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MITCHELL E. ABBOTT (State Bar No. 64990)
DAVID G. ALDERSON (State Bar No. 231597)
RICHARDS, WATSON & GERSHON
A Professional Corporation
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101
Telephone: 213.626.8484
Facsimile: 213.626.0078
mabbott@rwglaw.com
dalderson@rwglaw.com

Attorneys for Plaintiff,
City of Palm Desert

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

CITY OF PALM DESERT, a municipal
corporation,

Plaintiff,

v.

FEDERAL HOUSING FINANCE
AGENCY; FEDERAL NATIONAL
MORTGAGE ASSOCIATION; and
FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Defendants.

CV 10 4482

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

**ORIGINAL
FILED**
OCT -4 P 3:48
RICHARD W. WIEGAND
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

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JURISDICTION AND VENUE

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2 1. This Court has subject matter jurisdiction to hear this case pursuant to
3 28 U.S.C. §1331 (action arising under the laws of the United States); 5 U.S.C. §701,
4 et seq. (action arising under the Administrative Procedure Act); 12 U.S.C. §1452(f)
5 (action involving the Federal Home Loan Mortgage Corporation); 12 U.S.C.
6 §§1723a(a) (action involving the Federal National Mortgage Association); 28 U.S.C.
7 §2201, et seq. (action for declaratory and injunctive relief); and 28 U.S.C. §1367
8 (supplemental jurisdiction).

9 2. This Court has personal jurisdiction over the defendants in that each
10 defendant is present and does business within the Northern District of California.

11 3. Venue is properly laid in this Court pursuant to 28 U.S.C. §1391(e)
12 because a substantial part of the events or omissions giving rise to the claims alleged
13 in this complaint occurred within the Northern District of California and the
14 defendants are present in the Northern District of California.

PARTIES

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16 4. Plaintiff, City of Palm Desert, is a municipal corporation, duly
17 incorporated and organized under and pursuant to the provisions of the California
18 Constitution and the general laws of the State of California.

19 5. Defendant, Federal Housing Finance Agency (hereinafter “FHFA”) is
20 an independent agency of the federal government created in 2008 pursuant to the
21 Federal Housing Finance Regulatory Reform Act of 2008, 12 U.S.C. §4511, Pub.L.
22 110-289, 122 Stats. 2661. Pursuant to the Act, FHFA has general supervisory and
23 regulatory authority over the Federal National Mortgage Association (hereinafter
24 “Fannie Mae”) and the Federal Home Loan Mortgage Corporation (hereinafter
25 “Freddie Mac”). Plaintiff is informed and believes and thereupon alleges that on or
26 about September 7, 2008, FHFA appointed itself Conservator of Fannie Mae and
27 Freddie Mac.

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1 6. Defendant, Federal National Mortgage Association (hereinafter “Fannie
2 Mae”) is a federally chartered government-sponsored enterprise. Fannie Mae is a
3 corporation whose stock is publicly traded and which is subject to the regulations of
4 the Securities and Exchange Commission. Fannie Mae purchases or guarantees
5 home loans originated by lenders throughout the United States, in order to facilitate
6 the availability of such lenders’ capital for the making of additional home loans to
7 other borrowers. Fannie Mae finances the purchase of said loans through the
8 issuance of obligations for purchase by investors throughout the United States,
9 including debt securities (e.g., notes and bonds), equity securities (i.e., stock), and
10 securities whose repayment is secured by “pools” of said home loans previously
11 purchased by Fannie Mae. Pursuant to 12 U.S.C. §1723a(a), Fannie Mae has the
12 power to sue and to be sued in both the state and federal courts.

13 7. Defendant, Federal Home Loan Mortgage Corporation (hereinafter
14 “Freddie Mac”), is a federally chartered government-sponsored enterprise. Freddie
15 Mac is a corporation whose stock is publicly traded and which is subject to the
16 regulations of the Securities and Exchange Commission. Freddie Mac purchases or
17 guarantees home loans originated by lenders throughout the United States, in order to
18 facilitate the availability of such lenders’ capital for the making of additional home
19 loans to other borrowers. Freddie Mac finances the purchase of said loans through
20 the issuance of Freddie Mac obligations for purchase by investors throughout the
21 United States, including debt securities (e.g., notes and bonds), equity securities (i.e.,
22 stock), and securities whose repayment is secured by “pools” of said home loans
23 previously purchased by Freddie Mac. Pursuant to 12 U.S.C. §1452(c), Freddie Mac
24 has the power to sue and to be sued in both the state and federal courts.

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FIRST CLAIM FOR RELIEF

(Adoption of Regulations in Violation of Administrative Procedure Act)

8. Plaintiff repeats the allegations contained in paragraphs 1 through 7 of this complaint and incorporates them herein by this reference as though set forth again in full.

I. Assessment Financing in California

9. For more than 100 years, the State of California has authorized the construction of public works and improvements for the public good which are financed by the issuance of public agency bonds. Security for repayment of the bonds is assured by assessments which are levied on the benefitted properties over a period of years which matches the repayment schedule for the bonds, and which generally is limited in duration, correlating with a maximum term of 120% of the reasonably expected economic life of the financed public improvements, pursuant to federal tax laws. Pursuant to the Improvement Act of 1911, California Streets & Highways Code Section 5000, et seq., the obligation to repay assessments levied pursuant to the Act takes priority over all other obligations on the property – including any preexisting purchase money mortgage and any subordinate or secondary mortgage obligations. Plaintiff is informed and believes and thereupon alleges that defendants, Fannie Mae and Freddie Mac, have consistently and without exception purchased and guaranteed mortgages on California properties subject to assessment liens which enjoy a statutory priority over any underlying mortgage obligation.

10. On July 21, 2008, Governor Schwarzenegger signed into law Stats. 2008, Ch. 159, §1, (“AB 811”), an urgency statute which became effective immediately, to amend existing contractual assessment law set forth in Chapter 29 of Part 3 of the Improvement Act of 1911, California Streets & Highways Code Section 5898.10 et seq., to authorize local governments to finance real property improvements which reduce energy use and provide clean electrical power. This

