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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF CALIFORNIA  
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7 ERNIE ALTMANN,

8 Plaintiff,

9 v.

10 RUSHMORE LOAN MANAGEMENT  
11 SERVICES, LLC, a Delaware  
12 Limited Liability Company;  
13 WELLS FARGO BANK, a division  
14 of Wells Fargo, N.A.; and  
15 TRUSTEE CORPS,

16 Defendants.

No. 1:15-cv-00880-GEB-GSA

**ORDER DENYING EX PARTE MOTION  
FOR TEMPORARY RESTRAINING ORDER**

17 On July 2, 2015, Plaintiff filed an ex parte motion for  
18 a temporary restraining order ("TRO"), in which he seeks an order  
19 enjoining Defendants from "continuing [their] foreclosure by  
20 advertising[,] which will result in the eviction of Plaintiff  
21 from [his] home." (Pl.'s TRO 3:4-5, ECF No. 12.) In support of  
22 the motion, Plaintiff argues:

23 Plaintiff will suffer immediate and  
24 irreparable injury if [D]efendant[s are] not  
25 immediately restrained from continuing  
26 foreclosure by advertisement which will lead  
27 to the eviction of Plaintiff[] from [his]  
28 home for which [P]laintiff has no adequate  
remedy at law. Until Plaintiff's Motion for  
Preliminary Injunction can be heard, an  
eviction process will ensue which will result  
in the depravation of Plaintiff's legally  
protected property and all trauma that goes  
with it, including damage to Plaintiff's  
relationships, reputation within the

1 community, and hindering the ability to  
2 pursue their constitutionally guaranteed  
right to due process of law.

3 There is a substantial likelihood that  
4 [P]laintiff will prevail on the merits.  
Plaintiff has proof via an expert forensic  
5 investigation that the Plaintiff[] was not in  
6 default at the commencement of foreclosure  
activity and that the Defendant[s] continued  
foreclosure activity without authority or  
standing.

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8 The threatened harm to Plaintiff  
outweighs the harm a temporary restraining  
9 order would inflict on Defendant[s]. The  
evidence proves that Plaintiff was not in  
10 default and did not sustain injury at the  
time foreclosure proceedings commenced. In  
11 addition, Defendant[s are] not a real party  
in interest and [are] merely . . .  
12 servicer[s] with no "stated or admitted"  
financial stake in the foreclosure.

13 Issuance of a temporary restraining  
14 order is in the public interest, as the  
consuming public, including [Plaintiff], will  
15 continue to be harmed by violations and  
conduct of the Defendant[s] . . . if the  
16 relief requested herein is not granted.

17 The court should enter this temporary  
restraining order without notice to  
18 Defendant[s] because Plaintiff will suffer  
immediate and irreparable injury, loss, or  
19 damage if the TRO is not granted before  
[D]efendant[s] can be heard, and there is no  
20 less drastic means to protect Plaintiff's  
interests.

21 (TRO 2:10-25 (paragraph numbering omitted) (citations omitted).)

22 A temporary restraining order is a provisional remedy  
23 intended to "preserv[e] the status quo and prevent[] irreparable  
24 harm just so long as is necessary to hold a [preliminary  
25 injunction] hearing, and no longer." Reno Air Racing Ass'n, Inc.  
26 v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006) (internal  
27 quotation marks omitted) (quoting Granny Goose Foods, Inc. v.  
28 Bhd. of Teamsters & Auto Truck Drivers, 415 U.S. 423, 439

1 (1974)). To obtain a TRO, the movant must establish that "(1) [he  
2 is] likely to succeed on the merits; (2) [he is] likely to suffer  
3 irreparable harm in the absence of preliminary relief; (3) the  
4 balance of equities tips in [his] favor; and (4) a preliminary  
5 injunction is in the public interest." Sierra Forest Legacy v.  
6 Rey, 577 F.3d 1015, 1021 (9th Cir. 2009) (citing Winter v.  
7 Natural Res. Def. Council, Inc., 555 U.S. 7, 19 (2008)).

8 Local Rule 231 concerns the issuance of TROs. It  
9 prescribes, *inter alia*: "Except in the most extraordinary of  
10 circumstances, no temporary restraining order shall be granted in  
11 the absence of actual notice to the affected party . . . or a  
12 sufficient showing of efforts made to provide notice." E.D. Cal.  
13 R. 231(a) (citing Fed. R. Civ. P. 65(b)). Local Rule 231(c)  
14 further prescribes that "[n]o hearing on a temporary restraining  
15 order will normally be set unless" certain documents are provided  
16 to the Court and to the affected parties, including: "an  
17 affidavit detailing the notice or efforts to effect notice to the  
18 affected parties or counsel or showing good cause why notice  
19 should not be given."

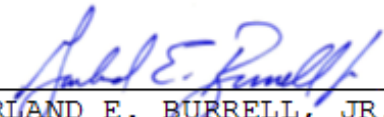
20 Here, Plaintiff neither provided notice to Defendants  
21 of his intention to file a TRO nor has shown good cause in an  
22 affidavit "why notice should not be given." E.D. Cal. R. 231(c).

23 Moreover, Plaintiff has not shown his entitlement to  
24 the issuance of a TRO. Plaintiff has not "show[n] that a TRO  
25 [hearing] is necessary before [a] motion for preliminary  
26 injunction [can be duly scheduled and] heard[;]" Plaintiff does  
27 not indicate in the TRO when the referenced foreclosure is  
28 scheduled to occur. Baldwin v. Sebelius, No. 10CV1033 DMS (WMC),

1 2010 WL 2384588, at \*2 (S.D. Cal. June 10, 2010). Further,  
2 Plaintiff's conclusory statements in the TRO fail to show that  
3 "he is likely to succeed on the merits of his claim[s]." Fyock v.  
4 Sunnyvale, 779 F.3d 991, 995 (9th Cir. 2015); see Loop AI Labs,  
5 Inc. v. Gatti, No. 15-cv-00798-HSG, 2015 WL 1090180, at \*3 (N.D.  
6 Cal. Mar. 12, 2015) ("Conclusory allegations alone are not  
7 sufficient to demonstrate a likelihood of success on the  
8 merits."); accord Solomon v. Aurora Loan Servs., LLC, No. 2:12-  
9 00209 WBS KJN, 2012 WL 4747151, at \*6 (E.D. Cal. Oct. 3, 2012).

10 For the stated reasons, Plaintiff's motion for a TRO,  
11 (ECF No. 12), is DENIED.

12 Dated: July 2, 2015

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16 GARIAND E. BURRELL, JR.  
17 Senior United States District Judge  
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