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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MILDRED C. FREESTON, et al.,

Plaintiffs,

v.

BISHOP, WHITE & MARSHALL, P.S.,  
et al.,

Defendants.

CASE NO. C09-5560BHS

ORDER DENYING  
PLAINTIFFS' EMERGENCY  
MOTION FOR A  
TEMPORARY RESTRAINING  
ORDER

This matter comes before the Court on Plaintiffs' Emergency Motion for a Temporary Restraining Order (Dkt. 12). The Court has considered the pleadings filed in support of the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On September 17, 2009, Plaintiffs filed a complaint (Dkt. 2) and an Emergency Motion for Removal of Case from Pierce County Superior Court (Dkt. 6). Plaintiffs assert that the Court has jurisdiction pursuant to 42 U.S.C. § 1983 and "other Federal Statutes . . . ." Dkt. 2, ¶ 1. The majority of Plaintiffs' claims are based on fraud, but one claim asserts a violation of the Federal Truth in Lending Act. *Id.*, ¶ 19.

On September 21, 2009, Plaintiff filed a First Amended Complaint. Dkt. 8.

1 On September 22, 2009, the Court denied Plaintiffs' emergency motion for  
2 removal. Dkt. 9.

3 On October 26, 2009, Defendant Chevy Chase Bank appeared in this matter. Dkt.  
4 11.

5 On November 12, 2009, Plaintiffs filed an Emergency Motion/Application for  
6 Temporary Restraining Order. Dkt. 12. In support of their motion, Plaintiffs have  
7 submitted an eviction notice that states that eviction will occur at 6 AM on November 16,  
8 2009. *Id.*, Exh. 1 at 14.

9 On November 13, 2009, the Court requested a response from Defendant Chevy  
10 Chase Bank (Dkt. 13) and Defendant filed a response (Dkt. 14).

## 11 **II. FACTUAL BACKGROUND**

12 In the complaint, Plaintiffs allege facts as follows:

13 Defendant CHEVY CHASE BANK FSB induced Charles E.  
14 Freeston, prior to his death, and, Plaintiff Mildred C. Freeston in to engage  
15 a new mortgage by enticement to lower mortgage cost of \$300 per month.  
16 The mortgage cost were actually \$372.00 more than prior. During this time  
17 my husband Charles E. Freeston was ill and he died and the CHEVY  
18 CHASE BANK FSB agent knew of this situation.

19 CHEVY CHASE BANK FSB used predatory tactics, and took  
20 advantage of senior citizens. Mildred C. Freeston is 84 years, and Shirsha  
21 Sumeru is 65. We had problems with Charles's retirement funds and  
22 couldn't make the payments. CHEVY CHASE BANK FSB foreclosed  
23 when we couldn't even catch up because the Medicaid - Nursing Home bills  
24 were horrendous before Charles's death. CHEVY CHASE BANK FSB  
25 engaged BISHOP, WHITE & MARSHALL, P.S. for the foreclosure as  
26 trustee.

27 The foreclosure proceeded to conclusion. The house was taken over  
28 by FANNIE MAE, on April 3, 2009. FANNIE MAE engaged BISHOP,  
WHITE & MARSHALL, P.S. as trustees for the sale from CHEVY  
CHASE BANK FSB and auction process.

BISHOP, WHITE & MARSHALL, P.S. acted for both parties. The  
seller of a foreclosed home CHEVY CHASE BANK FSB and FANNIE  
MAE, a U.S. Government instrumentality the buyer.

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Bishop, White & Marshall, P.S., filed for eviction unlawful detainer  
and writ of possession. The hearing was on July 13, 2009 Mildred C.  
Freeston read into the record a statement relating the fraud. Only then did  
Commissioner James B. Marshall read our defenses as we were authorized  
to present according to Washington laws governing such matters.  
Commissioner Marshal ordered a hearing which has been held off. We  
believe there is a court date before Commissioner Robyn Lindsay  
September 15, 2009. Commissioner Marshall ordered BISHOP WHITE &

1 MARSHALL, PS, attorney Annette Cook to respond by briefing the federal  
2 law protecting foreclosures like ours.

3 We filed counter complaints to the eviction with submission for  
4 record consisting of federal court findings showing MERS had no standing,  
5 CHEVY CHASE BANK FSB had no standing to foreclose. The Counter  
6 Complaint has never been answered. The Counter Complaint named  
7 BISHOP WHITE & MARSHALL, PS, attorney defendants covering up a  
8 fraud on a federal instrumentality, FANNIE MAE.

9 Dkt. 2, ¶¶ 3-10.

10 With regard to the instant motion, Plaintiffs allege facts as follows:

11 Irreparable injury is apparent from the facts. The facts show  
12 Plaintiffs will loose possession of the home at 8918 108th St. SW,  
13 Lakewood, Washington, 98498 under Defendants refusal to require Federal  
14 case law to be given full faith and credit by PIERCE COUNTY SUPERIOR  
15 COURTS.

16 Defendant parties are not harmed by this Temporary Restraining  
17 Order in that Defendants have no change in status from the last one year  
18 and four months. Defendants lose nothing at this point other than a few days  
19 before hearing is set for permanent Injunctive order holding status quo until  
20 this matter is litigated.

21 Defendants Annette Cook of [Bishop, White, & Marshall] stated on  
22 October 8 that no eviction would take place. Apparent agent for Defendant  
23 FANNIE MAE: David Hitchcock stated this would not take place for at  
24 least three months. Both these statements In context of Defendant status of  
25 parties attacking the Plaintiffs who are 85 and 65 year old ladies with  
26 nowhere else to live, who are fighting for their lives to avoid being harmed  
27 and damaged by fraudulent bank practices.

28 Plaintiffs have been denied honest services by governmental and  
quasi governmental actors, Defendants, and will be injured and damaged by  
loss of home by continued acts and omissions Defendants.

Plaintiffs move the Court to issue Temporary Restraining Order to be  
issued immediately and that hearing on Permanent Injunction barring  
eviction under writ of possession fraudulently obtained be set within 8 days.

Dkt. 12, ¶¶ 2-7.

### III. DISCUSSION

Plaintiffs move for a temporary restraining order pursuant to Fed. R. Civ. P. 65.

Dkt. 12, ¶ 2. While Plaintiffs have supplied facts regarding irreparable loss, they have failed to provide facts regarding “any efforts made to give notice [to the opposing parties] and the reasons why [notice] should not be required.” Fed. R. Civ. P. 65(b)(1). While Defendant Chevy Chase Bank has notice of the motion, the record is silent whether any other Defendant has received notice of the motion. Therefore, the Court denies the request for ex parte relief based on this failure to comply with the rules of procedure.

1 Even if the Court were to reach the merits of the motion, Plaintiffs have failed to  
2 meet their burdens for preliminary relief. To obtain preliminary injunctive relief, the  
3 moving party must show: (1) a likelihood of success on the merits; (2) a likelihood of  
4 irreparable harm to the moving party in the absence of preliminary relief; (3) a balance of  
5 equities tips in the favor of the moving party; and (4) that an injunction is in the public  
6 interest. *Winter v. Natural Res. Def. Council, Inc.*, \_\_\_ U.S. \_\_\_, 129 S. Ct. 365, 374  
7 (2008).


8 In this case, Plaintiffs have failed to make a showing as to each of these required  
9 elements. The Court agrees with Plaintiffs that there is a likelihood of irreparable harm if  
10 the eviction proceeds as planned. Plaintiffs, however, have failed to show that they are  
11 likely to succeed on the merits of their federal claims for relief. It is also unclear whether,  
12 based on the asserted claims, Plaintiffs would be entitled to injunctive relief instead of  
13 damages. Therefore, the Court denies Plaintiffs' request for a temporary restraining order  
14 because Plaintiffs have failed to make a showing as to each element of standard for  
15 preliminary relief.

#### 16 IV. ORDER

17 Therefore, it is hereby

18 **ORDERED** that Plaintiffs' Emergency Motion for a Temporary Restraining Order  
19 (Dkt. 12) is **DENIED**.

20 DATED this 13th day of November, 2009.

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22   
23 BENJAMIN H. SETTLE  
24 United States District Judge  
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