

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BETTINA L. FARREN; STEVE FARREN,  
individuals,

Plaintiffs,

v.

SELECT PORTFOLIO SERVICING, INC.;  
US BANK AS TRUSTEE ON BEHALF OF THE  
HOLDERS OF THE WAMU MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2007-  
HY6; JPMORGAN CHASE BANK, N.A.;  
QUALITY LOAN SERVICE CORPORATION;  
and DOES 1 through 50, inclusive,

Defendants.

No. 2:16-cv-01077-JAM-EFB

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

Bettina Farren ("Mrs. Farren") and Steve Farren ("Mr. Farren") (collectively "Plaintiffs") applied ex parte for a temporary restraining order ("TRO") (Doc. #13).<sup>1</sup> As explained below, Plaintiffs are not likely to succeed on the merits of

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). No hearing was scheduled. Although no opposition to this Application was filed by any of the Defendants, the Court is still required to and has considered the merits of this Application.

1 their claims. Thus, the Court denies Plaintiffs' motion for a  
2 TRO.

### 3 I. FACTUAL ALLEGATIONS

4 In March 2007, Plaintiffs added Mrs. Farren's brother,  
5 Steven Hinrichs, and Mr. Hinrichs' wife to the title of real  
6 property located at 2045 Salmon Falls Road in El Dorado Hills,  
7 California ("Subject Property"). Declaration of Bettina Farren  
8 ("Mrs. Farren Decl.") ¶ 8. A \$1,464,000.00 loan was taken out  
9 and secured by the Subject Property. Compl. ¶ 12. Plaintiffs  
10 signed the Deed of Trust. Id. ¶ 16. But, Plaintiffs did not  
11 sign the Adjustable Rate Note (the "Note"). Exh. A to SPS's  
12 Request for Judicial Notice (Doc. #9). Only Mr. and Mrs.  
13 Hinrichs signed the Note. Id.

14 In December 2008, JP Morgan Chase Bank ("Chase") issued a  
15 notice of default against the Subject Property. Compl. ¶ 18.  
16 In January 2016, Quality Loan Service Corporation ("Quality")  
17 became the trustee of the Deed of Trust. Id. ¶ 24. In March  
18 2016, Quality recorded a Notice of Trustee's Sale for the  
19 Subject Property for April 14, 2016. Id. ¶ 25.

20 On April 8, 2016, Mrs. Farren submitted a complete loan  
21 modification application to Defendant Select Portfolio Servicing  
22 ("SPS"). Mrs. Farren Decl. ¶ 11. Mrs. Farren has not received  
23 any acknowledgement of the receipt of her application and has  
24 not received notice about whether the application has been  
25 denied. Id. ¶¶ 11, 12. Mrs. Farren also made several calls to  
26 SPS to discuss modification of the loan. Id. ¶¶ 48-50. Alison  
27 Luna, an SPS representative, told Mrs. Farren that SPS could not  
28 postpone the foreclosure sale because Mrs. Farren's name was not

1 on the Note. Id. ¶ 50.

2 On April 14, 2016, Plaintiffs obtained a TRO in El Dorado  
3 Superior Court which enjoined Defendants from conducting the  
4 trustee's sale of the Subject Property. Exh. 7 to Request for  
5 Judicial Notice (Doc. #3). On May 19, 2016, Defendant Chase  
6 removed the case to federal court (Doc. #1). The foreclosure  
7 sale is now set for July 11, 2016. Mrs. Farren Decl. ¶ 4.  
8 Plaintiffs submitted a motion for a TRO on July 6, 2016 to  
9 enjoin the foreclosure sale scheduled for July 11 (Doc. #13).  
10 Defendants did not file an opposition.

## 11 12 II. OPINION

### 13 A. Legal Standard

14 Federal Rule of Civil Procedure ("Rule") 65 provides  
15 authority to issue either preliminary injunctions or TROs. A  
16 plaintiff seeking a preliminary injunction must demonstrate that  
17 he is "[1] likely to succeed on the merits, [2] that he is likely  
18 to suffer irreparable harm in the absence of preliminary relief,  
19 [3] that the balance of equities tips in his favor, and [4] that  
20 an injunction is in the public interest." Am. Trucking Assn's v.  
21 City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting  
22 Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008)). The  
23 requirements for a TRO are the same. Stuhlbarg Int'l Sales Co.  
24 v. John D. Brush & Co., 240 F.3d 832, 839 n. 7 (9th Cir. 2001).  
25 A party seeking an ex parte TRO must "clearly show that immediate  
26 and irreparable injury, loss, or damage will result to the movant  
27 before the adverse party can be heard in opposition" and "the  
28 movant's attorney [must] certif[y] in writing any efforts made to

1 give notice and the reasons why it should not be required." Fed.  
2 R. Civ. P. 65(b). Ex parte TROs are appropriate only when  
3 necessary to prevent irreparable harm and should be imposed only  
4 "so long as is necessary to hold a hearing." Granny Goose Foods,  
5 Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of  
6 Alameda Cty., 415 U.S. 423, 439 (1974).

7 Local Rule 231(b) states that courts "will consider whether  
8 the applicant could have sought relief by motion for preliminary  
9 injunction at an earlier date without the necessity of seeking  
10 last-minute relief by motion for temporary restraining order."  
11 If the Court finds that the movant unduly delayed in seeking  
12 injunctive relief, "the Court may conclude that the delay  
13 constitutes laches or contradicts the applicant's allegations of  
14 irreparable injury and may deny the motion solely on either  
15 ground." Local Rule 231(b).

16 B. Analysis

17 1. Undue Delay

18 Defendants removed this case to federal court on May 19,  
19 2016. Plaintiffs did not file their TRO until nearly six weeks  
20 later and only five days before the scheduled trustee's sale.  
21 Plaintiffs' attorney states that he received notice on June 24,  
22 2016 from defense counsel stating that SPS would not postpone the  
23 trustee's sale. Declaration of John Sargetis ¶ 4. Plaintiffs  
24 waited almost two weeks to file the application for a TRO.  
25 Plaintiffs' counsel's excuse for this delay is that he has "at  
26 the same time these past two weeks been working on pre exiting  
27 [sic] deadlines on numerous other cases." Id. Plaintiffs' delay  
28 in filing the TRO is of concern to the Court. However,

1 Plaintiffs' TRO application will not be denied on this ground.

2 2. Likelihood of Success on the Merits

3 Plaintiffs argue that they are likely to succeed on the  
4 merits of their claims on two grounds. First, Plaintiffs argue  
5 they are likely to succeed on their second cause of action for  
6 violation of California Civil Code § 2923.6(c). Points and  
7 Authorities in support of Motion for TRO ("Mot. for TRO") at 5.  
8 Second, Plaintiffs argue that Defendants are not authorized to  
9 conduct foreclosure proceedings. Id. at 7.

10 a. Violation of California Civil Code  
11 § 2923.6(c)

12 California Civil Code section 2923.6(c) states "[i]f a  
13 borrower submits a complete application for a first lien loan  
14 modification offered by, or through, the borrower's mortgage  
15 servicer, a mortgage servicer, mortgagee, trustee, beneficiary,  
16 or authorized agent shall not . . . conduct a trustee's sale,  
17 while the complete first lien loan modification application is  
18 pending." Mrs. Farren states that she submitted a loan  
19 modification to SPS on Friday, April 8, 2016. Mrs. Farren Decl.  
20 ¶ 11.

21 The issue here, however, is whether Mrs. Farren is even  
22 legally able to obtain a modification on this loan since her  
23 signature is not on the Adjustable Rate Note itself. Plaintiffs  
24 argue that they are parties to the loan because they signed the  
25 Deed of Trust, even though they do not have documentary proof  
26 that they signed the Note. Mot. for TRO at 6. Plaintiffs state  
27 that "[t]he terms of the subject Deed of Trust were such that  
28 plaintiffs signature on that document operated as a ratification

1 of the Note obligation." Id. Plaintiffs cite to two California  
2 cases to support their argument: Rakestraw v. Rodrigues, 8 Cal.  
3 3d 67 (1972) and Stegeman v. Vandeventer, 57 Cal. App. 2d 753  
4 (1943). Id. Both cases are inapplicable. Rakestraw concerns  
5 ratification of a forged signature, it does not discuss whether a  
6 signature on a Deed of Trust indicates that a person is also a  
7 party to a promissory note. Rakestraw, 8 Cal. 3d at 73-75.  
8 Stegeman concerns whether a wife could be liable for fraud when  
9 she was "not a party to any of the fraudulent representations  
10 which her husband made to plaintiff" but she "signed the deed  
11 conveying the property to plaintiff. Stegeman, 57 Cal. App. 2d  
12 at 758-59.

13 Plaintiffs cite to no other authority indicating that  
14 signing a Deed of Trust makes an individual a party to a Note he  
15 did not sign. The only people who appear to have signed the  
16 Adjustable Rate Note that has been submitted in this case are Mr.  
17 and Mrs. Hinrichs. Plaintiffs have not produced a copy of the  
18 Note that contains their signatures and absent such proof they  
19 are not entitled to modify the loan arrangement. Thus, the Court  
20 finds that Plaintiffs are unlikely to succeed on their  
21 § 2923.6(c) claim.

22 b. Defendants' Authorization to Conduct  
23 Foreclosure Sale

24 Plaintiffs next argue that "conducting of the foreclosure  
25 trustee's sale is wrongful as these defendants do not legally own  
26 the Note and Deed of Trust as the Assignment to them of these  
27 documents are void in violation of law." Mot. for TRO at 7.

28 Plaintiffs state that they have standing to challenge the

1 sufficiency of an assignment of a loan. Mot. for TRO at 7-8.  
2 Plaintiffs cite to Yvanova v. New Century Mortgage Co., 62 Cal.  
3 4<sup>th</sup> 919 (2016) and Lundy v. Selene Finance, LP, 2016 WL 1059423  
4 (N.D. Cal. Mar. 17, 2016), both of which held that a third party  
5 has standing to challenge the validity of assignment. But, the  
6 plaintiffs in neither Yvanova nor Lundy had the problem of not  
7 being a signatory on the promissory note which has been assigned.  
8 Plaintiffs have a completely different standing problem here than  
9 the ones addressed in Yvanova and Lundy. Plaintiffs cannot prove  
10 that they are likely to succeed on the merits of their claims  
11 because they cannot prove that they are parties to the Note. As  
12 discussed above, a TRO is an extraordinary remedy that the Court  
13 can only grant if Plaintiffs meet each of the four required  
14 elements. Since Plaintiffs are not likely to prevail on the  
15 first element, their Application for a TRO is denied and the  
16 Court declines to and need not address the remaining elements.

17  
18 III. ORDER

19 Plaintiffs' ex parte application for a temporary restraining  
20 order is DENIED.

21 IT IS SO ORDERED.

22 Dated: July 8, 2016

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24   
25 JOHN A. MENDEZ,  
26 UNITED STATES DISTRICT JUDGE  
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