

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Ex  
Rel. EDMUND G. BROWN, JR., ATTORNEY  
GENERAL,

Plaintiff,

v.

FEDERAL HOUSING FINANCE AGENCY;  
EDWARD DeMARCO, in his capacity as  
Acting Director of FEDERAL HOUSING  
FINANCE AGENCY; FEDERAL HOME LOAN  
MORTGAGE CORPORATION; CHARLES E.  
HALDEMAN, Jr., in his capacity as  
Chief Executive Officer of FEDERAL  
HOME LOAN MORTGAGE CORPORATION;  
FEDERAL NATIONAL MORTGAGE  
ASSOCIATION; MICHAEL J. WILLIAMS, in  
his capacity as Chief Executive  
Officer of FEDERAL NATIONAL MORTGAGE  
ASSOCIATION,

Defendants.

\_\_\_\_\_ /

No. 10-cv-03084 CW  
REQUEST FOR  
POSITION LETTER  
FROM UNITED STATES

SONOMA COUNTY and PLACER COUNTY,

Plaintiffs,

v.

FEDERAL HOUSING FINANCE AGENCY;  
EDWARD DeMARCO, in his capacity as  
Acting Director of FEDERAL HOUSING  
FINANCE AGENCY; FEDERAL HOME LOAN  
MORTGAGE CORPORATION; CHARLES E.  
HALDEMAN, Jr., in his capacity as  
Chief Executive Officer of FEDERAL

No. 10-cv-03270 CW

1 HOME LOAN MORTGAGE CORPORATION;  
2 FEDERAL NATIONAL MORTGAGE  
3 ASSOCIATION; MICHAEL J. WILLIAMS, in  
4 his capacity as Chief Executive  
5 Officer of FEDERAL NATIONAL MORTGAGE  
6 ASSOCIATION,

7 Defendants.  
8 \_\_\_\_\_/

9 SIERRA CLUB,

10 Plaintiff,

No. 10-cv-03317 CW

11 v.

12 FEDERAL HOUSING FINANCE AGENCY;  
13 EDWARD DeMARCO, in his capacity as  
14 Acting Director of FEDERAL HOUSING  
15 FINANCE AGENCY,

16 Defendants.  
17 \_\_\_\_\_/

18 CITY OF PALM DESERT,

19 Plaintiff,

No. 10-cv-04482 CW

20 v.

21 FEDERAL HOUSING FINANCE AGENCY;  
22 FEDERAL NATIONAL MORTGAGE  
23 ASSOCIATION; FEDERAL HOME LOAN  
24 MORTGAGE CORPORATION,

25 Defendants.  
26 \_\_\_\_\_/

United States District Court  
For the Northern District of California

1 TO: THE HONORABLE ERIC H. HOLDER, JR., ATTORNEY GENERAL

2 California, various local governments and the Sierra Club have  
3 filed the above-captioned lawsuits against the Federal Housing  
4 Finance Agency (FHFA) and related entities, raising novel issues  
5 that implicate other agencies and federal programs.<sup>1</sup> In light of  
6 the issues raised, the Court seeks input from the United States,  
7 which thus far has not participated in the litigation directly, if  
8 the United States deems it appropriate. The FHFA is not  
9 represented by the Department of Justice, but by its agency counsel  
10 and three outside law firms, Arnold and Porter LLP, O'Melveny &  
11 Myers LLP, and Reed Smith LLP.

12 Plaintiffs filed suit after the FHFA issued a statement, and  
13 the Federal National Mortgage Association (Fannie Mae) and the  
14 Federal Home Loan Mortgage Corporation (Freddie Mac) published  
15 announcements, which allegedly thwarted Property Assessed Clean  
16 Energy (PACE) programs substantially supported with grant monies  
17 from the Department of Energy. Through these programs, state and  
18 local governments sought to finance energy conservation projects  
19 using city and county tax assessments against the retrofitted  
20 properties. The American Recovery and Reinvestment Act of 2009  
21 allotted funding to support these programs.

22 On May 5, 2010, Fannie Mae and Freddie Mac issued "Industry  
23

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24 <sup>1</sup> Three similar cases are pending in federal district courts in  
25 Florida and New York. The FHFA has moved the Judicial Panel on  
26 Multidistrict Litigation to centralize all seven actions. The three  
27 additional actions are The Town of Babylon v. FHFA et al., 2:10-cv-  
28 04916 (E.D.N.Y); Natural Resource Defense Council, Inc. v. Federal  
Housing Finance Authority et al., 1:10-cv-07647-SAS (S.D.N.Y.); and  
Leon County v. FHFA et al., 4:10-cv-00436-RH (N.D.Fla.).

1 Letters" to lenders, referring to PACE programs, and reminding  
2 lenders that liens may not be senior to any mortgage sold to them.  
3 The letters further indicated that Fannie Mae and Freddie Mac would  
4 provide additional guidance for lenders on handling the PACE  
5 programs.

6 On July 6, 2010, the FHFA issued a statement, warning that  
7 PACE programs "present significant safety and soundness concerns  
8 that must be addressed by Fannie Mae, Freddie Mac and the Federal  
9 Home Loan Banks." The FHFA stated that the first liens established  
10 by PACE programs were different from "routine tax assessments," and  
11 posed significant risks to lenders, servicers, and mortgage  
12 securities investors. In turn, the FHFA directed Fannie Mae,  
13 Freddie Mac and the Federal Home Loan Banks to undertake several  
14 prudential actions, including reviewing their collateral policies  
15 to assure no adverse impact by PACE programs. In the wake of this  
16 statement, on August 31, 2010, Fannie Mae and Freddie Mac issued  
17 announcements to lenders, expressly stating that they would not  
18 purchase mortgage loans originated on or after July 6, 2010,  
19 secured by properties with an outstanding PACE obligation.

20 Plaintiffs seek declaratory and injunctive relief, pressing  
21 claims for violations of the Administrative Procedures Act, the  
22 National Environmental Policy Act, various state laws and the  
23 United States Constitution. All of the documents filed in the  
24 cases are available on this Court's electronic docket at  
25 <https://ecf.cand.uscourts.gov>. The claims present issues of first  
26 impression, including statutory interpretation of the Safety and  
27 Soundness Act, Title 12, Chapter 46.

1           Accordingly, the Court seeks the views of the United States in  
2 the form of a letter or brief from the Department of Justice. If  
3 the United States deems it appropriate, a response received no  
4 later than January 13, 2010 would be most helpful.

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7 Dated:     12/17/2010

  
CLAUDIA WILKEN  
United States District Judge

**United States District Court**  
For the Northern District of California

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1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 PEOPLE OF THE STATE OF CALIFORNIA, EX  
REL. et al,

Case Number: CV10-03084 CW  
CV10-03270 CW  
CV10-03317 CW  
CV10-04482 CW

5 Plaintiff,

6 v.

**CERTIFICATE OF SERVICE**

7 FEDERAL HOUSING FINANCE AGENCY et al,

8 Defendant.  
9 \_\_\_\_\_/

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,  
Northern District of California.

11 That on December 17, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
in the Clerk's office.

14 Honorable Eric H. Holder, Jr.  
15 Attorney General of the United States  
U. S. Department of Justice  
16 950 Pennsylvania Ave., NW  
Washington, DC 20530

17  
18 Melinda Haag, U.S. Attorney  
U.S. Attorney's Office  
19 Golden Gate Ave.  
P.O. Box 36055  
20 San Francisco, CA 94102

21 Dated: December 17, 2010

22 Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk  
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United States District Court  
For the Northern District of California