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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RENEE L. MARTIN,

No. 2:12-cv-970-MCE-EFB PS

Plaintiff,

vs.

LITTON LOAN SERVICING, LP;
OCWEN LOAN SERVICING, LLC;
and DOES 1-30, inclusive,

Defendants.

FINDINGS AND RECOMMENDATIONS

On November 14, 2012, the undersigned held a hearing on plaintiff’s motion for a preliminary injunction. Dckt. No. 28. Plaintiff appeared pro se; attorney Douglas Stastny appeared on behalf of defendants. As stated on the record and for the reasons stated on the record, the undersigned recommends that the motion be denied without prejudice.

On October 11, 2012, plaintiff filed an amended complaint alleging various state and federal claims related to property located at 2428 Covered Wagon Circle, Elverta, California 95626 (the “subject property”). First Am. Compl. (“FAC”), Dckt. No. 26. Plaintiff now moves for a preliminary injunction, arguing that defendants “have commenced an unlawful foreclosure against [the] subject property and none of the defendant have any lawful rights to foreclose on

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1 Plaintiff.”¹ *Id.* at 2. Therefore, plaintiff seeks to enjoin Deutsche Bank National Trust Company
2 (“Deutsche Bank”) and Western Progressive LLC (“Western Progressive”) from foreclosing on
3 the subject property.² *Id.*

4 “The standards for granting a temporary restraining order and a preliminary injunction
5 are identical.” *Haw. County Green Party v. Clinton*, 980 F. Supp. 1160, 1164 (D. Haw. 1997);
6 *cf. Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n. 7 (9th Cir.2001)
7 (observing that an analysis of a preliminary injunction is “substantially identical” to an analysis
8 of a temporary restraining order). In order to be entitled to preliminary injunctive relief, a party
9 must demonstrate “that he is likely to succeed on the merits, that he is likely to suffer irreparable
10 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
11 injunction is in the public interest.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th
12 Cir.2009) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 9 (2008)). Alternatively,
13 “‘serious questions going to the merits’ and a balance of hardships that tips sharply towards the
14 plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that
15 there is a likelihood of irreparable injury and that the injunction is in the public interest.”
16 *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). A plaintiff
17 seeking a preliminary injunction “must establish that irreparable harm is likely, not just
18 possible.” *Id.* at 1131 (citing *Winter*, 555 U.S. at 20–21); *see also Connecticut v. Massachusetts*,
19 282 U.S. 660, 674 (1931) (“Injunction issues to prevent existing or presently threatened injuries.

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21 ¹ Plaintiff previously moved for a temporary restraining order in April 2012 and August
22 2012. Dckt. Nos. 2, 22. Both of those motions were denied because plaintiff failed to allege that
23 foreclosure or any other injury was imminent and plaintiff failed to show that a temporary restraining
order was necessary to protect the status quo since she did not adequately show that irreparable
injury was likely to result if a temporary restraining order was not issued. Dckt. Nos. 7 at 2-3; Dckt.
No. 23 at 3-4; *see also* Dckt. No. 37.

24 ² While plaintiff’s motion for a preliminary injunction asserts that she wants an injunction
25 to prevent all defendants from foreclosing on her property, it appears that the only defendants who
26 have initiated a foreclosure action against her are Deutsche Bank, who appears to be the trustee, and
Western Progressive, who appears to be Deutsche Bank’s agent. FAC, Ex. 20, at 109-11; Defs.’
Req. for Jud. Notice, Dckt. No. 36, at 25-26.

1 One will not be granted against something merely feared as liable to occur at some indefinite
2 time in the future.”).

3 Here, as discussed at the hearing on plaintiff’s motion for a preliminary injunction,
4 defendants have not yet posted a Notice of Trustee’s Sale and no sale date has yet been
5 scheduled for the subject property. Additionally, at the hearing, defense counsel represented that
6 defendants would not notice such a sale until after the court has heard defendants’ pending
7 motion to dismiss and/or the parties have conducted an early settlement conference. Therefore,
8 plaintiff has failed to establish the irreparable injury element since she has not demonstrated that
9 irreparable harm is likely. *Winter*, 555 U.S. at 22 (“Issuing a preliminary injunction based only
10 on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief
11 as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
12 entitled to such relief.”).

13 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff’s motion for a preliminary
14 injunction, Dckt. No. 28, be denied without prejudice.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
20 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
21 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.1991).

22 DATED: November 15, 2012.

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25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE