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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Plaintiff,

No. CIV S-11-2724 MCE CKD PS

vs.

MARGARITA LIEBMANN, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

This action was removed from state court on October 17, 2011. On October 24, 2011, findings and recommendations were filed recommending this action be remanded because the state court action is nothing more than a simple unlawful detainer action and there is no basis for federal subject matter jurisdiction evident in the state court pleadings. One week after filing the petition for removal, plaintiffs filed a copy of the removal petition and added the words “and motion for TRO” to the caption. No substantive argument was submitted in support of the motion.

The standards governing the issuance of temporary restraining orders are “substantially identical” to those governing the issuance of preliminary injunctions. Stuhlberg Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir.2001).

1 Therefore, “[a] plaintiff seeking a [TRO] must establish that he is likely to succeed on the merits,
2 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
3 equities tips in his favor, and that an injunction is in the public interest.” Am. Trucking Ass'n,
4 Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter v. Natural Res.
5 Def. Council, Inc., 555 U.S. 7 (2008)). “A preliminary injunction is appropriate when a plaintiff
6 demonstrates . . . that serious questions going to the merits were raised and the balance of
7 hardships tips sharply in the plaintiff’s favor.” Alliance for the Wild Rockies v. Cottrell, 622
8 F.3d 1045, 1049-50 (9th Cir. 2010) (quoting Lands Council v. McNair, 537 F.3d 981, 97 (9th
9 Cir. 2008) (en banc)). A TRO is “an extraordinary remedy that may only be awarded upon a
10 clear showing that the plaintiff is entitled to such relief.” Winter, 129 S. Ct. at 376.

11 The Ninth Circuit has reiterated that under either formulation of the principles, if
12 the probability of success on the merits is low, preliminary injunctive relief should be denied:

13 Martin explicitly teaches that “[u]nder this last part of the
14 alternative test, even if the balance of hardships tips decidedly in
15 favor of the moving party, it must be shown as an irreducible
16 minimum that there is a fair chance of success on the merits.”

16 Johnson v. California State Bd. of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) (quoting
17 Martin v. International Olympic Comm., 740 F.2d 670, 675 (9th Cir. 1984)).

18 Plaintiffs here allege no basis for federal subject matter jurisdiction; therefore,
19 there is no probability of success on the merits. In addition, plaintiffs advance no argument in
20 support of a claim that they will be irreparably harmed in the absence of preliminary relief. For
21 these reasons, preliminary injunctive relief should be denied.

22 Accordingly, IT IS HEREBY RECOMMENDED that plaintiffs’ motion for
23 temporary restraining order (dkt. no. 4) be denied.

24 These findings and recommendations are submitted to the United States District
25 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
26 days after being served with these findings and recommendations, any party may file written

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
3 shall be served and filed within seven days after service of the objections. The parties are
4 advised that failure to file objections within the specified time may waive the right to appeal the
5 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

6 Dated: October 27, 2011

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9 CAROLYN K. DELANEY
10 UNITED STATES MAGISTRATE JUDGE

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