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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

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9 Daniel L. Schayes and Wendy L. Schayes,)	No. CV-10-1893-PHX-GMS
10 Plaintiffs,	} <b>ORDER</b>
11 vs.	
12 BAC Home Loans Servicing, LP	
13 Defendant.	
14 _____)	

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16 On September 3, 2010, Plaintiffs filed an Original Petition (Doc. 1), a Petition for  
17 Restraining Order, and a Petition For Temporary Injunction (Docs. 3-4). In the motions,  
18 Plaintiffs request that this Court temporarily enjoin a trustee’s sale of property located at  
19 7035 E. Berneil Dr. Paradise Valley, AZ 85253. The trustee’s sale was originally scheduled  
20 for September 9, 2010 and then apparently postponed.

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22 Federal Rule of Civil Procedure 65 authorizes the Court to issue a preliminary  
23 injunction or TRO upon a proper showing. The standard for issuing a TRO is the same as  
24 that for issuing a preliminary injunction. *See Brown Jordan Int’l, Inc. v. The Mind’s Eye*  
25 *Interiors, Inc.*, 236 F. Supp. 2d 1152, 1154 (D. Haw. 2007). To prevail on a request for a  
26 preliminary injunction, a plaintiff must show either “(a) probable success on the merits  
27 combined with the possibility of irreparable injury or (b) that [it] has raised serious questions  
28 going to the merits, and that the balance of hardships tips sharply in [its] favor.” *Bernhardt*  
*v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003). The Ninth Circuit has explained

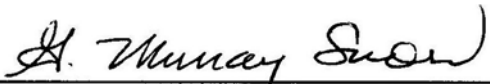
1 that “these two alternatives represent ‘extremes of a single continuum,’ rather than two  
2 separate tests. Thus, the greater the relative hardship to the moving party, the less probability  
3 of success must be shown.” *Immigrant Assistant Project of Los Angeles County Fed’n of*  
4 *Labor (AFLCIO) v. INS*, 306 F.3d 842, 873 (9th Cir. 2002) (citation omitted).

5 In Plaintiffs’ petition, they allege that Defendant violated various provisions of federal  
6 law, including : (1) the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*; (2) the Real  
7 Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2601 *et seq.*; and (3) the  
8 Deceptive Practices Act (“DPA”), 15 U.S.C. § 45 *et seq.* Plaintiffs also assert claims of  
9 unjust enrichment, breach of fiduciary duty, negligence, negligence per se, fraud, intentional  
10 infliction of emotional distress, and the breach of covenant of good faith and fair dealing.  
11 Outside of the verified Petition for Temporary Injunction, which principally contains  
12 allegations only, Plaintiffs failed to present any affidavits or other admissible evidence  
13 supporting that they are likely to prevail on the merits of their claims. After review of the  
14 materials presented in this matter, the Court finds that Plaintiffs have failed to demonstrate  
15 a likelihood of success on the merits sufficient to grant injunctive relief. Moreover, Plaintiffs  
16 have failed to demonstrate that a trustee’s sale is actually scheduled sufficient to demonstrate  
17 the possibility of irreparable injury.

18 Because Plaintiffs have failed to demonstrate that injunctive relief is proper:

19 **IT IS THEREFORE ORDERED** that Plaintiffs’ Motion for Temporary Restraining  
20 Order (Doc. 3) and Motion for Preliminary Injunction (Doc. 4) are **DENIED WITHOUT**  
21 **PREJUDICE.**

22 DATED this 6th day of October, 2010.

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G. Murray Snow  
United States District Judge