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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

Robert Perry; Tammy M. Rey,	)	Case No.: 10-CV-03167-LHK
	)	
Plaintiffs,	)	
v.	)	
	)	<b>ORDER RE-SETTING HEARING ON</b>
National Default Servicing Corporation;	)	<b>MOTIONS TO DISMISS</b>
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, Does 1-100,	)	
	)	
Defendants.	)	

**IT IS SO ORDERED.**

Defendants EMC Mortgage Corporation and Mortgage Electronic Registration Service, Inc. filed a motion to dismiss this case for failure to state a claim on August 3, 2010. Defendant Kondaur Capital Corporation ("Kondaur") filed a separate motion to dismiss on August 9, 2010. These motions were set for hearing on October 7, 2010. In the interim, this Court denied Plaintiffs' request for a preliminary injunction staying the sale of the subject property, and the Plaintiffs appealed this decision. The appeal is currently pending before the Ninth Circuit. No opposition to the motions to dismiss has been filed by the Plaintiffs.

Case No.: 10-CR-03167-LHK  
ORDER DENYING STAY PENDING APPEAL

1                   In light of these facts, the Court hereby VACATES the October 7, 2010 hearing on  
2 Defendants' Motions to Dismiss, and re-sets the hearing for January 20, 2010. A case management  
3 conference will follow the hearing on these motions. The parties shall file the required Case  
4 Management Statement by January 13, 2010.

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6 **IT IS SO ORDERED.**

7 Dated: September 28, 2010

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9 LUCY H. KOH  
10 United States District Judge

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