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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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NANCY GUEDA,

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No. CV 10-104-PHX-MHM

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Plaintiff,

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ORDER

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vs.

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WELLS FARGO BANK, as trustee for)
HARBORVIEW 2006-10; DOUGLAS A)
TOLENO, ESQ.; DAVID E.)
MCALLISTER, ESQ.; ROCHELLE L.)
STANFORD, ESQ.; PITE DUNCAN,)

)

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LLP, DOES 1-10;

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Defendants.

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Currently pending before the Court is pro-se Plaintiff Nancy Gueda’s Verified
Complaint For Declaratory Relief to Void Forcible Entry and Detainer. (Dkt. #1). Before
it would consider the merits of her petition, the Court ordered Plaintiff to give notice to
Defendants of this action. (Dkt.# 5). Plaintiff has complied with the Court’s directive, and
after reviewing the pleadings, and determining that oral argument is unnecessary, the Court
issues the following Order.

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I. Background

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On January 19, 2009, Plaintiff lodged the instant Complaint with this Court.
Plaintiff’s filing is labeled as a Verified Complaint For Declaratory Relief to Void Forcible
Entry and Detainer, but really appears to be a request for a temporary restraining order
 (“TRO”) (the words “Temporary Restraining Order” are handwritten at various places on the

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1 otherwise typewritten document). The Verified Complaint alleges that Defendants sold
2 Plaintiff's property located at 3105 Simitan Drive, Lake Havasu City, Arizona, at a public
3 sale on May, 14, 2009. After that, the factual situation is decidedly unclear. Based on the
4 injunctive relief sought—a TRO to void forcible entry and detainer—the Court has surmised
5 that Defendants are now or will soon be attempting to forcibly remove her from that
6 property. Plaintiff has not, however, and as will be discussed *infra*, provided the Court with
7 any pertinent details concerning the forcible entry and detainer she wishes this Court to
8 enjoin.

9 **II. Discussion**

10 The standard for issuing a TRO is the same as that for issuing a preliminary
11 injunction. See Brown Jordan Int'l, Inc. v. The Mind's Eye Interiors, Inc., 236 F.Supp.2d
12 1152, 1154 (D.Haw. 2007). Accordingly, a TRO is appropriate where the moving party
13 establishes “that he is likely to succeed on the merits, that he is likely to suffer irreparable
14 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and
15 that an injunction is in the public interest.” American Trucking Associations, Inc. v. City of
16 Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009). The purpose of injunctive relief is to
17 preserve the status quo and prevent the irreparable loss of rights. Textile Unlimited, Inc. v.
18 A..BMH and Co., Inc., 240 F.3d 781, 786 (9th Cir. 2001).

19 Plaintiff has asked this Court to enjoin Defendants from forcibly entering and taking
20 possession of the property located at 3105 Simitan Drive, Lake Havasu City, Arizona (“the
21 property”). It is not clear whether Defendants have initiated a forcible entry and detainer
22 action in state court. See A.R.S § 12-1173-1173.01 (setting forth forcible detainer law).
23 Plaintiff has not specifically informed the Court that they have, the only mention of forcible
24 detainer is in the title of this motion. Accordingly, this Court is without sufficient
25 information to determine if temporary injunctive relief is warranted or necessary. To wit,
26 Plaintiff has not told the Court such potentially pertinent information such as who is seeking
27 to evict Plaintiff, when and if a state-court hearing on this issue is scheduled, whether a state
28 court has already authorized forcible detainer, and, if so, the date by which Plaintiff must

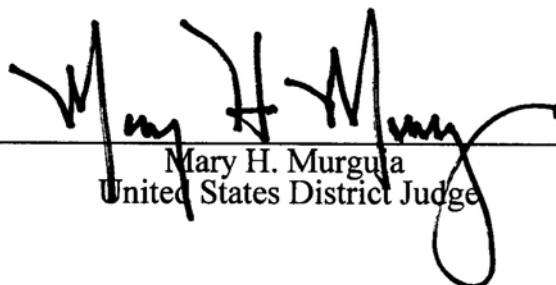
1 vacate the property. It cannot, therefore, decide if Plaintiff has been threatened with harm,
2 let alone irreparable harm, or if Plaintiff is likely to succeed on the merits of a challenge to
3 the forcible detainer action.

4 In addition, the information Plaintiff has provided the Court does not support entry
5 of a TRO. In her papers, Plaintiff admits that on May 14, 2009, the property was sold at non-
6 judicial sale pursuant to the terms of the Mortgage and Security Agreement of which she was
7 a party. Arizona Revised Statute section 12-1173.01 sets forth numerous circumstances
8 under which a person in possession of land “may be removed through an action for forcible
9 detainer filed with the clerk of the superior court.” A.R.S. 12-1173.01(A). These include,
10 among others, a situation, like the one here, where “the property has been sold through the
11 foreclosure of a mortgage, deed of trust or contract for conveyance of real property.” *Id.* at
12 12-1173.01(A)(1). Perhaps this is why Plaintiff’s brief does not focus on the law of forcible
13 detainer, but instead challenges the legality of the Mortgage and Security Agreement that
14 resulted in the non-judicial sale of the property, alleging that agreement denied her due
15 process of law, was unconscionable, and was an unenforceable cognovit note. These
16 arguments, however, have no bearing on Plaintiff’s requested relief, as they go to the legality
17 of the sale, not forcible detainer. If Plaintiff believed her claims concerning the Mortgage
18 Agreement entitled her to protection from the non-judicial sale, she should have filed a
19 motion for a TRO prior to that sale. This Court cannot now grant injunctive relief to undo
20 a sale that has already occurred.

21 **Accordingly,**

22 **IT IS HEREBY ORDERED** denying Plaintiff’s request for a TRO found in her
23 Verified Complaint For Declaratory Relief to Void Forcible Entry and Detainer. (Dkt.
24 #1).

25 DATED this 1st day of February, 2010.

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Mary H. Murgula
United States District Judge