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2 NOT FOR PUBLICATION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 CATHERINE MCALLISTER,)

No. 09-CV-1075-PHX-GMS

10 Plaintiff,)

TEMPORARY RESTRAINING ORDER

11 vs.)

12 INDYMAC FEDERAL BANK, F.S.B.,)

13 Defendant.)
14)
15)

16 Pending before the Court is the Emergency Application for Temporary Restraining
17 Order (“TRO”) of Plaintiff Catherine McAllister. (Dkt. # 4.) In her Petition, Plaintiff
18 requests that this Court temporarily enjoin a trustee’s sale of property located at 4241 W.
19 Monte Cristo Ave., Phoenix, Arizona 85053. The trustee’s sale is scheduled for 12:00 P.M.,
20 May 22, 2009. In support of her Application for a TRO, Plaintiff filed a verified complaint
21 to which Plaintiff has attached both the Notice of Trustee’s Sale and the Qualified Written
22 Request she sent to Defendant Indymac Federal Bank pursuant to the Real Estate Settlement
23 Procedures Act (“RESPA”), 12 U.S.C. § 2601 *et seq.* (Dkt. # 1.) Plaintiff additionally has
24 filed the certification of her attorney that notice of the Complaint and Application were given
25 to Defendant. (Dkt. # 4 Pt. 2.) On May 21, 2009, the Court conducted a hearing on the
26 matter. (*See* Dkt. # 7.) Although Defendant did not appear, Plaintiff’s counsel verified to
27 the Court that timely notice was given Defendant of the scheduled hearing.
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1 Federal Rule of Civil Procedure 65 authorizes the Court to issue a preliminary
2 injunction or TRO upon a proper showing. The standard for issuing a TRO is the same as
3 that for issuing a preliminary injunction. *See Brown Jordan Int'l, Inc. v. The Mind's Eye*
4 *Interiors, Inc.*, 236 F. Supp. 2d 1152, 1154 (D. Haw. 2007). To prevail on a request for a
5 preliminary injunction, a plaintiff must show either “(a) probable success on the merits
6 combined with the possibility of irreparable injury or (b) that [it] has raised serious questions
7 going to the merits, and that the balance of hardships tips sharply in [its] favor.” *Bernhardt*
8 *v. Los Angeles County*, 339 F.3d 920, 925 (9th Cir. 2003). The Ninth Circuit has explained
9 that “these two alternatives represent ‘extremes of a single continuum,’ rather than two
10 separate tests. Thus, the greater the relative hardship to the moving party, the less probability
11 of success must be shown.” *Immigrant Assistant Project of Los Angeles County Fed'n of*
12 *Labor (AFLCIO) v. INS*, 306 F.3d 842, 873 (9th Cir. 2002) (citation omitted).

13 Here, after review of the Verified Complaint and supporting documentation, the
14 Court finds that Plaintiff has raised serious questions going to the merits of her Complaint
15 and that the balance of hardships tips sharply in her favor. Plaintiff has provided verified
16 statements and evidence supporting the allegations that Defendant has violated its statutory
17 obligations under RESPA, specifically 28 U.S.C. § 2605. While the Court recognizes the
18 inconvenience imposed on Defendant in issuing this TRO, should this Court refuse to grant
19 the TRO, Plaintiff would face potentially irreparable injury by the imminent sale of her
20 primary residence.

21 **IT IS THEREFORE ORDERED** that Plaintiff’s Application for Temporary
22 Restraining Order (Dkt. # 4) is **GRANTED**.


23 **IT IS FURTHER ORDERED** that Defendant and its appointed Trustee are enjoined
24 for a period of **ten (10) days** from the date and time of the issuance of this Order from
25 conducting or pursuing in any way a trustee’s sale of Plaintiff’s property located at 4241 W.
26 Monte Cristo Avenue, Phoenix, Arizona 85053.

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IT IS FURTHER ORDERED that this Order is binding on Defendant; Defendant's officers, agents, servants, employees, and attorneys; and any person acting in concert or participation with anyone previously described and having actual notice hereof.

IT IS FURTHER ORDERED that no bond is required of Plaintiff for this TRO Order.

DATED this 21st day of May, 2009, 4:15 P.M.



G. Murray Snow
United States District Judge