

E-Filed 8/5/2010

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

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ROBERT PERRY;
TAMMY M. REY,

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Plaintiffs,

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v.

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NATIONAL DEFAULT SERVICING CORPORATION; KONDAUR CAPITAL CORPORATION; EMC MORTGAGE CORPORATION; GMAC MORTGAGE LLC; MORTGAGE ELECTRONIC REGISTRATION SERVICE, INC.; AND ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE ESTATE, LIEN OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT ADVERSE TO PLAINTIFFS' TITLE, OR ANY CLOUD UPON PLAINTIFFS' TITLE THERETO; and DOES 1-100,

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Defendants.

Case Number: 10CV03167 LHK

ORDER¹ GRANTING APPLICATION FOR TEMPORARY RESTRAINING ORDER AND SETTING HEARING ON REQUEST FOR INJUNCTIVE RELIEF

[re: docket no. 8]

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On June 25, 2010, Plaintiffs Robert Perry and Tammy M. Rey ("Plaintiffs") filed the

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¹ This disposition is not designated for publication in the official reports.

1 instant action in the San Benito Superior Court against Defendants National Default Servicing
2 Corporation, Kondaur Capital Corporation, EMC Mortgage Corporation, GMAC Mortgage LLC,
3 Mortgage Electronic Registration Service, Inc., Unknown Persons Claiming Any Legal Or
4 Equitable Right, Title, Estate, Lien or Interest in the Property Described in the Complaint
5 Adverse to Plaintiffs' Title, or Any Cloud Upon Plaintiffs' Title Thereto; and Does 1-100
6 (collectively, "Defendants") alleging violations of the Truth in Lending Act ("TILA"), 15 U.S.C.
7 § 1601, et seq and of California law. On July 2, 2010, in response to Plaintiffs' motion filed the
8 same day, the state court issued an *ex parte* temporary restraining order ("TRO") enjoining
9 Defendants from transferring ownership interest in the subject property located at 1383 Perry
10 Court, Hollister, CA 95023 ("the Property") and setting the matter for further hearing on July 22,
11 2010.

12 Defendants thereafter removed this action to federal court on July 20, 2010, two days
13 before the scheduled hearing set by the state court. *See* Dkt. No. 1. Defendants also rescheduled
14 their scheduled sale of the Property to August 6, 2010. Today, August 5, 2010, Plaintiff filed the
15 instant application in this Court. The foreclosure sale remains scheduled for tomorrow.
16 Plaintiffs allege that they were not aware of the date of the foreclosure sale until this week. *See*
17 Dkt. No. 8 at 3. Having considered Plaintiffs' application and Defendants' opposition thereto,
18 this court finds that irreparable harm will result to the movant before all the Defendants may be
19 heard in opposition, and that the Plaintiffs were unable to provide Defendants with more than one
20 day's notice due to the timing of the scheduled sale. Therefore, good cause appearing, a hearing
21 on Plaintiffs' request for injunctive relief is hereby scheduled for Friday, August 13, 2010 at 1:30
22 p.m. Any further opposition by Defendants shall be filed by Tuesday, August 10, 2010; any reply
23 shall be filed by Thursday, August 12, 2010. Pending that hearing and until further order of the
24 Court, Defendants shall be temporarily restrained from proceeding with any sale of or otherwise
25 transferring any ownership interest in the Property.

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IT IS SO ORDERED.

DATED: August 5, 2010


LUCY H. KOH
United States District Judge