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 9

10 **UNITED STATES DISTRICT COURT**  
 11 **DISTRICT OF NEVADA**

12 LESLIE ARCHER; ROBERT BARFIELD,  
 13 ROSE BONILLA; TIMOTHY BRADLEY;  
 14 THAYER BURTON; TROYLETTE BURTON;  
 SPENCER CHUNG; DEIDRE CONNELL;  
 15 EVELYN CORRO-SAMMARCO; JACALYN  
 CURTIS; LOUIS CUSHLER; KELLEY  
 16 DEUTSCH; STEVEN DEUTSCH; ROGER  
 DONNER; MICHAEL DONOVAN; PAMELA  
 17 DONOVAN; TASHAE DUPREE; TITAN  
 EGGSTAFF; ARTHUR EINHORN; CAROL  
 18 EINHORN; MATTHEW FEUSTEL; ERIC  
 19 FITZHUGH; LEON GAUTHIER; STPHANIE  
 GOINS; JAY HA; JOAN HA; EUGENE  
 20 HALLETT; STEVE HASTINGS; KENNETH  
 HISCOCKS; NATALI HISCOCKS; ROSE  
 21 HUFFMAN; CHARLI JACOBS; RANDY  
 JACOBS; DIANNE KNIGHTS; JONATHAN  
 22 KNIGHTS; CASEY KORTH; KYLE KORTH;  
 23 ZUEFANG MEI; MIRELA MICULA; TYRONE  
 NEWTON; HOMER NICHOLS, JANELLE  
 24 OZAWA; LELAND OZAWA; CAMILLE  
 PATELLA; VINCENT PATELLA; BENITO  
 25 PICHARDO; CYNTHIA PUTMAN; TERRY  
 PUTMAN; HERMENEGILDO RAMIREZ-  
 26 SOTO; LINDA RAMIREZ-SOTO; JOELL  
 REED; DANNY REGENSBERG; SHAWN  
 27 RORICK; JOHN SAMMARCO; VAN  
 SHERMAN; SANDRA STUCKI; JOHN  
 28

Case No.: 2:11-cv-01264-JCM-LRL

**ORDER DENYING MOTION FOR  
 PRELIMINARY INJUNCTION**

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1 DUFFY TAYLOR; JEANNIE THOMPSON;  
2 JEFFREY THOMPSON; TINA TRAN;  
3 ABDULKADIR TURA; CARLOS  
4 VERDUZCO; BRYAN WELLS; FRANCIS  
5 WILSON; ROBERT WILSON; LADDAWAN  
6 WOOD; WILLIAM WOOD; LISA  
7 YEGHIAYAN; STEVE YEGHIAYAN,

8 Plaintiffs.

9 vs.

10 BANK OF AMERICA CORPORATION;  
11 BANK OF AMERICA, NATIONAL  
12 ASSOCIATION, BAC HOME LOANS  
13 SERVICING, LP; RECONTRUST COMPANY,  
14 NA; FIRST AMERICAN LOANSTAR  
15 TRUSTEE SERVICES, LLC; CAL-WESTERN  
16 RECONVEYANCE CORPORATION; MTC  
17 FINANCIAL INC. d/b/a TRUSTEE CORPS;  
18 FEDERAL NATIONAL MORTGAGE  
19 ASSOCIATION,

20 Defendants.

21 This Court held a hearing on plaintiffs' motion for preliminary injunction (Doc. No. 22) on  
22 October 5, 2011. Having considered the written submissions, and arguments of counsel at the  
23 hearing, the Court finds as follows:

24 Plaintiffs did not meet their burden of demonstrating that a preliminary injunction should  
25 issue. Under *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008), a " plaintiff seeking a  
26 preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to  
27 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
28 favor, and that an injunction is in the public interest." Plaintiffs did not meet these factors.

29 **First**, plaintiffs fail to establish likelihood of success on the merits. Plaintiffs plead three  
30 causes of action: (1) violation of the Nevada Deceptive Trade Practices Act, (2) Promissory  
31 Estoppel, and (3) Wrongful Foreclosure. They are unlikely to succeed on their claim for violation of  
32 the Nevada Deceptive Trade Practices (codified at Nev. Rev. Stat. Ch. 598) because the statute  
33 applies to transactions involving goods and services, not real estate. They are unlikely to succeed on  
34 their claim for promissory estoppel because they did not allege, and did not present any evidence of,  
35 a specific promise by the defendants or of specific conduct by them in reliance on a promise by the

1 defendants. They are unlikely to succeed on their claim for wrongful foreclosure because plaintiffs  
2 have admitted their default on their loans. Under *Collins v. Union Fed. Sav. & Loan Ass'n*, 662 P.2d  
3 610, 623 (Nev. 1983), a plaintiff in default cannot state a claim for wrongful foreclosure. In  
4 addition, most plaintiffs' properties have yet to be sold, making the claim premature.

5 **Second**, the court finds that plaintiffs are not likely to suffer irreparable harm in the absence  
6 of preliminary relief. Under *Winter*, granting a "preliminary injunction based only on a possibility of  
7 irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary  
8 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."  
9 *Winter*, 555 U.S. at 22. The court finds that plaintiffs failed to make a clear showing of irreparable  
10 harm – they failed to explain why monetary damages cannot redress any loss, and provided no  
11 reason for the court to prevent the defendants from enforcing plaintiffs' deeds of trust.

12 **Third**, the court finds the balance of hardships tips against the issuance of an injunction  
13 because defendants are not receiving payments to which they are legally entitled as a result of the  
14 plaintiffs' default. Granting a preliminary injunction despite plaintiffs' default while plaintiffs  
15 continue to use and enjoy the properties would be inequitable.

16 **Fourth**, the court does not find that the public interest warrants preliminary relief.

17 In light of the court's findings, and for good cause appearing, **IT IS HEREBY ORDERED**  
18 that plaintiffs' motion for a preliminary injunction is **DENIED**.

19 DATED this 19th day of October, 2011.

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21   
22 UNITED STATES DISTRICT JUDGE

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1 Submitted By:

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3 /s/ Jacob D. Bundick

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11 Reviewed by:

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13 /s/ Mitchell S. Bisson

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