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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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THE CALIFORNIA VALLEY MIWOK
TRIBE, a federally recognized
Indian Tribe, and SILVA
BURLEY, in her official
capacity as Chairwoman,

No. 2:13-cv-02179-GEB-EFB

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Plaintiffs,

**ORDER DENYING PLAINTIFFS' EX
PARTE APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

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v.

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SAN JOAQUIN COUNTY SHERIFF'S
OFFICE; SAN JOAQUIN COUNTY
SHERIFF STEVE MOORE, in his
official capacity; INDYMAC
BANK, F.S.B., a federally
chartered savings bank;
DEUTSCHE BANK NATIONAL TRUST
COMPANY, as trustee of the
IndyMac INDA Mortgage Loan
Trust 2007-AR3, Mortgage Pass
Through Certificates, Series
2007-AR3; ONEWEST BANK, a
federally chartered savings
bank; and MERIDIAN
FORECLOSURE SERVICE, a
California corporation, dba
Meridian Trust Deed Service,

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Defendants.

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On Friday, October 18, 2013, at approximately 2:14
p.m., Plaintiffs filed an "Ex Parte Emergency Application and
Motion for Temporary Restraining Order," (ECF No. 2), to enjoin
the foreclosure sale of the property located at 10601 Escondido
Place in Stockton, California, which is scheduled to occur in
three days, on Monday, October 21, 2013. (See Decl. of Silvia

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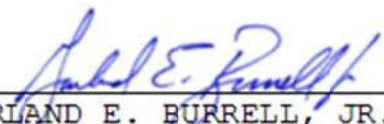
1 Burley ¶ 7, ECF No. 2-3.)

2 Local Rule 231(b) prescribes:

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

17 Here, Plaintiff Silvia Burley avers that "the Tribe
18 received Notice of Default and Election to Sell Under Deed of
19 Trust" on June 30, 2013. (Burley Decl. ¶ 6.) Ms. Burley further
20 declares that "the Tribe received a Notice of Trustee's Sale" on
21 September 25, 2013. (Id. at ¶ 7.) However, Plaintiffs provide **no**
22 **explanation** regarding why they delayed in seeking to enjoin the
23 impending foreclosure until the Friday afternoon before the
24 scheduled auction. Therefore, the Court concludes Plaintiffs'
25 unexcused delay in seeking injunctive relief constitutes laches,
26 and Plaintiffs' ex parte application for a TRO is DENIED. See
27 Mammoth Specialty Lodging, LLC v. WE-KA-JASSA Inv. Fund, LLC, No.
28 CIV S-10-0864 LKK/JFM, 2010 WL 1539811, at *2 (E.D. Cal. Apr. 16,
2010) (denying motion for TRO to enjoin foreclosure when the
plaintiff delayed in bringing motion).

Dated: October 18, 2013



GARIAND E. BURRELL, JR.
Senior United States District Judge