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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Vicky S. Benson,

NO. CV-12-1693-PHX-FJM

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Plaintiff,

ORDER

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v.

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Daren W. Jantz; Vanderbilt Mortgage and Finance,
Inc., et al.

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Defendants.

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Pending before the Court is Plaintiff's Amended Ex Parte Application for
16 Temporary Restraining Order (Doc. 6). For the reasons discussed below, Plaintiff's
17 motion will be denied.

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The instant action is Plaintiff Vicky S. Benson's third attempt to obtain federal
19 relief from state-court eviction proceedings. On July 16, 2012, Plaintiff removed an
20 eviction action brought against her in Hassayampa Justice Court to this Court. *See Jantz*
21 *v. Seitz, et. al*, 2:12-cv-01532-SRB, Doc. 1, Ex. 1. On July 23, 2012, the Court remanded
22 the action back to the justice court, holding that it had no subject matter jurisdiction over

1 the state law eviction action. *See id.*, Doc. 4. On July 25, 2012, Plaintiff again removed
2 the eviction action to this Court and at the same time moved for a temporary restraining
3 order. The Court again remanded the action back to the justice court for lack of subject
4 matter jurisdiction and denied the TRO request as moot.

5 Plaintiff now tries a new tack. On August 9, 2012, she filed the Complaint in this
6 action against various “owners of plaintiff’s real property” and against Defendant Joseph
7 Arpaio, the Sheriff of Maricopa County. (Doc. 1). In her Complaint, Plaintiff brings
8 claims against the owners of her property for negligence, fraudulent misrepresentation,
9 wrongful foreclosure, breach of contract, unjust enrichment, quiet title, slander of title,
10 and RICO violations. (*Id.*). In addition, Plaintiff brings claims against Sheriff Arpaio for
11 civil rights violations under 18 U.S.C. § 242 arising from his alleged continuation of
12 eviction proceedings “while KNOWING of a valid removal [to federal court] to be in
13 place and existing.” (Doc. 1, ¶ 126).

14 Also on August 9, Plaintiff moved for an ex parte TRO. Plaintiff argued in the
15 TRO that Defendants refuse to relinquish jurisdiction over her eviction proceedings to the
16 federal court and that they must be forced to relinquish such jurisdiction or else she “will
17 be wrongfully removed from her single family home.” (Doc. 3 at 3). Because Plaintiff
18 had not notified Defendants of her TRO request, and because she had failed to explain
19 why notice should not be provided as required by Rule 65(b), the Court denied her
20 motion for an ex parte TRO “without prejudice to her filing it again in compliance with
21 the rule.” (Doc. 5 at 2).

1 Now Plaintiff has filed an amended TRO application. Although the amended
2 application itself is virtually unchanged from her initial application, she has attached a
3 notarized “Declaration” in which she details various damages that Defendants have
4 allegedly caused her. (Doc. 6 at 6–10). This declaration does not, however, explain why
5 Defendants cannot be provided with notice of her TRO application. This alone renders
6 her request for an ex parte TRO invalid. FED. R. CIV. P. 65(b)(1)(B) (stating that the
7 court may issue a TRO without giving the defendants notice “only if” the movant
8 “certifies in writing any efforts made to give notice and the reasons why it should not be
9 required”).

10 Moreover, to prevail on her TRO application, Plaintiff must establish four
11 elements, including that she “is likely to succeed on the merits, that [s]he is likely to
12 suffer irreparable harm in the absence of preliminary relief, that the balance of equities
13 tips in h[er] favor, and that an injunction is in the public interest.” *Winter v. Nat’l Res.*
14 *Def. Council*, 555 U.S. 7, 22 (2008). Although these elements are evaluated using a
15 sliding scale approach, where likelihood of success is concerned a plaintiff must at least
16 raise “serious questions going to the merits.” *Alliance for the Wild Rockies v. Cottrell*,
17 632 F.3d 1127, 1134–35 (9th Cir. 2011). Plaintiff has failed to raise serious questions
18 going to the merits. Plaintiff states in her TRO application that that she seeks the TRO
19 because the state court and state authorities have engaged in “[w]illful, intentional refusal
20 to relinquish jurisdiction” over her eviction proceedings to federal court. (Doc. 6 at 2). As
21 discussed above, however, the eviction action was remanded back to state court and state
22 authorities have no discretion to decline a remand order.

