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E-filed 08/13/2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

URSULA MCCOMAS, et al.,

No. C 10-2622 RS

Plaintiffs,

v.

**ORDER RE BRIEFING ON MOTION
FOR LEAVE TO SEEK
RECONSIDERATION**

EARL L. WALLACE, et al.,

Defendants,

Pursuant to Civil Local Rule 7-9, plaintiffs Jim and Danielle Earl request leave to file a motion for reconsideration of the denial of their motion for a preliminary injunction. Good cause appearing, no later than 5:00 p.m. on August 18, 2010, plaintiffs shall file a supplemental brief addressing the following points:

1. Plaintiffs acknowledge that Conejo Capital Partners, LLC, the present owner of record of the property at issue is not “subject to this Court’s equitable powers,” as it is not a named defendant herein. Notwithstanding plaintiffs’ contention that Conejo did not lawfully obtain title, what authority, if any, supports the notion that the Court may in effect deprive Conejo of possession of property as to which it is the owner of record without at least providing it the opportunity to be heard?

2. Similarly, plaintiffs’ papers appear directed at showing, (a) they have a likelihood of success against the attorney defendants for violations of the Fair Debt Collections Act and other

1 claims, and; (b) that the foreclosures were unlawful. Plaintiffs have still failed to explain adequately
2 how their claims against the named defendants, even if proven, will entitle them to set aside the
3 foreclosure sales, at least in the absence of other defendants such as the purchasers and the lenders.
4 As preliminary relief ordinarily must be closely related to the final relief plaintiffs would obtain
5 upon prevailing on the merits, this appears to present a substantial barrier to the relief they seek. In
6 other words, even if plaintiffs can prove a *damages* claim against these defendants, that will not, in
7 and of itself, necessarily entitle them to set aside the foreclosure sales in this action as presently
8 constituted. While plaintiffs appear to contend that these defendants' alleged statutory violations
9 rendered all subsequent foreclosure proceedings unlawful and void, that does not automatically
10 mean that the sales can be set aside in the absence of other affected parties.

11 3. Finally, as plaintiffs correctly note, at this juncture at least, there does not appear to be
12 any defect in venue to the extent that plaintiffs seek injunctive relief directed against named
13 defendants herein. Plaintiffs, however, are continuing to request an order staying the proceedings of
14 the Ventura County Superior Court, and involving real property situated in that county. Why would
15 this be an appropriate venue to seek such relief?

16
17 No later than 5:00 p.m. on August 20, 2010, defendant Stanley Yates shall file a response to
18 plaintiffs' request for leave to seek reconsideration, addressing only the propriety of allowing the
19 motion for reconsideration to be filed. In the event leave to file the motion for reconsideration is
20 granted, a briefing schedule for addressing the merits of the motion for reconsideration will be
21 established.

22
23 IT IS SO ORDERED.

24
25 Dated: 08/13/2010



26 RICHARD SEEBORG
27 UNITED STATES DISTRICT JUDGE
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