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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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CHRISTOPHER ESQUIVEL; CARMEN)
ESQUIVEL,

No. 09-CV-0107-PHX-GMS

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Plaintiffs,

ORDER

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vs.

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MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS, INC., et al.,)

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Defendants.

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On December 24, 2008, at 4:11 PM, Plaintiffs Christopher and Carmen Esquivel filed a Petition for Temporary Restraining Order (“TRO”), Preliminary and Permanent Injunction and Order to Show Cause. (See Case No. 08cv2350 Dkt. # 1.) In their Petition, Plaintiffs requested that this Court temporarily enjoin a trustee’s sale of property located at 102 W. Shamrock Street, Gilbert, Arizona. The trustee’s sale was scheduled for December 29, 2008, the first business day following the Christmas holiday. The Court denied Plaintiffs’ Petition for failure to comply with Federal Rule of Civil Procedure 65(b) and because the Petition was moot given that the scheduled date of the trustee’s sale had past prior to the Court’s order. (Case No. 08cv2350 Dkt. # 4.)

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On January 16, 2009, Plaintiffs Christopher and Carmen Esquivel filed a second Petition for TRO, Preliminary and Permanent Injunction and Order to Show Cause seeking to temporarily enjoin the trustee’s sale of the same property. (Dkt. # 1.) The trustee’s sale, previously scheduled for December 29, 2008, apparently was postponed and was re-

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1 scheduled for 10:00 A.M., January 20, 2009 – prior to the time that Plaintiffs’ request was
2 presented to this division. In this instance, due to the Martin Luther King holiday, the
3 trustee’s sale was scheduled for the morning of the next business day following the date
4 Plaintiffs’ second Petition was filed. Notably, despite claiming that “time is of the essence”
5 in both Petitions (Case No. 08cv2350 Dkt. # 1 at 9; Dkt. # 2 at 12), Plaintiffs waited until the
6 last minute to file the Petitions with the Court, did not requested a hearing, and made no other
7 attempt to contact or alert the Court to the TRO petitions prior to the scheduled dates of the
8 trustee’s sale.

9 Federal Rule of Civil Procedure 65 authorizes the Court to issue a preliminary
10 injunction or TRO upon a proper showing. The standard for issuing a TRO is the same as
11 that for issuing a preliminary injunction. *See Brown Jordan Int’l, Inc. v. The Mind’s Eye*
12 *Interiors, Inc.*, 236 F. Supp. 2d 1152, 1154 (D. Haw. 2007). To prevail on a request for a
13 preliminary injunction, a plaintiff must show either “(a) probable success on the merits
14 combined with the possibility of irreparable injury or (b) that [it] has raised serious questions
15 going to the merits, and that the balance of hardships tips sharply in [its] favor.” *Bernhardt*
16 *v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003). The Ninth Circuit has explained
17 that “these two alternatives represent ‘extremes of a single continuum,’ rather than two
18 separate tests. Thus, the greater the relative hardship to the moving party, the less probability
19 of success must be shown.” *Immigrant Assistant Project of Los Angeles County Fed’n of*
20 *Labor (AFLCIO) v. INS*, 306 F.3d 842, 873 (9th Cir. 2002) (citation omitted).

21 In addition to the requisite showing, a preliminary injunction may issue “only on
22 notice to the adverse party.” Fed. R. Civ. P. 65(a). A TRO may be granted without notice
23 to the adverse party:

24 only if (1) it clearly appears from specific facts shown by
25 affidavit or by the verified complaint that immediate and
26 irreparable injury, loss, or damage will result to the applicant
27 before the adverse party or that party’s attorney can be heard in
28 opposition, and (2) the applicant’s attorney certifies to the court
in writing the efforts, if any, which have been made to give the
notice and the reasons supporting the claim that notice should
not be required.

1 Fed. R. Civ. P. 65(b).

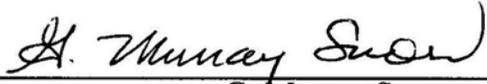
2 Here, despite claiming to have sent copies of the Petition to Defendants by certified
3 mail on the 12th of January, Plaintiffs present no evidence suggesting that they have noticed
4 Defendants of their request for a TRO and preliminary injunction. Plaintiffs' counsel
5 likewise has not certified in writing the efforts made to notice Defendants or provided any
6 reasons why notice should not be required. Additionally, Plaintiffs failed to submit a verified
7 complaint, affidavits, or other admissible evidence supporting any chance of success on the
8 merits or any injury, loss, or damage. Plaintiffs' Petition is not filed under oath or penalty
9 of perjury. The Petition refers to a verified complaint (Dkt. # 2 at 3, 7) and attachments (*Id.*
10 at 7), but the complaint filed in the matter is not verified and no attachments were filed with
11 Plaintiffs' Petition.

12 Because Plaintiffs have failed to demonstrate that injunctive relief is proper, and
13 because the TRO request is apparently moot:

14 **IT IS ORDERED** that Plaintiffs' Petition for Temporary Restraining Order,
15 Preliminary and Permanent Injunction and Order to Show Cause (Dkt. # 2) is **DENIED**.

16 **IT IS FURTHER ORDERED** directing Plaintiffs' counsel to show cause why he has
17 not violated Federal Rule of Civil Procedure 11(b). *See* Fed. R. Civ. P. 11(c)(3) (granting
18 courts the power to order an attorney to show cause "why conduct specifically described in
19 the order has not violated Rule 11(b)"). This is the second time that counsel has filed with
20 the Court a flawed motion for a TRO at the last minute. Counsel is directed to file a
21 memorandum with the Court by January 29, 2009. Additionally, counsel is directed to
22 appear on January 30, 2009, at 11:30 a.m. to further discuss the matter with the Court.

23 DATED this 26th day of January, 2009.

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26 G. Murray Snow
27 United States District Judge
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