securities firms, banks, and asset managers. SIFMA has become the voice of the financial industry that is uniquely suited to provide trusted and expert information to policymakers, regulators, media, industry participants and the general public about the financial industry. SIFMA’s member firms are engaged in

1 communities across the country to raise capital for businesses, promote job creation, and lead
 2 economic growth. SIFMA's mission is to support a strong financial industry, investor
 3 opportunity, capital formation, and economic growth, while building trust and confidence in
 4 financial markets. In addition, SIFMA keeps a close watch on trends in financial markets, and
 5 regularly publishes and maintains robust analyses of the strengths and weaknesses of those
 6 markets, including the market for private-label residential mortgage-backed securities—the
 7 financial instrument directly at issue in this case. Moreover, SIFMA has been monitoring, and has
 8 been a vocal opponent of, MRP's eminent domain plan since it gained attention over a year ago,
 9 and as explained below, SIFMA has had extensive contact with the City of Richmond and has
 10 developed mortgage data specifically on the issue.

11 The Chamber is the world's largest business federation. It represents 300,000 direct
 12 members and indirectly represents the interests of three million companies and professional
 13 organizations of every size, in every industry sector, and from every region of the country.
 14 Chamber members transact business throughout the United States and a large number of countries
 15 around the world. An important function of the Chamber is to represent the interests of its
 16 members in matters before Congress, the Executive Branch, and the courts.¹ The Chamber and its
 17 members thus have a significant interest in this case, given the widespread ramifications that the
 18 eminent domain plan will have for the financial and housing markets, and the national economy as
 19 a whole. Moreover, the Chamber believes that Richmond's and MRP's plan, if allowed to
 20 proceed, would create a dangerous precedent for municipalities' ability to abrogate private
 21 contractual rights and interfere with interstate markets.

22 **III. *AMICI CURIAE*'S EXPERTISE WILL BENEFIT THE COURT**

23 Based on their significant expertise in the functioning of American business and financial
 24 markets and their direct involvement with Richmond in its decision to pursue MRP's seizure
 25

26 ¹ *Amici* are independent of the parties in this case. No counsel for a party authored their *amici curiae*
 27 Memorandum in whole or in part, and no such counsel or party made a monetary contribution
 28 intended to fund the preparation or submission of the Memorandum.

1 program, *amici* believe that their participation and perspective will aid the Court in evaluating
 2 Plaintiffs' Preliminary Injunction Motion on both the merits and issue of ripeness.

3 Issues raised by Plaintiffs' motion include, among other things, (A) the extent to which
 4 Defendants' seizure program is purportedly necessary to avoid foreclosure, remedy blight, and
 5 correct alleged problems in the way that private-label securities ("PLS") trusts were set up; and
 6 (B) the impact of Defendants' plan on the functioning of the financial and housing markets. Based
 7 on *amici*'s extensive knowledge of these national markets, and specific information relating to
 8 PLS loans in Richmond and the availability and success of alternative loan modification programs,
 9 *amici* have "unique information [and] perspective that can help the court" and their perspective is
 10 important to understand the severe "ramifications beyond the parties directly involved" in case.
 11 *NGV Parties*, 355 F. Supp. 2d at 1067 (quotation omitted). SIFMA's first-hand interactions with
 12 the City as it has pursued MRP's plan also go to, and will assist the Court in understanding, why
 13 this case is ripe for adjudication, and why prompt adjudication is important to avoiding uncertainty
 14 in the markets and preventing additional municipalities from following Richmond.

15 IV. CONCLUSION

16 Accordingly, SIFMA and the Chamber respectfully request that the Court grant their
 17 motion for leave to participate as *amici curiae*, and to file the accompanying Memorandum in
 18 support of Plaintiffs' motion for a preliminary injunction.²

19 Dated: September 3, 2013

Respectfully submitted,

20 SIDLEY AUSTIN LLP

21 By: /s/ David R. Carpenter
 22 David R. Carpenter

23
 24 ² Plaintiffs consented to the participation of SIFMA and the Chamber as *amici curiae* and to their
 25 filing of a Memorandum regarding Plaintiffs' motion for a preliminary injunction, provided that the
 26 filing does not cause a delay in the hearing on that motion. On August 27, 2013, counsel for *amici*
 27 asked counsel for Defendants to consent to the filing of three *amicus* briefs by (1) SIFMA and the
 28 Chamber, as well as (2) the Structured Finance Industry Group, Inc, and (3) the California Bankers
 Association, American Bankers Association, California Mortgage Bankers Association, and
 Mortgage Brokers Association. Defendants declined to consent to *amici*'s participation.

Attorneys for *Amici Curiae*

SECURITIES INDUSTRY AND FINANCIAL
MARKETS ASSOCIATION AND
CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA

Ira D. Hammerman
Kevin Carroll
SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 962-7382

*Of counsel for amicus curiae Securities Industry
and Financial Markets Association*

Rachel L. Brand
Steven P. Lehotsky
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, NW
Washington, DC 20062
Telephone: (202) 463-5337

*Of counsel for amicus curiae Chamber of
Commerce of the United States of America*

David R. Carpenter (SBN 230299)
Email: drcarpenter@sidley.com
Collin P. Wedel (SBN 278461)
Email: cwedel@sidley.com
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013
Telephone: (213) 896-6604
Facsimile: (213) 896-6600

Carter G. Phillips
(*pro hac vice application pending*)
Email: cphillips@sidley.com
Jonathan F. Cohn
(*pro hac vice application pending*)
Email: jfcohn@sidley.com
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

*Attorneys for Amici Curiae Securities Industry and
Financial Markets Association and Chamber of
Commerce of the United States of America*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee, *et al.*

Plaintiffs,

vs.

CITY OF RICHMOND, CALIFORNIA, a
municipality; and MORTGAGE
RESOLUTION PARTNERS LLC,

Defendants.

Ira D. Hammerman
Kevin Carroll
SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 962-7382

*Of counsel for amicus curiae Securities
Industry and Financial Markets Association*

Rachel L. Brand
Steven P. Lehotsky
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, NW
Washington, DC 20062
Telephone: (202) 463-5337

*Of counsel for amicus curiae Chamber of
Commerce of the United States of America*

Case No. CV-13-3663-CRB

**[PROPOSED] MEMORANDUM OF THE
SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION
AND THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA,
AS AMICI CURIAE, IN SUPPORT OF
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Date: September 13, 2013
Time: 10:00 a.m.
Judge: Hon. Charles R. Breyer

TABLE OF CONTENTS

		Page
1		
2		
3	INTRODUCTION AND SUMMARY OF ARGUMENT	1
4	FACTUAL BACKGROUND.....	2
5	A. Explanation of the Residential Mortgage-Backed Securitization Trusts	
6	at Issue.	2
7	B. MRP’s Road Show and Richmond’s Decision to Proceed with MRP’s	
8	Plan	4
9	ARGUMENT.....	8
10	I. DEFENDANTS’ SCHEME DOES NOT SERVE A VALID PUBLIC	
11	BENEFIT AND WILL CAUSE SUBSTANTIAL HARM TO FINANCIAL	
12	AND HOUSING MARKETS.....	8
13	A. Defendants’ Scheme Rests on a Flawed Assumption that Compelled,	
14	Across-the-Board Principal Reduction is Necessary to Save	
15	Underwater Loans from Default	8
16	B. Seizing Loans from RMBS Trusts Will Cause Widespread Harm.....	10
17	1. “Just Compensation” for the Seizures Cannot Possibly	
18	Be Provided.....	11
19	2. The Plan Will Harm the People It Purports to Help	12
20	II. THE CASE IS RIPE FOR REVIEW	14
21	CONCLUSION.....	15
22		
23		
24		
25		
26		
27		
28		

INTRODUCTION AND SUMMARY OF ARGUMENT

For over a year, Mortgage Resolution Partners LLC (“MRP”) has been traveling from city to city, pitching its plan to exploit local governments’ power of eminent domain to seize mortgage loans where the size of the loan currently exceeds the value of the property. What makes this plan so radical is not its strategy of targeting loans rather than properties, which is certainly unusual. Rather, it is that MRP, a for-profit private entity, brazenly seeks to use eminent domain as a mere pass-through for a private arbitrage in which MRP and/or other investors will fund the “seizure” of selected loans and then profit from restructuring and flipping those loans into the capital markets.

Amici Securities Industry and Financial Markets Association (“SIFMA”) and the Chamber of Commerce of the United States of America (the “Chamber”) recognize the significant challenges municipalities face in grappling with the fallout of the housing market and economic downturn, but this extraordinary abuse of municipal power is not the answer, or lawful. Indeed, the plan’s faulty premises and inherent problems have been manifest from the outset. For example, though touted as a means to avoid foreclosure and blight, MRP’s plan targets *performing* loans that, in fact, do not have a high likelihood of foreclosure. At the same time, MRP’s plan values the loans *as if they are already in foreclosure*, ignoring the prospect that the loans will continue to perform and be repaid. These features—cherry-picking performing loans and compelling their liquidation at a loss to investors—are essential; otherwise, the loans cannot be flipped for a profit for the speculators.

If it sounds too good to be true that one can extinguish millions of dollars of debt overnight and generate a profit, without harming anyone or impacting the functioning of the market, that’s because it is. As the Federal Housing Finance Agency (“FHFA”) itself has observed, such a program represents a clear threat to the operation of the residential mortgage-backed securities (“RMBS”) market and risks reducing access to credit for mortgage borrowers. *See* FHFA, FHFA Statement on Eminent Domain, Aug. 8, 2013; FHFA, General Counsel Memorandum Summary of Comments and Additional Analysis Regarding Input on Use of Eminent Domain to Restructure

1 Mortgages (Aug. 7, 2013) (hereinafter “FHFA Memorandum”).¹ The use of eminent domain in this
 2 context thus stands to hurt the very people it seeks to help.

3 The City of Richmond is not the first to consider MRP’s plan, but it is the first to move
 4 forward, and if Richmond’s plan proceeds, more will inevitably follow. As organizations
 5 representing the financial industries and the American business community at large, *amici* are well-
 6 situated to explain the reasons why Defendants’ plan is not reasonably connected to its touted
 7 purpose of avoiding foreclosure, and instead would cause substantial and irreparable harm to RMBS
 8 trusts as well as pension plans, insurance companies, and others investing in RMBS, and the housing
 9 market as a whole. (*See Part I infra.*) Moreover, and particularly because SIFMA has been dealing
 10 with Richmond since it began considering MRP’s plan, *amici* are well-situated to explain why this
 11 dispute is ripe for adjudication, given, among other things, that Richmond City representatives have
 12 already heard all of the legal and policy problems raised by the seizure program and decided to
 13 initiate the statutory eminent domain process nonetheless. (*See Part II infra.*) For all of these
 14 reasons, this Court should grant Plaintiffs’ motion for a preliminary injunction and declare the plan
 15 an unconstitutional abuse of municipal power.

16 **FACTUAL BACKGROUND**

17 **A. Explanation of the Residential Mortgage-Backed Securitization Trusts at Issue.**

18 Broadly speaking, an RMBS trust is an asset-backed security secured by a pool of mortgages.
 19 Historically, local mortgage markets were unable to offer reliable interest rates due to the outsized
 20 effect of even a few foreclosures or prepayments. But, with RMBS trusts, financial institutions can
 21 provide capital to borrowers at lower rates by pooling thousands of home loans into a
 22 geographically- and risk-diversified security. These trusts generally contain between 1,000 to 6,000
 23 mortgages, but can range from 300 to 45,000. Interests in the trust are then sold to institutional
 24 investors such as pension funds and insurance companies, while a financial institution serves as the
 25 trustee until the loans mature. Borrowers’ payments flow directly to the trust’s beneficiaries (or
 26

27 ¹ Available at <http://fhfa.gov/webfiles/25419/FHFASmtEminentDomain080813.pdf?n=10696>; and
 28 <http://www.fhfa.gov/webfiles/25418/GCMemorandumEminentDomain.pdf?n=57402>.

1 “certificateholders”), who do not own particular mortgage loans within the trust, but rather own a
 2 share of the entire pool. The cash-flow value and projected value of the loans is found, of course,
 3 not just in recouping the principal balance but in the collection of interest over the life of the loan.

4 Many RMBS trusts are organized by government-sponsored enterprises (“GSE”), such as
 5 Fannie Mae or Freddie Mac, and come with a government-backed guarantee of repayment. The
 6 trusts at issue here, though, are sponsored privately—dubbed “private-label” RMBS trusts—and are
 7 not guaranteed by the government. The total household mortgage debt in the United States is around
 8 \$8.6 trillion; of this, nearly \$8.1 trillion of mortgage loans are financed through RMBS trusts (mostly
 9 GSE trusts), and almost \$1 trillion of that comes from private-label RMBS. *See* SIFMA, US
 10 Mortgage Related Securities Outstanding.² Defendants have targeted only loans held in private-
 11 label trusts, and have avoided any loans held directly by banks.

12 Demand for private-label mortgage-backed securities is robust, especially when compared to
 13 the nearly non-existent demand for individual mortgages, and new-issue RMBS activity has grown
 14 substantially over the past year, as the housing and residential mortgage markets have steadily
 15 improved. *See* SIFMA, U.S. Research Quarterly (Aug. 20, 2013).³ RMBS trusts generally have
 16 strong credit ratings, even after the decline in the real estate market, precisely because the mortgages
 17 within the trusts have been risk-balanced and regionally diversified, and because the loans have
 18 decades-long terms that offer a comparatively reliable and non-volatile stream of fixed income.

19 Because of these features, the main certificateholders of private-label RMBS trusts are and
 20 have been pension funds, credit unions, and insurance companies, as well as mutual funds and hedge
 21 funds. *See* National Association of Insurance Commissioners & The Center for Insurance Policy &

22 _____
 23 ² Available at www.sifma.org/uploadedFiles/Research/Statistics/StatisticsFiles/SF-US-Mortgage-Related-SIFMA.xls?n=30427 (last visited Aug. 27, 2013).

24 ³ Available at www.sifma.org/WorkArea/DownloadAsset.aspx?id=8589944854; *see also* Jeremy
 25 Schneider, Standard & Poor’s, *Despite More Favorable Conditions In The Housing Market, The*
 26 *U.S. RMBS Outlook Is Stable* (June 18, 2013) [hereinafter “S&P Report”] (explaining that “issuance
 27 of private-label residential mortgage-backed securities (RMBS) surpassed the total 2012 tally in the
 28 first several months alone,” and “[n]ew issue RMBS activity is at its highest point since 2007”). The
 S&P Report can be found at www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1146548&SctArtId=163466&from=CM&ns1_code=LIME.

Research, *Capital Market Special Report* (July 2013); Letter from SIFMA et al. to United States Congress (July 22, 2013).⁴ CalPERS, the California Public Employees' Retirement System, holds more than \$200 million of such securities. *See* CalPERS, Annual Investment Report (June 30, 2012).⁵ Anyone with an annuity or similar investment-based insurance product, a retirement plan, college fund, or other fund-based investment likely has some level of interest in the stability of RMBS trusts. These investors consider an array of factors in ultimately deciding to invest in a private-label RMBS trust (*e.g.*, market conditions, unemployment, the loan originator, expected maturities, credit spread levels, and so on). *See* Frank J. Fabozzi, *A Credit Intensive Approach to Analyzing Whole Loan CMOs* 177-92 (1997). They have not, however, historically considered the possibility that trust assets could be subject to a governmental seizure.

B. MRP's Road Show and Richmond's Decision to Proceed with MRP's Plan

Since last year, MRP has approached numerous local entities across the country, promoting its trademarked "CARES™" program (Community Action to Restore Equity and Stability). *See* <http://mortgageresolution.com> (last visited Aug. 28, 2013). MRP's proposal first gained attention when San Bernardino County and the cities of Fontana and Ontario formed a "Joint Powers Authority" to consider the eminent domain plan. They ultimately abandoned the idea after encountering substantial opposition from homeowners, government officials, lenders, and industry organizations, which provided detailed analyses of why MRP's plan is unconstitutional and bad policy. Indeed, shortly after the plan was announced, FHFA posted a notice in the Federal Register raising "significant concerns about the use of eminent domain," including that it would create substantial "losses" for investors and "could undermine and have a chilling effect on the extension of credit to borrowers seeking to become homeowners and on investors that support the housing market." FHFA, *Use of Eminent Domain to Restructure Performing Loans*, 77 Fed. Reg. 47,652 (Aug. 9, 2012). Nonetheless, MRP has been in talks with other California cities (*e.g.*, El Monte, La Puente, Salinas, Los Angeles, and Sacramento) as well as Brockton, Massachusetts, North Las

⁴ Available at www.sifma.org/issues/item.aspx?id=8589944483.

⁵ Available at www.calpers.ca.gov/eip-docs/about/pubs/annual-investment-report-2012.pdf.

1 Vegas, Nevada, Chicago, Illinois, and Suffolk County, New York, among others. No local
2 government had taken any concrete steps toward exercising eminent domain—until Richmond.

3 Several months ago, when MRP first began discussions with Richmond, SIFMA sent a letter
4 to the Mayor and City Council Members explaining the practical and legal flaws with the program.
5 *See Exhibit A.*⁶ This letter received no response, and on April 2, 2013, the City Council
6 unanimously passed a proposal to “APPROVE an Advisory Services Agreement with Mortgage
7 Resolution Partners, LLC to assist the City of Richmond in reducing the impact of the mortgage
8 crisis, by advising on the acquisition of mortgage loans through the use of eminent domain, in order
9 to restructure or refinance the loans.” Richmond City Council, Agenda for Apr. 2, 2013, at 6;
10 Minutes of Apr. 2, 2013 Meeting at 7-8.⁷

11 Shortly thereafter, on April 9, SIFMA held a conference call with the City Manager and
12 various other city officials. In advance of and for the call, SIFMA sent a presentation detailing the
13 legal and financial flaws with MRP’s proposal, highlighting the likely negative impact on mortgage
14 credit and demonstrating the significant losses this plan would inflict on retirement savers and other
15 taxpayers. *See Exhibit B.* Thereafter, the City Manager and City Attorney received “briefing
16 books” highlighting more legal information, analyst reports, and policy arguments, and on April 18,
17 2013, a coalition of 22 organizations sent a letter outlining the widespread opposition to the use of
18 eminent domain and recommending that the City consider alternatives. *See Exhibit C.*

19 On May 1, at a meeting with Mayor McLaughlin and her staff, SIFMA elaborated on its
20 concerns and, based on a powerpoint presentation used at the meeting, reviewed mortgage data for
21 the City of Richmond and loans in private-label RMBS. *See Exhibit D.* SIFMA discussed how
22 overall delinquency trends have been materially improving, *id.* at 2-3, including that “less than 10%
23 of loans that were current as of Jan 2012 were delinquent 1 year later,” reflecting that “[t]he situation

24 _____
25 ⁶ This letter, among other materials discussed, is available on SIFMA’s website at
26 <http://www.sifma.org/issues/capital-markets/securitization/eminent-domain/overview/> and the
27 related links.

28 ⁷ The City Council Agenda and meeting minutes are available, respectively, at
<http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/5082>, and
<http://www.ci.richmond.ca.us/ArchiveCenter/ViewFile/Item/5138>.

1 in 2008 is not the same as the situation today,” *id.* at 5. SIFMA also reported on modification
 2 efforts, noting that approximately 46% of all current loans in private-label securities (“PLS”) in
 3 Richmond had already been modified and that over 20% *received a principal modification.* *Id.* at 6.
 4 Almost half of current PLS loans now have an interest rate below 3% (a quarter have a rate below
 5 2%), and average monthly payments for current loans have been steadily falling. *Id.* at 7-8.

6 Over the next months, SIFMA engaged in telephone calls and email correspondence with
 7 members of the City Council, the Mayor, and representatives from the City Manager’s Office, the
 8 City Attorney’s Office, and the Housing Authority, emphasizing the problems with eminent domain
 9 and keeping the City apprised of the mounting negative reactions from both the business community
 10 and the federal government. Among the alternatives highlighted were the Keep Your Home
 11 California (“KYHC”) programs, run by the CalHFA Mortgage Assistance Corporation. KYHC was
 12 given \$2 billion in federal funds to help low- and moderate-income homeowners keep their homes if
 13 they meet certain qualifying criteria, such as financial hardship through unemployment, illness, or
 14 disability, or a sudden increase in their monthly mortgage payment. Among other things, KYHC has
 15 nearly \$800 million allocated toward providing principal reduction.⁸

16 Notably, NID Housing Counseling Agency, in partnership with the City of Richmond,
 17 scheduled a Housing Fair for underwater borrowers at the Richmond Convention Center, on June 15,
 18 2013, offering on-the-spot loan modifications and counseling. *See* Exhibit E. KYHC, mortgage
 19 servicers, and others were available to provide assistance. In response, the Mayor organized a
 20 competing event for *the same borrowers at the same time* as the Housing Fair to promote MRP’s
 21 proposal. *See* Exhibit F.⁹ The Mayor followed that with an editorial in the *San Francisco*
 22 *Chronicle*—apparently in response to opposition voiced by industry groups—promising that the City
 23 was “not backing down” from “[t]he same Wall Street banks that targeted our communities with

24 ⁸ See generally <http://keepyourhomecalifornia.org> for information about the program. See
 25 <http://keepyourhomecalifornia.org/wp-content/uploads/2013/06/prp-6-2013.pdf> for information
 26 about the principal reduction program specifically.

27 ⁹ A web page memorializing the Mayor’s counterprogramming is available at *Town Hall Forum with*
 28 *Mayor McLaughlin: Using Eminent Domain to Reduce Principal for Underwater Homeowners*,
http://www.richmondprogressivealliance.net/info_archives/RPA111_ChevronGoodNeighbor.html.

1 predatory loans [that] are now trying to scare and bully us.” Gayle McLaughlin & Marvin Webb,
 2 *Richmond’s Plan to Battle Foreclosures*, S.F. Chron., June 17, 2013.¹⁰

3 Ultimately, the continuing pleas that the City abandon MRP’s plan were disregarded. On
 4 July 31, 2013, Richmond took the first step in California’s statutory scheme toward exercising
 5 eminent domain by sending “offer to purchase” letters to the trust owners and servicers of loans
 6 relating to 624 initially targeted properties. (Such letters are required pursuant to Code of Civil
 7 Procedure § 1245.230(c)(4) and Government Code § 7267.2 prior to commencing eminent domain
 8 proceedings.) Strikingly, the vast majority of the targeted loans are performing, and many relate to
 9 relatively high-value properties. *See Carolyn Said, Pricey Homes in Richmond’s Eminent Domain*
 10 *Plan*, S.F. Chron., Aug. 20, 2013.¹¹ The offer price is not based on any valuation of the loan’s value
 11 to RBMS certificateholders—*e.g.*, the net present value of the cash flow likely generated by the loan
 12 over its life. Instead, the offer price appears to be based on (a) an appraisal of the current value of
 13 the home that collateralizes the loan, which (b) is then discounted by 20-30% to reflect the lender’s
 14 estimated realization if the home were sold *today* at foreclosure. These offers, of course, were
 15 purely *pro forma*. Among other things, Richmond and MRP know that the trusts cannot sell
 16 individual loans out of the securitized pool because of REMIC tax requirements. *See* MRP FAQ
 17 Sheet, www.mortgageresolution.com/faqs (last visited Aug. 28, 2013) (acknowledging that
 18 individual loans cannot be purchased voluntarily).

19 Despite full knowledge of the legal and policy problems with MRP’s eminent domain plan,
 20 Richmond has cast itself into uncharted territory, and its actions are being watched closely by
 21 municipalities around the country. *See, e.g.*, Shaila Dewan, *A City Invokes Seizure Laws to Save*
 22 *Homes*, N.Y. Times, July 30, 2013, at A1. If MRP’s plan is permitted to proceed in Richmond, that
 23 will set a dangerous precedent for other localities. That is not merely because of the political appeal
 24 of launching a “homeowner protection plan” against vilified banks and lenders, but also because

25 _____
 26 ¹⁰ Available at www.sfchronicle.com/opinion/openforum/article/Richmond-s-plan-to-battle-foreclosures-4604029.php.

27 ¹¹ Available at www.sfgate.com/business/article/Pricey-homes-in-Richmond-s-eminent-domain-plan-4745146.php.
 28

MRP has promised that the cities themselves will financially benefit from their exercise of eminent domain by pocketing a portion of the profits when the loans are “seized” and refinanced.

ARGUMENT

Plaintiffs’ Complaint and motion for preliminary injunction aptly explain the fundamental, and facial, constitutional defects with the eminent domain plan. In particular, the plan—which is premised on the private financing of eminent domain for profit—cannot satisfy the “public use” requirement of the Taking Clause, especially given, as explained below, that the plan is not actually tailored to prevent foreclosures or remedy blight. If allowed to proceed, the plan would represent a dangerous expansion of *Kelo v. New London*, 545 U.S. 469 (2005), and an extraordinary precedent under which private parties could finance the taking of any tangible or intangible property interest—commercial leases, business franchises, contract distribution rights, corporate stock, *etc.*—on the ground that the new owner could put the property to “better” use, thereby raising local taxes, creating jobs, or providing some other asserted environmental, safety, or health benefit. *Amici* likewise agree that the seizure program violates the dormant commerce clause by directly targeting and unjustifiably interfering with securities traded in interstate markets, constitutes an impermissible abrogation of debt in violation of the Contracts Clause, and is extraterritorial in nature. To assist the Court in understanding the factual bases for such arguments, *amici* write to emphasize the fundamentally flawed premises and market-based problems underlying Defendants’ plan and why the dispute is ripe for adjudication.

I. DEFENDANTS’ SCHEME DOES NOT SERVE A VALID PUBLIC BENEFIT AND WILL CAUSE SUBSTANTIAL HARM TO FINANCIAL AND HOUSING MARKETS

A. Defendants’ Scheme Rests on a Flawed Assumption that Compelled, Across-the-Board Principal Reduction is Necessary to Save Underwater Loans from Default

The two core premises to MRP’s plan are that (a) underwater loans are very likely to lead to foreclosure, causing blight and other associated problems (Opp. 1-2, 23); and (b) PLS trusts are somehow uniquely unable to address the problem and provide reductions in the principal amount of the loan, purportedly “because of the way the PLS trusts were structured” (Opp. 3). These premises are critical to Defendants’ assertions that the seizure program serves a valid “public purpose” and that lenders and certificateholders would actually benefit. Both premises are fatally flawed.

1 First, the data do not support MRP's assertions about the likelihood of foreclosure. While
 2 MRP's "Richmond CARES" presentation projected a 50% foreclosure rate for underwater loans
 3 based on extrapolations *from 2011 data*,¹² Defendants' opposition papers do not attempt to defend
 4 that projection. Nor do they provide any specific, projected rate of default for the targeted loans,
 5 relying instead on vague and conclusory assertions from two of their declarants (Opp. 1, 2-3).

6 In fact, such assertions are unfounded, especially given that Defendants are substantially
 7 targeting—and *must* target to obtain refinancing—*performing* loans in which borrowers are making
 8 their payments and are relatively good credit risks. These are the borrowers who, though their
 9 property values may be underwater, have remained current through the economic crisis, shunned the
 10 opportunity for strategic default, and have continued to honor their contractual obligations. As
 11 observed by PIMCO, the world's largest bond investor, "the worst borrowers have either already
 12 defaulted or are seriously delinquent, and those borrowers who have successfully weathered the
 13 crisis are much more likely to continue making payments." Joshua Anderson & Emmanuel S.
 14 Sharef, PIMCO, *In Depth: Positioning for a Housing Recovery* (Aug. 2012) (hereinafter "Anderson
 15 & Sharef").¹³ Absent an external event such as job loss or illness, they are not likely to go into
 16 default now, and if they were facing default from such financial hardship, they would already be
 17 eligible for state and federal programs, such as KYHC or the Treasury Department's Home
 18 Affordable Modification Program. Indeed, housing prices in Richmond have risen 29.1% in the past
 19 year alone, and over 40% since 2011 when the Richmond market was at its nadir. *See* Zillow,
 20 *Richmond Home Prices and Home Values*, [www.zillow.com/local-info/CA-Richmond-home-](http://www.zillow.com/local-info/CA-Richmond-home-value/r_26751)
 21 [value/r_26751](http://www.zillow.com/local-info/CA-Richmond-home-value/r_26751) (last visited Aug. 26, 2013). This is consistent with, and outpaces, the national trend.
 22 Michael Cudzil & Daniel H. Hyman, PIMCO, *The U.S. Housing Market's Road to Recovery: Slower*
 23 *Speed Limits and Stricter Enforcement* (Apr. 2013).¹⁴ Overall, and as presented to the City, there is

24 ¹² *See* MRP, "Richmond CARES" Presentation, at 2, 4, <http://sireweb.ci.richmond.ca.us/sirepub/cache/2/efuhwctqngisxnfwbwrmf34bb/36546408262013113838931.pdf>.

25 ¹³ Available at [www.pimco.com/EN/Insights/Pages/Positioning-for-a-Housing-Recovery-](http://www.pimco.com/EN/Insights/Pages/Positioning-for-a-Housing-Recovery-August2012.aspx)
 26 [August2012.aspx](http://www.pimco.com/EN/Insights/Pages/Positioning-for-a-Housing-Recovery-August2012.aspx).

27 ¹⁴ Available at [http://www.pimco.com/EN/Insights/Pages/The-Housing-Markets-Road-to-Recovery-](http://www.pimco.com/EN/Insights/Pages/The-Housing-Markets-Road-to-Recovery-Slower-Speed-Limits-and-Stricter-Enforcement.aspx)
 28 [Slower-Speed-Limits-and-Stricter-Enforcement.aspx](http://www.pimco.com/EN/Insights/Pages/The-Housing-Markets-Road-to-Recovery-Slower-Speed-Limits-and-Stricter-Enforcement.aspx).

1 little basis for assuming such high foreclosure rates for all underwater loans, when trends are
 2 showing a decline in delinquencies and increasing success with existing loan modification programs.
 3 See Exhibit D; S&P Capital IQ, *Focus On Servicing: Despite Challenges, There Are Reasons For*
 4 *Optimism In Residential Servicing*, June 17, 2013;¹⁵ Anderson & Sharef; Nick Timiraos & Al Yoon,
 5 *California City Readies Controversial Loan-Seizure Program*, Wall St. J., July 31, 2013.

6 *Second*, the premise that PLS trusts are structurally unable to provide necessary loan
 7 modifications, including principal reduction, is false. PLS trustees typically have discretion, *when*
 8 *loans are on the road to default*, to engage in necessary loss mitigation measures and utilize various
 9 tools for “re-performance.” As the data presented to Richmond showed, a substantial percentage of
 10 PLS loans in the city already have had principal reductions. This stands in contrast to loans held by
 11 Freddie and Fannie, which do *not* use principal reduction as a loan modification option at all, but
 12 which are not part of MRP’s plan. The “problem” targeted by MRP, then, is not an inability to
 13 provide principal reduction for homeowners at risk of default, but the fact that PLS trusts do not
 14 provide across-the-board principal reduction for underwater, *but performing*, borrowers. That,
 15 however, is not any “defect” unique to PLS trusts. *No* prudent lending standards applicable to any
 16 kind of loan—whether held by PLS trusts, directly by banks, by or GSE—call for wholesale
 17 principal reduction for performing loans. There is no rational reason for singling out PLS trusts,
 18 except that it seems easier to vilify them politically and in the press.

19 In sum, while using eminent domain to cherry-pick performing loans out of securitized trusts
 20 may make for a profitable business model for MRP (which stands to collect roughly \$3 million in
 21 fees from the proposed seizures) and the investors funding the seizures, it is not designed to prevent
 22 foreclosure, remedy blight, or alleviate any structural defect in PLS trusts, especially when compared
 23 to programs that are already helping homeowners in distress.

24 **B. Seizing Loans from RMBS Trusts Will Cause Widespread Harm**

25 Defendants assert that PLS certificateholders having nothing to fear because, under any
 26 circumstances, they are guaranteed “just compensation.” For several reasons, this premise is flawed.

27 ¹⁵ Available at [https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?](https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1145946&SctArtId=163065&from=CM&nsI_code=LIME)
 28 [articleId=1145946&SctArtId=163065&from=CM&nsI_code=LIME](https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1145946&SctArtId=163065&from=CM&nsI_code=LIME).

Certificateholders, like the FHFA itself, reasonably fear that “just compensation” will not and cannot be provided, and the plan will severely harm PLS beneficiaries and the housing market.

1. **“Just Compensation” for the Seizures Cannot Possibly Be Provided**

For at least three reasons, the assertion that certificateholders are guaranteed “just compensation” for the loans is false.

First, because the eminent domain plan is being financed as part of a for-profit venture, the plan’s economic model *requires* that certificateholders be underpaid, by treating currently performing loans—which will continue to generate interest and cash flow for certificateholders for the indefinite future—as if they are already in foreclosure and liquidating them at a 20-30% discount. That is the only way to generate a “spread” upon refinancing the loan. But even if foreclosure rates were extraordinarily high (and they are not), Defendants’ plan turns a *potential* risk into an immediate loss, without attempting to value unique, individual circumstances, and without accounting for the possibilities that the loan will be repaid, or that—even if a default were to occur sometime in the future—property values will have risen and the borrowers will have made further payments in the meantime.

Second, apart from the economics of MRP’s plan, it is not clear that performing, securitized loans can be properly valued for “just compensation” purposes. There is no market for selling individual performing loans from an RMBS trust. Moreover, non-performing loans cannot be used as a baseline for valuing performing ones. A non-performing loan’s value is limited to the worth of the underlying collateral and the speculative chance that it might one day re-perform. A performing loan, by contrast, has value because it generates an ongoing cash stream in the form of interest and principal pay downs. Determining the value of an individual mortgage loan—*i.e.*, the likely cash flow of such a loan over its life—is therefore highly impracticable. *See* FHFA Memorandum at 5, 7 (explaining that “such a program will encounter difficulty in determining values for performing loans as there are too many variables . . . to accurately measure the full value of a mortgage” and further rejecting the notion that “pool level analytics for PLS loans and securities disclosures would suffice” or would allow one to “reverse engineer[]” the value of an individual, performing loan).

1 *Third*, Defendants fail to appreciate, and eminent domain proceedings are not equipped to
 2 account for, the outsized effect that seizing performing loans will have on trusts from which they are
 3 stripped. As explained above, the viability of RMBS depends on constructing a pool including
 4 diversified loans that are balanced in terms of risk, including risks of both default and prepayment.
 5 By cherry-picking loans held by borrowers with a history of performing, Defendants are culling
 6 relatively strong assets (ones likely to generate cash flow for an extended period of time) from the
 7 affected RMBS trusts while leaving behind the weakest (those more likely to prepay or default). As
 8 a result, Defendants’ plan—and the precedent set by it for other localities now and into the future—
 9 would undermine the stability and diversification of RMBS trusts, thus causing a devaluation of the
 10 securities themselves above and beyond the disruption to the cash-flow generated by the assets
 11 removed from the trusts.

12 2. **The Plan Will Harm the People It Purports to Help**

13 As a result of the foregoing, market forecasters and FHFA predict Defendants’ plan will have
 14 an outsized effect on the overall value of the trust and have severe negative impacts for the securities
 15 and housing markets, ultimately harming the very people Defendants purport to be helping.¹⁶

16 *First*, Defendants’ plan will harm anyone who has direct or indirect interests in the
 17 investment performance of RMBS. At bottom, certain risks—notably, foreclosure and
 18 prepayment—are factored into the value of an RMBS trust. The risk that a city might unilaterally
 19 seize and extinguish individual loans within that trust, much less at a steep discount to the current
 20 collateral value, is not currently factored into the value of the trust. *See* S&P Report (“In evaluating
 21 the likelihood of default, historical market data currently does not include defaults originating from
 22 eminent domain proceedings.”). The market will absorb Richmond’s actions and devalue private-
 23 label RMBS accordingly, especially those with loans from California or other areas where MRP has

24 _____
 25 ¹⁶ *See Richmond, Calif.’s Eminent Domain Proposal Could Have a Far-Reaching Impact on the U.S.*
 26 *RMBS Market*, Standard & Poor’s (Aug. 26, 2013) [hereinafter S&P Report] (“[T]he impact of such
 27 a proposal on the RMBS market could be significant, especially when the housing market is on a
 28 path to recovery and as private capital returns.”), *available at* https://www.globalcreditportal.com/ratingsdirect/renderArticle.do?articleId=1183286&SctArtId=178365&from=CM&ns1_code=LIME;
 FHFA Memorandum at 5.

made its plans known. It is not an exaggeration to say that *all RMBS certificateholders in America* are at risk of a loss if MRP's plan moves forward in Richmond and other areas. *See* Jiwon Park & Peter McNally et al., *Moody's Resi Landscape*, July 20, 2012, at 2 (noting that widespread use of eminent domain would increase losses by up to 30% in private-label RMBS pools).¹⁷ In the case of a corporate pension fund, its unfunded liabilities will increase, reducing profits, lowering stock price, and impairing its ability to invest in other businesses. For a public pension fund, like CalPERS, the state will have to respond by either reducing services or increasing taxes to make up the shortfall. These problems, in turn, will reduce demand for other RMBS pools and result in an "average three-notch downgrade[] to ratings on investment grade RMBS," diminishing their value further and creating a destructive feedback loop. Park & McNally, at 2, 6.

Second, the impact on RMBS will inexorably have negative effects on the housing market as a whole. For the reasons explained above, if Defendants' plan is allowed to proceed, the RMBS market—which is currently experiencing substantial growth—will have to factor in, and hedge against, the new risk that municipalities will use eminent domain to seize loans that go underwater. As a result—as observed by market forecasters such as S&P and Moody's—lenders will have to raise interest rates (to compensate for the risk) or require higher down payments, both of which would harm the recovery of the housing market, especially in municipalities, like Richmond, that have already put such plans into motion.¹⁸ Although Defendants contend that such predictions are merely "crying wolf," the FHFA itself recently explained that "the use of eminent domain by localities to restructure loans for borrowers that are 'underwater' on their mortgages presents a clear threat to the safe and sound operations" of the housing market. FHFA Memorandum at 5.

¹⁷ Available at www.structuredfinancelitigation.com/files/2012/07/Moodys-Resi-Landscape-newsletter.pdf.

¹⁸ *See, e.g.*, S&P Report, *supra* note 16 ("[T]he comparative decline in value for mortgages in jurisdictions that have employed eminent domain would likely make securitizations more speculative. We would expect this to translate into a higher mortgage rate and[] fewer credit opportunities for borrowers"); Yehudah Forster & Jiwon Park, *Moody's Credit Outlook*, Aug. 5, 2013, at 38, www.moodys.com/researchdocumentcontentpage.aspx?docid=PBC_157088 ("Cities would likely face repercussions if they adopt the plan. Lenders concerned about future eminent domain action likely would restrict credit to borrowers in those cities, demand lower LTVs as additional protection against loans becoming underwater or pass higher costs on to the borrowers.").

II. THE CASE IS RIPE FOR REVIEW

For several reasons, contrary to what Defendants assert, this case is ripe for review.

First, although the Resolution of Necessity hearing has yet to be held, it is manifest that Richmond has already decided to move forward with MRP's eminent domain plan. As explained above, Richmond has already initiated the statutory process for exercising eminent domain by sending trust owners and services hollow "offer" letters. Prior to that occurring, SIFMA and other organizations had communicated extensively with City officials responsible for implementing this plan and presented fully all of the data and legal and policy arguments demonstrating the plan's deficiencies. If these data were not sufficient to dissuade the Mayor and City Council from taking the first step in the seizure process, there is no reason to believe that the same arguments will prevent the City from adopting a "resolution of necessity" and proceeding with the seizures. Indeed, as noted above, not only have City representatives ignored the points raised by opponents, they have actively sought to *undermine* alternative loan modification programs, like the NID Housing Fair, and the Mayor recently led a march against Wells Fargo's headquarters, criticizing the lawsuit as "outrageous," and vowing the City was "absolutely not backing down."¹⁹

Second, not only is the plan likely to cause irreparable harm if it proceeds, but it is causing clear and discernible harm *right now*. Soon after Richmond announced it would go forward, the market began taking into account in setting prices the risk for mortgage lenders facing Richmond-like action throughout California. As one report from J.P. Morgan explained, in May 2013, the mere probability, based on the City's posturing, "that lenders may be[gin] pricing in potential legal risks such as eminent domain when looking at California. . . . [has already caused] a sizeable dispersion in jumbo rates by geography." J.P. Morgan, *Introducing the Non-Agency New Issue Jumbo Model*, J.P. Morgan US Fixed Income Strategy (May 10, 2013). Similarly, analysts for Moody's, one of the premier credit rating agencies, recently warned that the Mayor's *announcement itself* "of a controversial plan to . . . seiz[e] underwater mortgages through eminent domain. . . . is credit negative for US residential mortgage-backed securities." Forster & Park, *Moody's Credit Outlook*,

¹⁹ Richard Rogers, *Richmond Mayor, Protesters Turned Away at Wells Fargo Headquarters in San Francisco*, San Jose Mercury News, Aug. 15, 2013, www.mercurynews.com/ci_23870499.

at 37. These sentiments were recently echoed by Fitch Group, another of the US credit rating agencies, which announced in response to Richmond’s “announce[ment] to seize mortgages” that this “*potential* use of eminent domain by communities in California would negatively affect private label U.S. RMBS and future lending in th[e] region[.]”²⁰ Defendants’ argument that RMBS trusts should await the outcome of state eminent domain proceedings is unavailing where (a) the threat of eminent domain and the proceedings themselves will have harmed the trusts’ credit ratings during the course of litigation; and (b) the City, by its own admission, is nearly insolvent, meaning that there is no guarantee that the trusts and certificateholders could obtain effective recourse when the plan is found unconstitutional (or when the economics of MRP’s plan fail to work out because any compensation required would have to be above what the plan’s private investors expect to provide). Article III does not require Plaintiffs to wait for further harm before filing suit.²¹ Moreover, the negative effects of the proposal will be magnified if adopted by other localities, thus creating a strong interest in the prompt and decisive resolution of the issue.

Third, even if the precise list of targeted loans is still subject to further review, the seizure plan is facially unconstitutional and ripe for review. As explained, any iteration of MRP’s plan to engage in privately financed eminent domain for profit *must* target performing loans, and thus, does not target homes in imminent risk of foreclosure or “unlock” any value barred by the structure of PLS trusts. The expected profits are derived purely by forcibly liquidating existing contractual obligations at a discount, and then giving new lenders the opportunity to obtain and flip the loans.

CONCLUSION

For the foregoing reasons, Plaintiffs’ motion for a preliminary injunction should be granted.

²⁰ *US RMBS, Regional Lending at Risk in Eminent Domain Plans*, Fitch Ratings (Aug. 16, 2013), available at http://www.fitchratings.com/gws/en/fitchwire/fitchwirearticle/US-RMBS,-Regional?pr_id=799659&cm_mmc=FitchWire-_-US+RMBS%2C+Regional+Lending+at+Risk+in+Eminent+Domain+Plans-_-16+Aug+2013-_-NA.

²¹ See *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007) (holding that Plaintiff’s ability to avoid an threatened action did not deprive Court or jurisdiction to determine legality of threatened action); cf. *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979) (“[O]ne does not have to await the consummation of threatened injury to obtain preventive relief.” (quoting *Pennsylvania v. West Virginia*, 262 U.S. 553, 593 (1923))).

1 Dated: September 3, 2013

Respectfully submitted,
SIDLEY AUSTIN LLP

2
3 By: /s/ David R. Carpenter
David R. Carpenter

4 Attorneys for *Amici Curiae*
5 SECURITIES INDUSTRY AND FINANCIAL
6 MARKETS ASSOCIATION AND
7 CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA

8 Ira D. Hammerman
9 Kevin Carroll
10 SECURITIES INDUSTRY AND
11 FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 962-7382

12 *Of counsel for amicus curiae Securities Industry*
13 *and Financial Markets Association*

14 Rachel L. Brand
15 Steven P. Lehotsky
16 NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, NW
Washington, DC 20062
Telephone: (202) 463-5337

18 *Of counsel for amicus curiae Chamber of*
19 *Commerce of the United States of America*

EXHIBIT A



Invested in America

| asset management group

March 13, 2013

The Honorable Gayle McLaughlin
City of Richmond
Mayor's Office
450 Civic Center Plaza
Richmond, CA 94804

Dear Mayor McLaughlin:

I write in regards to discussions the Richmond City Council has recently undertaken pertaining to a plan developed by Mortgage Resolution Partners (MRP) that has been purported to be a solution to issues associated with foreclosures and underwater homeowners.

I have been closely following issues involving the use of eminent domain to seize mortgage loans, including the plans set forth by MRP. Mortgage Resolution Partners may profess that their plans have no cost, but this is incorrect. Before going too far down the eminent domain path, I would encourage you to have further discussions to better understand the full scope and potential harmful impacts of these programs on your residents.

My organization, the Securities Industry and Financial Markets Association (SIFMA)¹, represents the interests of hundreds of investors and other financial market participants, who may be directly targeted by the proponents of these plans. The investors we represent manage the retirement and other savings of millions of every day working citizens; they invest for municipal pension plans, state employees, teachers, and all other working savers. We believe that these savings should not be diminished so that private sector third parties can profit from schemes to seize the property of others.

We are also significantly concerned that the plans that have been put forth have serious legal defects, will be subject to challenge, and will require expensive and time consuming litigation. In this regard, I have attached a memorandum that was prepared for us by a noted constitutional scholar at the law firm O'Melveny and Myers when the eminent domain issue was first raised in San Bernardino County, California earlier this year.

Finally, we also believe that the execution of these plans to use eminent domain will result in a serious contraction of credit availability, as lenders and secondary market sources of funding react

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

New York | Washington

120 Broadway, 35th Floor | New York, NY 10271-0080 | P: 212.313.1200 | F: 212.313.1301
www.sifma.org

with defensive, very stringent underwriting criteria. This could make it much more difficult for people in your community to obtain new mortgages or to refinance existing mortgages.

I would be pleased to discuss these issues with you at greater length. We believe that there are better approaches to dealing with these problems, and we encourage you to engage in a dialogue with all interested parties, including those who originate and fund mortgage lending, to ensure that the right path is chosen. Please do not hesitate to contact me at 212-313-1389 or tcameron@sifma.org.

Sincerely,

A handwritten signature in dark ink, appearing to be 'TC', with a long horizontal line extending to the right.

Timothy Cameron, Esq.
Managing Director, Asset Management Group

Attachment

EXHIBIT B



EMINENT DOMAIN FOR MORTGAGE LOANS

A BAD IDEA FOR RICHMOND, CALIFORNIA
APRIL 9, 2013

Summary of the Issue

- Several municipalities - including the City of Richmond - are considering a plan proposed by MRP to use eminent domain to seize certain underwater performing mortgage loans held by private-label mortgage-backed securities (MBS).
- SIFMA believes the MRP plan is unconstitutional and will not survive a legal challenge. At a minimum, it will take years of litigation to resolve the issues raised by multiple litigants.
- The MRP plan arguably helps a few while hurting many.
 - The use of eminent domain will likely significantly reduce access to mortgage credit in the community. Residents who are able to get a mortgage will likely pay substantially higher interest rates and may be required to make larger down payments.
 - MBS are in the investment portfolios of most local, state and federal pension plans and individual 401ks and other retirement plans. The U.S. Government also heavily invests in MBS. These portfolios will likely suffer substantial losses.

Who is Mortgage Resolution Partners (MRP)?

- According to its December 2012 Form D filing with the SEC, Mortgage Resolution Partners is not a community advisory firm but rather a limited liability corporation in the pooled investment fund industry, in other words, an investment fund similar to other private equity or venture capital funds.
- MRP was incorporated in Delaware in 2011. It has 43 private funders, including former California politicians, California real estate investors, and other funds.
- MRP has developed a plan whereby the firm would serve as an advisor to municipalities that are exploring using eminent domain powers to seize mortgage loans.
- MRP claims they have Federal regulatory support for their scheme but we do not believe this to be the case based on our many discussions. Indeed, one Federal authority, the Federal Housing Finance Agency, has issued a public statement condemning the proposal.

What is MRP's Plan?

- MRP's plan targets the seizure of underwater, performing loans held by private-label securitizations.
- They are not targeting the vast majority of loans.
 - They are not “helping” people with loans in bank portfolios.
 - They are not “helping” people with loans guaranteed by Fannie Mae or Freddie Mac
 - They are not likely to help those who are closest to foreclosure - those who are not current on their mortgage.
- They are only targeting the 7% of Richmond loans that are in private label securitized mortgages.
- Of that 7%, their primary focus is on those people who are current on their mortgage and who have good credit. These are necessary requirements because MRP expects to refinance the PLS loans into FHA-guaranteed loans which have to satisfy certain criteria, including minimum credit scores and borrower payment histories.
- The City will be stuck holding any loans that can't be otherwise refinanced or worked out; it is important to keep in mind that the workout process can take months, if not years, and doesn't always succeed.
- The consequences of this action will be felt across all lending markets in Richmond – all prospective mortgage borrowers will pay the price.

Analysis: The MRP Plan is Unconstitutional and Violates State and Local Laws

- Eminent domain is the power of the State to take property from private citizens. It is limited by the 5th Amendment of the Constitution in that such taking must be for “public use” and provide “just compensation” to the former owner of the property.
- Eminent domain is typically exercised by a state or municipality to seize real property for a necessary public purpose such as widening a road, repairing a sewer line, or something of a similar nature. Using eminent domain to acquire underwater mortgages in securitized pools would be an extremely novel use of the eminent domain power.
- We believe that public use is not demonstrated when the primary beneficiaries are a small percentage of people who got principal reductions and the MRP funders. Moreover, any public “benefit” is outweighed by the negative consequences (e.g., tighter credit market and investment losses) of eminent domain’s use.
- A homeowner signs both a mortgage and a note. In a PLS, the note typically goes to the trustee, who is often domiciled outside the state. Eminent domain authority doesn’t extend beyond the state’s borders.
- The MRP proposal is also likely to be challenged as a violation of the Contracts Clause and the Commerce Clause of the U.S. Constitution.

MRP's Plan is, On Its Face, Not Fair Value

MRP Assumptions:

- Home value of original loan = \$400,000
- Mortgage Balance at time of purchase = \$320,000
- Current Home Value = \$200,000
- Current Mortgage Balance is \$300,000
- PLS gets paid \$160,000 when \$300,000 is owed
- New loan is issued for \$190,000
- \$30,000 differential goes to City (\$9500), MRP (\$4500), Expenses (\$3260) and MRP's funders (\$12,740)

It is difficult to demonstrate that fair value is being paid to the PLS owner when:

- PLS owner is getting \$160,000 but a new mortgage is being issued for \$190,000.
- “Current” underwater loans within private label securities are valued significantly higher than the prices these loans typically fetched in the whole market. – See, e.g. July 12, 2012 Credit Suisse analyst report
- It is not clear that 50% of performing PLS mortgages will default.
- Price paid does not reflect the additional diminution in value to the MBS when performing loans are taken out of the mix – note that just compensation includes such diminution in value. (Example: Beachfront property)

Analysis: The MRP Plan is Unconstitutional and Violates State and Local Laws

- SIFMA asked noted Constitutional expert Walter Dellinger of O'Melveny & Myers LLP to provide an analysis of the MRP plan in connection with San Bernardino County. Most of the analysis is similarly applicable to Richmond, California. Walter Dellinger concluded:

“As currently conceived, the MRP proposal suffers from multiple apparent legal and procedural defects, including defects arising under the U.S. Constitution and the California Constitution and under the laws of California and San Bernardino County governing the exercise of eminent domain authority. In light of these defects, we believe the MRP proposal is unlikely to survive a judicial challenge. At a minimum, it is almost certain to be tied up for years in litigation, exposing the government entities to enormous transaction costs, including potentially opposing counsel’s fees if the challenge is successful.”

Impact – Plan Would Impede Recovery of Mortgage Markets

- Actions such as the exercise of eminent domain, especially that which targets only MBS investors for significant losses, will work to undo the beginnings of recoveries that are beginning to take hold.
- Investors will be reluctant to provide funding for mortgage lending in an area that uses eminent domain to seize loans. Similarly, banks will be reluctant to lend their own money if it is perceived to be at risk. The result will be a significant contraction of credit availability, as lenders and secondary market sources of funding respond defensively.
- This means that it will be harder to get a loan to buy a house, and it will be harder for a non-underwater borrower to refinance to take advantage of a lower rate. The impact of this will be felt not only by homeowners, but also by businesses that depend directly on the housing market (such as construction, remodeling, and realtors) and by other businesses in the municipality that will be harmed as any improvement in mortgage and housing markets is reversed.

Impact – Analysts Predict Reduced Credit Availability

- *“In the best-case scenario, investors would charge a significant risk premium in the form of higher interest rates and steeper down payments. . . As a result, mortgage credit would fall further out of reach for would-be homebuyers, exerting downward pressure on home values. This continues the vicious cycle of deeper underwater homes, more foreclosures and a furthering of a depressed local economy.”* - Progressive Policy Institute, “Can Eminent Domain Help Underwater Homeowners?” July 2012
- *“We believe eminent domain would raise mortgage rates and reduce credit availability for borrowers in the affected areas, and is a long-term negative for housing finance and home prices.”* – J.P. Morgan, “MBS Market Commentary,” July 13, 2012
- *“We think the ... eminent domain proposal has short sighted benefits with very negative long term consequences, potentially 100-200 bp higher mortgage rates in the affected areas.”* - J.P. Morgan, “Non-agency RMBS Commentary,” July 13, 2012
- *As with any risky asset, lenders will eventually charge a risk-premium to compensate for taking on such additional risk. The fallout from such unintended consequences could be negative, with borrowers receiving higher interest rates. If the GSEs perceive that they are at risk, this pain could become much more intense, and it would turn out to be self-defeating in the long run”.* - Credit Suisse, “Non-Agency MBS,” July 12 2012

Impact – Analysts and Others Predict Reduced Credit Availability

- *“It would put another nail in the coffin of the private mortgage market. It just means you’re going to need to have monster credit scores and monster down payments if you’re ever going to have a private market.” - Scott Simon, PIMCO, Bloomberg News, Jun 28, 2012*
- *“Standard & Poor’s Ratings Services recognizes the efforts to revitalize the U.S. housing market, but believes the use of eminent domain would likely alter the traditional mortgage agreement between lender and borrower and may have unintended consequences in the RMBS market. . . Going forward, investors could demand a much higher premium for newer RMBS transactions, which we believe they will likely view as riskier with the added layer of uncertainty associated with eminent domain.” -S&P Capital IQ, October 8, 2012*
- *“FHFA has concerns that such programs could negatively affect the extension of credit to borrowers seeking to become homeowners and on investors that support the housing market.” - Federal Housing Finance Agency, Federal Register Notice, August 9, 2012*

Impact – Who Bears the PLS Losses From The MRP Proposal?

- It isn't primarily banks – it is retirement savers and other taxpayers, with the citizens of the municipality suffering collateral damage.
- **Average Investors**

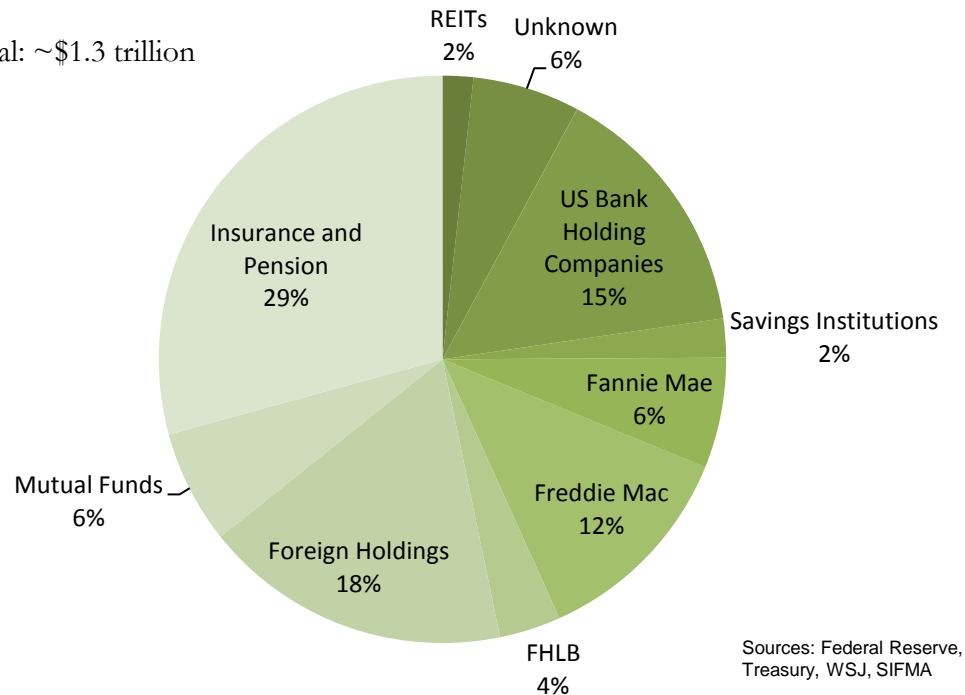
“The average taxpayer’s retirement account or pension will take a hit under this proposal. Securitizations, even private label securities, which are the target of this proposal, are investments made traditionally by institutional investors. In other words, teachers’ retirement accounts and firefighters’ pensions are the funds that are used for securitizations’ investments in order to make mortgage loans. So when the loan is “taken” by eminent domain and the investor is compensated at a severe discount, the difference is a direct loss for that retirement investment or policeman’s pension fund.” - Progressive Policy Institute, “Can Eminent Domain Help Underwater Homeowners?” July 2012
- **The Taxpayer**

“As conservator of Fannie Mae and Freddie Mac and regulator of 12 Federal Home Loan Banks, FHFA has significant concerns about the use of eminent domain to revise existing financial contracts and the alteration of the value of the companies’ securities holdings. FHFA has determined that action may be necessary on its part to avoid a risk to safe and sound operations at its regulated entities and to avoid taxpayer expense.” – FHFA News Release, August 8, 2012

Impact – Who Bears the PLS Losses From The MRP Proposal?

Holders of Non-Agency RMBS

Total: ~\$1.3 trillion



Others Who Have Weighed in On Eminent Domain

- *“I don’t think it’s the right way to address the problem. I don’t think it’s (in) the power of the city to do, to deal with the housing issue. We have a national issue. I think we have to address the issue. I just don’t think that’s the right instrument.” - Chicago Mayor Rahm Emanuel, August 14, 2012*
- *“The Homeownership Protection Program Joint Powers Authority board today voted unanimously to issue a Request for Qualifications seeking plans to address the mortgage crisis in San Bernardino county. But the board decided against considering proposals that would include the use of eminent domain.” – San Bernardino County News Release, January 24, 2103 (issued after more than 7 months of exploring MRP proposal).*
- *Where is the public purpose in this? The power grab smacks of the worst kind of ‘crony capitalism,’ using the power of government for private enrichment. In this case, the government would step in to violate a valid contract (a mortgage), impose losses on one private party (investors, like pension funds) to benefit other private parties (venture capitalists and borrowers. But for one to gain, another has to lose. There is no free lunch – and no public policy achievement.” – Douglas Holtz-Eakin, “Opinion-Mortgages and eminent domain: May they never meet,” Chicago Tribune, August 03, 2012*
- *“Government should not gamble on convoluted, legally untested schemes. San Bernardino County and two cities should reject a complex plan to rescue some underwater homeowners without a far more compelling case that the potential benefits outweigh the risks. Blindly forging ahead is the wrong approach for a proposal surrounded by so many troubling questions.” - The Press-Enterprise, July 22, 2012*

Others Who Have Weighed In On Eminent Domain

- *“Rather than advancing a public good, the main beneficiary of this idea would be those private interests most adept at manipulating the government. Policy makers should reject this abuse of property rights and allow the housing market to do what it already is doing -- recover on its own”. Steve Greenhunt, Opinion - Eminent Domain Is Bad Ploy for Underwater Mortgages,” Bloomberg-View, June 28, 2012*
- *“The housing bust has produced some terrible ideas, but now comes what may be the worst: A California county and two cities hit hard by foreclosures are thinking of using eminent domain to seize mortgages from private investors. “ - Wall Street Journal, Review & Outlook, July 12, 2012*
- *“It may be more good news than readers can take in one day . . . but this week politicians in financially struggling Southern California decided to think about the long run instead of going for a politically tempting quick fix. So bully to San Bernardino County and two Inland Empire cities for rejecting a proposal to use eminent domain to seize privately owned, residential mortgages.” –Wall Street Journal, Review & Outlook, January 25, 2013*

EXHIBIT C



April 18, 2013

Via Electronic and Overnight Delivery

The Honorable Gayle McLaughlin
The Honorable Nathaniel Bates
The Honorable Jovanka Beckles
The Honorable Courtland "Corky" Boozé
The Honorable Tom Butt
The Honorable Jael Myrick
The Honorable Jim Rogers
City of Richmond
City Council Chambers
440 Civic Center Plaza
Richmond, CA 94804

RE: Use of Eminent Domain to Acquire Underwater Mortgages

Dear Mayor McLaughlin, Vice Mayor Boozé and Councilmembers Bates, Beckles, Butt, Myrick, and Rogers:

The twenty-two organizations listed below recently learned that the City of Richmond has entered into an Advisory Services Agreement with Mortgage Resolution Partners (MRP) and that this agreement envisions using the City's eminent domain power to acquire certain underwater mortgage loans held by private-label mortgage-backed securities.

We are writing to make you aware of our serious concerns with this proposal. We understand that the timing is not ideal, and we apologize for not bringing these concerns to your attention earlier. We, however, understand that the Agreement does not obligate the City to use eminent

domain. We are therefore hopeful that you will weigh our concerns before making any final decisions.

We believe that the MRP proposal raises very serious legal and constitutional issues. No jurisdiction has ever used eminent domain to acquire underwater mortgages in securitized pools. Such a novel use of the eminent domain powers is unprecedented and would, in our view, not survive the multiple legal challenges that would ensue.

Under the 5th Amendment of the U.S. Constitution and California law, eminent domain powers can only be exercised when the proposed taking is for a public use or benefit and when just compensation has been provided to the former owner of the property. The MRP proposal does not satisfy either requirement. The proposal begins by targeting the 7% of Richmond loans that are in private-label mortgage backed securities and then narrows this group further to focus on those who are current on their existing mortgages, have good credit, and ideally don't have existing home equity loans or other liens on the property. While the small group of people that satisfy these criteria would initially appear to be helped, this help comes at the substantial expense of the entire Richmond community and other potential mortgage borrowers across the country.

In addition, the proposal on its face substantially undervalues the existing owners' holdings. In our view, fair compensation has not been provided when the amount paid is well below the face value of the taken note and when it does not reflect the diminution in the value of the overall investment. In MRP's own example, the mortgage that they pay investors \$160,000 for is refinanced shortly thereafter for \$190,000 with much of the additional \$30,000 going to MRP and its funders. The plan does not provide just compensation.

Furthermore, the mortgage note is typically held by the PLS trustee who is often domiciled outside the State of California. A City's eminent domain authority does not extend beyond the City's borders; it certainly doesn't apply outside the state. We therefore believe that entities that seek to use eminent domain in this highly unusual way will face years of costly litigation brought by multiple litigants who, because of fiduciary and other obligations, are forced to sue to protect the assets of their investors. For these and other reasons, Richmond may be tied up in costly litigation for years.

In addition to the legal issues, the use of eminent domain will also be immensely destructive to U.S. mortgage markets in general and to specific communities using eminent domain, in particular. If the sanctity of the contractual relationship between a borrower and a creditor is undermined by eminent domain, both lenders and investors will be reluctant to provide future funding. The result will be a significant contraction of credit availability, particularly in eminent domain communities. It will be much harder to get a loan, and any loan that is granted will likely come with much stronger credit scores, higher interest rates and larger down payments. This in turn could actually serve to further depress housing values in the City.

We also want to make you aware of who invests in private label mortgage-backed securities and who is therefore harmed if these mortgages are taken by eminent domain. More than a third of the approximately \$1.3 trillion currently held in PLS is held in pension plans, annuities and other insurance products, and mutual funds. Thus, the PLS losses are suffered not by large institutions but by every day savers and investors who have these investments in their pension and 401k plans, their college savings plans and their individual investment portfolios. Fannie Mae, Freddie Mac and the Federal Home Loan Board also own hundreds of billions of dollars of PLS. The Federal

Housing Financing Agency (FHFA), which is the conservator of Fannie Mae and Freddie Mac and the regulator of Federal Home Loan Banks, has expressly stated that "action may be necessary on its part to avoid a risk to safe and sound operations at its regulated entities and to avoid taxpayer expense."

We recognize the City's intention to assist homeowners who are facing financial difficulties. We, however, believe that using the power of eminent domain to abrogate a contractual agreement between borrower and creditor would have far greater and lasting negative effects on existing and future Richmond homeowners and on small Main Street investors from Richmond and elsewhere who have these investments in their pension plans and other savings vehicles.

We thank you for your time and consideration. Please do not hesitate to contact any of our organizations for more information or further discussion.

Sincerely,

Securities Industry and Financial Markets Association
American Bankers Association
American Council of Life Insurers
American Land Title Association
American Securitization Forum
Association of California Life and Health Insurance Companies
Association of Financial Guaranty Insurers
Association of Mortgage Investors
California Association of Realtors
California Bankers Association
California Escrow Association
California Land Title Association
California Mortgage Association
California Mortgage Bankers Association
Consumer Mortgage Coalition
Investment Company Institute
Mortgage Bankers Association
National Association of Home Builders
Richmond Chamber of Commerce
The Financial Services Roundtable
The Housing Policy Council of The Financial Services Roundtable
West Contra Costa Association of Realtors

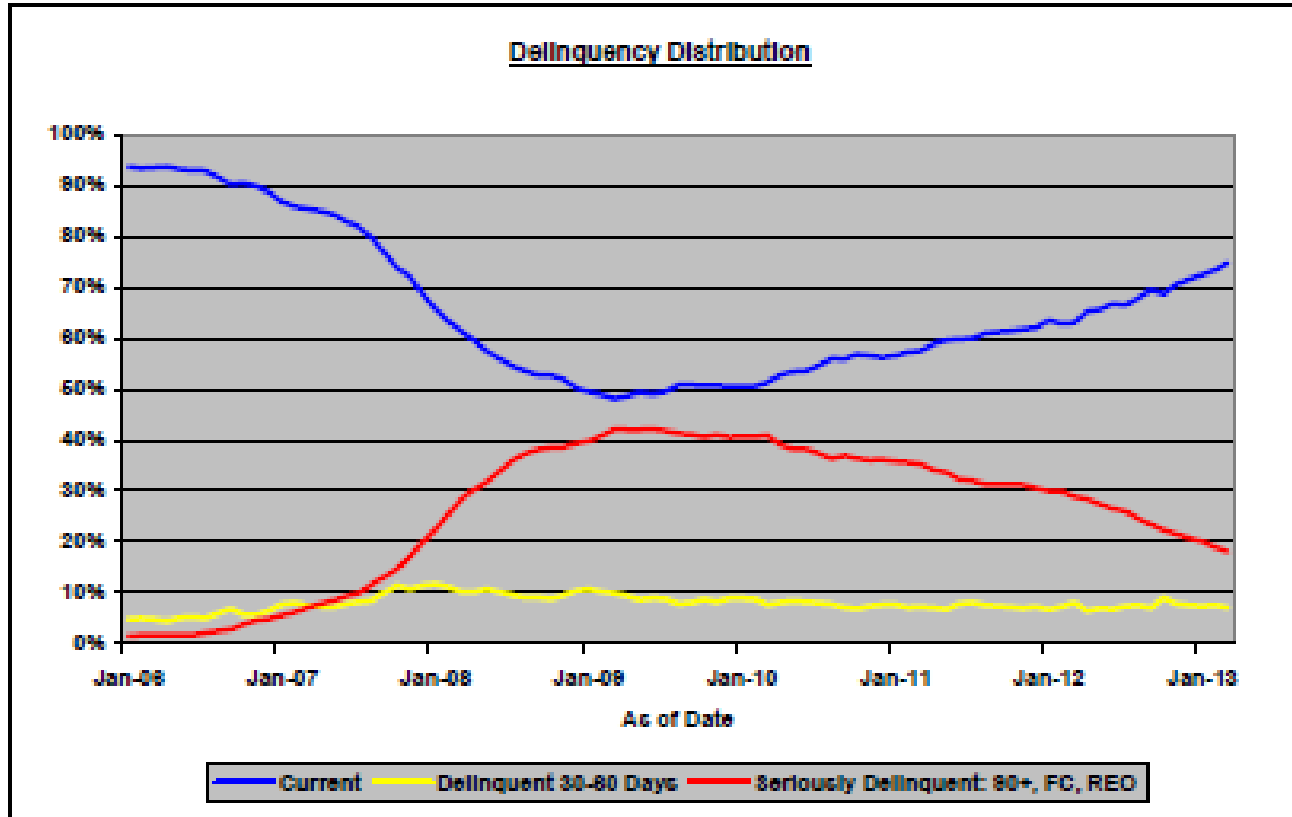
Cc: Bill Lindsay, City Manager
Bruce Goodmiller, City Attorney
Patrick Lynch, Housing & Community Development Director
Carlos Privat, Assistant City Attorney

EXHIBIT D

Mortgage Data – Richmond CA

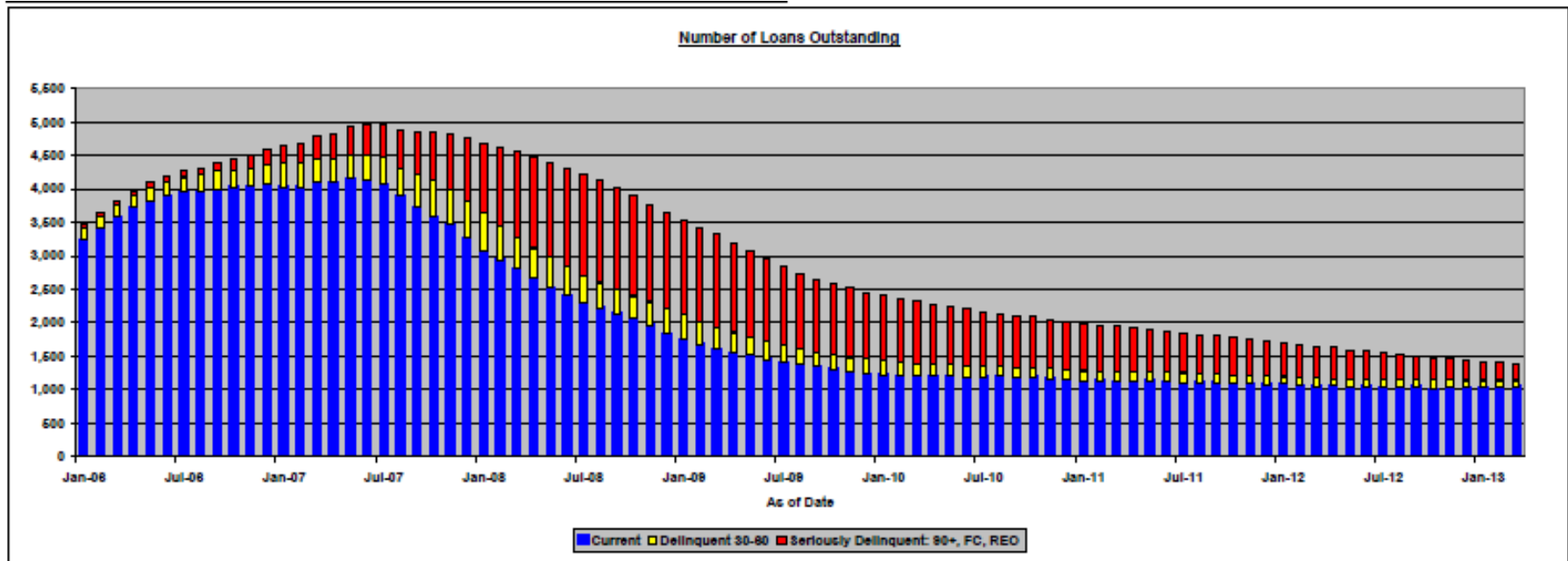
Loans in Private Label Mortgage-
Backed Securities

Overall Delinquency Trends Materially Improving



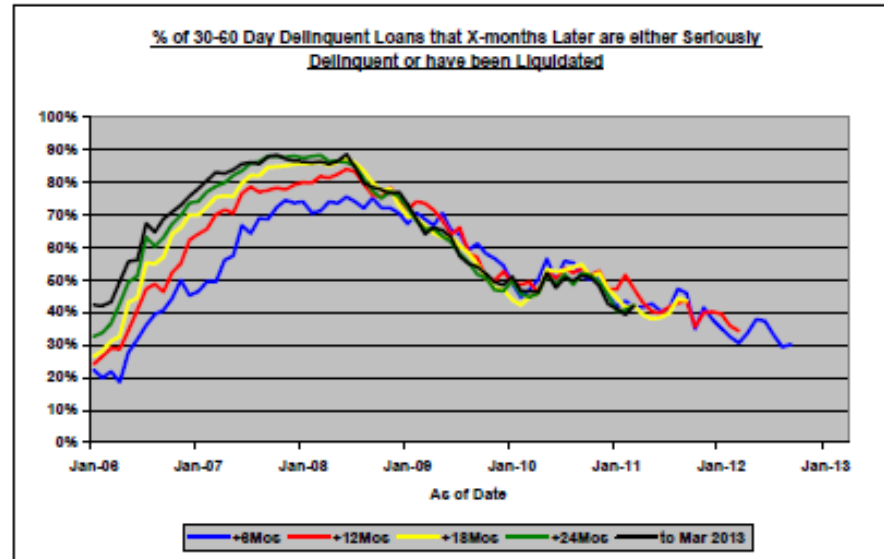
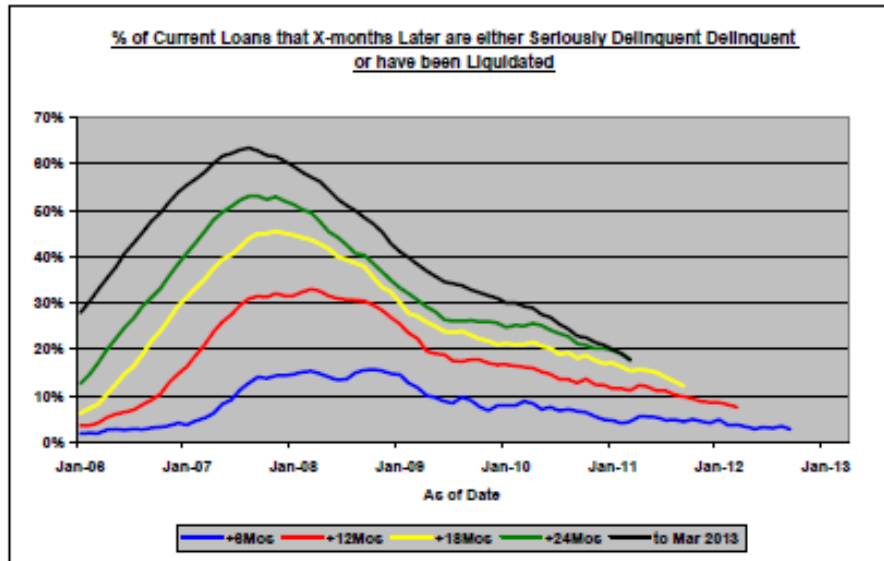
- From a low of approximately 50%, around 75% of loans in PLS in the Richmond area are current.
- The seriously delinquent share has been halved

Delinquency Trends Improving / Number of Loans in PLS



- The data shows the significant decrease in delinquent loans, and also reflects the reduction in the total number of outstanding loans in private label securities – there are about 1,000 remaining.

Transitions into Delinquency Significantly Lower



- The top chart shows what percentage of **current** loans (snapshot at a point in time) became delinquent/liquidated in a given period of time from that date.

- The bottom chart shows what percentage of 30-60 day delinquent loans were seriously delinquent/liquidated in a given period of time from that date.

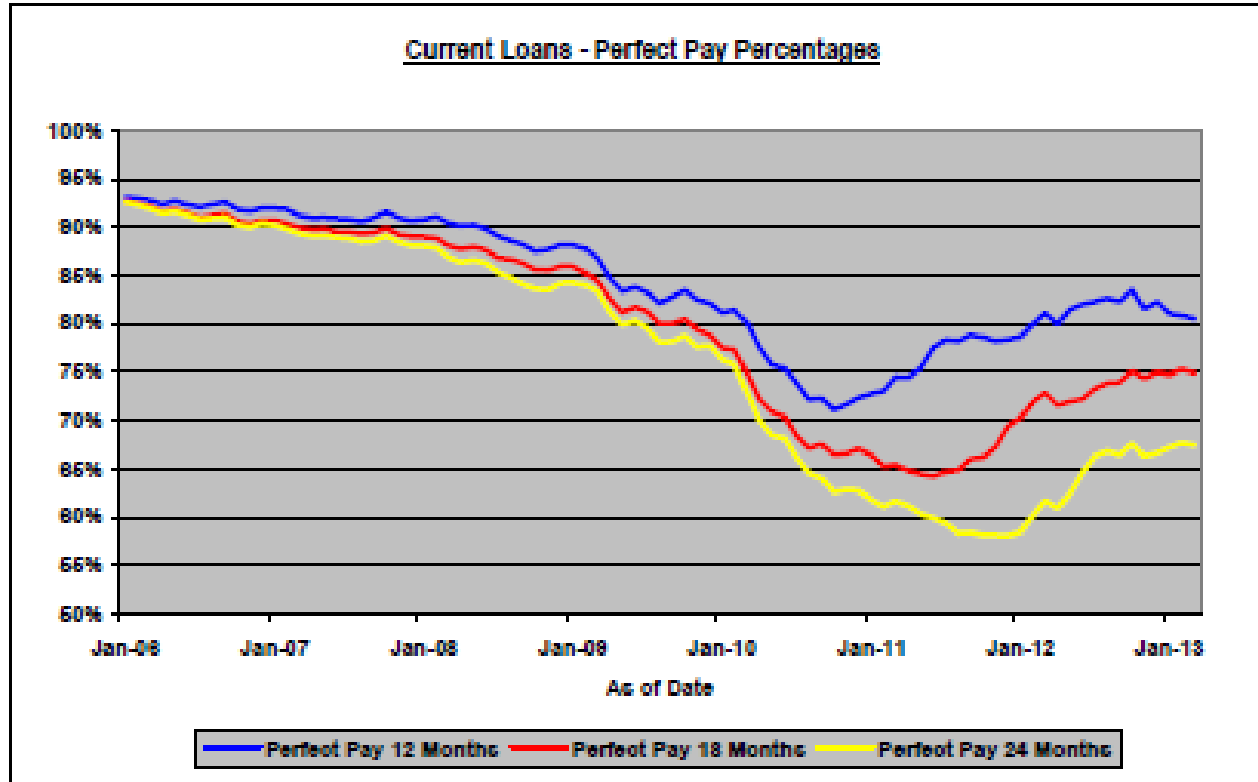
- The black lines show the transition rate into serious delinquency from the date on the x-axis until today.

- The data shows that transitions into delinquency have been very significantly reduced – in other words, far fewer borrowers are falling behind as the housing market and economy recovers.

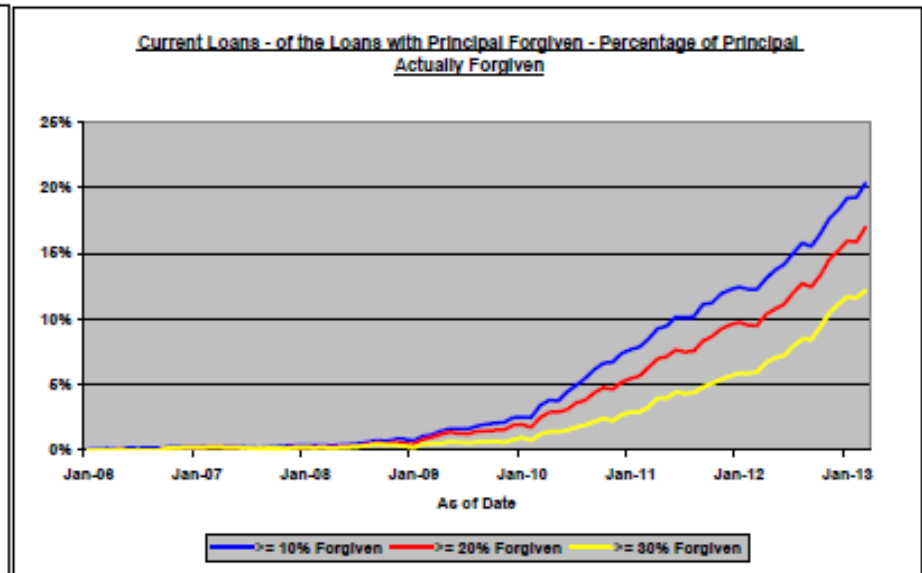
- For example, less than 10% of loans that were current as of Jan 2012 were delinquent 1 year later (red line on top chart).

- The situation in 2008 is not the same as the situation today.

Payment Performance Continues to Improve

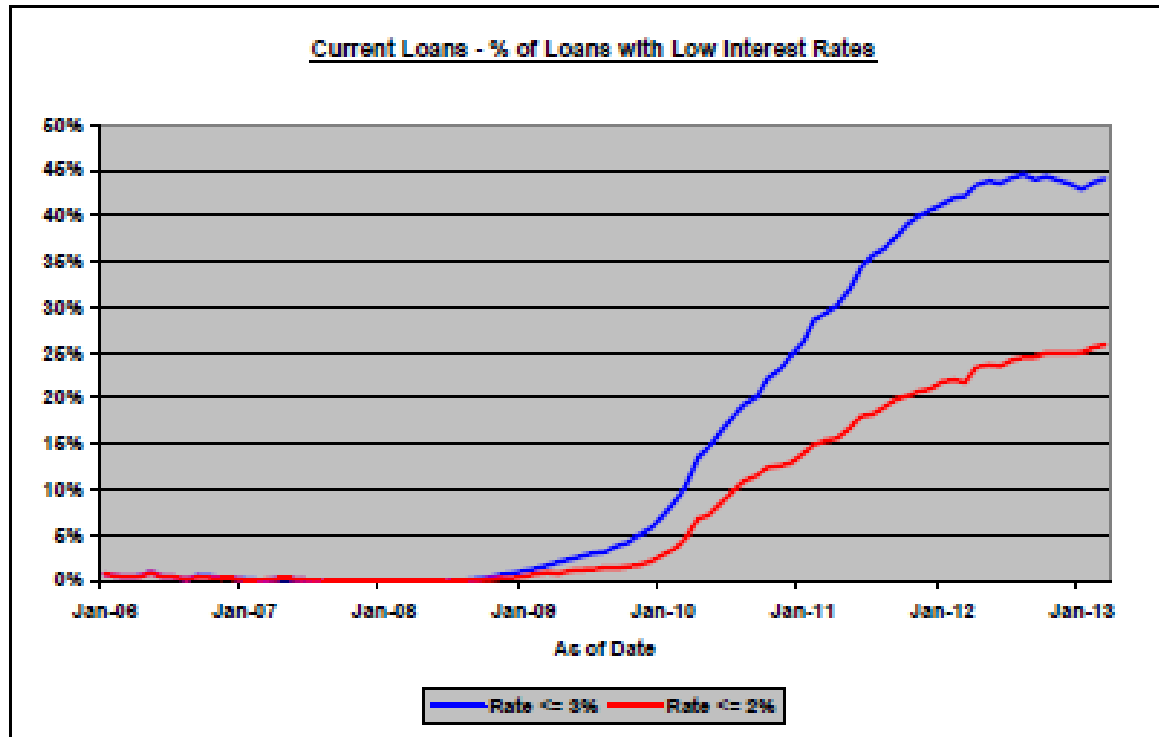


- Just over 80% of current borrowers have not missed a payment in a year. Around 67% have not missed a payment in two years.
- The dip in the lines in 2010-2012 reflect payment difficulties encountered by borrowers during the depths of the recession.
- The situation in 2008-2009 is not the same as the situation today.



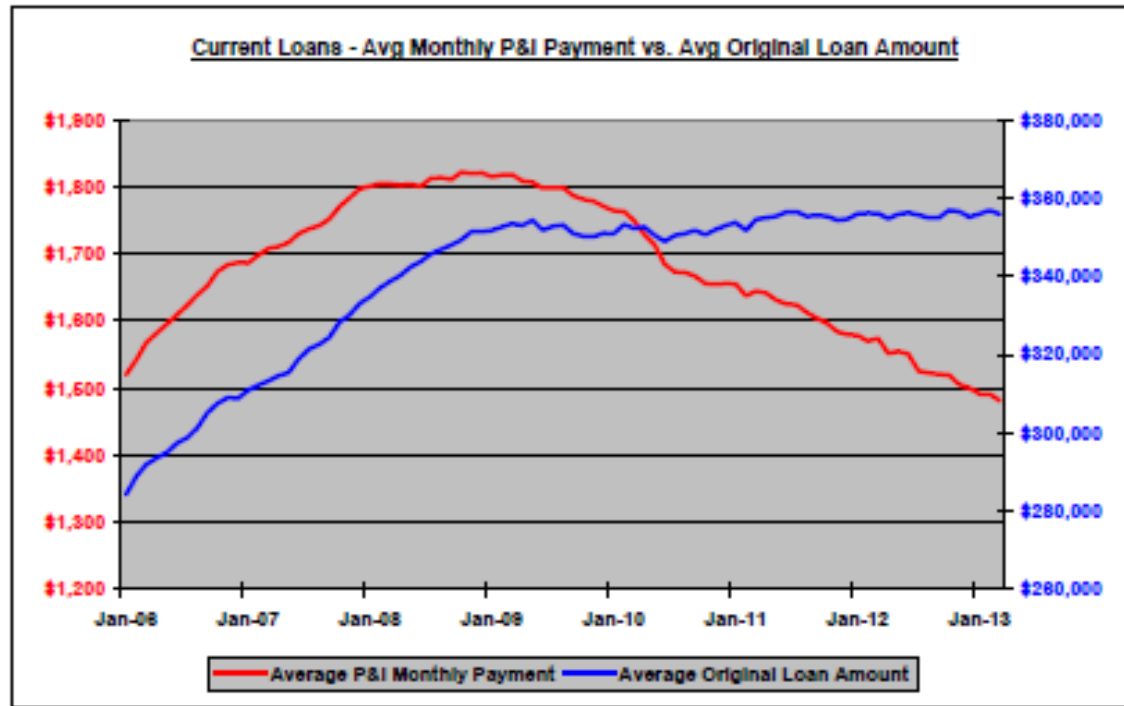
- Approximately 17% of these loans received a principal reduction of 20% or more.
- Around 12% received a principal reduction of 30% or more.

Interest Rates



- Approximately 46% of current loans in PLS in Richmond have already been modified and have an interest rate below 3%.
- Over 25% have a rate below 2%

Monthly Payment Burdens



- This chart shows the trend in loan size as well as average monthly payments for current loans
- Average monthly payment burdens have decreased approximately 13% since 2009. This includes loans which have not been modified, and therefore is consistent with modification trends shown on the previous page.

Data Sources for all charts:

RBS Securities, Inc; CoreLogic Loan Performance

EXHIBIT E



PLEASE SAVE THE DATE

NID HOUSING COUNSELING AGENCY

IN PARTNERSHIP WITH

THE CITY OF RICHMOND

Will be hosting a Housing Fair on:

Saturday June 15th 2013

From 9:00a.m.-3:00p.m.

At the:

Richmond Memorial Auditorium and Convention Center

403 Civic Center Plaza

Richmond, CA 94804

We will be assisting the public with:

- Foreclosure Counseling**
- Keep Your Home California**
- Fair Housing Assistance**
- Pre-Purchase Counseling**
- Rehab Loans through the City of Richmond**

YOUR PRESENCE IS REQUESTED

For more information or RSVP:

Nancy Rivera

nancyrivera@nidonline.org

510-899-4456



EXHIBIT F



June 14, 2013

Hon. Gayle McLaughlin
450 Civic Center Plaza
Richmond, CA 94804

Re: Eminent Domain Public Forum

Dear Mayor McLaughlin:

The members of the California Bankers Association and California Mortgage Bankers Association commend you for your strong voice on behalf of struggling homeowners in Richmond. When co-sponsoring events such as the 2013 Housing Resource Fair this Saturday, you should be keenly aware of the efforts that responsible mortgage lenders serving Richmond are making to help achieve the same goals that you have. We write to express disappointment in your decision to hold a public forum on the same day as the Resource Fair to promote a flawed initiative to use eminent domain as a tool to modify mortgages.

We particularly object to the use of caustic language by ACCE to characterize legitimate concerns raised about the plan. The punitive and (we believe) illegal plan appears to be driven by a simplistic view that the financial crisis was caused by predatory lenders preying on homeowners. This is a grossly unfair caricature of the mortgage lending community which is uniformly opposed to the eminent domain plan for well-founded reasons. We would hope that our association's members' demonstrated long-term commitment to the City in the form of investments, giving, and the provision of credit and other financial services—to include this weekend's event—warrants a more even-handed and nuanced treatment by your office.

Sincerely,

A handwritten signature in black ink, appearing to read "MCPadden", written over a stylized "LCAL" logo.

Maurine C. Padden
EVP/Chief Operating Officer

A handwritten signature in black ink, appearing to read "Susan Millazo", written in a cursive style.

Susan Millazo
President/CEO

cc: City Council Members
Housing Director Patrick Lynch
City Manager Bill Lindsay
City Attorney

David R. Carpenter (SBN 230299)
Email: drcarpenter@sidley.com
Collin P. Wedel (SBN 278461)
Email: cwedel@sidley.com
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013
Telephone: (213) 896-6604
Facsimile: (213) 896-6600

Carter G. Phillips
(*pro hac vice application pending*)
Email: cphillips@sidley.com
Jonathan F. Cohn
(*pro hac vice application pending*)
Email: jfcohn@sidley.com
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

*Attorneys for Amici Curiae Securities Industry and
Financial Markets Association and Chamber of
Commerce of the United States of America*

Ira D. Hammerman
Kevin Carroll
SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 962-7382

*Of counsel for amicus curiae Securities
Industry and Financial Markets Association*

Rachel L. Brand
Steven P. Lehotsky
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, NW
Washington, DC 20062
Telephone: (202) 463-5337

*Of counsel for amicus curiae Chamber of
Commerce of the United States of America*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee, *et al.*

Plaintiffs,

vs.

CITY OF RICHMOND, CALIFORNIA, a
municipality; and MORTGAGE
RESOLUTION PARTNERS LLC,

Defendants.

Case No. CV-13-3663-CRB

**[PROPOSED] ORDER GRANTING
MOTION OF SECURITIES INDUSTRY
AND FINANCIAL MARKETS
ASSOCIATION AND THE CHAMBER OF
COMMERCE OF THE UNITED STATES
OF AMERICA FOR LEAVE TO
PARTICIPATE AS *AMICI CURIAE*, AND
TO FILE A MEMORANDUM AS *AMICI
CURIAE* IN SUPPORT OF PLAINTIFFS'
MOTION FOR A PRELIMINARY
INJUNCTION**

Date: September 13, 2013
Time: 10:00 a.m.
Judge: Hon. Charles R. Breyer

1 Good cause appearing, the Motion of the Securities Industry and Financial Markets
2 Association (“SIFMA”) and the Chamber of Commerce of the United States of America (the
3 “Chamber”) for leave to participate as *amici curiae* and to file a Memorandum in support of
4 Plaintiffs’ Motion for a Preliminary Injunction is hereby GRANTED. The Court deems the
5 concurrently lodged Memorandum of SIFMA and the Chamber FILED as of September 3, 2013.

6 IT IS SO ORDERED.

7
8 Dated:

Honorable Charles R. Breyer
United States District Court Judge

David R. Carpenter (SBN 230299)
Email: drcarpenter@sidley.com
Collin P. Wedel (SBN 278461)
Email: cwedel@sidley.com
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013
Telephone: (213) 896-6604
Facsimile: (213) 896-6600

Carter G. Phillips
(*pro hac vice application pending*)
Email: cphillips@sidley.com
Jonathan F. Cohn
(*pro hac vice application pending*)
Email: jfcohn@sidley.com
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

*Attorneys for Amici Curiae Securities Industry and
Financial Markets Association and Chamber of
Commerce of the United States of America*

Ira D. Hammerman
Kevin Carroll
SECURITIES INDUSTRY AND
FINANCIAL MARKETS ASSOCIATION
1101 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 962-7382

*Of counsel for amicus curiae Securities
Industry and Financial Markets Association*

Rachel L. Brand
Steven P. Lehotsky
NATIONAL CHAMBER LITIGATION
CENTER, INC.
1615 H Street, NW
Washington, DC 20062
Telephone: (202) 463-5337

*Of counsel for amicus curiae Chamber of
Commerce of the United States of America*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Trustee, *et al.*

Plaintiffs,

vs.

CITY OF RICHMOND, CALIFORNIA, a
municipality; and MORTGAGE
RESOLUTION PARTNERS LLC,

Defendants.

Case No. CV-13-3663-CRB

PROOF OF SERVICE CM/ECF

1 I, Barbara Cunningham, hereby declare:

2 I am employed in the City and County of Los Angeles, California in the office of a member
3 of the bar of this court whose direction the following service was made. I am over the age of
4 eighteen years and not a party to the within action. My business address is Sidley Austin LLP, 555
5 West Fifth Street, Suite 4000, Los Angeles, California 90013.

6 On September 3, 2013, the following documents, as described as:

- 7 1. MOTION OF SECURITIES INDUSTRY AND FINANCIAL MARKETS
8 ASSOCIATION AND CHAMBER OF COMMERCE OF THE UNITED STATES
9 OF AMERICA FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE*, AND TO
10 FILE MEMORANDUM, AS *AMICI CURIAE*, IN SUPPORT OF PLAINTIFFS'
11 MOTION FOR A PRELIMINARY INJUNCTION;
- 12 2. [PROPOSED] MEMORANDUM OF THE SECURITIES INDUSTRY AND
13 FINANCIAL MARKETS ASSOCIATION AND THE CHAMBER OF
14 COMMERCE OF THE UNITED STATES OF AMERICA, AS *AMICI CURIAE*, IN
15 SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION;
- 16 3. [PROPOSED] ORDER GRANTING MOTION OF SECURITIES INDUSTRY AND
17 FINANCIAL MARKETS ASSOCIATION AND THE CHAMBER OF
18 COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO
19 PARTICIPATE AS *AMICI CURIAE*, AND TO FILE A MEMORANDUM AS
20 *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS' MOTION FOR A
21 PRELIMINARY INJUNCTION.

22 were served via CM/ECF by the Clerk of the Court, upon all counsel of record registered to receive
23 electronic filing, as indicated on the Court's website, or by the United States Mail, upon those parties
24 not registered for electronic filing.

25 I declare under penalty of perjury under the laws of the United States of America that the
26 foregoing is true and correct. Executed on September 3, 2013, at Los Angeles, California.

27 /s/ Barbara Cunningham

28 Barbara Cunningham