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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHETANN PATEL AND HARSHIKA PATEL,

Plaintiff,

vs.

**U.S. BANK, N.A., AS TRUSTEE FOR
CITIGROUP MORTGAGE LOAN TRUST, INC.,
ASSET-BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-HE1; WELLS
FARGO BANK, N.A.; QUALITY LOAN SERVICE
CORP.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., et al.,**

Defendants.

Case No.: 13-CV-1625 YGR

**ORDER DENYING PLAINTIFFS' (THIRD) EX
PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO SHOW
CAUSE WHY PRELIMINARY INJUNCTION
SHOULD NOT ISSUE AND FOR PRELIMINARY
INJUNCTION**

Plaintiffs Chetann Patel and Harshika Patel (“Plaintiffs”) bring this action against Defendants U.S. Bank, N.A., As Trustee For Citigroup Mortgage Loan Trust, Inc., Asset-Backed Pass-Through Certificates, Series 2006-HE1; Wells Fargo Bank, N.A.; Mortgage Electronic Registration Systems, Inc. (collectively, “Beneficiary Defendants”), and Quality Loan Service Corp. (“QLS”). On July 8, 2013, Plaintiffs filed their third ex parte request for a temporary restraining order, the previous two having been denied by this Court on procedural grounds. (*See* Dkt. Nos. 37, 11, 33.) Plaintiffs’ latest request suffers from procedural defects as well as substantive lack of merit.

1 First, Plaintiffs have noticed their ex parte motion for a hearing on the Court's July 9, 2013,
2 2:00 p.m. calendar. Per Civil Local Rule 7-2, and except for motions made during the course of a
3 trial or hearing, all motions must be noticed for hearing not less than 35 days after service of the
4 motion in the absence of an order granting leave to set a hearing on shortened time. No such order
5 was obtained here.

6 Second, the Court previously granted motions by the Beneficiary Defendants and QLS to
7 dismiss Plaintiffs' complaint pursuant to FRCP 12(b)(6), on the grounds that all the claims in the
8 complaint were barred by *res judicata*. (Dkt. No. 31.) Plaintiffs previously filed a state-court
9 complaint against all the defendants here based upon the same set of facts and the same basic
10 theories as alleged in this Court. The state court dismissed the complaint with prejudice, and
11 entered a judgment in favor of Defendants on September 7, 2012. (Beneficiary Defendants'
12 Request for Judicial Notice, Exh. N and O [Dkt. No. 15-14, 15-15].) Although Plaintiffs argued in
13 opposition to the motion that they could state claims not barred by *res judicata*, no such claims
14 have yet been stated.

15 The Court's Order of June 25, 2013, denied the second Motion for a Temporary Restraining
16 Order on the grounds that there was no operative complaint on file. Although Plaintiffs have now
17 filed a motion to amend to add new claims, the fact remains that no leave to amend has yet been
18 granted and thus Plaintiffs have no operative complaint or claims.

19 Moreover, Plaintiffs have not demonstrated how any set of facts that might entitle them to
20 injunctive relief to stay the foreclosure sale of their property. The Court's prior order made clear
21 that any claims based upon securitization and assignment of the note are barred by the prior
22 judgment and the only claim Plaintiffs could seek to amend to add was a claim for violation of
23 TILA for failure to provide accurate material disclosures. (Dkt. No. 31 at p. 3-4.) Even assuming
24 that Plaintiffs can plead a viable claim for such a TILA violation, the only remedy available at this
25 juncture is one for damages. *See McOmie-Gray v. Bank of Am. Home Loans*, 667 F.3d 1325, 1328
26 (9th Cir. 2012) (right of rescission under TILA expires three years after date of consummation of
27 transaction, notwithstanding the fact that information or forms required to be disclosed have not
28 been delivered, citing 15 U.S.C. § 1635(f)).

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Based upon the foregoing, Plaintiffs cannot establish entitlement to a temporary restraining order and their (Third) Ex Parte Motion For Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Issue And For Preliminary Injunction is **DENIED**.

IT IS SO ORDERED.

Date: July 9, 2013



**YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE**