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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ELLINGTON DANIELS and DIANE DANIELS,

Plaintiffs,

vs.
COMMUNITY LENDING, INC.; NEW CENTURY MORTGAGE; THE BANK OF AMERICA HOME LOANS; COUNTRYWIDE HOME LOANS; BANK OF AMERICA, N.A.; GINNIE MAE; THE BANK OF NEW YORK; MORTGAGE ELECTRONIC REGISTRATIONS SYSTEMS; and RECONTRUST COMPANY, N.A.,

Defendants.

CASE NO. 13cv488-WQH-JMA
ORDER

HAYES, Judge:

On February 28, 2013, Plaintiffs, proceeding pro se, initiated this action by filing a Complaint which purports to assert claims pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, the Telephone Consumer Protection Act, 47 U.S.C. § 227, and the due process clause of the 14th Amendment of the United States Constitution. (ECF No. 1). On March 22, 2013, the Court issued an Order granting Plaintiffs’ motions to proceed in forma pauperis and requiring the United States Marshal to serve the Complaint and summons as directed by Plaintiffs. (ECF No. 4).

On March 26, 2013, Plaintiffs filed a “Motion for Issuance of an Emergency Temporary

1 Restraining Order to Stay the Sale of Real Property and Imposition of Permanent Injunctive
2 Relief Barring the Sale of the Real Property by Defendants” (“Motion for Temporary
3 Restraining Order”). (ECF No. 6). The Motion for Temporary Restraining Order
4 “incorporates by reference all facts set forth in Plaintiffs’ Complaint.” *Id.* at 2. The Motion
5 for Temporary Restraining Order does not contain a separate statement of facts and is not
6 accompanied by affidavits or other evidence.

7 Rule 65 of the Federal Rules of Civil Procedure provides:

8 (a)(1) The court may issue a preliminary injunction only on notice to the adverse
9 party....

10 (b)(1) The court may issue a temporary restraining order without written or oral
notice to the adverse party or its attorney only if:

11 (A) specific facts in an affidavit or a verified complaint clearly
12 show that immediate and irreparable injury, loss, or damage will
13 result to the movant before the adverse party can be heard in
opposition; and

14 (B) the movant’s attorney certifies in writing any efforts made to
give notice and the reasons why it should not be required.

15 Fed. R. Civ. P. 65(a)(1) & (b)(1).

16 Plaintiffs have failed to demonstrate that Defendants have received notice of the factual
17 basis for the Motion for Temporary Restraining Order. Plaintiffs have failed to show “specific
18 facts in an affidavit or a verified complaint,” Fed. R. Civ. P. 65(b)(1)(A), and Plaintiffs have
19 failed to “certif[y] in writing any efforts made to give notice and the reasons why it should not
20 be required.” Fed. R. Civ. P. 65(b)(1)(B). To the extent Plaintiffs seek a temporary restraining
21 order without providing notice to Defendants of the factual basis underlying the Motion,
22 Plaintiffs have failed to comply with the requirements of Rule 65. *See Reno Air Racing Ass’n,*
23 *Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (“The stringent restrictions imposed by
24 Rule 65 on the availability of ex parte temporary restraining orders reflect the fact that our
25 entire jurisprudence runs counter to the notion of court action taken before reasonable notice
26 and an opportunity to be heard has been granted both sides of a dispute.”) (quotation omitted).
27 To the extent that the Motion for Temporary Restraining Order requests a temporary
28 restraining order, the Motion is denied.

