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28UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LEE, et al.,

Plaintiffs,

v.

PMC BANCORP, et al.,

Defendants.

No. C 09-4484 PJH

**NOTICE AND ORDER  
SETTING HEARING ON  
TEMPORARY RESTRAINING  
ORDER**

The court is in receipt of plaintiff's ex parte application for temporary restraining order and order to show cause re preliminary injunction. Plaintiff seeks an order temporarily restraining defendants PMC Bancorp, Quality Loan Service Corp, Capital Mortgage Group, and Aurora Loan Services (collectively "defendants") from foreclosing on, conducting a trustee sale on, and/or otherwise disposing of plaintiffs' residential property located at 236 Benham Drive, Martinez, California, 94553. A trustee sale is purportedly scheduled for October 23, 2009.

The hearing on plaintiffs' motion for temporary restraining order is accordingly set for **October 21, 2009**, at 9:00 a.m., in Courtroom 3, 3rd Floor, Federal Building, 1301 Clay Street, Oakland, California 94612.

The court furthermore notes, however, that plaintiffs have not yet filed a proof of service with the court adequately establishing defendants' receipt of the instant motion or complaint, nor have plaintiffs otherwise satisfactorily complied with the requirements of Federal Rule of Civil Procedure ("FRCP") 65(b). While plaintiffs have filed a supporting declaration of counsel and proof of service purporting to demonstrate service of the complaint and motion upon counsel for "Quality and Aurora" as well as "defendants," see

1 Declaration of Kaiser U. Khan ISO Ex Parte App. for TRO, the actual proof of service  
2 submitted by counsel belies this claim. It affirms service of the motion alone (not the  
3 complaint), via mail upon an Andrew Hill at McCarthy & Holthus, and via fax upon Matthew  
4 Podmenik at McCarthy & Holthus. There is no Mr. Hill or Mr. Podmenik listed as counsel of  
5 record in this action, however, though a Mr. Andrew Hall is listed as counsel for defendant  
6 Aurora Loan Services, and this is presumably whom plaintiffs' counsel meant to serve. The  
7 court also notes that there is no proof of attempted service on counsel of record for  
8 defendant Quality Loan Service Corp. (represented by Mr. Seth Michael Harris, according  
9 to the docket), or upon defendants Capital Mortgage Group or PMC Bancorp, who do not  
10 seem to have even entered an appearance as yet.

11 Despite plaintiffs' inability to demonstrate compliance with FRCP 65, and in view of  
12 the October 23 trustee sale scheduled by defendants, the court nonetheless schedules the  
13 instant motion for a hearing on shortened time, as indicated above. Plaintiffs are  
14 ORDERED, however, to serve (1) the complaint, (2) the instant motion papers, and (3) this  
15 order upon all defendants whom plaintiff seeks to enjoin by way of the instant motion  
16 immediately. In the event plaintiffs have already served defendants with the complaint and  
17 motion papers, plaintiffs need only serve defendant with a copy of this order.

18 No later than 2:00 p.m. tomorrow, October 21, 2009, plaintiffs shall file a proof of  
19 service with this court indicating compliance with the foregoing. In any event, no hearing  
20 on plaintiffs' motion for temporary restraining order shall take place until all parties have  
21 been served.

22 **IT IS SO ORDERED.**

23 Dated: October 19, 2009



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PHYLLIS J. HAMILTON  
United States District Judge

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