

1

2

3

4

## UNITED STATES DISTRICT COURT

5

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

6

## OAKLAND DIVISION

7

8 ERLINDA ABIBAS ANIEL, an individual;  
9 FERMIN SOLIS ANIEL, an individual;  
10 MARC JASON ANIEL, an individual,

11 Plaintiffs,

12 v.

13 GMAC MORTGAGE, LLC; EXECUTIVE  
14 TRUSTEE SERVICES, LLC., DBA ETS  
15 SERVICES, LLC; AND DOES 1 THROUGH  
50,

16 Defendants.

Case No: C 12-04201 SBA

**ORDER DENYING MOTION  
FOR PRELIMINARY  
INJUNCTION**

Docket 28

16 On August 9, 2012, Plaintiffs Erlinda Aniel, Fermin Aniel, and Marc Aniel  
17 (collectively, "Plaintiffs") filed the instant action against Defendants GMAC Mortgage,  
18 LLC ("GMAC") and Executive Trustee Services, LLC ("ETS") (collectively,  
19 "Defendants"), alleging nine claims for relief in connection with a foreclosure proceeding  
20 on their residence located at 75 Tobin Clark Drive, Hillsborough, CA 94010 (the  
21 "Property"). Compl., Dkt. 1. The parties are presently before the Court on Plaintiffs'  
22 motion for preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure.  
23 Dkt. 28. Defendants oppose the motion. Dkt. 29. Having read and considered the papers  
24 filed in connection with this matter and being fully informed, the Court hereby DENIES  
25 Plaintiffs' motion without prejudice, for the reasons stated below. The Court, in its  
26 discretion, finds this matter suitable for resolution without oral argument. See Fed.R.Civ.P.  
27 78(b); N.D. Cal. Civ. L.R. 7-1(b).  
28

1     I.     DISCUSSION

2     Plaintiffs move for an order enjoining "Defendants and their agents, employees,  
3     successors, attorneys and all persons in active concert and participation with [them] from  
4     commencing, continuing, maintaining or conducting . . . a Trustee's Sale of Plaintiffs' home  
5     or other foreclosure proceeding or any other proceeding of any kind, during the pendency  
6     of this action." Dkt. 28. In response, Defendants argue that Plaintiffs' motion should be  
7     denied because (1) there is no imminent threat of harm as Plaintiff Marc Aniel filed a  
8     bankruptcy petition which triggered an automatic stay that precludes foreclosure at this  
9     time, (2) Plaintiffs' motion is based on well-worn and roundly rejected theories regarding  
10    securitization, and (3) Plaintiffs' motion raises no new facts or legal theories from the  
11    previously unsuccessful application for temporary restraining order. Dkt. 29.

12    As an initial matter, the instant motion does not comply with the meet and confer  
13    requirement set forth in this Court's Standing Orders, which provides:

14    All parties shall meet and confer before filing any motion before the Court.  
15    The motion and any other non-stipulated request shall include a certification,  
16    which may be included in the body of the document, that the parties have  
      complied with the meet and confer requirement. The Court may disregard  
      any papers submitted that do not comply with this rule.

17    See Civil Standing Orders ¶ 5.

18    The parties have failed to comply with this requirement, which is essential to the  
19    parties' representation that there is a dispute which requires the Court's resolution. Until  
20    such time as the parties have met and conferred to discuss the issues, it is premature to  
21    conclude that there exists a dispute necessitating the Court's intervention. The meet and  
22    confer requirement is essential to conserving the limited time and resources of the Court  
23    and the parties by obviating the filing of unnecessary motions. Had the parties met and  
24    conferred as required, they may have been able to resolve the issues presented in Plaintiffs'  
25    motion. For instance, the parties may have been able to reach an agreement whereby  
26    Defendants agree to postpone any trustee's sale until the Court has an opportunity to render  
27    a decision on the merits. "The purpose of the [meet and confer] requirement is to  
28    encourage settlement, resolve disputes which need not involve the Court, and avoid

1 unnecessary litigation, thus saving the parties', the Court's, and the taxpayers' limited time,  
2 money, and resources." See Wong v. Astrue, 2008 WL 4167507, at \*2 (N.D. Cal. 2008)  
3 (Armstrong, J.). Accordingly, because the parties did not meet and confer on the issues  
4 presented by the instant motion, Plaintiffs' motion for preliminary injunction is DENIED  
5 without prejudice. It is incumbent upon litigants before this Court to familiarize themselves  
6 not only with the Local Rules, but also with this Court's Standing Orders. There is simply  
7 no excuse for the parties' failure to comply with the meet and confer requirement set forth  
8 in this Court's Standing Orders.

9 In addition to failing to comply with the meet and confer requirement, Plaintiffs  
10 have not demonstrated that a preliminary injunction is warranted. To obtain such relief,  
11 Plaintiffs must demonstrate: (1) a likelihood of success on the merits; (2) a risk of  
12 irreparable harm absent injunctive relief; (3) that the balance of equities tip in favor of  
13 injunctive relief; and (4) that injunctive relief is in the public interest. Winter v. Natural  
14 Resources Defense Council, Inc., 555 U.S. 7, 20 (2008). Because injunctive relief is "an  
15 extraordinary remedy," it "may only be awarded upon a clear showing that the plaintiff is  
16 entitled to such relief." Id. at 22.

17 Here, Plaintiffs have not shown that a trustee's sale of the Property is imminent. In  
18 fact, it is undisputed that there is currently an automatic bankruptcy stay in effect  
19 preventing Defendants from foreclosing on the Property. Thus, Plaintiffs have failed to  
20 carry their burden to demonstrate that a preliminary injunction is appropriate. See Winter,  
21 555 U.S. at 22 (A preliminary injunction will not be issued simply to prevent the possibility  
22 of some remote future injury. Issuing a preliminary injunction based only on a possibility  
23 of irreparable harm is inconsistent with the notion that injunctive relief is an extraordinary  
24 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such  
25 relief.). Plaintiffs have not shown that in the absence of injunctive relief, they are likely to

26

27

28

1 suffer irreparable harm<sup>1</sup> before a decision on the merits can be rendered. See id.  
2 Accordingly, Plaintiffs' motion for preliminary injunction is DENIED without prejudice. In  
3 the event the bankruptcy stay is lifted, Plaintiffs may file a renewed motion for preliminary  
4 injunction.

5 **II. CONCLUSION**

6 For the reasons stated above, IT IS HEREBY ORDERED THAT:

- 7 1. Plaintiffs' motion for preliminary injunction is DENIED without prejudice.
- 8 2. The parties shall meet and confer in person or by telephone prior to filing any  
9 future motions. The parties shall meet and confer in good faith in an attempt to resolve or  
10 narrow the issues presented in such a motion. The parties shall certify in writing that they  
11 have done so, as required by this Court's Standing Orders.
- 12 3. This Order terminates Docket 28.

13 IT IS SO ORDERED.

14 Dated: 6/7/13

---

15 SAUNDRA BROWN ARMSTRONG  
16 United States District Judge

17  
18  
19  
20  
21  
22  
23  
24  
25  
26

---

27 <sup>1</sup> "The loss of one's home through foreclosure generally is considered sufficient to  
28 establish irreparable harm." Washington v. National City Mortg. Co., 2010 WL 5211506,  
at \*5 (N.D. Cal. 2010) (Armstrong, J.)