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

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11 JUANITO CORTEZ and PRISCILLA  
12 CORTEZ,

13 Plaintiffs,

14 vs.

15 MILI MORTGAGE GROUP; et al.,

16 Defendants.

CASE NO. 13-CV-982 BEN (WMC)

**ORDER DENYING SECOND *EX*  
*PARTE* APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER**

[Docket No. 6]

17 Presently before the Court is Plaintiffs' Second *Ex Parte* Application for  
18 Temporary Restraining Order. (Docket No. 6.) For the reasons stated below, the *Ex*  
19 *Parte* Application is **DENIED**.

20 **BACKGROUND**

21 On April 24, 2013, Plaintiffs Juanito Cortez and Priscilla Cortez initiated this  
22 action to set aside the trustee's sale of property located at 4330 Paseo de la Vista,  
23 Bonita, California, 91902. (Docket No. 1.) The Complaint alleges ten claims: (1) set  
24 aside trustee's sale; (2) cancel trustee's deed upon sale; (3) quiet title; (4) fraud; (5)  
25 forcible detainer; (6) breach of covenant of good faith and fair dealing; (7) violation  
26 of California Business & Professions Code § 17200; (8) violation of the Truth in  
27 Lending Act ("TILA") regulations; (9) declaratory relief; and (10) injunctive relief.  
28 (*Id.*)

1 On April 25, 2013, Plaintiffs filed an *Ex Parte* Application for Temporary  
2 Restraining Order (“TRO”) to enjoin Defendants “from evicting or barring and  
3 interfering with them from re-entry and/or possession of their residential property.”  
4 (*Ex Parte* App. [Docket No. 4] at 2.) The Court denied this *ex parte* application  
5 because Plaintiffs did not set forth facts showing that immediate and irreparable injury  
6 would result before Defendants could be heard in opposition or certify in writing that  
7 any effort had been made to give notice to Defendants and the reasons why it should  
8 not be required.

9 Presently before the Court is Plaintiffs’ Second *Ex Parte* Application for  
10 Temporary Restraining Order. (Docket No. 6.) Along with the re-filed *Ex Parte*  
11 Application, Plaintiffs’ counsel George H. Bye filed a declaration that he had left  
12 voicemail messages for Defendants Alegria Real Estate Fund II, LLC, Alegria Real  
13 Estate Fund II, LLC, William Gore, and OneWest Bank, FSB, giving them notice of  
14 the *Ex Parte* Application. (Docket No. 8.) However, Plaintiffs’ counsel did not give  
15 notice to the remaining twelve defendants. For three of these defendants, Plaintiffs’  
16 counsel asserts that he was unable to locate them. Plaintiffs’ counsel claims that the  
17 remaining nine defendants are “foreclosure services and title companies with little or  
18 no interest in the proceedings at this point.” (*Id.* at 2-3.)

## 19 DISCUSSION

20 A TRO is a form of preliminary injunctive relief limited to “preserving the status  
21 quo and preventing irreparable harm just so long as is necessary to hold a hearing.”  
22 *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 439 (1974). To obtain a TRO,  
23 similar to a preliminary injunction, Plaintiffs must demonstrate: (1) a likelihood of  
24 success on the merits; (2) a risk of irreparable harm absent injunctive relief; (3) the  
25 balance of equities tip in favor of injunctive relief; and (4) injunctive relief is in the  
26 public interest. *Winter v. Natural Res. Def. Counsel*, 555 U.S. 7, 20 (2008). In  
27 addition, an injunction may be issued “where the likelihood of success is such that  
28 serious questions going to the merits [are] raised and the balance of hardships tips

1 sharply in plaintiff's favor," assuming the other two elements of the *Winter* test are also  
2 met. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011)  
3 (internal quotation marks omitted). Ordinarily before issuing a TRO, the Court must  
4 hold a hearing or otherwise provide the opposing party with an opportunity to respond.  
5 See FED. R. CIV. P. 65(b).

6 First, in regards to providing notice to the opposing parties, Plaintiffs' counsel  
7 has not provided notice to all of the defendants. Attorney Bye filed a declaration that  
8 he had left voicemail messages for Defendants Alegria Real Estate Fund II, LLC,  
9 Alegria Real Estate Fund II, LLC, William Gore, and OneWest Bank, FSB, giving  
10 them notice of the *Ex Parte* Application. (Docket No. 8.) However, Attorney Bye did  
11 not give notice to the remaining twelve defendants. (*Id.*) Plaintiffs' counsel claims  
12 that he is unable to locate and give notice to three of these twelve defendants, and that  
13 the remaining nine defendants are "foreclosure services and title companies with little  
14 or no interest in the proceedings at this point." (*Id.* at 2-3.) Attorney Bye does not  
15 state that any effort was made to give notice to nine of the defendants in this action.

16 Second, Plaintiffs fail to establish a likelihood of success on the merits. The *Ex*  
17 *Parte* Application does not assert any facts showing that Plaintiffs have a likelihood  
18 of success on the merits. A preliminary review of Plaintiffs' Complaint similarly  
19 reveals insufficient factual allegations to establish a likelihood of success on the merits.  
20 Because the Court finds that Plaintiffs failed to establish a likelihood of success on the  
21 merits, the remaining elements of the *Winter* test need not be addressed.

## 22 CONCLUSION

23 For the reasons stated above, Plaintiffs' Second *Ex Parte* Application for  
24 Temporary Restraining Order is **DENIED**.

25 **IT IS SO ORDERED.**

26  
27 DATED: May 20, 2013

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HON. ROGER T. BENITEZ  
United States District Judge