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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ANTONIO SANDOVAL,

Plaintiff,

v.

MORRISON FINANCIAL SERVICES
LLC, et al.,

Defendants.

1:11-cv-00043 OWW SKO

ORDER DENYING REQUEST FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION (DOC. 2)

This action concerns real property located at 9860 Douglas Avenue, in Delhi, California 95315. Plaintiff, Antonio Sandoval, who appears *pro se*, filed a Complaint on January 11, 2011, alleging that non-judicial foreclosure proceedings have concluded in state court, resulting in the service of a notice of trustee's sale on Plaintiff on or around May 14, 2010. See Doc. 1 at 1, 3. It is alleged that "the notice of trustee's sale was not filed in good faith" because "the property has [] already [been] a part of a substitution of trustee and full reconveyance and notice of cease and desist..." Doc. 1 at 1.

1 The Complaint appears to contain only two substantive
2 causes of action. First, Plaintiff alleges a violation
3 of 18 U.S.C. § 513(a), which makes it a crime to
4 counterfeit securities. Second, Plaintiff alleges that
5 Defendants, Morrison Financial Services LLC, U.S. Bank
6 Home Mortgage, and National Default Servicing
7 Corporation, violated "Regulation Z of the Truth in
8 Lending Act, pursuant to Title 5 U.S.C. section 1635(a)
9 and Title 12 C.F.R. 226.23(d)(i)." Doc. 1.

11 Plaintiff has also filed an "application for
12 temporary restraining order and order to show cause re
13 preliminary injunction," in an attempt to block the
14 foreclosure process. Doc. 2, filed Jan. 11, 2011.
15 Plaintiff's application for injunctive relief relies
16 entirely on a legal theory not set forth in his
17 Complaint, namely that Defendants failed to comply with
18 the procedural pre-requisites for pursuing non-judicial
19 foreclosure set forth in California Civil Code § 2923.5.
20 Among other things, Plaintiff argues that Defendants
21 "never established proof that it was entitled to perform
22 the non-judicial foreclosure." Doc. 2 at 6.

25 To obtain temporary or permanent injunctive relief, a
26 plaintiff must demonstrate likelihood of success on the
27 merits of his substantive claims. See *Winter v. NRDC*,

1 555 U.S. 7 (2008). As noted above, Plaintiff's Complaint
2 appears to advance only two causes of action: (1) Title
3 18 U.S.C. § 513(a), and (2) Regulation Z. Plaintiff has
4 no chance of success in this civil case on his claim that
5 Defendants violated 18 U.S.C. § 513(a), which makes it a
6 crime to counterfeit securities. Plaintiff suggests that
7 the "negotiable instrument" in question, presumably a
8 document related to his mortgage loan, qualifies as a
9 counterfeited security. However, a civil litigant does
10 not have standing to bring criminal charges against
11 Defendants under any provision of Title 18. See *Linda*
12 *R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) ("[A]
13 private citizen lacks a judicially cognizable interest in
14 the prosecution or nonprosecution of another."). A court
15 has an independent duty to ensure that a plaintiff has
16 standing to bring each and every claim asserted.
17 *Bernhardt v. County of Los Angeles*, 279 F.3d 862, 868
18 (9th Cir. 2002). As Plaintiff does not have standing to
19 bring a claim under Title 18, this claim must be
20 dismissed.

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24 Nor is Plaintiff likely to succeed on his Regulation
25 Z claim. The basis for Plaintiff's Regulation Z claim is
26 unclear. He alleges that Defendants failed to disclose
27 "that the original loan was created by check book entry,
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1 which may be sold in the open market (as a promissory
2 note) for 80-90 cents on the dollar with no consideration
3 to Plaintiff;" that "the loan was pre-paid and the
4 Plaintiff would be converted into joint tenants for 30
5 years;" and that "all monthly payments of Federal Reserve
6 Notes, tender for debt," which Plaintiff alleges is
7 problematic because "Federal Reserve Notes are
8 valueless." Doc. 1 at 8.

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10 There are two types of remedies available under TILA
11 and Regulation Z: statutory damages and rescission. 15
12 U.S.C. §§ 1635(f), 1640(a). Plaintiff's Complaint does
13 not seek damages. Even if it did, a claim for statutory
14 damages does not support interference with the
15 foreclosure proceedings.
16

17 In addition to damages, rescission is available under
18 TILA and Regulation Z in some circumstances. 15 U.S.C. §
19 1635; 12 C.F.R. § 226.23. The consumer's right to
20 rescission is absolute only for a period of three days
21 after the loan is consummated, 15 U.S.C. § 1635(a); 12
22 C.F.R. § 226.23(a)(3), unless the lender fails to provide
23 "material disclosures" at the closing, in which case the
24 period is extended to three years, 15 U.S.C. § 1635(f);
25 12 C.F.R. § 226.23(a)(3). Regardless of any failure to
26 disclose, "Plaintiff must allege (subject to Rule 11) an
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1 ability to tender in order to state a claim for
2 rescission under TILA and Regulation Z." *Garcia v.*
3 *Wachovia Mortgage Corp.*, 676 F.Supp.2d 895, 904-05
4 (C.D.Cal.2009); see also *Gonzalez v. HomeQ Servicing*,
5 2010 WL 289303, at *3 (E.D. Cal. Jan. 15, 2010); *Yamamoto*
6 *v. Bank of N.Y.*, 329 F.3d 1167, 1171 (9th Cir. 2003)
7 ("[R]escission should be conditioned on repayment of the
8 amounts advanced by the lender.") (emphasis omitted).
9 "The equitable goal of rescission under TILA is to
10 restore the parties to the status quo ante." *Am.*
11 *Mortgage Network, Inc. v. Shelton*, 486 F.3d 815, 820 (4th
12 Cir. 2007) (internal quotation omitted).

13
14 The Complaint does not allege that Plaintiff has
15 tendered or has the ability to tender the principal
16 balance of the loan. This is required. Absent such
17 allegations, any TILA/Regulation Z claim for rescission
18 is subject to dismissal. Plaintiff is not likely to
19 succeed on the merits of his Regulation Z claim.
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22 CONCLUSION

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24 Plaintiff's request for a temporary restraining order
25 ("TRO") is DENIED WITHOUT PREJUDICE because Plaintiff is
26 not likely to succeed on the merits of either claim
27 articulated in his Complaint. His Title 18 claim is
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1 DISMISSED for lack of standing; his Regulation Z claim is
2 subject to dismissal for failure to allege that he has
3 the ability to tender the principal balance of the loan.
4 It is unnecessary to set a hearing on his motion for a
5 TRO.
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7 SO ORDERED
8 January 12, 2011

9 /s/ Oliver W. Wanger
10 Oliver W. Wanger
11 United States District Judge
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