

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

N. Paul Friederichs and Jill A.
Friederichs,

Plaintiffs,

Civ. No. 08-6419 (RHK/JJK)

ORDER

v.

Tom Gorz, *et al.*,

Defendants.

This matter is before the Court *sua sponte*.

On March 3, 2009, the Court issued an Order to Show Cause (Doc. No. 11) why this matter should not be dismissed for lack of subject-matter jurisdiction. On the face of the Complaint, it appeared that both federal-question jurisdiction and diversity jurisdiction were lacking. Plaintiffs timely submitted a response to the Order to Show Cause, asserting several grounds for jurisdiction, including interpleader jurisdiction under Federal Rule of Civil Procedure 22 and 28 U.S.C. § 1335.

The Court then ordered Defendant IndyMac Bank, F.S.B. (“IndyMac”) – the only Defendant to have appeared in this matter – to file a memorandum addressing Plaintiffs’ arguments and further addressing *de novo* whether the Court enjoys subject-matter jurisdiction. The Court also indicated in its Order that “[n]o further submissions concerning the issue – whether by memorandum, affidavit, letter, or otherwise – will be permitted absent further Order of the Court.” (Doc. No. 15.)

In response to the Court's latest Order, IndyMac Bank has filed a Motion to Dismiss the Complaint for lack of subject-matter jurisdiction (Doc. No. 16).¹ The Motion does not address the arguments raised in Plaintiffs' response to the Order to Show Cause; rather, it asserts for the first time that the Court lacks jurisdiction because Plaintiffs have not exhausted their claims under the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"), codified in relevant part at 12 U.S.C. § 1821(d). The Court believes that Plaintiffs should have the opportunity to address the FIRREA argument, even though it previously ordered that no further submissions concerning subject-matter jurisdiction would be permitted. Based on the foregoing, and all the files, records, and proceedings herein, **IT IS ORDERED** as follows:

1. Plaintiffs shall serve and file a response to IndyMac's Motion on or before April 24, 2009;
2. IndyMac shall serve and file a reply, if any, on or before May 1, 2009; and
3. The hearing currently scheduled for May 14, 2009, at 8:00 a.m. is

CANCELED. If the Court later desires a hearing on the Motion, it will so advise the parties.

Dated: April 1, 2009

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge

¹ IndyMac did not notice its Motion for a particular date, although it had previously noticed a hearing on a Motion to Dismiss/Motion for More Definite Statement for May 14, 2009, at 8:00 am. (See Doc. No. 10.)