

1  
2  
3  
4  
5 IN THE UNITED STATES DISTRICT COURT  
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
7

8 U.S. BANK NATIONAL, et al.,

No. C 07-3175 SI

9 Plaintiffs,

**ORDER DENYING DEFENDANTS'  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER**

10 v.

11 NORLIN MERRITT, et al.,

12 Defendants.  
13 \_\_\_\_\_/

14 On June 15, 2007, pro se defendants Norlin and Maria Merritt filed in this Court a "Notice of  
15 Removal," a document titled "TRO," and various other documents. The underlying action appears to  
16 be a state-court unlawful detainer action, pending in Marin County Superior Court since at least May  
17 4, 2007. The TRO document, which is unsworn, states that defendants are conspiring to steal  
18 defendants' property, knowing they have no standing because the note they are acting on was sold or  
19 is counterfeit. Defendants state that they have contacted the Marin County District Attorney's Office  
20 and the FBI regarding alleged criminal acts by plaintiffs and others, and that defendants seek a TRO,  
21 apparently to stay the state court proceedings "pending the outcome of the criminal investigation."

22 Defendants' papers do not present any facts which would support its issuance, and accordingly  
23 the Court DENIES the motion for a temporary restraining order.

24 The Court further has serious questions whether there is any basis for removal of what is  
25 apparently a state-court unlawful detainer action to federal court and whether, in any event, it is  
26 untimely. The Notice of Removal states that defendants are "respectfully requesting moving from  
27 Superior Court Marin County to Federal Court due to Superior Court moving forward without proper  
28 notice to me of scheduled hearings and sealing the file as confidential and stopping me access." The

1 papers attached include a statement that on May 8, 2007 defendants were hand-served a summons and  
2 “unlawful detainer/eviction” papers. The papers also include a mailed notice, dated May 4, 2007,  
3 concerning the unlawful detainer papers. Thus defendants were apparently on notice of the pendency  
4 of the Marin County action for over 30 days prior to filing this action, making the removal untimely  
5 under 28 U.S.C. 1446.

6 Defendants also seek to proceed *in forma pauperis*, but their Application to Proceed In Forma  
7 Pauperis states that defendant Norlin Merrit earns a monthly salary of \$10,000 gross and \$4,000 net and  
8 that defendants have a net bank account balance of \$2000. They do not appear to be unable to pay the  
9 Court’s filing fee (\$350). The application is therefore DENIED.

10 The Court advises defendants that if they wish to try to proceed with this action in this Court,  
11 they must serve a copy of all papers on plaintiffs, and must also file a copy of the Notice of Removal  
12 in state court where the action is pending. *See generally* 28 U.S.C. § 1446.

13  
14 **IT IS SO ORDERED.**

15 Dated: June 15, 2007

16   
17 \_\_\_\_\_  
18 SUSAN ILLSTON  
19 United States District Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28