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AUG 12 2009	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	M DEPUTY

1 Matthew D. Diamond
 2 Susan E. Diamond
 3 3120 E. Kesler Ln.
 4 Gilbert, AZ 85295
 5 (480) 279-4336
 6 Pro Se Plaintiffs

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

7 Matthew D. Diamond and)
 8 Susan E. Diamond,)
 9 Plaintiffs,)
 10 Vs.)
 11 OneWest Bank, FSB as successor)
 12 by acquisition of Indymac)
 13 Federal Bank, FSB; IndyMac)
 14 Mortgage Services, a division)
 15 of OneWest Bank, FSB; Mortgage)
 16 Electronic Registration)
 17 Systems, Inc., a Delaware Corp.)
 18 X Corporations 1-10;)
 19 John Does 1-10.)
 20 Defendants)

Case No. 2:09-cv-001593

APPLICATION FOR EXPEDITED
 TEMPORARY RESTRAINING ORDER
 AND ORDER TO SHOW CAUSE RE
 PRELIMINARY INJUNCTION
 (With Out Notice)

INTRODUCTION

23 Plaintiffs request that the Court issue a Temporary
 24 Restraining Order ("TRO") against a foreclosure and Notice of
 25 Trustee's Sale on their residence scheduled for October 9, 2009.

26 Plaintiffs further request that the court issue an Order to
 27 Show Cause ("OSC") to Defendants requiring them to appear and
 28

1 show cause why the relief requested should not be granted at a
2 hearing for a preliminary injunction.

3 Plaintiff's Pro Se Complaint is incorporated by reference
4 herein.

5 Plaintiffs have filed concurrently herewith a Joint
6 Affidavit in support of this application and Motion, and a
7 Memorandum in support of the Temporary Restraining Order and
8 Preliminary Injunction.

9 Plaintiffs have further filed concurrently herewith per
10 Rule 65(b)(1) FRCP a Certification of Notice to Defendants as to
11 efforts made to notify them of this application for a Temporary
12 Restraining Order and Order to Show Cause.

13 A proposed Temporary Restraining Order and Order to Show
14 Cause is also attached herewith.

15 SPECIFIC FACTS

16 Plaintiffs will suffer immediate and irreparable injury,
17 loss, or damage before the adverse party can be heard in
18 opposition unless the Court enters a Temporary Restraining Order
19 to enjoin the foreclosure and issue an Order to Show Cause.

20 If a Court Order is not issued, Plaintiffs will lose their
21 home through a wrongful foreclosure before the matter can be
22 fully heard by the court.

23 Plaintiff's allegations are fully set forth in their
24 Complaint filed in this case and incorporated herein.

25 In summary, Plaintiff Matthew Diamond had an approved loan
26 modification with IndyMac Federal Bank, FSB, dated October 9,
27 2008, which incorporated all past due payments.

28 Matthew Diamond made the loan modification payments for a
period of four months in November and December, 2008, and in

1 January and February, 2009. Said payments were accepted by
2 IndyMac Federal Bank, FSB, without qualification.

3 During the period when payments were being made Plaintiff
4 received letters of default from IndyMac for arrears prior to
5 the loan modification.

6 Plaintiff was informed by IndyMac representatives to ignore
7 said letters as they were sent in error and that he had an
8 approved loan modification, which Plaintiffs again state had
9 incorporated all past due payments.

10 In March 2009, IndyMac Mortgage Services, a division of
11 OneWest Bank, FSB, and successor in interest to IndyMac Federal
12 Bank, FSB, twice refused payment by Plaintiff Matthew Diamond
13 claiming that he did not have an approved loan modification
14 since "investor" approval had not been obtained.

15 IndyMac Mortgage further claimed that Plaintiff Matthew
16 Diamond was in arrears for the amount of \$27,000 dating back to
17 August, 2008, when he first applied for a loan modification, and
18 that payment of said amount in full was necessary to restore the
19 loan to a paid status.

20 Matthew Diamond challenged IndyMac's claims in a certified
21 letter to them dated April 3, 2009, and in a Qualified Written
22 Request dated April 22, 2009 in accordance with the provisions
23 of the Truth in Lending Act. The Qualified Written Request
24 requested the name and address of the true note holder and the
25 status or acknowledgement of the loan modification.

26 In their response to the Qualified Written Request IndyMac
27 Mortgage refused the requested information by stating that
28 *"these requests go well beyond what is required to be produced
pursuant to a Qualified Written Request and will not be*

1 provided", thus violating the provisions of 15 U.S.C. 2605 of
2 the Truth in Lending Act re Disclosures.

3 Plaintiff Matthew Diamond then in April, 2009, in
4 accordance with the provisions of the Truth In Lending Act, 15,
5 U.S.C. 1635, provided notice to OneWest Bank, FSB, successor in
6 interest to IndyMac Federal Bank, FSB, and to IndyMac Mortgage
7 Services that he was rescinding the loan modification since
8 IndyMac Federal Bank, FSB, had not provided Plaintiff the
9 required Notice of Right to Rescind the loan modification.

10 Defendant OneWest Bank, FSB, thereafter denied that
11 Plaintiff Matthew Diamond had a right to rescind the loan
12 modification and refused to comply with the requirements of 15
13 U.S.C. 1635 re rescission.

14 On July 10, 2009, Defendant OneWest Bank, successor in
15 interest to IndyMac Federal Bank, FSB, as the purported "present
16 beneficiary" under the subject deed of trust, appointed Quality
17 Loan Service Corporation as a successor trustee.

18 Quality Loan Service then on July 10, 2009, recorded a
19 Notice of Trustee's Sale for October 9, 2009, in the courtyard
20 by the main entrance of the Maricopa Superior Court building.

21 Plaintiffs have a copy of the approved loan modification
22 and payments made thereunder, and of all certified letters and
23 records of conversations with IndyMac representatives.

24 Defendants OneWest Bank, FSB, and IndyMac Mortgage
25 Services, a division of OneWest Bank, have violated the Truth in
26 Lending laws, wrongfully refused payments, and in bad faith
27 breached an approved loan modification after inducing Plaintiff
28 Matthew Diamond to make payments for a period of four months.

1 They also have unjustly enriched themselves at Plaintiffs
2 expense.

3 Further, the Notice of Trustee's Sale may be defective and
4 thus invalid.

5 Plaintiffs are without information or belief that OneWest
6 Bank, FSB, as the purported "present beneficiary", is in fact
7 the record beneficiary with the authority to have appointed the
8 successor trustee that recorded the Notice of Trustee's Sale.

9 Plaintiffs, after searching the records of the Maricopa
10 County Recorders Office, were unable to obtain any evidence of a
11 recorded assignment of beneficial interest from Mortgage
12 Electronic Registration Systems, the beneficiary of record in
13 the deed of trust being foreclosed, to OneWest Bank.

14 The Notice of Trustee's Sale may therefore be defective
15 since the successor trustee, Quality Loan Service, only has
16 authority to conduct a Trustee's Sale at the direction of the
17 true beneficiary and note holder which may not be OneWest Bank.

18 Further, the lender under the subject deed of trust,
19 Taylor, Bean, and Whitaker, who may be the true note holder and
20 beneficiary, has just been ordered to cease operations effective
21 August 5, 2009, by the U.S. Department of Housing and Urban
22 Development, and by Freddie Mac and Ginnie Mae. Plaintiff will
23 need time to determine their rights, if any, in this litigation.

24 REQUESTS FOR RELIEF

25 Plaintiffs request that the Court enjoin the Trustee's Sale
26 in accordance with the proposed TRO and issue an Order to Show
27 Cause in accordance with the proposed OSC.

28 Plaintiffs request that they not be required to post a
bond. Plaintiffs believe that their claims have a substantial

1 likelihood of success and merit, OneWest Bank is fully secured
2 as to the property by their deed of trust, are covered by their
3 own property insurance, and a bond requirement would be unfair.

4 Plaintiffs respectfully request that the Court grant the
5 relief requested in the proposed TRO and proposed OSC by
6 enjoining Defendant OneWest Bank, FSB, and its appointed agent,
7 Quality Loan Service Corporation, as Trustee, from conducting
8 the Trustee's Sale scheduled for 12 p.m. October 9, 2009, in the
9 courtyard by the main entrance of the Maricopa Superior Court
10 building.

11 DATED THIS 11th of August, 2009.

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15 Matthew D. Diamond

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17 Susan E. Diamond
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22 Defendants

Case No. 2:09-cv-001593

Temporary Restraining Order
(Proposed)

23 Upon application of Plaintiffs based upon their Complaint
24 and affidavits, and good cause appearing therefore, IT IS HEREBY
25 ORDERED granting Plaintiff's application for a Temporary
26 Restraining Order, and ordering as follows:

27 1. The Trustee's Sale scheduled for 12:00 p.m. on Friday,
28 October 9, 2009, as set forth in the July 10, 2009 Notice of
Trustee's Sale, with respect to the property at 3120 E. Kesler

1 Lane., Gilbert, AZ, 85295, and being identified as Maricopa
2 County Assessors Parcel No. 304-47-013W, is hereby cancelled.

3 2. Defendant OneWest Bank, FSB, and its appointed Trustee
4 Quality Loan Service Corp., are hereby enjoined for a period of
5 _____ days from the date and time of the issuance of this
6 order from issuing any new Notice of Trustee's Sale concerning
7 the above property, or renoticing any such sale.

8 3. This order is binding on the Defendants and any person
9 acting in concert or participation with it and having notice
10 thereof.

11 4. No bond is required of Plaintiff for this order since
12 Plaintiffs claims have a substantial likelihood of success and
13 Defendant OneWest Bank, FSB, has a superior lien on the subject
14 property and has obtained its own property insurance.

15 5. This order is issued on _____, 2009, at ___ am/pm .

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17 DATED THIS _____ of _____, 2009.
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ORDER TO SHOW CAUSE
(Proposed)

23 Upon application of Plaintiff and good cause appearing
24 therefore, IT IS HEREBY ORDERED granting Plaintiff's application
25 for an Order to Show Cause, and IT IS FURTHER ORDERED the
26 defendants shall appear on the _____ day of _____, 2009,
27 at _____ a.m./p.m. before this Court and show cause, if any
28 it has, why the relief requested in Plaintiffs application for a

1 Temporary Restraining Order and Motion for a Preliminary
2 Injunction should not be granted.

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DATED THIS _____ day of _____, 2009.