

1 Plaintiffs' Second Amended Complaint, which is currently under submission.

2 Plaintiffs now seek a temporary restraining order to prevent the Harmony Grove property from
3 being sold at a Trustee's Sale. The purpose of a temporary restraining order is to preserve the status
4 quo before a preliminary injunction hearing may be held; its provisional remedial nature is designed
5 merely to prevent irreparable loss of rights prior to judgment. *See Granny Goose Foods, Inc. v.*
6 *Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974) (noting that a temporary
7 restraining order is restricted to its "underlying purpose of preserving the status quo and preventing
8 irreparable harm just so long as is necessary to hold a hearing, and no longer"). Injunctive relief is "an
9 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to
10 such relief." *Winter v. Natural Res. Def. Council, Inc.*, ___ U.S. ___, 129 S. Ct. 365, 376 (2008).
11 The standard for issuing a temporary restraining order is identical to the standard for issuing a
12 preliminary injunction. *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp.
13 1320, 1323 (N.D. Cal. 1995). A party seeking injunctive relief under Federal Rule of Civil Procedure
14 65 must show "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in
15 the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction
16 is in the public interest." *Am. Trucking Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir.
17 2009) (quoting *Winter*, 129 S. Ct. at 374).

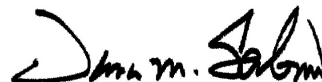
18 Plaintiffs have failed to meet that standard. Initially, there is some dispute as to whether the
19 Trustee's Sale is going forward on September 3. Plaintiffs state that the phone line provided in the
20 Notice of Trustee's Sale indicates the sale is going forward on September 3, 2010 at 10:00 a.m.
21 Defendants contend a subordinate lien holder on the Harmony Grove property has declared bankruptcy
22 and therefore the foreclosure sale will not go forward on September 3. (Brucker Decl. ¶¶ 4-5.)
23 Nonetheless, assuming the foreclosure sale is scheduled to take place on September 3, Plaintiffs have
24 failed to show likelihood of success on the merits. The only basis for TRO asserted in Plaintiffs'
25 application is the "one-action rule" provided by California Code of Civil Procedure section 726.
26 Plaintiffs assert that because Preferred Bank has filed suit against Ray Gray in state court, it cannot
27 also attempt to foreclose on the property. In the guaranty agreement signed by Mr. Gray, however, he
28 specifically waived his right to assert a defense of Section 726. (Def. Ex. 6.) Such a waiver is

1 permitted by California Civil Code section 2856(a)(3). Further, Plaintiffs do not address whether the
2 balance of equities tips in their favor or if the injunction is in the public interest.

3 Accordingly, Plaintiffs' application for TRO is denied. Plaintiffs' request for leave to file a
4 third amended complaint to add a claim for declaratory relief in order to support the TRO is also
5 denied.¹

6 **IT IS SO ORDERED.**

7 DATED: September 2, 2010



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10 HON. DANA M. SABRAW
United States District Judge

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¹ In their opposition to Plaintiffs' *ex parte* application, Defendants seek sanctions under Rule 11 in the amount of \$2,500. The Court declines to reach this issue without a noticed motion.