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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

FARMERS INSURANCE EXCHANGE,  
et al.,

Plaintiffs,

v.

STEELE INSURANCE AGENCY, INC.,  
et al.,

Defendants.

No. 2:13-cv-00784-MCE-DAD

**MEMORANDUM AND ORDER**

Through this action, Plaintiffs Farmers Insurance Exchange (“Farmers”), Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company, and Farmers New World Life Insurance Company (“Plaintiffs”) seek relief from Defendants Steele Insurance Agency, Inc. (“Steele Insurance Agency”), Troy Steele (“Steele”), Ted Blalock (“Blalock”), Larry McCarren (“McCarren”), Bill Henton (“Henton”), Cindy Jo Perkins (“Perkins”), and Does 1 through 50 (collectively “Defendants”) for the alleged misappropriation of Plaintiffs’ trade secrets, as well as other violations of state and federal law pertaining to the operation of Plaintiffs’ and Defendants’ respective insurance companies. Presently before the Court is Plaintiffs’ Application for a Temporary Restraining Order (“TRO”) filed on April 26, 2013. Defendants filed an opposition to the TRO on April 29, 2013. (ECF No. 7.) Plaintiffs filed a reply. (ECF No. 8.)

1 The Court held oral argument on the matter on April 30, 2013. The Court ruled on the  
2 motion from the bench and DENIED the Application for TRO. The Court set a hearing  
3 on Plaintiffs' Application for a Preliminary Injunction for May 10, 2013, at 10:00 AM.

4 The following is the Court's memorandum and order on Plaintiffs' Application for  
5 TRO, which more fully explains the Court's reasoning in denying the motion. To the  
6 extent that there is any inconsistency between this Order and the Court's ruling from the  
7 bench, the terms of this Order control.

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9 **STANDARD**

10  
11 The purpose of a temporary restraining order is to preserve the relative positions  
12 of the parties—the status quo—until a trial on the merits can be conducted. Granny  
13 Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 438-39 (1974) (temporary restraining  
14 orders “should be restricted to serving their underlying purpose of preserving the status  
15 quo and preventing irreparable harm just so long as is necessary to hold a hearing, and  
16 no longer”); LGS Architects, Inc. v. Concordia Homes of Nev., 434 F.3d 1150, 1158 (9th  
17 Cir. 2006) (quoting Univ. of Tex. v. Camenisch, 451 U.S. 390, 395 (1981)). Issuance of  
18 a temporary restraining order as a form of preliminary injunctive relief “is an  
19 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is  
20 entitled to such relief.” Winter v. Natural Res. Defense Council, 555 U.S. 7, 22 (2008).  
21 Plaintiffs have the burden of proving the propriety of such a remedy by clear and  
22 convincing evidence. See Mazurek v. Armstrong, 520 U.S. 968, 972 (1997); Granny  
23 Goose, 415 U.S. at 441. The propriety of a TRO hinges on a significant threat of  
24 irreparable injury that must be imminent in nature. Caribbean Marine Servs. Co. v.  
25 Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

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1 In general, the showing required for a temporary restraining order is the same as  
2 that required for a preliminary injunction. Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush  
3 & Co., Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2001). A plaintiff seeking a temporary  
4 restraining order must establish that he is (1) "likely to succeed on the merits;" (2) "likely  
5 to suffer irreparable harm in the absence of preliminary relief;" (3) "the balance of  
6 equities tips in his favor;" and (4) "a preliminary injunction is in the public interest." Sierra  
7 Forest Legacy v. Rey, 577 F.3d 1015, 1021 (9th Cir. 2009) (citing Winter v. Natural Res.  
8 Defense Council, 555 U.S. 7, 20 (2008)); see also Am. Trucking Ass'ns, Inc. v. City of  
9 L.A., 559 F.3d 1046, 1052 (9th Cir. 2009) (adopting the preliminary injunction standard  
10 articulated in Winter). "If a plaintiff fails to meet its burden on any of the four  
11 requirements for injunctive relief, its request must be denied." Sierra Forest Legacy v.  
12 Rey, 691 F. Supp. 2d 1204, 1207 (E.D. Cal. 2010) (citing Winter, 555 U.S. at 22). "In  
13 each case, courts must balance the competing claims of injury and must consider the  
14 effect on each party of the granting or withholding of the requested relief." Winter,  
15 555 U.S. at 24 (quoting Amoco Prod. Co., 480 U.S. 531, 542 (1987)).

16 Alternatively, under the so-called sliding scale approach, as long as the Plaintiffs  
17 demonstrate the requisite likelihood of irreparable harm and show that an injunction is in  
18 the public interest, a preliminary injunction can still issue so long as serious questions  
19 going to the merits are raised and the balance of hardships tips sharply in Plaintiffs'  
20 favor. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1134-35 (9th Cir. 2011)  
21 (concluding that the "serious questions" version of the sliding scale test for preliminary  
22 injunctions remains viable after Winter).

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1 **FACTUAL BACKGROUND<sup>1</sup>**

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3 Plaintiffs allege that each Farmers agent, as part of their contract with Farmers,  
4 expressly agrees that Farmers’ policyholder information, whether maintained on  
5 Farmers’ databases or in hard copy or electronic files in an agent’s office, is the  
6 confidential property of Farmers. This information is to be returned to Farmers upon  
7 termination of the contract, and is not to be used to Farmers’ detriment. This information  
8 is not shared with Farmers’ competitors.

9 Farmers maintains databases, which include the Electronic Customer Marketing  
10 System (“eCMS”). eCMS contains information about current and former policyholders,  
11 including name, address, telephone, social security number, driver’s license number,  
12 policy expiration date, insured property, claims history, financial, and other information of  
13 Farmers’ policyholders.<sup>2</sup> Farmers invests significant time, labor, and capital in  
14 developing this information. The Confidential Policyholder Information is not generally  
15 available in this aggregated form in the industry or to Farmers’ competitors. If this  
16 information was available to Plaintiffs’ competitors, those competitors could more easily  
17 solicit Farmers’ policyholders to change insurance providers.

18 eCMS is an important tool on the Farmers’ “Agency Dashboard,” which is  
19 accessed and used by Farmers’ authorized insurance agents. eCMS provides  
20 authorized agents with the ability to access Confidential Policyholder Information about  
21 the policyholders they service, and allows agents to create policyholder reports, contact  
22 lists, mailing labels, etc.

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26 <sup>1</sup> The following recitation of facts is taken, sometimes verbatim, from Plaintiffs’ Memorandum of  
27 Points and Authorities in Support of Motion for TRO. (ECF No. 5-1.) While Defendants objected to many  
28 of the statements contained in the evidence submitted by Plaintiffs, the Court did not consider those  
statements in ruling on Plaintiffs’ Application. (See ECF No. 7-1 (objecting to Plaintiffs’ Declarations).)  
Accordingly, the Court finds it unnecessary to rule on the Defendants’ objections at this time.

<sup>2</sup> This information is referred to by Plaintiffs as “Confidential Policyholder Information.”

1 Use of eCMS is subject to certain confidentiality restrictions and security  
2 protections. Farmers maintains its Confidential Policyholder Information, including policy  
3 expirations, on a password and user-ID protected system. In addition, when an  
4 individual Farmers agent accesses eCMS, Farmers provides an eCMS “view” that is  
5 unique to that particular Farmers insurance agent. The eCMS “view” enables agents  
6 (and their authorized staffs) to access customer information for only those Farmers’  
7 customers serviced by each individual agent on behalf of Farmers. When an agent’s  
8 Agent Agreement is terminated, the agent’s access (and their staffs’ access) to eCMS  
9 and the Agency Dashboard is turned off and their user ID/password combination is no  
10 longer valid. Farmers also issues company policies regarding access to and  
11 preservation of Confidential Policyholder Information, by maintaining copies of those  
12 policies on the Agency Dashboard. Farmers periodically reminds its insurance agents of  
13 Farmers’ confidentiality policies via bulletins, yearly compliance memoranda, and other  
14 communications.” (ECF No. 5-3 at 4.) Finally, each time an agent accesses Farmers’  
15 proprietary system through the Agency Dashboard, that agent must acknowledge that  
16 they have read and understood an additional separate “Notice” and agree to be bound  
17 by its terms. The Notice provides that the information the agent is accessing is  
18 “proprietary, confidential and trade secret information of Farmers,” and that use of the  
19 information is “intended for use in connection with legitimate business purposes related  
20 to the agent’s Farmers agency and Farmers, and is not intended to be used for other  
21 purposes.”

22 Defendants Troy Steele and Steele Insurance Agency

23 Steele was appointed a District Manager with Farmers in 2001, pursuant to a  
24 District Manager Appointment Agreement. Pursuant to the terms of this Agreement,  
25 Farmers terminated Steele’s Agreement in January 2010. Thereafter, Steele began his  
26 own independent insurance agent—the Steele Insurance Agency. Steele and the Steele  
27 Insurance Agency were not appointed or allowed to sell Farmers’ insurance products.

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1 Plaintiffs allege that Steele is involved in a “plot to systematically violate the trade  
2 secret protection of Farmers’ Confidential Policyholder Information.” (ECF No. 5-1 at  
3 10.) In short, Plaintiffs contend that Steele is assisting current and former Farmers  
4 agents, or their staff members, to use Plaintiffs’ customer lists and other trade secret  
5 information to solicit those customers to switch to the Steele Insurance Agency.  
6 According to Plaintiffs, Farmers had lost numerous customers to the Steele Insurance  
7 Agency as a result of Steele’s trade secret misappropriation.

8 Defendant Larry McCarren

9 McCarren was a Farmers agent who worked in the district of Defendant District  
10 Manager Blalock until January 2012. McCarren and Blalock had a close relationship.  
11 Defendant Blalock’s District Manager Appointment Agreement was terminated in  
12 January 2012. Blalock then went to work for the Steele Insurance Agency.

13 By the summer of 2012, McCarren’s new business was down seventy percent  
14 from the year before. In August 2012, McCarren exercised his option under his Agent  
15 Appointment Agreement to terminate his Agreement with Farmers after giving three  
16 months’ written notice. Thus, McCarren’s termination became effective November 3,  
17 2012. McCarren is now appointed with and working as an insurance agent for Steele  
18 Insurance Agency.

19 Following McCarren’s resignation, Farmers received complaints from customers  
20 saying that McCarren had contacted them in an attempt to switch their insurance  
21 business to other carriers. According to Plaintiffs, Farmers’ internal records also show  
22 that shortly before and during the three-month window between McCarren’s resignation,  
23 in August 2012, and his effective termination date in November 2012, McCarren used  
24 Farmers’ computer system to download a significant amount of information regarding  
25 Farmers’ customers that he serviced as a Farmers agent. Records show that McCarren  
26 accessed information pertaining to roughly 800 Farmers’ customers. From the records,  
27 it appears that McCarren devoted the entirety of four consecutive days in August to  
28 downloading this information.

1 Before McCarren left in November, he accessed policyholder information on “all or  
2 virtually all” of the customers he serviced as a Farmers agent.

3 Butler confronted McCarren with these facts. McCarren admitted that he  
4 possessed documents relating to Farmers. McCarren stated that he had downloaded  
5 the Farmers customer information to use in the event that Farmers did not pay him the  
6 Contract Value as specified in his Agent Appointment Agreement. Butler then went to  
7 McCarren’s office to collect documents, and McCarren’s office manager turned over  
8 thousands of pages with policy files relating to Farmers’ customers. According to  
9 Plaintiffs, the office manager inadvertently turned over “training materials provided by  
10 Troy Steele to McCarren, apparently showing McCarren the paperwork and strategies to  
11 employ in switching customers form Farmers to Steele’s agency.” (ECF No. 5-1 at 11.)  
12 Farmers lost the insurance business of at least twenty-nine customers previously  
13 serviced by McCarren while he was a Farmers agent. According to Plaintiffs, these  
14 customers have switched to the Steele Insurance Agency.

15 Defendant Cindy Jo Perkins

16 In the spring of 2012, Perkins went to work for another Farmers agent, Charlie  
17 Finister. Perkins was McCarren’s longtime employee. Throughout the year of 2012,  
18 Finister was gravely ill with diabetes.

19 Finister resigned and went into hospice in early November 2012. Thereafter,  
20 Butler went to Finister’s office and found that Perkins was running the office. Butler  
21 asked Perkins whether she had a license to transact insurance. Perkins replied that she  
22 did. Butler then asked Perkins to verify that Perkins had appointments, and informed  
23 Perkins that Perkins needed to have a contract with Farmers to sell Farmers’ products.  
24 Perkins then printed her appointment information from the Department of Insurance  
25 website, which showed that Perkins was appointed with Steele Insurance Agency.  
26 Perkins remains appointed with Steele Insurance Agency.

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1 Perkins then admitted that she had used Finister's user ID and password  
2 combination to gain access to the Farmers' computer system when she worked in the  
3 office. Farmers disconnected Finister's user ID and password combination on or around  
4 November 2, 2012. Finister's computer records show that in the months of October and  
5 November 2012, Finister's user ID and password were used to access hundreds of  
6 documents containing Farmers' policyholder information. From October 23 to  
7 October 31, Finister's user ID was used to download over 300 reports or other  
8 documents containing information about Farmers' customers serviced by Finister. On  
9 November 1 and 2, Farmers' policyholder information was downloaded over 100 times.

10 Since that time, Farmers has lost the insurance business of at least thirty-seven  
11 customers previously serviced by Finister when he was a Farmers agent. According to  
12 Plaintiffs, these customers have switched to Steele Insurance Agency.

13 Defendant Bill Henton

14 Bill Henton ("Mr. Henton"), Defendant Henton's father, was a Farmers agent from  
15 1968 to 2012. In 2012, Mr. Henton's District Manager, Rudy Cedre, believed that  
16 Mr. Henton had developed severe memory problems. Defendant Henton worked in  
17 Mr. Henton's office, but Defendant Henton was not appointed as an agent with Farmers.

18 In November 2012, Mr. Henton resigned as a Farmers agent. Individuals within  
19 Mr. Henton's office have since informed Cedre that Defendant Henton allowed his wife  
20 and daughter to access the Farmers' computer system, prior to Mr. Henton's resignation  
21 from Farmers. According to Cedre, Defendant Henton is also in the process of  
22 becoming, or has become, a part of Steele Insurance Agency. Defendant Henton  
23 remains in control of the employees and contents of his father Mr. Henton's office,  
24 including the physical files relating to over 1500 Farmers' policies. These files have not  
25 been returned to Cedre, and Cedre has not been able to access these files. Defendant  
26 Henton also arranged for his father's mail, including Farmers' business mail, to be  
27 forwarded to Defendant Henton's new business address.

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1 Plaintiffs contend that since Mr. Henton's Farmers agency terminated, or shortly  
2 beforehand, Farmers lost the insurance business of "a significant number of Farmers'  
3 customers previously serviced by [Mr. Henton] when he was a Farmers agent." (ECF  
4 No. 5-1 at 14.) At least 124 policies formerly serviced by Mr. Henton have switched to  
5 Steele Insurance Agency.

6 Thus, the gravamen of Plaintiffs' allegations is that Steele and the other  
7 Defendants obtained Plaintiffs' trade secret information and used that information to  
8 switch Farmers' customers to Steele Insurance Agency.

9  
10 **LEGAL BACKGROUND and RELIEF SOUGHT**

11  
12 Plaintiffs originally filed their action in the Superior Court of California, County of  
13 San Joaquin, on April 5, 2013. Plaintiffs allege nine causes of action: (1) breach of  
14 contract; (2) misappropriation of trade secrets; (3) intentional interference with  
15 contractual relations; (4) intentional interference with prospective economic advantage;  
16 (5) unfair competition; (6) breach of fiduciary duty; (7) violation of the computer fraud act,  
17 18 U.S.C. § 1030(a)(2)(C); (8) violation of the computer fraud act, 18 U.S.C.  
18 § 1030(a)(4); and (9) civil conspiracy. (ECF No. 1 at 7.)

19 On April 22, 2013, Plaintiffs filed a TRO in state court. (Newman Decl., ECF  
20 No. 5-2 at 2.) On April 23, 2013, Defendants removed this action to federal court. (ECF  
21 No. 1.) On April 25, 2013, Plaintiffs filed the instant Application for TRO. (ECF No. 5.)

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1 Plaintiffs' Application requests that the Court order that Defendants:  
2 (1) "[I]mmediately cease and desist accessing, utilizing, divulging, or making use in any  
3 manner, confidential trade secret information relating to the identity of, or any information  
4 regarding, Farmers policyholders"; (2) "[I]mmediately cease and desist duplicating,  
5 copying, condensing, or summarizing trade secret policyholder information obtained  
6 from Farmers' computer database or from hard copy or electronic files of former Farmers  
7 agents"; (3) "[I]mmediately cease and desist duplicating, copying, condensing, or  
8 summarizing information obtained from Farmers' computer databases or the files of  
9 former Farmers agents that pertains to policyholder expirations or other policyholder  
10 information"; and (4) "[I]mmediately cease and desist disseminating, transferring,  
11 publishing, or communicating to any other person, including competing insurance  
12 carriers, Farmers' trade secret policyholder information." (ECF No. 5-1 at 7.)

13 Plaintiffs also ask the Court that Defendant McCarren be ordered to immediately  
14 cease and desist from, for a period of one year, directly or indirectly soliciting, accepting,  
15 or servicing the insurance business of any policyholder previously serviced by McCarren  
16 when he was an agent of Farmers. (Id.) Additionally, Plaintiffs ask that "all non-  
17 Defendants appointed by the Steele Insurance Agency who were agents or District  
18 Managers of Farmers within the last year to immediately cease and desist from, for a  
19 period of one year, directly or indirectly soliciting, accepting, or servicing the insurance  
20 business of any policyholder previously serviced by that person when they were agents  
21 and/or District Managers of Farmers." (Id.) Finally, Plaintiffs ask that the Court compel  
22 "Defendants . . . to allow Farmers reasonable access to each and every computer and  
23 other device, including all off-site internet data storage . . . capable of storing electronic  
24 information in their possession, custody, and control wherever located, to determine if it  
25 contains any trade secret policyholder information, and if so, to be permanently deleted  
26 from the memory of these computers and devices." (Id.)

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1 **ANALYSIS**

2 **A. Procedural Issues**

3  
4 Defendants argue that Plaintiffs fail to adequately explain Plaintiffs' delay in filing  
5 this action and seeking a TRO and a preliminary injunction. (ECF No. 7 at 7 n.1.)  
6 Defendants correctly assert that "Plaintiffs bear the burden of showing that, among other  
7 things, they are likely to suffer irreparable injury and the injury must be imminent in  
8 nature." Caribbean Marine, 844 F.2d at 674. Local Rule 231(b), which governs the  
9 timing of motions for TROs, states in full:

10 In considering a motion for a temporary restraining order, the  
11 Court will consider whether the applicant could have sought  
12 relief by motion for preliminary injunction at an earlier date  
13 without the necessity for seeking last-minute relief by motion  
14 for temporary restraining order. Should the Court find that the  
15 applicant unduly delayed in seeking injunctive relief, the  
16 Court may conclude that the delay constitutes laches or  
17 contradicts the applicant's allegations of irreparable injury  
18 and may deny the motion solely on either ground.

19 As stated above, Plaintiffs filed their Complaint in state court on April 5, 2013.  
20 (ECF No. 1 at 2, 26.) On April 19, 2013, Plaintiffs served letters on all Defendants in the  
21 case, informing them that Plaintiffs would seek ex parte relief in state court on April 23,  
22 2013. (ECF No. 5-2 at 2.) Plaintiffs filed all papers relating to the TRO application with  
23 the Superior Court, County of San Joaquin, on April 22, 2013. (Id.) Plaintiffs requested  
24 relief identical to the relief sought here. (Id.) On the afternoon of April 22, 2013,  
25 Plaintiffs received notice that Defendants had removed the matter to federal court. (Id.;  
26 see also ECF No. 1 (removing action to federal court).) Between April 22 and April 24,  
27 2013, Plaintiffs worked to rewrite their Motion for TRO "to make it appropriate for a  
28 federal filing." (ECF No. 5-2 at 2.)

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1           However, while Plaintiffs address the use of their time between their initial filing of  
2 a TRO in state court and their filing of their Application for TRO in the present case,  
3 neither Plaintiffs' Application nor Plaintiffs' Reply addresses the cause of their delay in  
4 filing a case or seeking a TRO or preliminary injunction between November 2012 and  
5 April 2013. Indeed, Plaintiffs' TRO Checklist states that there has not been undue delay  
6 in bringing a TRO, and that the TRO could not have been brought earlier. (ECF No. 5-  
7 21 at 1.)

8           However, from Plaintiffs' allegations, Plaintiffs first learned of Defendants' alleged  
9 trade secret misappropriation on or around November 1, 2012. Indeed, Butler's  
10 Declaration states in the "summer of 2012," he suspected that McCarren was "writing  
11 new business, but in violation of his Agency Appointment Agreement . . . was writing it  
12 for other insurers." (ECF No. 5-14 at 3.) On November 1, 2012, Butler went to  
13 McCarren's office to collect documents. On this date, McCarren turned over the  
14 document which Plaintiffs contend constitute "training materials provided by Troy Steele  
15 to McCarren . . . showing McCarren the paperwork and strategies to employ in switching  
16 customers from Farmers to Steele's agency." (ECF No. 5-1 at 11.) As Defendants  
17 pointed out in the hearing, Plaintiffs printed the record of McCarren's downloading  
18 activity on December 5, 2012. Similarly, Plaintiffs allege that Perkins accessed Finister's  
19 computer system in October and November 2012. (Id. at 12.) Plaintiffs further allege  
20 that Farmers' customers previously serviced by Finister cancelled their policies between  
21 November 21, 2012 and January 15, 2013. (Id. at 13.) As to Defendant Henton,  
22 Plaintiffs allege that "since the termination of Bill Henton's Farmers agency, or shortly  
23 beforehand, Farmers has lost the insurance business of a significant number of Farmers'  
24 customers previously serviced by Bill Henton when he was a Farmers agent . . . ." (Id. at  
25 14.) According to Plaintiffs, Mr. Henton (Defendant Henton's father) resigned as a  
26 Farmers agent in November 2012. (Id. at 13.) Thus, the alleged harm to Plaintiffs  
27 occurred, or began to occur, in November 2012, and Plaintiffs knew of this harm at that  
28 time.


1 In sum, Plaintiffs provide no explanation for their delay in seeking a TRO for  
2 nearly six months. There is nothing before the Court to suggest that Plaintiffs could not  
3 “have sought relief by motion for preliminary injunction at an earlier date without the  
4 necessity for seeking last-minute relief by motion for temporary restraining order.” Local  
5 R. 231(b); see also Occupy Sacramento v. City of Sacramento, 2:11-CV-02873-MCE,  
6 2011 WL 5374748 (E.D. Cal. Nov. 4, 2011) (denying application for TRO for twenty-five  
7 day delay). Plaintiffs could have sought a preliminary injunction, without resorting to the  
8 extraordinary form or relief that is a TRO, in the interim period between November 2012  
9 and April 23, 2013. Plaintiffs’ failure to seek relief for the almost six months between  
10 November 2012 and the date that Plaintiffs filed their Complaint in state court contradicts  
11 Plaintiffs’ claims that Plaintiffs will suffer irreparable harm which is imminent in nature if  
12 the TRO does not issue. Under the circumstances here, the Court finds that a delay of  
13 nearly six months constitutes an “undue delay” under Local Rule 231(b).

14 Accordingly, the Court denies Plaintiffs’ Motion on procedural grounds alone. It is  
15 therefore unnecessary to address the substantive issues of Plaintiffs’ Application at this  
16 time.

17  
18 **CONCLUSION**

19  
20 For the reasons just stated, IT IS HEREBY ORDERED that Plaintiffs’ motion for a  
21 TRO is DENIED. (ECF No. 5.)

22 DATE: April 30, 2013

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25 MORRISON C. ENGLAND, JR., CHIEF JUDGE  
26 UNITED STATES DISTRICT COURT  
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