

United States District Court
For the Northern District of California

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

VERONICA NEWBECK, an individual; and
JOHN J. FORD, III, an individual,

Plaintiffs,

v.

WASHINGTON MUTUAL BANK; PLAZA HOME
MORTGAGE INC.; and WASHINGTON MUTUAL
MORTGAGE SECURITIES CORP.,

Defendants.

No. C 09-01599 CW

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

_____ /

Plaintiffs Veronica Newbeck and John Ford move ex parte for a temporary restraining order prohibiting Defendants from evicting them from their property located at 230 Cordova St., San Francisco, California, or from conducting a trustee sale of the property.

A temporary restraining order may be issued without providing the opposing party an opportunity to be heard only if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). "The standard for issuance of a temporary restraining order is the same as that for issuance of a

1 preliminary injunction." Burgess v. Forbes, 2009 WL 416843, at *2
2 (N.D. Cal.). To obtain a preliminary injunction, the moving party
3 must "establish that he is likely to succeed on the merits, that he
4 is likely to suffer irreparable harm in the absence of preliminary
5 relief, that the balance of equities tips in his favor, and that an
6 injunction is in the public interest." Winter v. Natural Res. Def.
7 Council, Inc., ___ U.S. ___, 129 S. Ct. 365, 374 (2008). "[T]he
8 required showing of harm varies inversely with the required showing
9 of meritoriousness." Indep. Living Ctr. of S. Cal., Inc. v.
10 Shewry, 543 F.3d 1047, 1049 (9th Cir. 2008) (quoting Rodeo
11 Collection, Ltd. v. W. Seventh, 812 F.2d 1215, 1217 (9th Cir.
12 1987)). "When the balance of harm 'tips decidedly toward the
13 plaintiff,' injunctive relief may be granted if the plaintiff
14 raises questions 'serious enough to require litigation.'" Id.
15 (quoting Benda v. Grand Lodge of the Int'l Ass'n of Machinists &
16 Aerospace Workers, 584 F.2d 308, 315 (9th Cir. 1978)).

17 Plaintiffs have failed to demonstrate that a temporary
18 restraining order should be granted. First, they have not
19 submitted any evidence demonstrating that they have a viable claim
20 under the Truth in Lending Act (TILA), and thus it is impossible to
21 evaluate the likelihood of their success on the merits. Second,
22 they have not identified the date of any potential foreclosure sale
23 or eviction, and thus have not demonstrated that they are likely to
24 suffer irreparable harm if Defendants are given an opportunity to
25 oppose preliminary injunctive relief. Third, even if Defendants
26 violated TILA, Plaintiffs have not shown that enjoining foreclosure
27 proceedings would be an appropriate remedy. Fourth, Plaintiffs
28 waited for nearly four months after initiating this lawsuit before

1 serving the complaint and filing the present motion, and thus any
2 injury that may result from giving Defendants an opportunity to be
3 heard is attributable to Plaintiffs' own delay.¹

4 Plaintiffs' request for immediate ex parte relief is therefore
5 DENIED. If Plaintiffs seek a preliminary injunction, they must
6 serve the summons and complaint on any Defendant against whom
7 relief is sought. They must then file a properly noticed motion
8 under the Civil Local Rules.

9 IT IS SO ORDERED.

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11 Dated: 8/6/09



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CLAUDIA WILKEN
United States District Judge

¹Although Plaintiffs state in their motion that Washington Mutual was served with the summons and complaint on July 27, 2009, they have not submitted proof of such service. In addition, they do not allege that the other Defendants have been served.

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 VERONICA NEWBECK et al,

Case Number: CV09-01599 CW

5 Plaintiff,

CERTIFICATE OF SERVICE

6 v.

7 WASHINGTON MUTUAL BANK et al,

8 Defendant.
_____ /

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

11 That on August 6, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 John J. Ford
230 Cordova Street
16 San Francisco, CA 94112

17 Veronica Newbeck
230 Cordova Street
18 San Francisco, CA 94112

19 Dated: August 6, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

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