

1 Mortgage Capital in the amount of \$799,950 in order to purchase this house. (Req.
2 for Judicial Notice, Ex. 1, ECF No. 21.) At some point, Defendant became Plaintiffs’
3 loan servicer. (See FAC ¶ 7.) Plaintiffs allege that Defendant “intentionally
4 overstated Plaintiffs’ income on the loan application,” failed to make numerous
5 disclosures required under the Truth in Lending Act, and dual-tracked the mortgage in
6 violation of the California Homeowner Bill of Rights Act. (*Id.* ¶¶ 12, 14–15, 24, 34–
7 35.)

8 On April 11, 2016, Plaintiffs filed this action in the Riverside Superior Court.
9 (ECF No. 1.) On May 13, 2016, Defendant removed the case to federal court. (*Id.*)
10 On July 3, 2016, Plaintiffs filed a FAC, in which they assert the following causes of
11 action: (1) violation of California Business and Professions Code section 17200; (2)
12 breach of the implied covenant of good faith and fair dealing; and (3) violation of the
13 California Homeowners Bill of Rights Act. (ECF No. 15.) On July 6, 2016, Plaintiffs
14 filed an ex parte application for a temporary restraining order, seeking to enjoin a
15 foreclosure that was scheduled to go forward on July 8, 2016. (ECF No. 17.) The
16 Court denied that TRO application, concluding that Plaintiffs had not shown a
17 probability of prevailing on the merits of their claims or that the equities and public
18 interest were in their favor. (ECF No. 23.)

19 On August 4, 2016, Plaintiffs filed a second ex parte application for a TRO
20 seeking to enjoin Defendant from proceeding with a foreclosure sale on August 8,
21 2016. (ECF No. 24.) The following day, Defendant filed a timely opposition. (ECF
22 Nos. 25.) That ex parte application is now before the Court for consideration.

23 III. LEGAL STANDARD

24 “A preliminary injunction is ‘an extraordinary and drastic remedy, one that
25 should not be granted unless the movant, *by a clear showing*, carries the burden of
26 persuasion.’” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (emphasis in
27 original) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)). To
28 prevail, the moving party must show: (1) a likelihood of success on the merits; (2) a

1 likelihood that the moving party will suffer irreparable harm absent preliminary
2 injunctive relief; (3) that the balance of equities tips in the moving party's favor; and
3 (4) that preliminary injunctive relief is in the public interest (the "*Winter* factors").
4 *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Lockheed Missile &*
5 *Space Co. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995) ("The
6 standard for issuing a temporary restraining order is identical to the standard for
7 issuing a preliminary injunction."). "Under *Winter*, plaintiffs must establish that
8 irreparable harm is *likely*, not just possible, in order to obtain a preliminary
9 injunction." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir.
10 2011) (original emphasis). In the Ninth Circuit, "'serious questions going to the
11 merits' and a hardship balance that tips sharply toward the plaintiff can [also] support
12 issuance of an injunction, assuming the other two elements of the *Winter* test are also
13 met." *Id.* at 1132, 1135 (holding that the "sliding scale" test remains viable "so long
14 as the plaintiff also shows that there is a likelihood of irreparable injury and that the
15 injunction is in the public interest").

16 IV. DISCUSSION

17 This application is virtually identical to Plaintiffs' prior ex parte application, yet
18 curiously does nothing to address the reasons for the Court's denial of that
19 application. Based on Plaintiffs' moving papers, the Court sees no reason to depart
20 from its prior conclusion that Plaintiffs have not met the *Winter* factors. (*See* ECF No.
21 23.) Consequently, the Court **DENIES** Plaintiffs' application.

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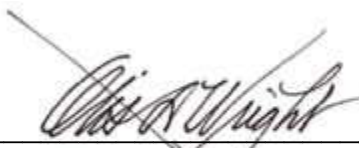
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V. CONCLUSION

For the reasons discussed above, the Court **DENIES** Plaintiffs' Ex Parte Application for a Temporary Restraining Order. (ECF No. 23.)

IT IS SO ORDERED.

August 5, 2016



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE