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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ALLIANCE OF CALIFORNIANS FOR
COMMUNITY EMPOWERMENT;
HOUSING AND ECONOMIC RIGHTS
ADVOCATES; URBAN REVIVAL dba
CITY LIFE/VIDA URBANA; THE
COLORADO FORECLOSURE
RESISTANCE COALITION; HOME
DEFENDERS LEAGUE; NEW JERSEY
COMMUNITIES UNITED; NEW YORK
COMMUNITIES FOR CHANGE,

Plaintiffs,

v.

FEDERAL HOUSING FINANCE
AGENCY,

Defendant.

CASE No.: 13-cv-05618-KAW

**SECOND DECLARATION OF SHAYLA
SILVER-BALBUS IN SUPPORT OF
PLAINTIFFS' REPLY**

Hearing Date: July 18, 2014
Time: 11:00 a.m.
Location: Oakland U.S. Courthouse
Courtroom 4, 3rd Floor
Judge: Magistrate Judge Kandis A.
Westmore

1
2 1. I am counsel for Plaintiffs in this action. Except as otherwise stated, the information
3 contained in this declaration is based upon my personal knowledge and if called upon to testify, I
4 could and would competently testify thereto.

5 FHFA's Failure to Search Agency Phone Messages

6 2. Defendant FHFA has not searched Agency phone messages which may be
7 responsive to Plaintiffs' FOIA request, because "Plaintiffs' FOIA request did not identify any
8 individuals who may have called the Agency." *See* ECF No. 47 at 8. Plaintiffs have previously
9 disputed this decision not to search Agency phone messages in their Cross-Motion and Opposition.
10 *See* ECF No. 41 at 12-13.

11 3. I have reviewed all of the documents produced by FHFA to Plaintiffs and have
12 identified several instances in which the documents reflect that Agency officials exchanged phone
13 calls and phone messages with trade group representatives about eminent domain. Evidence of
14 these phone calls is contained in the Agency's first production of documents, dated December 30,
15 2013, relevant excerpts of which are attached as Exhibit 1 to this declaration.

16 4. The excerpts attached as Exhibit 1 include: (1) a July 23, 2012 email from Michael
17 Powers at FHFA to Jon Greenlee at FHFA, in which Mr. Powers forwards a statement by SIFMA
18 about eminent domain and states: "Not sure you are aware of this – *I received a lengthy voicemail*
19 *from Richard Dorfman. You may want to give him a call.*" Exh. 1 at Bates 1 (emphasis added).
20 Richard Dorfman is cc'd on the email and has a "sifma.org" email address; (2) an April 18, 2013
21 email from Chris Killian, with a "sifma.org" email address, to Alfred Pollard, FHFA General
22 Counsel, cc'ing Richard Dorman, and forwarding an email about SIFMA sending letters to officials
23 in Richmond, CA and North Las Vegas, NV opposing eminent domain proposals. The email from
24 Mr. Killian to Mr. Pollard reads: "I wanted to send this your way; Richard may have given you a
25 heads up *earlier this week when you spoke. ... Have a good weekend if we don't speak.*" *Id.* at
26 Bates 2 (emphasis added); and (3) a June 11, 2013 email from Chris Killian to Alfred Pollard, in
27
28

1 which Mr. Killian forwards an “Eminent Domain Update.” The email reads: “It may make sense
2 for us to talk”; Mr. Pollard responds “Will call.” *Id.* at Bates 3.

3

4 I declare under penalty of perjury under the laws of the United States that the foregoing
5 is true and correct.

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Executed this 10th day of July 2014 in San Francisco, California.

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/s/ Shayla Silver-Balbus

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Shayla Silver-Balbus

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Exhibit 1

Easter, Stacy

From: Dorfman, Richard <(b)(6)@sifma.org>
Sent: Monday, July 23, 2012 8:45 AM
To: Powers, Michael J.; Greenlee, Jon
Subject: RE: Press Statement: SIFMA Statement on Eminent Domain and TBA Trading

Mike and Jon,

Thank you for your interest. The "San Bernardino" matter approaches a crisis in seriousness and impact. I would be pleased to speak to one or both of you.

Today only, working from home: (b)(6) my private business line.

Regards,

Richard

From: Powers, Michael J. [Michael.Powers@fhfa.gov]
Sent: Monday, July 23, 2012 8:36 AM
To: Greenlee, Jon
Cc: Dorfman, Richard
Subject: FW: Press Statement: SIFMA Statement on Eminent Domain and TBA Trading

Jon

Not sure you are aware of this-I received a lengthy voicemail from Richard Dorfman. You may want to give him a call

(b)(6)

(b)(5)

Mike

From: Dorfman, Richard [mailto:(b)(6)@sifma.org]
Sent: Thursday, July 19, 2012 1:02 PM
Subject: Press Statement: SIFMA Statement on Eminent Domain and TBA Trading

The following statement was issued this morning and is available at this link: <http://www.sifma.org/news/news.aspx?id=8589939537>

Release Date: July 19, 2012

Contact: Katrina Cavalli, (b)(6) (b)(6)@sifma.org

SIFMA Statement on Eminent Domain and TBA Trading

New York, NY, July 19, 2012—SIFMA today issued the following statement on eminent domain and TBA trading:

Recent press reports have discussed SIFMA's consideration of the potential impact of a seizure of mortgage loans through an eminent domain process on the To-Be-Announced (TBA) market for Mortgage-Backed Securities (MBS). The reports correctly note SIFMA and its members' strong concerns with and objections to such proposed policies that involve the use of involuntary seizures under eminent domain powers. SIFMA's existing TBA trading practice guidelines do not currently contemplate such actions and their impact on the homogeneity of loans eligible for TBA delivery needs to be assessed. Therefore, SIFMA necessarily discussed this issue with its members.

Easter, Stacy

From: Pollard, Alfred
Sent: Friday, April 19, 2013 9:53 AM
To: Killian, Chris
Subject: RE: SIFMA, Coalition Send Letters to Richmond CA and North Las Vegas NV Opposing Eminent Domain

thanks

From: Killian, Chris [mailto:(b)(6)@sifma.org]
Sent: Thursday, April 18, 2013 7:16 PM
To: Pollard, Alfred
Cc: Dorfman, Richard
Subject: Fwd: SIFMA, Coalition Send Letters to Richmond CA and North Las Vegas NV Opposing Eminent Domain

Hi Alfred,

Good to see you the other week. I wanted to send this your way; Richard may have given you a heads up earlier this week when you spoke. Either way, we got the proverbial band back together and have sent off some letters to officials in Richmond CA (big focus right now) and North Las Vegas.

Earlier today, there was an event in Newark Nj pushing policymakers in this direction as well. Supporting materials have MRP fingerprints (and we know they've been to NJ already).

Have a good weekend if we don't speak.

-Chris

Mobile: (b)(6)

Begin forwarded message:

From: "Killian, Chris" (b)(6)@sifma.org>
To: "Killian, Chris" (b)(6), "Cameron, Tim" (b)(6)@sifma.org>, "Chamberlain, Kim" (b)(6)@sifma.org>
Subject: SIFMA, Coalition Send Letters to Richmond CA and North Las Vegas NV Opposing Eminent Domain

To: Sifma Eminent Domain Member WG

Earlier today we sent the attached letters to local officials in Richmond, CA and North Las Vegas, NV. The letters express strong opposition to and concerns with proposals to use eminent domain to seize mortgage loans, and SIFMA is joined by approximately 20 local and national organizations on each letter.

We expect to follow up these letters with in-person advocacy efforts in coming days.

Easter, Stacy

From: Pollard, Alfred
Sent: Tuesday, June 11, 2013 1:04 PM
To: (b)(6)@sifma.org
Subject: Re: Fwd: Eminent Domain Update

Will call

From: Killian, Chris [mailto:(b)(6)@sifma.org]
Sent: Tuesday, June 11, 2013 11:33 AM
To: Pollard, Alfred
Subject: Fwd: Eminent Domain Update

Hi Alfred,

I assume you saw the Hockett piece FRBNY published.

Also, I am not sure if you know, but (b)(6) has left SIFMA. It may make sense for us to talk.

Regards,
Chris

—
Sent from my iPad

Mobile: (b)(6)

Begin forwarded message:

From: "Killian, Chris" <(b)(6)@sifma.org>
Date: June 10, 2013, 3:43:24 PM EDT
To: "Killian, Chris" <(b)(6)@sifma.org>
Subject: Eminent Domain Update

To: Eminent Domain Member WG
Eminent Domain Industry Coalition

Please see below for links to a piece by Robert Hockett (which you may have previously seen) that was published today in the New York Fed's *Current Issues in Economics and Finance*. You might recall that Hockett was a visiting scholar of the FRBNY, in addition to being a consultant to MRP.

Related to this, SIFMA staff and other coalition groups will be attending the North Las Vegas City Council's workshop on eminent domain tomorrow night. Following that, we will be heading out to California for a round of meetings in Pomona, in coordination with local advocates. We will report back after the meetings.

Regards,

Chris

Chris Killian

(o) (b)(6)
(m)