United States District Court
For the Northern District of California

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

ORDER REGARDING SONOMA COUNTY'S MOTION FOR A PRELIMINARY INJUNCTION IN THE SONOMA COUNTY ACTION, 10-cv-03270 (Docket No. 33)

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

HOME LOAN MORTGAGE CORPORATION; FEDERAL NATIONAL MORTGAGE ASSOCIATION; MICHAEL J. WILLIAMS, in his capacity as Chief Executive Officer of FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Defendants.
_____/

SIERRA CLUB,

Plaintiff,

v.

FEDERAL HOUSING FINANCE AGENCY; EDWARD DeMARCO, in his capacity as Acting Director of FEDERAL HOUSING FINANCE AGENCY,

Defendants.
_____/

No. 10-cv-03317 CW

CITY OF PALM DESERT,

Plaintiff,

v.

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

Defendants.
_____/

No. 10-cv-04482 CW

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California, various local governments and the Sierra Club have filed the above-captioned lawsuits against the Federal Housing Finance Agency (FHFA) and related entities, after the FHFA issued a statement, and the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) published announcements, which allegedly thwarted Property Assessed Clean Energy (PACE) programs.[1] Through these programs, state and local governments sought to finance energy conservation projects using city and county tax assessments against the retrofitted properties. The American Recovery and Reinvestment Act of 2009 provided funding to support these programs, and the Department of Energy has assumed responsibility for allocating such funding through grants. Plaintiffs seek declaratory and injunctive relief, pressing claims for violations of the Administrative Procedures Act, the National Environmental Policy Act, various state laws and the United States Constitution.

In the Sonoma County action, 10-cv-03270, Sonoma County has moved for a preliminary injunction. Docket No. 33. The motion seeks a court order enjoining Defendants from:

1. Giving any force or effect in Sonoma County to the FHFA's July 6, 2010 "Statement on Certain Energy Retrofit Loan Programs" and any actions taken by Freddie Mac or Fannie Mae in response to

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[1] Three similar cases are pending in federal district courts in Florida and New York. The FHFA has moved the Judicial Panel on Multidistrict Litigation to centralize all seven actions. The three additional actions are The Town of Babylon v. FHFA et. al., 2:10-cv-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.).

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the FHFA's July 6, 2010 Statement, including but not limited to, the actions taken by Freddie Mac and Fannie Mae on August 31, 2010.

2. Interpreting the Uniform Security Instrument as prohibiting Sonoma County Energy Independence Program (SCEIP) assessments, whether obtained before or after July 6, 2010;

3. Issuing any further directives, statements, or guidance that characterize SCEIP assessments as loans or threats to the safety and soundness of Freddie Mac, Fannie Mae and the Home Loan Banks; and

4. Treating SCEIP assessments differently than any other assessments or property taxes imposed pursuant to state law. California filed an amicus brief in support of Sonoma County's motion. Docket No. 65. The motion was argued on December 2, 2010.

The Court is inclined to deny Sonoma County's motion. Sonoma is not likely to succeed on the merits to obtain the broad relief it requests. Nor does the balance of hardships tip sharply in its favor, given that continued uncertainty, even if preliminary relief were granted, is unlikely to be reassuring to Sonoma County residents who have applied for the program, energy-retrofitting businesses, and financial institutions.

However, the Court would entertain a narrower request for relief, such as an order that, although not being required in the interim to withdraw their challenged announcements, Defendants proceed to initiate the notice and comment process while this lawsuit is pending. Plaintiffs' likelihood of success on their Administrative Procedure Act claims for notice and comment is greater than on their other claims. Complying with a preliminary

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order such as this may not cause great hardship to Defendants, and might even serve a beneficial purpose. On the other hand, delay in beginning the notice and comment process, if such is eventually required, could cause a hardship to Sonoma County.

Because this form of preliminary relief was not requested in Sonoma County's motion, the Court allows Defendants to address it. Defendants may not reiterate their arguments about the merits of Plaintiffs' case, but may address the balance of hardships that would be incurred by a preliminary injunction requiring them to begin the notice and comment process, without being required to withdraw their announcements. Defendants may file a brief of not more than ten pages on January 6, 2011. Sonoma may respond with a brief of the same length, addressing the same issue, on January 13, 2010. The matter will be decided on the papers.

IT IS SO ORDERED.

Dated: December 20, 2010

CLAUDIA WILKEN
United States District Judge