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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 WENDY CARROLL,
12 Plaintiff,
13 v.
14 NATIONSTAR MORTGAGE, LLC; and
15 Does 1 to 10, inclusive,
16 Defendants.

Case No. 2:13-cv-4490-ODW(PJWx)

**ORDER DENYING EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION [4]**

17 **I. INTRODUCTION**

18 Plaintiff Wendy Carroll applies to the Court ex parte for a temporary restraining
19 order enjoining Defendant Nationstar Mortgage, LLC from (1) selling the property;
20 (2) recording the trustee's deed upon sale; and (3) evicting Carroll from the property.
21 (ECF No. 4.) For the reasons that follow, the Court **DENIES** Carroll's application.

22 **II. FACTUAL BACKGROUND**

23 In 2007, Carroll refinanced her home with a first trust deed loan in the amount
24 of \$997,500. (Ex Parte Appl. 4.) On November 2, 2010, a Notice of Default was
25 recorded on the property. (*Id.*) Nationstar later acquired this loan. (*Id.*)

26 Carroll alleges that since June 2012, she has tried to obtain a loan modification,
27 evidenced by her submission of several such applications and supporting documents.
28 (*Id.* at 5.) She further alleges that though Nationstar confirmed receiving her loan-

1 modification application and the required supporting documents, Nationstar ultimately
2 refused to modify her loan. (*Id.* at 6, 11.) Throughout the loan-modification process,
3 Carroll complains that Nationstar gave her the run-around, including requiring her to
4 update her application and supporting documents, informing her that it has not
5 received the requested documents, verbally notifying her that she is ineligible for a
6 loan modification, changing the single point of contact assigned to her, suggesting that
7 she attempt to short-sell her home, and setting up her home for a foreclosure sale
8 while ignoring her loan-modification application, i.e., dual tracking. (*Id.* at 5–10.)

9 On May 6, 2013, a Notice of Trustee’s Sale was recorded. (Compl. Ex. E.) On
10 June 3, 2013, Nationstar foreclosed the property. (Ex Parte Appl. 10.) Then Carroll
11 received on June 10, 2013, a three-day Notice to Quit. (*Id.*) As of June 17, 2013, the
12 trustee’s deed upon sale has not yet been recorded. (*Id.*) Carroll filed her Complaint
13 on June 20, 2013.

14 III. LEGAL STANDARD

15 The purpose of a temporary restraining order is to preserve the status quo and to
16 prevent irreparable harm “just so long as is necessary to hold a hearing, and no
17 longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423, 439 (1974).
18 Thus, a TRO may be issued only upon a showing “that immediate and irreparable
19 injury, loss, or damage will result to the movant before the adverse party can be heard
20 in opposition.” Fed. R. Civ. P. 65(b)(1)(A).

21 “The standard for issuing a temporary restraining order is identical to the
22 standard for issuing a preliminary injunction.” *Lockheed Missile & Space Co., Inc. v.*
23 *Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); *see also Stuhlberg*
24 *Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir.
25 2001) (standards for issuing a TRO are “substantially identical” to those for issuing a
26 preliminary injunction). A plaintiff seeking a preliminary injunction must establish:
27 (1) a likelihood of succeed on the merits; (2) a likelihood that plaintiff will suffer
28 irreparable harm in the absence of preliminary relief; (3) that the balance of equities

1 tips in his favor; and (4) that an injunction is in the public interest. *Winter v. Natural*
2 *Res. Def. Council*, 555 U.S. 7, 20 (2008).

3 The Ninth Circuit employs a “sliding scale” approach to *Winter*’s four-element
4 test. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).
5 Under this approach, a preliminary injunction may issue if the plaintiff raises “serious
6 questions going to the merits” and demonstrates that “the balance of hardship tips
7 sharply towards the plaintiff’s favor,” but only so long as the plaintiff also
8 demonstrates that irreparable harm is *likely*—not just possible—and the injunction is
9 in the public interest. *Id.* (internal quotation marks omitted).

10 Finally, “a preliminary injunction is an extraordinary remedy never awarded as
11 of right.” *Winter*, 555 U.S. at 24. Thus, a district court should enter preliminary
12 injunctive relief only “upon a clear showing that the plaintiff is entitled to such relief.”
13 *Id.* at 22.

14 IV. DISCUSSION

15 Carroll contends she has fallen victim to dual tracking—a relatively common
16 process by which the lender negotiates a loan modification with a borrower in default
17 while simultaneously pressing forward with the foreclosure process. The result of this
18 tactic “is that the borrower does not know where he or she stands, and by the time
19 foreclosure becomes the lender’s clear choice, it is too late for the borrower to find
20 options to avoid it.” *Jolley v. Chase Home Fin., LLC*, 213 Cal. App. 4th 872, 904
21 (2013).

22 To combat this maneuver, and to encourage mortgage servicers to offer loan
23 modifications, the California legislature passed the California Homeowner Bill of
24 Rights. *See* Cal. Civ. Code § 2923.6(b). The Homeowner Bill of Rights became
25 effective on January 1, 2013. As is relevant here, the Homeowner Bill of Rights
26 explicitly prohibits dual tracking: “If a borrower submits a complete application for a
27 first lien loan modification . . . [the] mortgage servicer, mortgagee, trustee,
28 beneficiary, or authorized agent *shall not* record a notice of default or notice of sale,

1 or conduct a trustee’s sale, while the complete first lien modification is pending.” *Id.*
2 § 2923.6(c) (emphasis added). Then, once the borrower submits the modification
3 application, a foreclosure sale cannot occur until (1) the “mortgage servicer makes a
4 written determination that the borrower is not eligible” for the modification and the
5 30-day appeal period expires; or (2) the borrower does not accept an offered
6 modification within 14 days; or (3) the borrower accepts a modification but later
7 defaults under the modified terms. *Id.* § 2923.6(c)–(d).

8 The Homeowners Bill of Rights also requires lenders to designate a “single
9 point of contact” for borrowers to request foreclosure alternatives and provide the
10 borrower one or more direct means of communicating with that point of contact. *Id.*
11 § 2923.7. Like the dual-tracking provision, the single-point-of-contact provision “is
12 intended to prevent borrowers from being given the run around, being told one thing
13 by one bank employee while something entirely different is being pursued by
14 another.” *Jolley*, 213 Cal. App. 4th at 904–05.

15 Even so, there are several problems with Carroll’s ex parte request. First, the
16 only provision she may prevail on is the one requiring a mortgage servicer to give a
17 borrower written notice that she is ineligible for a loan modification and to allow 30
18 days to pass before commencing the foreclosure sale: the other two provisions do not
19 apply here. But Carroll’s allegations only superficially support her contention that she
20 properly applied for a loan modification—there is no real evidence that she did so.
21 And despite her claims to the contrary, correspondence from Nationstar dated June 14,
22 2013, suggests that Carroll failed to provide *all* required documents. (Compl. Ex. H.)

23 Second, there is only so much that the Court can do at this stage: the foreclosure
24 sale has already occurred. (Ex Parte Appl. 10.) The Court could enjoin Nationstar
25 from recording the trustee’s deed upon sale and evicting Carroll from the property.
26 But the recording is just a formality; and Carroll presents no evidence that Nationstar
27 has taken any further steps to evict her, such as filing an unlawful-detainer complaint.

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1 Finally, the emergency presented here is of Carroll's own doing. A party
2 seeking ex parte relief must establish that she "is without fault in creating the crisis
3 that requires ex parte relief, or that the crisis occurred as a result of excusable
4 neglect." *Mission Power Eng'g Co. v. Cont'l Casualty Co.*, 883 F. Supp. 488, 492
5 (C.D. Cal. 1995). The Notice of Trustee's Sale was recorded on May 6, 2013, and
6 Carroll received notice of it shortly thereafter. (Compl. Ex. E.) Yet Carroll did not
7 act by filing a Complaint then. Instead, she waited until June 20, 2013—two weeks
8 after Nationstar's June 3, 2013 foreclosure on her property—to file her Complaint.
9 (Ex Parte Appl. 10.)

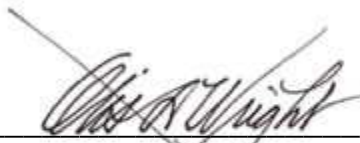
10 V. CONCLUSION

11 The Court concludes that the only factor in Carroll's favor is irreparable harm.
12 Even if the Court grants this TRO, it merely delays Defendants' right to foreclosure.
13 This ex parte application is also inappropriate because Carroll's lack of diligence
14 created this emergency where she is now facing eviction from her home. Therefore,
15 Carroll's Ex Parte Application is hereby **DENIED**.

16 Nevertheless, Carroll may file a regularly noticed motion for preliminary
17 injunction if she believes that she is entitled to equitable relief—despite the Court's
18 concerns expressed here—under the California Homeowner Bill of Rights.

19 **IT IS SO ORDERED.**

20
21 June 21, 2013

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25 **OTIS D. WRIGHT, II**
26 **UNITED STATES DISTRICT JUDGE**
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