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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 KENNETH A. SIVER, et al.,

11 Plaintiffs,

12 v.

13 CITIMORTGAGE, INC., et al.,

14 Defendants.

CASE NO. C10-1685JLR

ORDER DENYING MOTION  
FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION

15 This matter comes before the court on Plaintiffs Kenneth A. and Catriona Siver's  
16 motion for a temporary restraining order and preliminary injunction (Dkt. # 2). Plaintiffs  
17 seek to enjoin the trustee's sale of their home scheduled for November 19, 2010. (*See*  
18 *Compl.* (Dkt. # 1) Ex. 5.) In an order dated October 19, 2010, the court declined to issue  
19 an ex parte temporary restraining order and set a schedule for briefing and argument on  
20 Plaintiffs' motion. (Dkt. # 3.) On November 1, 2010, counsel for Defendants  
21 CitiMortgage, Inc., First American Title Insurance Company, and Cal-Western  
22 Reconveyance Corporation of Washington filed a response to Plaintiffs' motion. (Dkt. #

1 10.) On November 5, 2010, Plaintiffs filed a reply. (Dkt. # 15.) The court heard oral  
2 argument on the motion on November 9, 2010. (See Dkt. # 21.) Having considered the  
3 submissions of the parties, and for the reasons stated on the record during oral argument  
4 on November 9, 2010, the court DENIES Plaintiffs' motion for a temporary restraining  
5 order and preliminary injunction (Dkt. # 2).

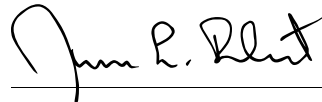
6 A plaintiff seeking a preliminary injunction must establish (1) that he is likely to  
7 succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of  
8 preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an  
9 injunction is in the public interest. *Winter v. Nat'l Res. Def. Council, Inc.*, 129 S. Ct. 365,  
10 374 (2008). The Ninth Circuit has recently clarified that a preliminary injunction is also  
11 appropriate "when a plaintiff demonstrates that serious questions going to the merits were  
12 raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for*  
13 *Wild Rockies v. Cottrell*, --- F.3d ---, 2010 WL 2926463, at \*7 (9th Cir. 2010). For the  
14 reasons stated on the record during the November 9, 2010 hearing, the court finds that  
15 Plaintiffs have not met their burden to demonstrate a likelihood of success or serious  
16 questions going to the merits of their claims. Plaintiffs fail, therefore, to establish that  
17 that they are entitled to a temporary restraining order or preliminary injunction.

18 Moreover, under Washington's Deed of Trust Act, chapter 61.24 RCW, a court  
19 must require, as a condition of granting a restraining order or injunction preventing a  
20 trustee's sale, "that the applicant pay to the clerk of the court the sums that would be due  
21 on the obligation secured by the deed of trust if the deed of trust was not being  
22 foreclosed[.]" RCW 61.24.130(1). Plaintiffs stated on the record during the November

1 9, 2010 hearing that they would not pay the sums due on their mortgage. As a result, the  
2 Deed of Trust Act prevents the court from restraining or enjoining the November 19,  
3 2010 trustee's sale.

4 For the foregoing reasons, the court DENIES Plaintiffs' motion for a temporary  
5 restraining order and permanent injunction (Dkt. # 2).

6 Dated this 9th day of November, 2010.

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10 JAMES L. ROBART  
11 United States District Judge  
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