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2 NOT FOR PUBLICATION

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

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9 SHERRYL L. MADISON,

No. CV-08-1562-PHX-GMS

10 Plaintiff,

**ORDER**

11 vs.

12 FIRST MAGNUS FINANCIAL )  
13 CORPORATION, et al., )

14 Defendants. )  
15 \_\_\_\_\_ )

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17 Pending before the Court is the Application for Preliminary Injunction of Plaintiff  
18 Sherryl L. Madison. (Dkt. # 176.) Despite styling her motion as an Application for  
19 Preliminary Injunction, Plaintiff ultimately requests that the Court issue a temporary  
20 restraining order (“TRO”) and an order to show cause as to why a preliminary injunction  
21 should not issue. (Dkt. # 176 at 6.)

22 Plaintiff is an Arizona resident who allegedly owns real property in Arizona at the  
23 following addresses: (1) 24220 N. 53rd Avenue, Glendale, Arizona 85310; (2) 522 E.  
24 Glendale Avenue, Phoenix, Arizona 85020; (3) 2302 E. Lincoln Drive, Phoenix, Arizona  
25 85016; (4) 16083 West Morning Glory Street, Goodyear, Arizona 85338; (5) 18607 N. 45th  
26 Drive, Glendale, Arizona 85308; and (6) 7384 W. Utopia Road, Glendale, Arizona 85308.  
27 In her Second Amended Complaint (“SAC”), Plaintiff alleges that, at various times between  
28 April 2005 and June 2007, she either refinanced or purchased each of her six properties. The

1 financing was obtained from various financial institutions and was obtained pursuant to  
2 promissory notes secured by deeds of trust on each property. In the SAC, Plaintiff alleges  
3 that a non-judicial trustee sale has already been conducted on her property at 18607 N. 45th  
4 Drive (Dkt. # 181 ¶¶ 18-19), and her other properties are in the process of being subject to  
5 trustee sales (*id.* ¶¶ 10, 13, 22, 26, 29). Other than the allegations that her remaining  
6 properties are at risk, Plaintiff provides no indication or evidence that trustee sales have been  
7 scheduled or are otherwise imminent.

8 Plaintiff now requests that this Court “enjoin the Defendants from effectuating  
9 unlawful foreclosures to transfer title of Plaintiff’s properties.” (Dkt. # 176 at 1.) In support  
10 of her Application, Plaintiff filed a verified complaint in which she asserts twenty-two causes  
11 of action against all twenty-four named defendants and one claim of fraud against Defendants  
12 Warrick, Garcia, and Smart. Plaintiff has also filed certifications that she has mailed copies  
13 of the SAC and Application to the various defendants, many of whom have yet to be  
14 properly served. (Dkt. # 176 at 8-10.)

15 Federal Rule of Civil Procedure 65 authorizes the Court to issue a preliminary  
16 injunction or TRO upon a proper showing. The standard for issuing a TRO is the same as  
17 that for issuing a preliminary injunction. *See Brown Jordan Int’l, Inc. v. The Mind’s Eye*  
18 *Interiors, Inc.*, 236 F. Supp. 2d 1152, 1154 (D. Haw. 2007). To prevail on a request for a  
19 preliminary injunction, a plaintiff must show either “(a) probable success on the merits  
20 combined with the possibility<sup>1</sup> of irreparable injury or (b) that [it] has raised serious questions  
21 going to the merits, and that the balance of hardships tips sharply in [its] favor.” *Bernhardt*  
22 *v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003). The Ninth Circuit has explained  
23 that “these two alternatives represent ‘extremes of a single continuum,’ rather than two  
24 separate tests. Thus, the greater the relative hardship to the moving party, the less probability  
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26 <sup>1</sup>In *Winter v. Natural Res. Def. Council, Inc.*, the Supreme Court held that “the Ninth  
27 Circuit’s ‘possibility’ standard is too lenient.” 129 S. Ct. 365, 375 (2008). The Court stated  
28 that the “standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable  
injury is *likely* in the absence of an injunction.” *Id.* (citations omitted).

1 of success must be shown.” *Immigrant Assistant Project of Los Angeles County Fed’n of*  
2 *Labor (AFL-CIO) v. INS*, 306 F.3d 842, 873 (9th Cir. 2002) (citation omitted).

3 In her Application, Plaintiff contends that “likelihood of success . . . is a matter of  
4 opinion and should be given minimal weight in the . . . test for injunctive relief.” (Dkt. # 176  
5 at 5.) However, the Supreme Court has repeatedly held that “a party seeking a preliminary  
6 injunction *must* demonstrate . . . a likelihood of success on the merits.” *Munaf v. Geren*, 128  
7 S. Ct. 2207, 2219 (2008) (emphasis added). Therefore, temporary injunctive relief will not  
8 be granted “unless the movant, *by a clear showing*, carries the burden of persuasion” on this  
9 point. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). After careful review of Plaintiff’s  
10 SAC, it is apparent that Plaintiff has failed to cure many of the deficiencies that existed in  
11 her First Amended Complaint. With the exception of claim twenty-three, Plaintiff again  
12 asserts collective allegations of misconduct against all named defendants despite the fact that  
13 the majority of the defendants were only involved with one of Plaintiff’s six properties and  
14 despite the fact that many of the defendants were not involved during the times in which  
15 Plaintiff either refinanced or purchased her properties. Given the deficiencies in the SAC,  
16 and given the fact that Plaintiff fails to advance any argument in her Application regarding  
17 her likelihood of success on the merits, Plaintiff has not carried her burden sufficient to  
18 warrant preliminary injunctive relief.

19 In addition to the requisite showing, a preliminary injunction may issue “only on  
20 notice to the adverse party.” Fed. R. Civ. P. 65(a). A TRO may be granted without notice  
21 to the adverse party:

22 only if (1) it clearly appears from specific facts shown by  
23 affidavit or by the verified complaint that immediate and  
24 irreparable injury, loss, or damage will result to the applicant  
25 before the adverse party or that party’s attorney can be heard in  
26 opposition, and (2) the applicant’s attorney certifies to the court  
27 in writing the efforts, if any, which have been made to give the  
28 notice and the reasons supporting the claim that notice should  
not be required.

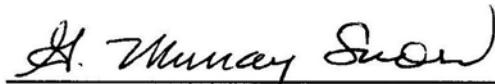
Fed. R. Civ. P. 65(b).

1 Here, despite claiming to have sent copies of the Application to Defendants by U.S.  
2 mail, Plaintiff presents no evidence suggesting that she has noticed all Defendants of her  
3 request for a TRO and preliminary injunction. Likewise, in the context of a TRO without  
4 notice, Plaintiff has not certified in writing the efforts made to notice Defendants or provided  
5 any reasons why notice should not be required. Nor has Plaintiff presented any specific facts  
6 showing that immediate and irreparable injury, loss, or damage will result to the applicant  
7 before the adverse party or that party's attorney can be heard in opposition.

8 Because Plaintiff has failed to demonstrate that injunctive relief is proper,

9 **IT IS HEREBY ORDERED** that Plaintiff's Application for Restraining Order  
10 (Dkt. # 176) is **DENIED**.

11 DATED this 10th day of June, 2009.

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G. Murray Snow  
United States District Judge