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Attorney for Wells Fargo Bank, solely in its trustee capacity

22 **UNITED STATES DISTRICT COURT**
23 **NORTHERN DISTRICT OF CALIFORNIA**

24 **WELLS FARGO BANK, NATIONAL**
25 **ASSOCIATION, solely in its capacity as**
26 *Trustee for*
27 ABFC 2002-OPT1 Trust, ABFC 2005-OPT1
Trust, ABFC 2006-OPT1 Trust, Asset Backed
28 Securities Corporation Home Equity Loan
Trust, Series 2003-HE6, Asset Backed

Case No. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Securities Corporation Home Equity Loan
Trust, Series 2004-HE2, Asset Backed
2 Securities Corporation Home Equity Loan
Trust, Series AMQ 2007-HE2, Banc of America
3 Funding 2005-B Trust, Banc of America
4 Funding 2005-G Trust, Banc of America
5 Funding 2006-E Trust, Banc of America
6 Funding 2007-E Trust, BCAP LLC TRUST
2006-AA1, BNC Mortgage Loan Trust 2007-4,
7 Banc of America Alternative Loan Trust 2003-
8, Banc of America Alternative Loan Trust
8 2006-5, Banc of America Alternative Loan
9 Trust 2003-10, Banc of America Alternative
10 Loan Trust 2003-11, Banc of America
11 Alternative Loan Trust 2003-4, Banc of
12 America Alternative Loan Trust 2003-5, Banc
13 of America Alternative Loan Trust 2003-6,
14 Banc of America Alternative Loan Trust 2003-
15 8, Banc of America Alternative Loan Trust
16 2003-9, Banc of America Alternative Loan
17 Trust 2004-1, Banc of America Alternative
18 Loan Trust 2004-11, Banc of America
19 Alternative Loan Trust 2004-6, Banc of
20 America Alternative Loan Trust 2004-7, Banc
21 of America Alternative Loan Trust 2005-6,
22 Banc of America Alternative Loan Trust 2005-
23 7, Banc of America Alternative Loan Trust
24 2006-2, Banc of America Alternative Loan
25 Trust 2006-3, Banc of America Alternative
26 Loan Trust 2006-5, Banc of America
27 Alternative Loan Trust 2006-7, Banc of
28 America Mortgage 2003-6 Trust, Banc of
America Mortgage 2003-D Trust, Banc of
America Mortgage 2003-H Trust, Banc of
America Mortgage 2003-K Trust, Banc of
America Mortgage Trust 2004-11, Banc of
America Mortgage Trust 2004-6, Banc of
America Mortgage Trust 2004-8, Banc of
America Mortgage Trust 2004-9, Banc of
America Mortgage 2004-B Trust, Banc of
America Mortgage 2004-C Trust, Banc of
America Mortgage 2004-D Trust, Banc of
America Mortgage 2004-I Trust, Banc of
America Mortgage 2004-K Trust, Banc of
America Mortgage 2004-L Trust, Banc of
America Mortgage Trust 2005-10, Banc of

1 America Mortgage Trust 2005-11, Banc of
 2 America Mortgage Trust 2005-4, Banc of
 3 America Mortgage Trust 2005-7, Banc of
 4 America Mortgage 2005-A Trust, Banc of
 5 America Mortgage 2005-E Trust, Banc of
 6 America Mortgage 2005-J Trust, Banc of
 7 America Mortgage 2007-1 Trust, Banc of
 8 America Mortgage 2007-2 Trust, Banc of
 9 America Mortgage 2004-J Trust, Banc of
 10 America Mortgage 2005-D Trust, Banc of
 11 America Mortgage 2005-E Trust, Banc of
 12 America Mortgage 2007-3 Trust, Bear Stearns
 13 Asset Backed Securities, Inc. 2000-2, Bear
 14 Stearns Mortgage Funding Trust 2006-AR1,
 15 Bear Stearns Mortgage Funding Trust 2006-
 16 AR2, Bear Stearns Mortgage Funding Trust
 17 2006-AR3, Bear Stearns Mortgage Funding
 18 Trust 2006-AR4, Bear Stearns Mortgage
 19 Funding Trust 2006-AR5, Bear Stearns
 20 Mortgage Funding Trust 2007-AR1, Bear
 21 Stearns Mortgage Funding Trust 2007-AR2,
 22 Bear Stearns Mortgage Funding Trust 2007-
 23 AR3, Bear Stearns Mortgage Funding Trust
 24 2007-AR4, Bear Stearns Mortgage Funding
 25 Trust 2007-AR5, Bear Stearns ARM Trust
 26 2007-3, Carrington Mortgage Loan Trust,
 27 Series 2006-FRE2, Carrington Mortgage Loan
 28 Trust, Series 2006-NC2, Carrington Mortgage
 Loan Trust, Series 2006-NC3, Carrington
 Mortgage Loan Trust, Series 2006-NC3,
 Carrington Mortgage Loan Trust, Series 2006-
 NC5, Carrington Mortgage Loan Trust, Series
 2006-OPT1, Carrington Mortgage Loan Trust,
 Series 2006-RFC1, First Franklin Mortgage
 Loan Trust 2004-FF11, First Franklin Mortgage
 Loan Trust 2006-FF15, Freddie Mac Securities
 REMIC Trust 2005-S001, GMACM Home
 Equity Loan Trust 2003-HE2, GreenPoint MTA
 Trust 2005-AR3, GreenPoint Mortgage Funding
 Trust 2005-AR4, GreenPoint Mortgage Funding
 Trust 2005-AR5, GreenPoint Mortgage Funding
 Trust 2006-AR1, GreenPoint Mortgage Funding
 Trust 2006-AR2, GreenPoint Mortgage Funding
 Trust 2006-AR3, HarborView Mortgage Loan
 Trust 2006-10, HarborView Mortgage Loan
 Trust 2006-12, HarborView Mortgage Loan

1 Trust 2007-1, HarborView Mortgage Loan
2 Trust 2007-3, Impac CMB Trust Series 2004-
3 11, Impac CMB Trust Series 2004-6, Impac
4 CMB Trust Series 2005-6, Irwin Home Equity
5 Loan Trust 2007-1, Impac Secured Assets
6 Corp., Mortgage Pass- Through Certificates,
7 Series 2005-2, Lehman Mortgage Trust 2006-9,
8 Lehman Mortgage Trust 2007-4, MASTR Asset
9 Backed Securities Trust 2003-OPT2, MASTR
10 Asset Backed Securities Trust 2007-NCW,
11 Merrill Lynch Mortgage Investors Trust, Series
12 2004-WMC5, Merrill Lynch Mortgage
13 Investors Trust, Series 2005-WMC2, Merrill
14 Lynch Mortgage Investors Trust Series MLCC
15 2004-B, Merrill Lynch Mortgage Investors
16 Trust Series MLCC 2006-1, Merrill Lynch
17 Mortgage Investors Trust Mortgage Loan
18 Asset-Backed Certificates, Series 2006-HE1,
19 Morgan Stanley ABS Capital I Inc. Trust 2005-
20 WMC2, Morgan Stanley ABS Capital I Inc.
21 Trust 2005-WMC3, Morgan Stanley ABS
22 Capital I Inc. Trust 2005-WMC4, Morgan
23 Stanley ABS Capital I Inc. Trust 2006-WMC1,
24 MSCC HELOC Trust 2007-1, National City
25 Mortgage Capital Trust 2008-1, Option One
26 Mortgage Loan Trust 2003-5, Option One
27 Mortgage Loan Trust 2003-6, Option One
28 Mortgage Loan Trust 2005-3, Option One
Mortgage Loan Trust 2005-4, Option One
Mortgage Loan Trust 2006-1, Option One
Mortgage Loan Trust 2007-1, Option One
Mortgage Loan Trust 2007-3, Option One
Mortgage Loan Trust 2007-4, Option One
Mortgage Loan Trust 2007-5, Option One
Mortgage Loan Trust 2007-6, Option One
Mortgage Loan Trust 2007CP1, Option One
Mortgage Loan Trust 2007-FXD2, Park Place
Securities, Inc., Asset-Backed Pass-Through
Certificates, Series 2004-MCW1, Park Place
Securities, Inc., Asset-Backed Pass-Through
Certificates, Series 2004-WHQ1, Park Place
Securities, Inc., Asset-Backed Pass-Through
Certificates, Series 2004-WHQ2, Park Place
Securities, Inc., Asset-Backed Pass-Through
Certificates, Series 2005-WCH1, Park Place
Securities, Inc., Asset-Backed Pass-Through

1 Certificates, Series 2005-WCW2, Park Place
 2 Securities, Inc., Asset-Backed Pass-Through
 3 Certificates, Series 2005-WCW2, Park Place
 4 Securities, Inc., Asset-Backed Pass-Through
 5 Certificates, Series 2005-WHQ1, Park Place
 6 Securities, Inc., Asset-Backed Pass-Through
 7 Certificates, Series 2005-WHQ3, Park Place
 8 Securities, Inc., Asset-Backed Pass-Through
 9 Certificates, Series 2005-WHQ4, RESI Finance
 10 Limited Partnership 2003-B, RESI Finance
 11 Limited Partnership 2003-C, RESI Finance
 12 Limited Partnership 2003-CB1, RESI Finance
 13 Limited Partnership 2003-D, RESI Finance
 14 Limited Partnership 2004-B, RESI Finance
 15 Limited Partnership 2004-C, RESI Finance
 16 Limited Partnership 2005-A, RESI Finance
 17 Limited Partnership 2005-B, RESI Finance
 18 Limited Partnership 2005-C, RESI Finance
 19 Limited Partnership 2005-D, RESI Finance
 20 Limited Partnership 2006-A, RMAC Pass-
 21 Through Trust, Series 2010-A, Securitized
 22 Asset Backed Receivables LLC Trust 2006-
 23 HE1, Securitized Asset Backed Receivables
 24 LLC Trust 2006-HE2, SABR Mortgage Loan
 25 2008-1 Grantor Trust, Structured Asset
 26 Investment Loan Trust 2003-BC12, Structured
 27 Asset Mortgage Investments II Trust 2007-
 28 AR4, Structured Adjustable Rate Mortgage
 Loan Trust, Series 2004-10, Structured
 Adjustable Rate Mortgage Loan Trust, Series
 2004-16, Structured Adjustable Rate Mortgage
 Loan Trust, Series 2004-18, Structured
 Adjustable Rate Mortgage Loan Trust, Series
 2004-9XS, Structured Adjustable Rate
 Mortgage Loan Trust, Series 2005-12,
 Structured Adjustable Rate Mortgage Loan
 Trust, Series 2005-17, Structured Adjustable
 Rate Mortgage Loan Trust, Series 2007-3,
 Structured Adjustable Rate Mortgage Loan
 Trust, Series 2007-4, Structured Asset
 Securities Corporation Pass-Through
 Certificates, Series 2002-AL1, Structured Asset
 Securities Corporation Mortgage Pass-Through
 Certificates, Series 2003-15A, Structured Asset
 Securities Corporation Mortgage Pass-Through
 Certificates, Series 2003-26A, Structured Asset

1 Securities Corporation Mortgage Loan Trust
2 2006-OPT1, Structured Asset Securities Corp.
3 2007-BC1, SASI Finance Limited Partnership
4 2006-A, Southern Pacific Secured Assets Corp.,
5 Mortgage Loan Asset-Backed Pass-Through
6 Certificates, Series 1998-2, Soundview Home
7 Loan Trust 2007-OPT1, Soundview Home Loan
8 Trust 2007-OPTS, Terwin Mortgage Trust,
9 Series TMTS 2003-8HE, WaMu Mortgage
10 Pass-Through Certificates Series 2004-PR1
11 Trust, WaMu Mortgage Pass-Through
12 Certificates Series 2004-PR2 Trust, WaMu
13 Mortgage Pass-Through Certificates Series
14 2005-PR1 Trust, WaMu Mortgage Pass-
15 Through Certificates Series 2005-PR2 Trust,
16 WaMu Mortgage Pass-Through Certificates
17 Series 2005-PR4 Trust, WaMu Mortgage Pass-
18 Through Certificates Series 2006-PR1 Trust,
19 WaMu Mortgage Pass-Through Certificates
20 Series 2006-PR2 Trust, WaMu Mortgage Pass-
21 Through Certificates Series 2006-PR3 Trust,
22 Waterfall Victoria Mortgage Trust 2010-1;

23 **DEUTSCHE BANK NATIONAL TRUST**
24 **COMPANY**, *solely in its capacity as Trustee*
25 *for*
26 Alliance Securities Corp. 2007-OA1,
27 Accredited Mortgage Loan Trust 2006-2,
28 American Home Mortgage Investment Trust
2005-2, American Home Mortgage Investment
Trust 2005-3, American Home Mortgage
Investment Trust 2006-1, American Home
Mortgage Assets Trust 2006-5, American Home
Mortgage Investment Trust 2007-1, American
Home Mortgage Assets Trust 2007-1, American
Home Mortgage Assets Trust 2007-2, American
Home Mortgage Assets Trust 2007-4, American
Home Mortgage Investment Trust 2007-SD2,
Amerquest Mortgage Securities Inc. 2006-R1,
Argent Securities Inc. 2004-W8, Argent
Securities Inc. 2005-W2, Argent Securities
Trust 2006-W4, Argent Securities Trust 2006-
M1, Argent Securities Trust 2006-M2, Asset
Backed Securities Corporation Home Equity
Loan Trust 2004-HE1, Barclays Capital Inc.,
BCAP LLC Trust 2007-AA1, Carrington

1 Mortgage Loan Trust 2005-NC4, Carrington
2 Mortgage Loan Trust 2005-NC5, Encore Credit
3 Receivables Trust 2005-3, Downey Savings and
4 Loan Association Mortgage Loan Trust 2004-
5 AR2, Downey Savings and Loan Association
6 Mortgage Loan Trust 2005-AR3, Soundview
7 Home Equity Loan Trust 2005-OPT4, First
8 Franklin Mortgage Loan Trust 2005-FFH3,
9 HarborView Mortgage Loan Trust 2006-14,
10 Downey Savings and Loan Association
11 Mortgage Loan Trust 2006-AR1, Fremont
12 Home Loan Trust 2006-3, HarborView
13 Mortgage Loan Trust 2006-3, Soundview Home
14 Equity Loan Trust 2006-OPT5, Soundview
15 Home Loan Trust 2007-WMC1, Downey
16 Savings and Loan Association Mortgage Loan
17 Trust 2007-AR1, HarborView Mortgage Loan
18 Trust 2007-4, HarborView Mortgage Loan
19 Trust 2007-7, GSAA Home Equity Trust 2007-
20 4, GSAA Home Equity Trust 2007-6, GSR
21 Mortgage Loan Trust 2007-AR2, GSR
22 Mortgage Loan Trust 2007-OA2, STARM
23 Mortgage Loan Trust 2007-4, HSI Asset
24 Securitization Corporation Trust 2005-OPT1,
25 HSI Asset Securitization Corporation Trust
26 2006-OPT1, HSI Asset Securitization
27 Corporation Trust 2006-OPT2, HSI Asset
28 Securitization Corporation Trust 2007-NC1,
HSI Asset Securitization Corporation Trust
2007-WF1, HSI Asset Securitization
Corporation Trust 2007-HE1, Impac CMB
Trust 2005-5, Impac Secured Assets Corp.
2006-3, Impac Secured Assets Corp. 2006-5,
Impac Secured Assets Corp. 2007-1, Impac
Secured Assets Corp. 2007-2, IndyMac
Residential Asset Securities Trust (RAST)
2004-A5, IndyMac INDX Mortgage Loan Trust
2005-AR1, IndyMac INDX Mortgage Loan
Trust 2005-AR8, IndyMac INDX Mortgage
Loan Trust 2005-AR12, IndyMac INDX
Mortgage Loan Trust 2005-AR13, IndyMac
INDX Mortgage Loan Trust 2005-AR14,
IndyMac INDX Mortgage Loan Trust 2005-
AR25, IndyMac INDA Mortgage Loan Trust
2006-AR2, IndyMac INDX Mortgage Loan
Trust 2006-AR6, IndyMac INDX Mortgage

1 Loan Trust 2006-AR14, IndyMac INDX
2 Mortgage Loan Trust 2006-AR29, IndyMac
3 INDA Mortgage Loan Trust 2006-AR3,
4 IndyMac Residential Asset Securities Trust
5 (RAST) 2007-A3, IndyMac INDX Mortgage
6 Loan Trust 2007-AR5, IndyMac INDX
7 Mortgage Loan Trust 2007-AR211P, IndyMac
8 INDA Mortgage Loan Trust 2007-AR1,
9 IndyMac INDA Mortgage Loan Trust 2007-
10 AR8, IndyMac INDX Mortgage Loan Trust
11 2007-FLX1, IndyMac INDX Mortgage Loan
12 Trust 2007-FLX6, J.P. Morgan Mortgage
13 Acquisition Trust 2007-CH3, J.P. Morgan
14 Mortgage Acquisition Trust 2007-CH5, Long
15 Beach Mortgage Loan Trust 2005-WL1, Long
16 Beach Mortgage Loan Trust 2005-WL2, Long
17 Beach Mortgage Loan Trust 2006-6, Long
18 Beach Mortgage Loan Trust 2006-7, Long
19 Beach Mortgage Loan Trust 2006-8, Long
20 Beach Mortgage Loan Trust 2006-10, Long
21 Beach Mortgage Loan Trust 2006-WL1, Long
22 Beach Mortgage Loan Trust 2006-WL2,
23 Mortgage IT Trust 2005-3, Morgan Stanley
24 ABS Capital I Trust 2004-NC7, Morgan
25 Stanley ABS Capital I Trust 2004-HE8, Morgan
26 Stanley ABS Capital I Trust 2006-NC3,
27 Morgan Stanley ABS Capital I Trust 2006-
28 NC5, Morgan Stanley ABS Capital I Trust
2006-HE5, Morgan Stanley ABS Capital I Trust
2006-HE7, Morgan Stanley ABS Capital I Trust
2006-HE8, Morgan Stanley ABS Capital I Trust
2006-WMC2, Morgan Stanley Home Equity
Loan Trust 2006-1, Morgan Stanley Home
Equity Loan Trust 2006-2, Morgan Stanley
ABS Capital I Trust 2007-NC4, Morgan
Stanley ABS Capital I Trust 2007-HE7, New
Century Home Equity Loan Trust 2005-4, New
Century Home Equity Loan Trust 2005-B, New
Century Home Equity Loan Trust 2005-D,
Novastar Mortgage Funding Trust 2007-1,
Saxon Assct Securities Trust 2007-2, Thornburg
Mortgage Securities Trust 2004-4, WaMu
Mortgage Pass- Through Certificates, Series
2004-AR6, WaMu Mortgage Pass-Through
Certificates, Series 2005-AR6, WaMu
Mortgage Pass- Through Certificates, Series

1 2005-AR11, WaMu Mortgage Pass-Through
2 Certificates, Series 2005-AR12, WaMu
3 Mortgage Pass- Through Certificates, Series
4 2005-AR13, WaMu Mortgage Pass-Through
5 Certificates, Series 2005-AR15, WaMu
6 Mortgage Pass-Through Certificates, WMALT
7 Series 2006-AR1, Washington Mutual
8 Mortgage Pass-Through Certificates, WMALT
9 Series 2006-AR5, WaMu Assct-Backed
10 Certificates 2007-HE; and

11 **DEUTSCHE BANK TRUST COMPANY**
12 **AMERICAS**, *solely in its capacity as Trustee*
13 *for*

14 Residential Accredit Loans Inc. 2005-QA10,
15 Residential Accredit Loans Inc. 2006-QO2,
16 Residential Accredit Loans Inc. 2006-QO3,
17 Residential Accredit Loans Inc. 2006-QO4,
18 Residential Accredit Loans Inc. 2006-QO6,
19 Residential Accredit Loans Inc. 2006-QO10,
20 Residential Accredit Loans Inc. 2006-QS3,
21 Residential Accredit Loans Inc. 2006-QS10,
22 Residential Accredit Loans Inc. 2006-QS17,
23 Residential Accredit Loans Inc. 2007-QA3,
24 Residential Accredit Loans Inc. 2007-QO1,
25 Residential Accredit Loans Inc. 2007-QO4,
26 Residential Accredit Loans Inc. 2007-QO5,
27 Residential Accredit Loans Inc. 2007-QS3,
28 Residential Funding Mortgage Securities I
2007-S4, Saxon Asset Securities Trust 2003-3,
Saxon Asset Securities Trust 2006-3;

Plaintiffs,

v.

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

Defendants.

INTRODUCTION

1
2 1. Plaintiffs serve as trustees for hundreds of residential mortgage-backed
3 securitization (“RMBS”) trusts (the “RMBS Trusts” or the “Trusts”) that hold mortgage loans
4 that are targeted by an elaborate profit-driven scheme being implemented by Defendant City of
5 Richmond, California (“Richmond” or the “City”) and its partner Defendant Mortgage
6 Resolution Partners LLC (“MRP”), a for-profit California investment firm. Richmond and
7 MRP seek to impermissibly use Richmond’s power of eminent domain to seize certain mortgage
8 loans located outside of Richmond in order to generate profits for Richmond, MRP, and MRP’s
9 investors (the “Richmond Seizure Program” or the “Program”). If Defendants’ unconstitutional
10 scheme is permitted to go forward, the RMBS Trusts and their beneficiaries, the investors in
11 certificates issued by the RMBS Trusts (also referred to as “certificateholders”) – which include
12 a vast number of public and private pension plans, college savings plans, 401(k) plans,
13 insurance companies, mutual funds, university endowments, and government-sponsored
14 enterprises – would suffer severe irreparable economic harm, as would hundreds of other
15 similarly situated RMBS trusts and their beneficiaries, and potentially the entire U.S. mortgage
16 industry. Accordingly, Plaintiffs seek declaratory and injunctive relief declaring that the
17 Richmond Seizure Program violates the United States Constitution, the California Constitution,
18 and other state laws, and enjoining Defendants from implementing the Program.

19 2. Defendants Richmond and MRP have entered into an agreement,
20 pursuant to which Defendants will use Richmond’s eminent domain power primarily to seize
21 *performing* mortgage loans – owned by RMBS trusts located outside of Richmond for the
22 benefit of their certificateholders – at steeply discounted prices, typically 80% of the value of
23 the home or less, rather than the outstanding loan amount owed by the borrowers. Upon
24 information and belief, MRP then plans to refinance those loans with new federally insured
25 loans in amounts substantially above the amounts paid by Richmond to seize the original loan.
26 According to MRP’s published statements, this profit strategy would generate profits of up to
27 20% for MRP and its investors. Richmond would be paid a portion of the profits for allowing
28 MRP to use Richmond’s eminent domain powers in furtherance of MRP’s strategy, and select

1 Richmond homeowners would receive a windfall by having their debt permanently discharged
2 because they meet a borrowing profile that is profitable to Richmond and MRP.

3 3. The Program is a profit-driven strategy designed to enrich Richmond, a
4 private investment firm (MRP) and its financial backers, and select Richmond homeowners, at
5 the expense of private-label RMBS trusts located outside of Richmond and the beneficiaries of
6 those trusts. Such a program does not involve a legitimate “public use” for which the
7 government’s eminent domain power is expressly reserved. Additionally, the entire business
8 model that drives the profits generated by the Program is predicated on paying for the seized
9 performing loans at artificially low prices that are substantially less than the loan’s actual value.
10 Thus, the Richmond Seizure Program would, if allowed to proceed, result in huge losses to the
11 Trusts and their beneficiaries and violate the constitutional requirement of “just compensation”
12 for any taking.

13 4. Moreover, implementing the Richmond Seizure Program would result in
14 a massive transfer of wealth from the beneficial owners of the mortgage loans targeted by the
15 Program (who are all located outside of Richmond and the vast majority of whom are located
16 outside of California) to a few preferred private parties, and would threaten to severely disrupt
17 the United States mortgage industry – a major sector of interstate commerce. Thus, the Program
18 also violates state and federal constitutional prohibitions against the extraterritorial reach of
19 Richmond’s regulatory authority.

20 5. Richmond and MRP seek to disguise the Program as a legitimate public
21 use of eminent domain power by asserting that they are aiming to seize “underwater” mortgages
22 (i.e., those where the value of the home is less than the outstanding principal amount of the
23 mortgage), which they claim will prevent future defaults and foreclosures in Richmond, and
24 therefore prevent their attendant consequences of home abandonment, blight, and economic
25 depression. But that characterization is a mere facade, as the Program principally targets
26 performing loans – i.e., the loans of homeowners who have been making their monthly
27 payments for years despite being “underwater,” and who have good credit ratings, as opposed to
28 those loans that are in default or at serious risk of default. The Program targets performing

1 loans *because they are not at serious risk of default* and therefore can be easily re-financed with
2 a new Federal Housing Authority (“FHA”) insured loan for an amount significantly greater than
3 the price paid by Richmond to seize the original loan. Thus, contrary to Defendants’ assertions,
4 the vast majority of the loans at issue are not at imminent risk of default, and the homeowners in
5 question are not at risk of having their loans foreclosed and having to move out of their homes.
6 Indeed, it is the relative safety of these loans that allows the Defendants to generate the huge
7 profits they seek, which is the actual purpose of the Program.

8 6. Federal agencies have expressed serious concerns about the
9 constitutionality of the Program and its potential impacts on the U.S. mortgage industry if it is
10 allowed to go forward. In a public statement dated August 9, 2012, the Federal Housing
11 Finance Administration (“FHFA”), the conservator of Fannie Mae and Freddie Mac (the two
12 Government–Sponsored Enterprises (“GSEs”) that are among the largest investors in RMBS
13 trusts), stated that “FHFA has significant concerns about the use of eminent domain to revise
14 existing financial contracts” and that “resulting losses from such a program would represent a
15 cost ultimately borne by taxpayers” and would have “a chilling effect on the extension of credit
16 to borrowers seeking to become homeowners and on investors that support the housing market.”
17 77 FR 47652 (August 9, 2012). FHFA noted that “[a]mong questions raised regarding the
18 proposed use of eminent domain are the constitutionality of such use,” “the effects on holders of
19 existing securities,” “the impact on millions of negotiated and performing mortgage contracts,”
20 and “critical issues surrounding the valuation by local governments of complex contractual
21 arrangements that are traded in national and international markets.” *Id.*

22 7. Likewise, the U.S. House of Representatives, House Financial Services
23 Committee, recently issued a draft reform bill, one of the stated purposes of which is: “To
24 combat constitutionally-suspect ‘eminent domain’ schemes by local municipalities to seize
25 mortgages out of legally binding securities for purposes of rewriting their terms, prohibit the
26 GSEs from purchasing or guaranteeing loans originated in municipalities where such practices
27 have been employed during the last ten years.” Executive Summary of the Protecting American
28

1 Homeowners (PATH) Act, July 11, 2013, available at
2 <http://financialservices.house.gov/news/documentsingle.aspx?DocumentID=342165>, at 2.

3 8. The concerns expressed by FHFA and by the House Financial Services
4 Committee are well founded. The Program violates numerous provisions of the United States
5 Constitution, the California Constitution, and California state law. Defendants' own public
6 statements concerning the purpose of the Program and the details of how it would be used to
7 target performing loans and then flip them to generate profits for MRP confirm that it would
8 violate the "public use" and "just compensation," requirements of the "Takings Clause" of the
9 U.S. and California Constitutions. U.S. Const. amend. V; Cal. Const. art. I, § 1. Moreover,
10 because the mortgage loans that would be seized are notes held in locations outside of
11 Richmond by non-Richmond creditors, the Program would also violate the Takings Clause and
12 California statutory prohibitions against extraterritorial seizures. The implementation of the
13 Program should be enjoined for those reasons.

14 9. Additionally, the Program, if fully implemented, would have a significant
15 impact on interstate commerce, and therefore would violate the U.S. Constitution's Commerce
16 Clause and Contract Clause in a number of ways.

17 10. First, the Program would violate the dormant Commerce Clause, which
18 prevents local governments from discriminating against out-of-state investors or otherwise
19 erecting barriers to interstate commerce to benefit in-state economic interests. As noted above,
20 Richmond, MRP, and MRP's financial backers would realize huge profits from this scheme by
21 sharing in the spread between the price at which the homeowner's current mortgage loan is
22 seized and the revenue gained by Richmond/MRP by giving the homeowner a new smaller
23 mortgage loan and then selling that loan to a government-backed securitized pool. The select
24 Richmond homeowners chosen to participate in the Program – because they meet a borrowing
25 profile that would be profitable to Richmond and MRP – also would profit by having their
26 underwater loans and mortgage debts extinguished and replaced with newly refinanced loans.
27 But these economic benefits to a relatively small group of investors and Richmond homeowners
28 would come at the expense of RMBS Trusts located outside of Richmond, and ultimately their

1 certificateholders. These RMBS Trusts and their certificateholders would experience significant
2 losses as a result of each loan seized: losses of approximately the unpaid principal balance of
3 the seized loans or more, minus the price paid by Richmond for the seizure. Such losses could
4 amount to many tens of millions of dollars. This transfer of wealth from the beneficiaries of
5 RMBS Trusts, who in most cases are located entirely outside of California, to Richmond and
6 MRP, not only violates the Commerce Clause of the U.S. Constitution; it also violates the
7 Contract Clause of the U.S. Constitution, which prohibits a local government from abrogating
8 debts of local residents held by creditors.

9 11. Second, while the actual benefits of the Program to Richmond as a whole
10 are questionable (as the Program primarily targets performing loans at low risk of default and
11 has the potential to harm the community by limiting available future mortgage financing), the
12 potential negative effects of the Richmond Seizure Program on the national mortgage industry
13 would be significant and widespread. The number of loans meeting the MRP profile in
14 Richmond alone – approximately 1,000 to 2,000 mortgage loans – would cause many tens of
15 millions of dollars in losses, potentially \$200 million or more if the Program is allowed to go
16 forward. If Richmond were allowed to proceed, other local governments would follow suit,
17 with the result that these damages across RMBS trusts would exceed billions of dollars. Upon
18 information and belief, several other local governments – including, among others, the
19 municipalities of North Las Vegas, Nevada; El Monte, California; La Puente, California; San
20 Joaquin, California; Orange Cove, California; Newark, New Jersey; and Seattle, Washington –
21 are seriously considering the Program or have already engaged MRP or otherwise taken steps
22 toward implementing the Program. This wealth transfer from the RMBS Trusts and their
23 beneficiaries to MRP, local governments, and select homeowners, would seriously adversely
24 impact the national housing market.

25 12. Richmond would advance its local concerns at the expense of an entire
26 sector of interstate commerce that is critical to the health of the national economy. The Program
27 would severely disrupt the interstate market for mortgage-backed securities, which, in turn, is an
28 essential part of the home loan industry that enables a large percentage of Americans to realize

1 the dream of owning their own homes. Lenders enter into mortgage loans, and those loans are
2 conveyed to RMBS trusts in interstate commerce, with the expectation that a large percentage of
3 homeowners will stay in their homes and continue to pay their mortgages or pay them off early
4 at full value, even as the housing market goes through cycles. These expectations are based on
5 careful analysis of historical payment trends. The Program being carried out in Richmond, by
6 itself, poses a direct threat to the economic expectations and underpinnings of the RMBS
7 market, but the threat is even more dire when coupled with the prospect that other cities around
8 the Nation would enter into similar agreements with MRP. If even the highest performing
9 mortgage loans are at risk of being seized at substantial discounts from face value whenever the
10 housing market enters a downward cycle, then the market will reflect that risk by sharply
11 reducing the price at which secondary-market buyers will be willing to purchase mortgage loans
12 in general. If the value of loans on the secondary market plummets, then lending banks likely
13 will reflect that change by offering new loans on more onerous terms than those currently
14 offered. And such more demanding terms will exclude many would-be home purchasers from
15 the market. Thus, by participating in the Program, Richmond would be using its sovereign
16 powers in a manner that effectively compels lenders to alter the terms of credit they offer to
17 account for greater risk. It is beyond question that Richmond could not directly adopt
18 regulations governing the interstate market in home mortgage loans that would have so
19 devastating an effect on the Nation's economy, and it cannot do so indirectly, under the guise of
20 "taking" the contract rights that are at the core of this important sector of interstate commerce.

21 13. The beneficiaries of the RMBS Trusts include state and local pension
22 plans, 401(k) plans, college savings plans, insurance companies, mutual funds, university
23 endowments, and government sponsored enterprises. The economic harm would extend to
24 those entities and ultimately to their individual participants, including a vast number of
25 individual retirees nationwide.

26 14. At the very least, the Program, if permitted to go forward, would have a
27 serious negative effect on the housing market and the local economy of Richmond. Among
28 other things, lenders will take into account Richmond's capricious use of eminent domain

1 powers to seize performing mortgage loans by reducing the available residential mortgage loan
2 credit to Richmond borrowers and increasing interest rates for residential mortgage loans. The
3 Program provides a windfall to a select group of Richmond residents who are paying their
4 mortgages, but harms the residential real estate market in Richmond across the board, and
5 effectively appropriates assets from, among others, a vast number of individual retirees
6 nationwide whose retirement vehicles are beneficiaries of RMBS trusts.

7 15. As is noted above, the Plaintiffs are the trustees for the RMBS Trusts
8 (also listed on Schedules A-C hereto), which hold mortgage loans of homeowners in Richmond
9 that are being targeted by the Program. Plaintiffs request declaratory and injunctive relief
10 against Defendants' implementation of the Program. Moreover, because Defendants have taken
11 substantial steps toward implementing the Program, including sending offer letters to the
12 Plaintiffs and loan servicers for the RMBS Trusts to acquire the loans and publicly declaring
13 their intentions to soon begin seizing mortgage loans using Richmond's eminent domain
14 powers, Defendants should be preliminarily enjoined from implementing the Program, which
15 would be exceedingly difficult, if not impossible, to unwind after it has begun.

16 THE PARTIES

17 **A. Plaintiffs**

18 16. Plaintiff Wells Fargo Bank, National Association ("Wells Fargo"), as
19 trustee for each of the RMBS Trusts listed on Schedule A hereto, is a national banking
20 association organized under the laws of the United States with its main office in South Dakota
21 and its principal place of trust administration in Maryland. Plaintiff Deutsche Bank National
22 Trust Company ("DBNTC"), as trustee for the RMBS trusts listed on Schedule B hereto, is a
23 national banking association organized to carry on the business of a limited purpose trust
24 company under the laws of the United States with its main office in Los Angeles, California,
25 and its principal place of trust administration in Santa Ana, California. Plaintiff Deutsche Bank
26 Trust Company Americas ("DBTCA"), as trustee for the RMBS Trusts listed on Schedule C
27 hereto, is a New York Banking Corporation organized and existing under New York law with
28 its principal place of business and its principal place of trust administration in New York.

1 17. None of Wells Fargo, DBTCA, or DBNTC is incorporated in California
2 or otherwise organized under the laws of California. None of the Trustees is headquartered in
3 Richmond, or has any corporate trust services office or employees in Richmond. Of the three
4 Plaintiff trustees, only DBNTC has a principal place of corporate trust administration in
5 California.

6 18. The Plaintiffs serve as trustees for the RMBS Trusts, which hold
7 mortgage loans targeted by the Richmond Seizure Program due to their geographic location and
8 loan profile. The beneficiaries or certificateholders of the RMBS Trusts include a variety of
9 institutional investors investing in the Trusts for their own accounts and on behalf of clients,
10 including federal, state and local pension plans, 401(k) plans, college savings plans, insurance
11 companies, mutual funds, university endowments and other institutional or individual investors.

12 19. Although, as of the time of filing of this Complaint, Plaintiffs do not
13 know all of the loans the Program will target, loans of the type being targeted by the Richmond
14 Seizure Program are held in approximately 1,100 RMBS trusts, including the Trusts listed on
15 Schedules A-C hereto.

16 20. The physical notes evidencing the targeted mortgage loans held by the
17 Trusts all are located outside of Richmond, and in most cases, are located outside of California.

18 21. The certificateholders or beneficial owners of the Trusts are located
19 across the country and the world.

20 **B. Defendants**

21 22. The Defendants – including MRP, a San Francisco-based investment firm
22 – are located in California.

23 23. Defendant MRP is a limited liability company registered under the laws
24 of Delaware, and its registered agent for service of process in Delaware is The Corporation
25 Trust Company, Corporation Trust Center, 1209 Orange St., Wilmington, Delaware, 19801. It
26 is headquartered in San Francisco, California.

27 24. MRP is a privately-owned, for-profit company that seeks to partner with
28 local governments to seize certain residential mortgage loans under the power of eminent

1 domain and to then restructure those loans. On information and belief, MRP has no other
2 business operations.

3 25. To date, MRP has attempted to partner with numerous municipalities in
4 California and other states to implement its program. While several of these municipalities have
5 taken steps towards implementing MRP's program, Richmond is believed to be furthest along.

6 26. MRP proposes to manage and facilitate the loan restructuring process,
7 including (a) raising funds to finance the seizures of the mortgage loans; (b) identifying
8 mortgage loans to be acquired through eminent domain; and (c) arranging for the refinancing of
9 the seized loans. MRP and its investors would profit handsomely from this arrangement with
10 municipalities. MRP would receive a \$4,500 fee for each loan seized and refinanced. In
11 addition, on information and belief, MRP's investors would receive the profit spread between
12 the seizure price and the price at which the new loan to the homeowner is refinanced and sold to
13 a securitized pool, net of MRP's fee, the fee paid the City of Richmond, and any expenses
14 incurred with the seizure of the loan that MRP has agreed to pay.

15 27. On or about April 2, 2013, Richmond, through its City Council and upon
16 the recommendation of its City Manager, voted to enter into an "Advisory Services Agreement"
17 with MRP, under which MRP would advise Richmond about avenues of mortgage relief for
18 Richmond homeowners, including the possibility of acquiring existing mortgage loans through
19 eminent domain. It is not clear whether this is the only written agreement between Richmond
20 and MRP or if there are other undisclosed oral or written arrangements or understandings
21 between them.

22 28. Defendant City of Richmond, a municipality, is located in Contra Costa
23 County in the State of California.

24 **JURISDICTION**

25 29. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331
26 (federal question jurisdiction) and 1343(a)(3) and (4) (jurisdiction over actions for violations of
27 constitutional and federal rights secured by 42 U.S.C. § 1983), and over Plaintiffs' declaratory
28 relief causes of action under 28 U.S.C. §§ 2201 and 2202. Plaintiffs' state law claims are so

1 related to their federal law claims that they form part of the same case or controversy.
2 Accordingly, this Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant
3 to 28 U.S.C. § 1367(a).

4 30. This Court has personal jurisdiction over Defendant Richmond, as a
5 municipality located in this judicial district. The Court also has personal jurisdiction over
6 Richmond because Plaintiffs' claims arise out of actions taken by Richmond in this judicial
7 district.

8 31. The Court has personal jurisdiction over Defendant MRP, because MRP
9 is an investment firm doing business in this judicial district, and Plaintiffs' claims arise out of
10 MRP's transaction of business in this judicial district.

11 VENUE

12 32. Venue is proper in this judicial district based on 28 U.S.C. § 1391(b).
13 Defendant Richmond resides in this district, Defendant MRP conducts business in this judicial
14 district, and a substantial part of the events or omissions giving rise to the claims asserted herein
15 occurred in this district.

16 INTRADISTRICT ASSIGNMENT

17 33. Pursuant to Civil Local Rules 3-2(c) and 3-2(d), this action is properly
18 assigned to either the San Francisco or Oakland Division of this Court, because a substantial
19 part of the events giving rise to the claims asserted herein occurred in Contra Costa County
20 (where Richmond is located) and the County of San Francisco (where MRP is headquartered).

21 FACTUAL BACKGROUND

22 I. Richmond and MRP's Profit Scheme

23 34. Defendants Richmond and MRP seek to enrich themselves through a
24 profit-driven scheme under which Richmond would use its eminent domain powers, and the
25 threat of eminent domain litigation, primarily to seize performing residential mortgage loans
26 owned by outside-of-Richmond RMBS Trusts and their beneficiaries at steeply and unjustifiably
27 discounted prices that do not reflect the current value of the loans, and then refinance those
28

1 loans with new federally insured loans for amounts substantially above the amounts paid by
2 Richmond to seize the homeowners' existing loans.

3 35. Richmond and MRP would profit by sharing in the spread between the
4 price paid by Richmond to seize the loans and the proceeds received by Richmond (through
5 MRP) for selling the new refinanced loans to the homeowners to a new securitized pool. The
6 outside-of-Richmond RMBS Trusts whose mortgage loans would be seized under this Program
7 would lose significant value – potentially hundreds of thousands of dollars on some seized loans
8 – causing substantial harm to the Trusts and their certificateholders. Thus, the Program amounts
9 to a seizure and transfer of wealth from private parties outside of Richmond, on the one hand, to
10 other private parties, on the other hand, with Richmond receiving a small cut of the profits as its
11 fee for renting out its eminent domain powers.

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

13 36. The Program primarily targets, for eminent domain seizure, mortgage
14 loans that meet a specific profile: (a) performing loans (meaning the borrower is not in default);
15 (b) that are underwater (meaning that the loan value is worth more than the underlying home
16 value); and (c) that are held by "private-label" securitization trusts (meaning that the trusts are
17 sponsored by a private entity, rather than by a government-sponsored enterprise).¹

18 37. The Program seeks to cherry-pick loans held by borrowers with the best
19 credit ratings. In MRP's own words, it seeks loans that are "relatively current (not in default),"
20 and only from "*borrowers who appear likely to repay their loans.*" Exhibit A (MRP
21 Homeownership Protection Program Presentation) at 9 (emphasis added). Thus, as MRP
22 admits, the Program does not target loans for which there is a serious risk of default (much less
23 a serious risk of foreclosure).

24 38. The reasons why MRP is targeting performing loans with low risks of
25 default are obvious and implicit in the MRP business model. Under that model, a loan seizure

26 ¹ The Program has been described in several public sources, including in presentations by MRP
27 to Richmond and others, attached hereto as Exhibits A (MRP Homeownership Protection
28 Program Presentation), B (MRP FAQ Sheet), C (Richmond CARES Presentation), and D (North
Las Vegas CARES Presentation).

1 cannot be profitable unless the seized loan can be refinanced. Without such refinancing, the
2 amount paid to compensate the targeted RMBS Trust and its certificateholders for the eminent
3 domain seizure would be unreimbursed (and the City would remain the de facto holder of the
4 seized mortgage loan). Thus, the Program necessarily targets homeowners who can qualify for
5 new loans with good credit ratings that could be sold to a new securitized trust guaranteed by
6 the Federal Housing Administration (“FHA”).

7 39. To put it simply, MRP cannot realize the huge profits it seeks on the
8 backend of its strategy unless it targets performing homeowners with good credit ratings and
9 repayment histories. Otherwise, MRP will not be able to sell the new loan to a securitized pool
10 and obtain the revenue from that sale that provides MRP with the profit spread for this scheme.

11 40. For similar strategic reasons, the Program targets loans held only by
12 private-label RMBS trusts, which are located outside of Richmond. On information and belief,
13 MRP believes the RMBS Trusts are too dispersed, and their certificateholders too dispersed, to
14 coordinate any meaningful resistance to MRP’s scheme.

15 41. The Program, by contrast, avoids seizing loans held by trusts sponsored
16 and guaranteed by Freddie Mac or Fannie Mae, in order to avoid provoking the ire of the federal
17 government. It similarly avoids seizing loans held directly by banks.

18 42. In addition, MRP and Richmond attempt to justify the Program as
19 correcting what they claim to be a market inefficiency that exists with respect to loans held in
20 private-label RMBS Trusts: that the governing documents of some RMBS trusts prohibit the
21 loan servicers for the Trusts from permanently reducing a borrower’s principal balance. *See,*
22 *e.g.*, Exhibit C (Richmond CARES Presentation), at 5.

23 43. Finally, while the Program targets “underwater” loans, to purportedly
24 avoid foreclosures and their attendant economic costs, this justification is a false pretense for the
25 Program’s money-making scheme. The performing loans targeted by the Program are unlikely
26 to go into default, let alone foreclosure, and the targeted homeowners are not about to abandon
27 or be forced out of their homes.

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

2 44. Under the Program, once a loan is selected, Richmond will attempt to
3 seize the loan through eminent domain powers for approximately 80% or less of the underlying
4 *home value*. Because these are underwater loans (i.e., those with home values below the
5 outstanding principal balance of the mortgage), a payment of 80% of the home value is far
6 lower than the unpaid principal balance of the loan.

7 45. Because the mortgage loans targeted by Richmond are performing and
8 have a low risk of default, and (as is described below) generally cannot legally be sold out of the
9 RMBS Trusts, those loans are properly valued at an amount worth substantially above the
10 underlying current home value. A proper valuation of the loans would take into account their
11 remaining principal and interest payments. The actual value of such loans would be the loan's
12 unpaid principal balance, which for most of the targeted loans far exceeds 80% of the home's
13 current value.

14 46. Additionally, it is unclear that the Program will even assess the current
15 value of the underlying home at a fair market value for purposes of pricing its compensation for
16 the seizure. Because Defendants are incentivized to pay as low a seizure price as possible, the
17 Program could value the underlying home at an artificial or deflated price, leading to an even
18 lower seizure price.

19 47. On information and belief, once Defendants secure the loan at a steeply
20 discounted price, they then intend to replace it with a new loan to be sold into a FHA securitized
21 pool in an amount equal to approximately 95% of the underlying home value. Richmond, MRP,
22 and their investors and partners thus would instantly profit by sharing in the spread between the
23 80% seizure price and the 95% refinancing price.

24 48. In an example provided by MRP, an underwater loan on a home worth
25 \$200,000 would be seized by eminent domain for \$160,000 (or 80% of the home's value), and
26 then refinanced into a new FHA loan for \$190,000 (or 95% of the home's value). The \$30,000
27 spread between the seizure price and the refinancing price would be divided (after expenses)
28 among Richmond, MRP, and MRP's investors.

1 49. In this example, Richmond would receive a flat fee of 5% of the
2 refinancing value (or \$9,500), MRP would receive a flat fee of \$4,500 for each loan seizure, and
3 MRP's investors would receive the remainder of the spread between the seizure price and the
4 refinancing price. *See Ex. C* hereto. MRP may also be entitled to additional compensation in
5 connection with the Program, including fees for arranging the financing for the seizure and/or in
6 connection with the refinancing.

7 50. MRP has claimed that the loans the Program seeks to target do actually
8 trade, and one can pull the trading histories and determine that, for example, a performing
9 \$300,000 loan on a \$200,000 house is worth about 80% of the value of the house. But this is
10 inaccurate. There is no trading market for performing underwater loans held by private-label
11 RMBS trusts. Indeed, the Trusts are structured under federal tax laws as "real estate mortgage
12 investment conduits," or "REMICs," and, as such, are prohibited from selling performing loans.
13 Regardless, the value of such performing loans to the RMBS Trusts is clearly not the current
14 value of the underlying home.

15 51. Additionally, the entire Program is premised on undercompensating the
16 owners of the loans. It could not function in any other way, because the Program is profitable
17 for its participants only because the loans are seized for heavily discounted prices and are then
18 refinanced with a new loan purportedly worth more than the amount for which the homeowner's
19 existing loan was seized. The new loan can be sold to a new securitized pool, creating a profit
20 spread. So compensation for the seized loans under the Program must, *ipso facto*, be at an
21 artificially deflated value – and hardly the "just" compensation that is constitutionally required.

22 52. In fact, not only is the 80% price not a fair value for a performing
23 underwater loan with a low risk of default owned by an RMBS Trust, it would not even be a fair
24 price for Richmond loans not part of RMBS Trusts that are in default or foreclosure. On
25 information and belief, *defaulted* residential mortgage loans available for sale have recently
26 traded at far above 80% of the underlying home value.

1 **C. The Program Will Have a Minimal Impact on Richmond’s Foreclosure Rate**

2 53. MRP and the City attempt to justify the Program as a proper use of the
3 City’s eminent domain powers by asserting that the seizure of underwater mortgage loans will
4 prevent defaults and foreclosures in Richmond, and thus reduce the economic fallout from the
5 mortgage crisis, which began in 2008. Additionally, Richmond and MRP have touted the
6 Program as fixing a “traditional” type of “market failure”: the inability of borrowers to obtain a
7 reduction in the principal balance of loans held by private-label RMBS trusts.

8 54. For example, Richmond claims that the Program will reduce foreclosures
9 in Richmond, create “more stable neighborhoods,” add “more money in our local economy to
10 stimulate community wealth,” and save homeowners money on their mortgage payments and
11 put that money in “homeowners’ pockets” to spend on local businesses. Likewise, the Program
12 would purportedly “preserv[e] home ownership, restor[e] homeowner equity and stabiliz[e] the
13 communitics’ housing market and economy by allowing many homeowners to remain in their
14 homes.” Exhibit E (MRP Advisory Services Agreement) at 1. MRP claims that the homes that
15 would be seized under the Program are “highly likely” to be foreclosed upon.

16 55. But such purported justifications for the Program are inconsistent with the
17 Program’s business model, which, as noted above, primarily targets performing loans that are
18 not at serious risk of default, let alone foreclosure.

19 56. These are loans where the borrowers have not gone into foreclosure or
20 otherwise walked away from their mortgages throughout a serious economic downturn that
21 started in 2008. The likelihood that such borrowers would default and be foreclosed upon now,
22 after weathering a years-long financial storm, with property values on the rise nationwide
23 (including in California), is minimal. With real estate prices in California having risen
24 significantly in the past year and expected to increase in the next 12 months, homeowners who
25 have performed their mortgage loan contracts for years have no reason to suddenly walk away
26 from their homes.

27 57. The actual reality in Richmond contradicts the parade of horrors – of
28 widespread defaults, foreclosures, home abandonments, blight and economic depression – that

1 MRP and Richmond claim will occur if they are not allowed to seize performing underwater
2 loans and refinance them for their own profit.

3 58. For example, MRP claims that *50% of the private label mortgages in*
4 *Richmond will go into foreclosure*, and that “[t]hese foreclosures will cost Richmond \$25
5 million.” Exhibit C (Richmond CARES Presentation) at 2. This is a gross exaggeration that is
6 completely inconsistent with historical trends and experts’ predictions for what will occur in the
7 future.

8 59. The probability that a performing loan being targeted by Richmond and
9 MRP will go into default over the next year is exceptionally low, and any such default would
10 almost certainly be due to a change in economic circumstances of the borrower, like the
11 unexpected loss of a job, and not due to a decision by the homeowner to abandon their home
12 because it is currently underwater. Any loan that were to go into default in Richmond in the
13 next year would most likely qualify to obtain a modification or other type of work-out, and
14 would not be foreclosed upon. Indeed, on information and belief, a significant percentage of the
15 Richmond loans being targeted by the Program have already been modified or refinanced since
16 2008. Under current California law, lenders are required to attempt to negotiate a modification
17 with homeowners before they can resort to foreclosure. In the rare case where a modification or
18 work-out cannot be done, it currently takes a minimum of one year in California before any
19 defaulting loan can be foreclosed upon.

20 60. Thus, the Richmond Seizure Program would have little or no effect on the
21 foreclosure rate in Richmond, and would instead cause substantial economic harm in Richmond
22 and beyond.

23 **D. MRP and The City Have Taken Substantial Steps Towards Implementing**
24 **the Program**

25 61. To date, several other municipalities (in California and other states) have
26 contemplated entering into a partnership with MRP to implement its Program.

27 62. MRP first targeted municipalities in California as potential partners for its
28 Program. The California local governments of San Bernardino County and the Cities of

1 Fontana and Ontario were the first to consider the Program. They formed a Joint Powers
2 Authority (“JPA”) to study the issue. After more than seven months of extensive review, the
3 JPA Board voted unanimously on January 24, 2013 not to consider any proposals that involved
4 the use of eminent domain.

5 63. At the time, JPA Board Chairman Greg Devereaux publicly remarked that
6 the JPA Board’s decision was informed by the fact that experts warned that the use of eminent
7 domain would destabilize an already weak local housing market and worsen the mortgage crisis,
8 and that few local homeowners and other stakeholders expressed support for the use of eminent
9 domain, with many affirmatively opposing such a strategy.

10 64. Although, to Plaintiffs’ knowledge, no loans have yet been seized by
11 Richmond, Defendants have taken substantial steps toward implementing the Program and
12 seizing the loans. In April 2013, Richmond entered into an “Advisory Services Agreement”
13 with MRP, which apparently is the operative agreement between Richmond and MRP with
14 respect to the Program.

15 65. On multiple occasions over the past months, the Mayor of Richmond or
16 other Richmond officials have publicly discussed Richmond’s implementation of the Program,
17 including confirming that the City Council entered into a partnership with MRP to implement
18 the Program and discussing MRP and Richmond’s readiness to begin implementing the
19 Program.

20 66. On or about July 31, 2013, Richmond sent letters to the Plaintiffs and
21 other trustees and loan servicers making offers to purchase loans held in RMBS trusts, which
22 offers are a prerequisite under California eminent domain law before a local government can
23 seize property. The offer letters purported to attach a list of 624 mortgage loans held by various
24 RMBS trusts (including many held by the RMBS Trusts for which Plaintiffs serve as trustees)
25 that Defendants offered to acquire, “at the present time.” Upon information and belief,
26 approximately two-thirds of the loans on this list are performing, thus indicating that the
27 Program seeks to target performing loans. It is unclear whether Richmond intends to seize the
28 nonperforming loans listed on the offer letters. The letters state that the offers are nonbinding

1 on Richmond, and provide a deadline of August 13, 2013 for responses to the offers, after which
2 Richmond may “decide[] to proceed with the acquisition of the loans through eminent domain.”
3 Upon information and belief, Richmond’s offer letters constitute a first wave of offers, and if
4 Defendants are successful in acquiring or seizing these loans, it is expected that they will
5 attempt to acquire or seize many other loans that meet their targeted profile.

6 67. If the offers to sell the loans are not accepted, Richmond could quickly
7 seize possession of the loans. Richmond must first hold a condemnation hearing, and
8 immediately thereafter could file an eminent domain lawsuit in California state court and use a
9 California state law procedure known as a “Quick Take” to immediately obtain a court order
10 giving Richmond possession of the property. MRP has indicated that the “Quick Take”
11 procedure is a critical component of its scheme. *See* Exhibit B (MRP FAQ Sheet), at 3. Once
12 Richmond receives possession of the loans, it could then extinguish, restructure, and refinance
13 them, causing immediate and irreparable harm to the Trusts that will be exceedingly difficult, if
14 not impossible, to unwind.

15 68. Thus, there is a high likelihood that Defendants will soon exercise the
16 City’s eminent domain powers to seize possession of the mortgage loans under the Program.

17 **II. Implementation of the Richmond Seizure Program Would Result in Significant** 18 **Economic Harm to Plaintiffs and Will Impact Interstate Commerce**

19 **A. Economic Harm to the Trusts and their Beneficiaries**

20 **1. Organization of the Trusts**

21 69. Defendants intend to potentially target for seizure under the Program any
22 performing loan secured by property in Richmond that is held by a “private label” RMBS trust.
23 MRP has estimated that approximately 1,500 such mortgage loans exist in Richmond. *See*
24 Exhibit C (Richmond CARES Presentation) at 2.

25 70. The RMBS Trusts are investment vehicles created as part of the
26 residential mortgage loan securitization process, whereby financial and economic risks are
27 distributed by pooling mortgage loans and issuing securities or certificates for which the
28 mortgages serve as collateral. Certificates of the RMBS Trusts are issued to certificateholders

1 on whose behalf Plaintiffs hold the mortgage loans. Under the typical governing documents for
2 the RMBS Trusts, the Plaintiffs, solely in their trustee capacity, hold legal title to the mortgage
3 loans on behalf of and for the benefit of the Trusts' certificateholders.

4 71. The most common form of securitization of mortgage loans involves a
5 "sponsor" – an entity that acquires or originates the mortgage loans and initiates the
6 securitization. A "private label" securitization is one that is sponsored by a private entity, rather
7 than a GSE such as Fannie Mae or Freddie Mac.

8 72. Sponsors do not always originate the mortgage loans themselves, but
9 frequently acquire the mortgage loans from loan originators or others that have title to the loans.
10 For a loan to be conveyed from the point of origination to an RMBS trust involves a complex
11 series of sales transactions that often occur across state lines.

12 73. The prices paid for the mortgage loans that are deposited into the RMBS
13 Trusts are contingent on the quality and value of the mortgage loans. Economic and financial
14 risk are distributed because the pool of loans in an RMBS trust typically is geographically
15 diverse. Thus, the Trusts do not exclusively contain loans secured by California real property
16 (or exclusively loans from any other single state), but rather each Trust contains mortgage loans
17 secured by real property located in a variety of states and localities.

18 74. The certificates issued by the Trusts represent beneficial ownership
19 interests in the principal and interest from the cash flow generated by the mortgage loan pool in
20 accordance with specific payment rules. The assets of the Trusts are serviced by "loan
21 servicers" whose responsibilities include collecting payments by borrowers and managing
22 borrower defaults.

23 75. The certificates are purchased by investors – typically referred to as
24 "certificateholders" – who seek a particular risk profile of the Trust's mortgage loans. The
25 certificates in the Trusts typically are issued pursuant to offering memoranda, which explain the
26 general structure of the investment and the risks involved and contain detailed descriptions of
27 the collateral groups underlying the certificates.
28

1 76. Pursuant to the governing documents for the Trusts, the performing loans
2 held by the Trusts generally cannot be sold. Therefore, there is no trading market for
3 performing private-label loans like those targeted by Richmond and MRP. Investors in RMBS
4 trusts expect those loans to perform until maturity, unless the loan is paid off by the borrower
5 early or goes into default.

6 **2. Harm to the Trusts and their Beneficiaries**

7 77. If implemented, the Richmond Seizure Program would cause significant
8 harm to the RMBS Trusts and their certificateholders, who ultimately bear the substantial harm
9 imposed by the Takings Program.

10 78. First, the targeting of performing loans within the Trusts' portfolios
11 would, by itself, completely upend the purpose of the securitization process, which is based
12 upon loan diversification and on the stable and non-saleable nature of performing loans within
13 the pool.

14 79. Second, the number of loans targeted in Richmond alone – hundreds of
15 mortgage loans – would cause tens of millions of dollars in losses to the RMBS Trusts for which
16 Plaintiffs serve as trustees, and other RMBS trusts holding those loans (with an average
17 estimated loss of approximately \$100,000 to \$200,000 per seized loan), potentially as high as
18 \$66 million or more in losses to the Trusts for which the Plaintiffs are trustees, and \$200 million
19 or more to all RMBS trusts. Indeed, upon information and belief, the first wave of 624 loans
20 targeted by Defendants could potentially cause losses to RMBS trusts holding those loans of
21 \$90 million or more.

22 80. Third, on information and belief, Richmond is a test case for the Program.
23 Many municipalities have been approached by MRP, but, upon information and belief,
24 Richmond has taken the most significant steps towards seizing loans under the Program. On
25 information and belief, those municipalities, and many others, are watching to see whether
26 Richmond is able to carry out its scheme. If even a few other municipalities of Richmond's size
27 implement the Program, then losses could range in the billions of dollars. If more than a few
28 implement the Program, losses could mount far higher. This widespread transfer of substantial

1 wealth from the RMBS Trusts and their certificateholders, on the one hand, to MRP, local
2 governments, and select local homeowners, on the other hand, could destabilize the national
3 housing market.

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

5 81. The Program would also cause significant harm to interstate commerce
6 and the national housing market. In addition to the damages caused to RMBS Trusts and their
7 beneficiaries by the seizure of performing residential mortgage loans at artificially low prices,
8 the Program would have a chilling effect on the future extension of mortgage credit to
9 homeowners. Lenders would have reduced willingness to underwrite mortgages in Richmond
10 or other municipalities in which they perceive a risk that similar programs will be implemented.
11 To the extent lenders chose to continue lending in such municipalities at all, they necessarily
12 would lower the loan-to-value (of the home) ratio at which they would lend, and charge a higher
13 interest rate on the loans they do make, to take into account the new risk that the loan would be
14 seized by eminent domain whenever the housing market enters a cyclical downturn. Potential
15 borrowers in those jurisdictions would therefore suffer by the tightening of credit in their
16 communities. With diminished access to credit, many prospective homeowners would be
17 unable to obtain loans, and housing prices would fall across the board.

18 82. Further, the Program would undermine investor confidence in the
19 residential mortgage-backed securities market, and by extension, the national housing market
20 and national economy. The securitization market would be upended, as investors in residential
21 mortgage-backed securities would be unable to adequately evaluate underlying mortgage pools
22 that collateralize their investment, and prices for affected securities would decrease. A broad
23 range of investors hold interests in residential mortgage-backed securitizations as part of
24 common diversification strategies. Thus, the detrimental effects of a valuation crisis as to the
25 securities evidencing those interests would flow through the national housing market, and
26 likewise, the national economy.

1 83. Likewise, industries dependent on a vibrant housing market and an active
2 home lending environment would suffer, such as the home building, construction, and realty
3 industries.

4 84. In comments published in the Federal Register, 77 FR 47652 (August 9,
5 2012) discussing the “Use of Eminent Domain To Restructure Performing Loans,” the FHFA
6 recognized the harm that programs like the Richmond Seizure Program would cause. Among
7 other things, FHFA has explained that the GSEs, as well as the multiple Federal Home Loan
8 Banks for which FHFA acts as a regulator, because they are substantial holders of RMBS,
9 would be harmed, as well as the communities themselves that attempt to use eminent domain.
10 According to FHFA:

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

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

21 Among questions raised regarding the proposed use of eminent domain are the
22 constitutionality of such use; the application of federal and state consumer
23 protection laws; the effects on holders of existing securities; the impact on
24 millions of negotiated and performing mortgage contracts; the role of courts in
25 administering or overseeing such a program, including available judicial
26 resources; fees and costs attendant to such programs; and, in particular, critical
27 issues surrounding the valuation by local governments of complex contractual
28 arrangements that are traded in national and international markets.

23 85. Likewise, the U.S. House of Representatives Financial Services
24 Committee, which has oversight of Fannie Mae and Freddie Mac, recently issued a draft reform
25 bill, a stated purpose of which is to implement the following reform: “To combat
26 constitutionally-suspect ‘eminent domain’ schemes by local municipalities to seize mortgages
27 out of legally binding securities for purposes of rewriting their terms, prohibit the GSEs from
28 purchasing or guaranteeing loans originated in municipalities where such practices have been

1 employed during the last ten years.” Executive Summary of the Protecting American
2 Homeowners (PATH) Act, July 11, 2013, at 2.

3 86. The concerns expressed by the FHFA and the House Financial Services
4 Committee are well-founded. Indeed, if fully implemented, the Program could have a
5 devastating effect on interstate commerce, including on the mortgage-backed securities market
6 and the national housing market, and would detrimentally affect both borrowers and lenders.

7 **C. The Damages to the City of Richmond and Its Homeowners**

8 87. Richmond, and its citizens, would not be spared from the harm caused by
9 Richmond’s wrongful use of eminent domain powers to seize mortgage loans under the
10 Program. Lenders would be less willing to write mortgages for Richmond citizens, and property
11 values would plummet and homeownership rates would drop.

12 88. The relatively small number of select Richmond homeowners who could
13 receive a windfall under the Program by having their underwater mortgages refinanced will not
14 offset the devastation to the local housing market and economy due to the Program’s chilling
15 effect on future mortgage credit.

16 **III. Injunctive Relief Is Necessary to Prevent the Immediate and Irreparable Harm**
17 **That Will Occur if the Program Is Allowed to Go Forward**

18 89. Defendants should be enjoined from implementing the Richmond Seizure
19 Program. As demonstrated herein, the Program would cause significant and widespread
20 economic harm, and, if carried out, the transactions that the Program contemplates will be
21 exceedingly difficult, if not impossible, to unwind.

22 90. Under the Program, once new loans are issued to refinance the original
23 loans, they would be securitized: sold by Richmond/MRP to another residential mortgage loan
24 pool backed by the FHA. Thus, to unwind these transactions would require extinguishing the
25 new loan, thereby harming the FHA trust that holds that loan, and its certificateholders. The
26 homeowner whose loan has been seized and refinanced would be put in a situation where their
27 underwater mortgage has been extinguished, refinanced for a lower rate, and then reinstated
28 again at the old rate and their new home equity from the refinancing taken away.

1 97. 42 U.S.C. § 1983 provides that any person, acting under the color of state
2 law, that subjects or causes to be subjected any citizen of the United States or other person
3 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the
4 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper
5 proceeding for redress.

6 98. California Constitution article I, § 19 provides that private property may
7 be taken only for a “public use.”

8 99. The Richmond Seizure Program is carried out by Defendants under the
9 color of state law.

10 100. The Program violates the “public use” requirement of the Takings Clause
11 of the Fifth and Fourteenth Amendments and of the California Constitution. . The Program is not
12 implemented for a public purpose, but rather for the purpose of seizing property from one set of
13 private entities (the Trusts and their beneficiaries) to enrich MRP, a private investment firm, and
14 its investors. The stated justifications for the Program – to reduce foreclosures and their
15 attendant economic effects – are mere pretexts for this profit-driven scheme. Indeed, the fact
16 that the Program principally targets performing loans shows that it is not designed to reduce
17 foreclosures or their economic consequences, but rather to confer private benefits on a select set
18 of individuals.

19 101. In addition, the Program would not benefit Richmond’s citizens as a
20 whole, but would instead lead to windfalls for the select group of homeowners that meet a loan
21 profile profitable to Defendants and their investors, to the detriment of all others. The Program
22 expressly excludes many borrowers and principally targets performing mortgage loans that are
23 not in default or foreclosure. If the Program is fully implemented and performing loans are
24 seized for well-below their unpaid principal balance, and thus at significant losses to the Trusts
25 holding those loans and their beneficiaries, future lenders will be unwilling to extend credit in
26 Richmond at the current level, creating, at a minimum, a chilling effect on the local home
27 lending environment. This will have severe consequences for current and prospective
28 Richmond homeowners.

1 102. None of the allegations in this Complaint should be construed in any way
2 as an attempt to threaten or restrain any of Defendants' constitutional rights of freedom of
3 speech or rights to petition government for the redress of grievances. Any allegations in this
4 Complaint that discuss statements made or actions taken by Defendants or any of their
5 representatives are included in this Complaint solely for the purposes of pleading a basis for
6 Plaintiffs' claims for relief (all of which are independent of Defendants' rights to free speech or
7 to petition government), including, among other things, by showing how the Richmond Seizure
8 Program works and identifying Defendants' purported and actual justifications for the Program
9 and intent to improperly use eminent domain powers. In short, the Complaint targets
10 Defendants' unconstitutional and unlawful use of eminent domain, not Defendants' statements
11 about it.

12 103. Accordingly, Plaintiffs respectfully request that the Court issue a
13 judgment for declaratory and injunctive relief against Defendants, declaring that the
14 implementation of the Richmond Seizure Program would violate the Fifth and Fourteenth
15 Amendments of the U.S. Constitution and article I, § 19 of the California Constitution, and
16 permanently enjoining Defendants from implementing any aspect of the Program.

17 **COUNT II**

18 **(VIOLATION OF THE PROHIBITIONS AGAINST EXTRATERRITORIAL**
19 **SEIZURES UNDER THE TAKINGS CLAUSES OF THE U.S. AND CALIFORNIA**
20 **CONSTITUTIONS AND THE CALIFORNIA CODE OF CIVIL PROCEDURE, AND**
21 **CLAIM UNDER 42 U.S.C. § 1983)**

22 **(AGAINST ALL DEFENDANTS)**

23 104. Plaintiffs repeat and reallege the allegations contained in each preceding
24 paragraph as if fully set forth herein.

25 105. The Fifth Amendment to the U.S. Constitution prohibits a local
26 government from extraterritorially seizing property pursuant to eminent domain powers. This
27 requirement is incorporated and made applicable to the states and their political subdivisions
28 and actors by the Fourteenth Amendment of the U.S. Constitution.

1 106. 42 U.S.C. § 1983 provides that any person, acting under the color of state
2 law, that subjects or causes to be subjected any citizen of the United States or other person
3 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the
4 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper
5 proceeding for redress.

6 107. Article I, § 1 of the California Constitution prohibits local governments
7 from extraterritorially seizing property pursuant to eminent domain powers.

8 108. Under Cal. Civ. Pro. Code § 1240.050, a local public entity may acquire
9 by eminent domain only property located within its territorial limits. Under Cal. Civ. Pro. Code
10 § 1250.020, an eminent domain proceeding shall be commenced in the county in which the
11 property sought to be taken is located.

12 109. The Richmond Seizure Program is carried out by Defendants under the
13 color of state law.

14 110. Defendants' implementation of the Program violates prohibitions against
15 extraterritorial property seizures under the Fifth and Fourteenth Amendments of the U.S.
16 Constitution and Article I, § 1 of the California Constitution, and violates Cal. Civ. Pro. Code §
17 1240.050 and § 1250.020. The mortgage loans that Defendants target under the Program are not
18 located within the territorial borders of Richmond, California, but are held in Trusts located
19 outside of Richmond. Because the situs of a debt for eminent domain purposes is deemed to be
20 the location of the creditor, Defendants have no power to seize these outside-of-Richmond
21 debts.

22 111. In addition, the notes evidencing the mortgage loans are physically held
23 by custodians in locations outside of Richmond. Thus, Defendants have no power to effect
24 extraterritorial seizures of those tangible instruments. Indeed, the many of the RMBS Trusts
25 holding Richmond loans and the notes evidencing those loans are not even located inside the
26 State of California.

27 112. Accordingly, Plaintiffs respectfully request that the Court issue a
28 judgment for declaratory and injunctive relief against Defendants, declaring that the

1 implementation of the Richmond Seizure Program would violate the Fifth and Fourteenth
2 Amendments of the U.S. Constitution, article I, § 1 of the California Constitution, and Cal. Civ.
3 Pro. Code § 1240.050 and § 1250.020, and permanently enjoining Defendants from
4 implementing any aspect of the Program.

5 **COUNT III**

6 **(VIOLATION OF THE COMMERCE CLAUSE OF THE U.S. CONSTITUTION AND**
7 **CLAIM UNDER 42 U.S.C. § 1983)**

8 **(AGAINST ALL DEFENDANTS)**

9 113. Plaintiffs repeat and reallege the allegations contained in each preceding
10 paragraph as if fully set forth herein.

11 114. Article I, § 8, cl. 3 of the U.S. Constitution (the “Commerce Clause”)
12 gives Congress the power to regulate commerce among the several states. Under the doctrine of
13 the “dormant Commerce Clause,” states and their political subdivisions are prohibited from
14 taking action designed to benefit in-state economic interests by burdening out-of-state interests.
15 That doctrine prohibits direct regulation of interstate commerce by the states and their political
16 subdivisions, and permits incidental regulation only where the burden imposed on such
17 commerce is not excessive in comparison with the putative local benefits.

18 115. 42 U.S.C. § 1983 provides that any person, acting under the color of state
19 law, that subjects or causes to be subjected any citizen of the United States or other person
20 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the
21 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper
22 proceeding for redress.

23 116. The Richmond Scizure Program is carried out by Defendants under the
24 color of state law.

25 117. Defendants violate the Commerce Clause of the U.S. Constitution by
26 implementing the Program, which is designed to benefit certain local economic interests – i.e.,
27 those of a relatively small number of Richmond homeowners selected to participate in the
28 Program, and of the San Francisco-based investment firm MRP that would profit under the

1 Program – at the expense of out-of-Richmond and out-of-state interests, including the Trusts
2 that hold the mortgage loans targeted for seizure and the beneficiaries of those Trusts.

3 118. In addition, the Program is a direct regulation of interstate commerce by
4 Richmond. The Program expressly targets for seizure private-label mortgage loans held by out-
5 of-Richmond and out-of-state Trusts and their beneficiaries, precisely because of Richmond’s
6 belief that there is a “market failure” in this sector of the interstate economy. The Trusts are
7 investment vehicles designed to distribute economic and financial risk by holding a diversified
8 collateral base of mortgage loans, including loans that are diverse based on, among other
9 factors, their geographic and risk profiles. Thus, the Trusts do not hold only loans secured by
10 real property located in Richmond or California, but by real property located in a variety of
11 states and localities.

12 119. Also, the private-label mortgage loans targeted by MRP were acquired by
13 a private sponsor, who securitized them in a private-label RMBS Trust, in which the loans are
14 serviced, and mortgage payments flow through the Trusts to be ultimately distributed to the
15 Trusts’ certificateholders. Therefore, the Program would directly regulate an investment
16 structure that by its very nature depends on a pool of collateral located in different states, and on
17 the interstate flows of proceeds from homeowners, to loan servicers, to the Trusts, and then
18 ultimately to the Trusts’ certificateholders.

19 120. Furthermore, the residential mortgage-backed securities market is a
20 national industry that crosses state lines, with investors and other market participants located
21 throughout the country. The Program would significantly and directly regulate this market by
22 seizing its underlying assets, and not for a fair market value, but for steeply discounted
23 valuations unilaterally determined by the local government.

24 121. Moreover, the burden imposed on interstate commerce by the Program
25 would be excessive, and would greatly outweigh any purported benefits to the Richmond
26 community. Among other things, the Program could cause hundreds of millions of dollars in
27 losses to the Trusts that hold the targeted mortgage loans and the beneficiaries of those Trusts.
28 It would also upend the heavily negotiated investment structures used across the national

1 residential mortgage backed securitization industry, diminish investor confidence in such
2 structures, and have a chilling effect on mortgage credit (in Richmond and elsewhere). In
3 addition, the purported benefits to Richmond – of reducing foreclosures and their local
4 consequences – are minimal or non-existent. The Program principally does not aim to seize
5 loans in default or at serious risk of default or foreclosure, but performing loans at low risk of
6 default, which would not even address the harms that it purports to prevent. The benefits to the
7 relatively small number of Richmond homeowners receiving a windfall under the Program
8 would not outweigh the harm that the Program would cause to the Trusts, their beneficiaries,
9 and others, on both a local and national scale.

10 122. Accordingly, Plaintiffs respectfully request that the Court issue a
11 judgment for declaratory and injunctive relief against Defendants, declaring that the
12 implementation of the Richmond Seizure Program would violate the Commerce Clause of the
13 U.S. Constitution, and permanently enjoining Defendants from implementing any aspect of the
14 Program.

15 **COUNT IV**

16 **(VIOLATION OF THE CONTRACTS CLAUSE OF THE U.S. CONSTITUTION AND**
17 **CLAIM UNDER 42 U.S.C. § 1983)**

18 **(AGAINST ALL DEFENDANTS)**

19 123. Plaintiffs repeat and reallege the allegations contained in each preceding
20 paragraph as if fully set forth herein.

21 124. Article I, § 10 of the U.S. Constitution – the “Contracts Clause” –
22 prohibits states from “impairing the Obligation of Contracts.” The Contracts Clause prevents
23 states and their political subdivisions from passing any law that would abrogate debts of their
24 citizens, where that law would impair commercial intercourse and threaten the existence of
25 credit.

26 125. 42 U.S.C. § 1983 provides that any person, acting under the color of state
27 law, that subjects or causes to be subjected any citizen of the United States or other person
28 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the

1 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper
2 proceeding for redress.

3 126. Defendants violate the Contracts Clause by implementing a scheme that
4 would severely impair the Trusts' contractual rights to receive full payments of unpaid principal
5 from borrowers. In exchange, the Program provides cash payments worth significantly less than
6 the rights abrogated by Defendants. The purpose of this significant impairment of contractual
7 rights is improper and without a legitimate public purpose or necessity: to abrogate debts held
8 by a small, select group of that jurisdiction's citizen while enriching a private investment firm
9 and its backers.

10 127. In addition, the Program impairs commercial intercourse and threatens
11 the existence of credit for current and prospective homeowners, in Richmond and elsewhere in
12 California and throughout the country. In Richmond, the Program would have a chilling effect
13 on home lending, as lenders would be unable to quantify the risk of seizures into pricing for
14 future mortgage loans and would consequently reduce the availability of credit and negatively
15 impact the credit terms on the loans actually made going forward. That underwriting problem
16 would spread to any other jurisdictions that lenders believe are at risk of adopting MRP's
17 scheme, causing property values and homeownership rates to decrease.

18 128. Accordingly, Plaintiffs respectfully request that the Court issue a
19 judgment for declaratory and injunctive relief against Defendants, declaring that the
20 implementation of the Richmond Seizure Program would violate the Contracts Clause of the
21 U.S. Constitution, and permanently enjoining Defendants from implementing any aspect of the
22 Program.

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COUNT V

**(VIOLATION OF THE “JUST COMPENSATION” REQUIREMENTS OF THE
TAKINGS CLAUSE OF THE U.S. AND CALIFORNIA CONSTITUTIONS AND
CLAIM UNDER 42 U.S.C. § 1983)**

(AGAINST ALL DEFENDANTS)

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5 129. Plaintiffs repeat and reallege the allegations contained in each preceding
6 paragraph as if fully set forth herein.

7 130. The Fifth Amendment to the U.S. Constitution provides that “private
8 property” shall not be “taken for public use, without just compensation.” This requirement is
9 incorporated and made applicable to the states and their political subdivisions and actors by the
10 Fourteenth Amendment of the U.S. Constitution.

11 131. In addition, under the U.S. and California Constitutions, where only a
12 portion of property is condemned (referred to as a “partial” taking), the measure of just
13 compensation includes both the value of the thing condemned and the loss in value to the
14 remaining, non-condemned portion of the property.

15 132. 42 U.S.C. § 1983 provides that any person, acting under the color of state
16 law, that subjects or causes to be subjected any citizen of the United States or other person
17 within its jurisdiction to the deprivation of any rights, privileges, or immunities under the
18 Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper
19 proceeding for redress.

20 133. A property owner is entitled to just compensation for any taking under
21 Article I, § 1 of the California Constitution. California Code of Civil Procedure § 1263.320
22 provides that the test for assessing “fair market value” for purposes of the “just compensation”
23 requirement is the highest price that a hypothetical buyer and seller would agree to in the
24 marketplace, assuming both were willing and able to complete the transaction but had no
25 particular or urgent necessity to do so.

26 134. The Richmond Seizure Program is carried out by Defendants under the
27 color of state law.
28

1 135. Defendants violate the just compensation requirements of the Takings
2 Clause of the U.S. Constitution and California Constitution, and also violate California statutory
3 law. The Program is a for-profit scheme that proposes seizing performing mortgage loans at
4 fractions of their unpaid principal balance, prices that are below the fair market value for even
5 loans that are in default. Thus, the Program would unjustly compensate the Trusts for the loan
6 seizures by seizing loans at prices far less than their actual or fair market values. This
7 unconstitutional feature of the Program is not merely a question of the valuation of a single
8 property, but instead is the central premise of the Program itself. Indeed, the Program is only
9 financially feasible, and profitable to Defendants and the Program's other participants, if loans
10 are seized at deeply discounted values and then refinanced at higher prices (with Defendants
11 profiting from the price spread).

12 136. In addition, the Program violates the just compensation requirements of
13 the Takings Clause of the U.S. Constitution and California Constitution, and also violates
14 California statutory law, by constituting a "partial" taking of the Trusts' remaining assets for
15 which no compensation is provided. The loans targeted by the Program are held by the Trusts
16 as part of a pool consisting of numerous loans. The Program cherry-picks and seizes the most
17 profitable loans from that pool – i.e., performing loans – leaving the Trusts with a pool
18 containing a higher concentration of non-performing loans, thereby diminishing the value of the
19 Trusts' remaining, non-condemned assets.

20 137. Accordingly, Plaintiffs respectfully request that the Court issue a
21 judgment for declaratory and injunctive relief against Defendants, declaring that the
22 implementation of the Richmond Seizure Program would violate the Takings Clause of the U.S.
23 Constitution and California Constitution, and permanently enjoining Defendants from
24 implementing any aspect of the Program.

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COUNT VI

(VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE U.S. AND CALIFORNIA CONSTITUTIONS AND CLAIM UNDER 42 U.S.C. § 1983)

(AGAINST ALL DEFENDANTS)

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

139. The Fourteenth Amendment to the U.S. Constitution provides that no state shall deny to any person within its jurisdiction equal protection of its laws (the “Equal Protection Clause”). The Equal Protection Clause prohibits states or their subdivisions from discriminating against similarly situated individuals, where the discrimination is not rationally related to a legitimate purpose.

140. 42 U.S.C. § 1983 provides that any person, acting under the color of state law, that subjects or causes to be subjected any citizen of the United States or other person within its jurisdiction to the deprivation of any rights, privileges, or immunities under the Constitution, shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress.

141. Article I, § 7 of the California Constitution provides that a person may not be denied equal protection of the laws.

142. The Richmond Seizure Program is carried out by Defendants under the color of state law.

143. Defendants violate the Equal Protection Clause of the U.S. and California Constitutions because the Program discriminates against certain holders of mortgage loans (including the Trusts), as well as certain classes of Richmond homeowners, and such discrimination is not rationally related to any legitimate purpose.

144. The Program is discriminatory because, among other reasons, it (a) solely targets loans held by private-label RMBS trusts, and does not target loans held by other holders, including GSE trusts or banks, (b) primarily targets performing loans, and primarily excludes defaulted loans, including loans in foreclosure, and (c) targets first-lien mortgages and not

1 second-lien mortgages. Defendants' purported justifications for the Program, of reducing
2 foreclosures and their attendant economic consequences (even if a legitimate purpose for the
3 abuse of eminent domain powers, which they are not), are in no way furthered by targeting
4 performing first-lien loans held in private-label RMBS trusts, to the exclusion of other loans,
5 such as defaulting loans or loans held by GSE trusts or banks.

6 145. Additionally, under the Program, some few select Richmond homeowners
7 would benefit from the Program, whereas many more would be harmed by it. Some Richmond
8 homeowners would receive an unjustified windfall by having their loans refinanced because
9 they meet a borrowing profile profitable to Defendants, whereas no benefit would be bestowed
10 upon the other homeowners who are not eligible for refinancing. Indeed, the homeowners not
11 selected for the Program will suffer harm by, among other reasons, being subjected to the
12 chilling effect on credit in the Richmond community caused by Richmond's implementation of
13 an eminent domain program that arbitrarily seizes mortgage loans. There is no rational basis for
14 providing a windfall to select homeowners at the expense of other homeowners.

15 146. The lack of a rational basis for Richmond's discrimination among
16 homeowners between those who will reap the windfall benefits of the Program and those who
17 will not is underscored by the fact that Richmond does not itself identify which loans will be
18 condemned. Rather, Richmond delegates this responsibility to MRP – a private, for-profit
19 investment firm – to identify which loans will best further its own purpose of enriching itself at
20 the expense of the Trusts and their beneficiaries.

21 147. Accordingly, Plaintiffs respectfully request that the Court issue a
22 judgment for declaratory and injunctive relief against Defendants, declaring that the
23 implementation of the Richmond Seizure Program would violate the Equal Protection Clause of
24 the U.S. Constitution and California Constitution, and permanently enjoining Defendants from
25 implementing any aspect of the Program.

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COUNT VII

(PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF AND DECLARATORY RELIEF)

(AGAINST ALL DEFENDANTS)

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

149. Defendants have taken substantial steps toward seizing loans under the Richmond Seizure Program, and Plaintiffs have every reason to expect that such seizures are imminent. If those seizures occur, the Trusts will be irreparably harmed. As part of the Program, Defendants would restructure the seized mortgages and refinance them with new loans. The new loans would then be sold into new mortgage-backed securities pools. Securities would be issued based on these pools to investors, and the securities would trade. Those transactions will be exceedingly difficult, if not impossible, to unwind after the fact, and to do so could cause harm to a variety of parties, including the Trusts currently holding Richmond loans that are seized and the investors in those Trusts, the issuer of the new mortgage loan, the trust holding the new loan and the investors in that trust, and the homeowners whose loans are restructured and refinanced.

150. Moreover, for all of the reasons discussed herein, Plaintiffs have a likelihood of success on the merits of their claims, and the balance of equities tips decidedly in favor of granting temporary relief to Plaintiffs. There will be no serious harm to Defendants caused by a delay in implementing the Program if it is preliminarily enjoined, as the Program targets loans of homeowners who are not in imminent danger of losing their homes if the Program is subject to a preliminary injunction. On the other hand, if implemented, the Program would have a chilling effect on the extension of credit to Richmond borrowers, along with consequential negative effects on Richmond's housing market and economy. Such effects could spread through California and the country, especially if other municipalities take steps toward implementing similar programs. Additionally, the Program would cause tens of millions of losses to the Trusts, and, if it spreads beyond Richmond, could have a destabilizing effect on the

1 mortgage-backed securities market, and the national housing market more broadly. There is a
2 significant public interest in enjoining the Program both permanently and preliminarily, while
3 the serious issues of constitutionality and legality raised by this Complaint are decided.

4 151. In addition, with respect to all of the claims for relief asserted in this
5 Complaint, and for all of the reasons asserted herein, there is an actual controversy between
6 Plaintiffs and Defendants sufficient for a declaratory judgment pursuant to 28 U.S.C. §§ 2201
7 and 2202.

8 152. Accordingly, Plaintiffs are entitled to preliminary and permanent
9 injunctive relief and declaratory relief restraining Defendants from implementing the Richmond
10 Seizure Program and declaring the Program unlawful.

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PRAYER FOR RELIEF

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

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

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

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

D. Declare that Defendants' implementation of the Richmond Seizure Program violates the Equal Protection Clause of the Constitution of the United States, and enjoin Defendants from implementing the Program on that basis;

E. Declare that Defendants' implementation of the Richmond Seizure Program violates Article I, § 19 of the Constitution of the State of California, and enjoin Defendants from implementing the Program on that basis;

F. Declare that Defendants' implementation of the Richmond Seizure Program violates Article I, § 7 of the Constitution of the State of California, and enjoin Defendants from implementing the Program on that basis;

G. Declare that Defendants' implementation of the Richmond Seizure Program violates Cal. Civ. Pro. Code § 1263.320, and enjoin Defendants from implementing the Program on that basis;

H. Declare that Defendants' implementation of the Richmond Seizure Program violates Cal. Civ. Pro. Code § 1240.050, and enjoin Defendants from implementing the Program on that basis;

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

J. Issue preliminary and permanent injunctions restraining Defendants, their officers, employees, agents, successors, and assigns from implementing the Richmond Seizure Program;

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

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

Respectfully submitted,

August 7, 2013

By _____

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