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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FERMIN SOLIS ANIEL, et al.,

No. C 10-03185 JSW

Plaintiffs,

**ORDER: (1) TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION; AND (2) DENYING WITHOUT PREJUDICE REQUEST FOR TEMPORARY INJUNCTIVE RELIEF**

v.

T.D. SERVICE COMPANY, et al.,

Defendants.

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On July 21, 2010, Plaintiffs filed a Complaint alleging claims for relief based on alleged violations of the Fair Debt Collection Practices Act, California’s Rosenthal Act, and claims for Fraud, Wrongful Foreclosure, Declaratory Relief, Injunctive Relief, and Quiet Title. Plaintiffs’ claims arise in relation to an impending foreclosure on a rental property located at 418 Persia Avenue, San Francisco, CA.

Plaintiffs premise jurisdiction in this Court on the alleged violations of the Fair Debt Collection Practices Act, and the allegations supporting this claim relate to the impending foreclosure. Courts that have addressed this issue have concluded consistently that “[a] claim cannot arise under the FDCPA based upon the lender enforcing its security interest under the subject deed of a trust because foreclosing on a mortgage does not constitute an attempt to collect a debt for purposes of the FDCPA.” *Landayan v. Washington Mutual Bank*, 2009 WL 3047238, at \* 3 (N.D. Cal. Sept. 18, 2009) (citing *Maguire v. Citicorp. Retail Svcs., Inc.*, 147

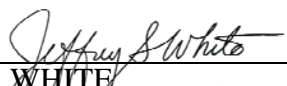
1 F.3d 232, 236 (2d Cir. 1998)); *Distor v. US Bank, N.A.*, 2009 WL 3420700, at \*5 (N.D. Cal.  
2 Oct. 22, 2009); *Perry v. Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985).

3 In addition, many of the allegations in support of this claim are premised on actions that  
4 took place during Bankruptcy Proceedings, which may preclude Plaintiffs' ability to bring an  
5 FDCPA claim. See *In re Chaussee*, 399 B.R. 225 (9th Cir. BAP 2008) ("*Chaussee*"), and *Walls*  
6 *v. Wells Fargo Bank, N.A.*, 255 B.R. 38 (E.D. Cal. 2000), *aff'd* 276 F.3d 302 (9th Cir. 2002).  
7 Accordingly, having reviewed the allegations in the Complaint, Plaintiffs are HEREBY  
8 ORDERED TO SHOW CAUSE why this case should not be dismissed for lack of subject  
9 matter jurisdiction. Plaintiffs' response to this Order to Show Cause shall be due by no later  
10 than August 6, 2010.

11 In their Complaint, Plaintiffs also alleged that a Trustee's Sale was scheduled to occur  
12 on July 21, 2010 at 2:00 p.m., and alleged that they were entitled to temporary injunctive relief  
13 on that basis. (Compl. ¶ 76.) However, Plaintiffs subsequently informed the Court that the sale  
14 had been postponed to August 23, 2010. To the extent Plaintiffs' intended to seek a temporary  
15 restraining order by filing their Complaint, that request is DENIED WITHOUT PREJUDICE.  
16 If Plaintiffs intend to pursue a motion for a temporary restraining order, they should file a  
17 proper application with the Court, serve their papers upon all interested parties, and file proof of  
18 such service with the Court. Moreover, if Plaintiffs do seek temporary injunctive relief, they  
19 should be prepared to address the issue of subject matter jurisdiction in their papers.

20 **IT IS SO ORDERED.**

21  
22 Dated: July 21, 2010

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

FERMIN SOLIS ANIEL et al,  
Plaintiff,

Case Number: CV10-03185 JSW  
**CERTIFICATE OF SERVICE**

v.

T.D. SERVICE COMPANY et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 21, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Erlinda Abibas Aniel  
75 Tobin Clark Drive  
Hillsborough, CA 94010

Fermin Solis Aniel  
75 Tobin Clark Drive  
Hillsborough, CA 94010

Marc Jason Aniel  
75 Tobin Clark Drive  
Hillsborough, CA 94010

Dated: July 21, 2010



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk