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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 SEAN M. PARK, et al.,

12 Plaintiffs,

13 vs.

14 NATIONAL CITY MORTGAGE BANK, et
15 al.,

16 Defendants.

CASE NO. 10cv2408 DMS (RBB)

**ORDER DENYING PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER**

[Docket Nos. 5, 6]

17 This matter comes before the Court on Plaintiffs' *ex parte* motion for a temporary restraining
18 order ("TRO") to prevent Defendants from foreclosing on Plaintiffs' property. Plaintiffs, who are
19 proceeding *pro se*, filed the present case on November 22, 2010, and filed the present motion on
20 November 29, 2010. It appears Plaintiffs have served copies of all of their filings on Defendant Quality
21 Loan Service Corporation only. No party has filed an opposition to the motion.

22 **I.**

23 **BACKGROUND**

24 Plaintiffs allege they are the owners of real property located at 2011-2017 W. Island Avenue,
25 San Diego, California. On August 3, 2005, Plaintiffs obtained a loan from Defendant National City
26 Bank of Indiana to purchase the property. On March 22, 2010, National City Bank assigned its interest
27 in the property to Defendant Green Tree Servicing LLC. On July 29, 2010, Defendant Green Tree,
28 through Defendant Quality Loan Service Corporation, filed a Notice of Default on Plaintiffs' property.

1 On September 10, 2010, Defendant Green Tree filed a Substitution of Trustee for Plaintiffs' property
2 substituting Defendant Quality Loan as trustee. On November 2, 2010, Defendant Quality Loan filed
3 a Notice of Trustee's Sale on Plaintiffs' property, scheduling the sale for November 23, 2010. The sale
4 has since been postponed to February 7, 2011.

5 Plaintiffs' allege that in March 2010 they entered into a contract with Defendant Green Tree to
6 modify the loan on their property. Plaintiffs believed that this was a permanent loan modification, and
7 they made the first three payments as required. In June 2010, Plaintiffs were informed that their request
8 for a loan modification had been denied. Plaintiffs thereafter sent a qualified written request ("QWR")
9 to Defendant Green Tree in which they disputed the debt and requested an accounting. Plaintiffs allege
10 Defendants have not responded to Plaintiffs' QWR. Plaintiffs also allege that they arranged for a sale
11 of the property in October 2010, but Defendants refused to proceed with that sale, instead opting to
12 foreclosure on the property.

13 The First Amended Complaint alleges the following claims for relief: (1) violation of the Truth
14 in Lending Act ("TILA"), (2) violation of California's Fair Debt Collection Practices Act ("the
15 Rosenthal Act"), (3) violation of the federal Fair Debt Collection Practices Act ("the FDCPA"), (4)
16 wrongful foreclosure, (5) violation of the Real Estate Settlement Procedures Act ("RESPA"), (6) breach
17 of fiduciary duty, (7) intentional misrepresentation, (8) negligent misrepresentation, (9) violation of
18 California Business and Professions Code § 17200, (10) breach of contract, (11) breach of the implied
19 covenant of good faith and fair dealing, (12) quiet title, (13) injunctive relief, (14) rescission and (15)
20 accounting.

21 II.

22 DISCUSSION

23 The purpose of a temporary restraining order is to preserve the status quo before a preliminary
24 injunction hearing may be held; its provisional remedial nature is designed merely to prevent irreparable
25 loss of rights prior to judgment. *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto*
26 *Truck Drivers*, 415 U.S. 423, 439 (1974) (noting that a temporary restraining order is restricted to its
27 "underlying purpose of preserving the status quo and preventing irreparable harm just so long as is
28 necessary to hold a hearing, and no longer.") The standard for issuing a temporary restraining order is

1 identical to the standard for issuing a preliminary injunction. *Lockheed Missile & Space Co., Inc. v.*
2 *Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). A party seeking injunctive relief under
3 Federal Rule of Civil Procedure 65 must show “that he is likely to succeed on the merits, that he is likely
4 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
5 favor, and that an injunction is in the public interest.” *Am. Trucking Ass'ns v. City of Los Angeles*, 559
6 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter v. Natural Res. Def. Council, Inc.*, ___ U.S. ___, 129
7 S.Ct. 365, 374 (2008)).

8 Here, Plaintiffs have not shown that they are likely to succeed on the merits of any of their
9 claims. Furthermore, in light of the postponement of the trustee’s sale, Plaintiffs are unlikely to suffer
10 irreparable harm in the absence of immediate and preliminary relief. In the absence of a showing that
11 either of these elements has been met, Plaintiffs are not entitled to a temporary restraining order.

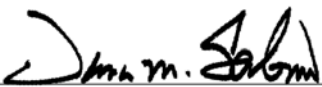
12 **III.**

13 **CONCLUSION**

14 For these reasons, Plaintiffs’ *ex parte* motion for temporary restraining order is denied.

15 **IT IS SO ORDERED.**

16 DATED: December 6, 2010

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19 HON. DANA M. SABRAW
20 United States District Judge
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