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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BERENICE THOREAU
DE LA SALLE,

No. 2:09-cv-02701-MCE-KJM

Plaintiff,

v.

MEMORANDUM AND ORDER

AMERICA'S WHOLESALE LENDER;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
RECONTRUST COMPANY, N.A.; BAC
HOME LOANS SERVICING, LP; JOHN
OR JANE DOES 1 through 100,

Defendants.

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Presently before the Court is Plaintiff's Ex Parte Application for Temporary Restraining Order and Preliminary Injunction ("Application") pursuant to Federal Rule of Civil Procedure 65(b). Plaintiff Berenice Thoreau De La Salle ("Plaintiff") seeks to enjoin Defendants America's Wholesale Lender, Mortgage Electronic Registration Systems, Inc., ReconTrust Company N.A. and BAC Home Loans Servicing, LP *fka* Countrywide Home Loans Servicing, LP, LLC ("Defendants") from conducting a non-judicial foreclosure sale of her home, currently scheduled for 2:00 p.m., April 16, 2010.

1 Issuance of a temporary restraining order, as a form of
2 preliminary injunctive relief, is an extraordinary remedy, and
3 Plaintiffs have the burden of proving the propriety of such a
4 remedy by clear and convincing evidence. See Mazurek v.
5 Armstrong, 520 U.S. 968, 972 (1997); Granny Goose Foods, Inc. v.
6 Teamsters, 415 U.S. 423, 442 (1974). Certain prerequisites must
7 be satisfied prior to issuance of a temporary restraining order
8 ("TRO"). See Granny Goose Foods, Inc. v. Brotherhood of
9 Teamsters & Auto Truck Drivers, 415 U.S. 423, 439 (1974) (stating
10 that the purpose of a TRO is "preserving the status quo and
11 preventing irreparable harm just so long as is necessary to hold
12 a hearing [on the preliminary injunction application], and no
13 longer").

14 In general, the showing required for a temporary restraining
15 order is the same as that required for a preliminary injunction.
16 Stuhlbarq Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240
17 F.3d 832, 839 (9th Cir. 2001). Following the Supreme Court's
18 decision in Winter v. Natural Resources Defense Council, 129 S.
19 Ct. 365 (2008), the party requesting preliminary injunctive
20 relief must show that "he is likely to succeed on the merits,
21 that he is likely to suffer irreparable harm in the absence of
22 preliminary relief, that the balance of equities tips in his
23 favor, and that an injunction is in the public interest."

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1 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009)
2 (quoting Winter, 129 S.Ct. at 374; see also American Trucking
3 Assocs. Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (“To the
4 extent that our cases have suggested a lesser standard [than that
5 required for injunctive relief by Winter], they are no longer
6 controlling, or even viable.”).

7 The Court has reviewed Plaintiff’s Ex Parte Application for
8 Temporary Restraining Order (“TRO”). Plaintiff has failed to
9 show the requisite likelihood of success on the merits to warrant
10 equitable relief.

11 Prior to Plaintiff’s Application for TRO, Defendants moved
12 to dismiss Plaintiff’s Complaint in its entirety for failure to
13 state a claim upon which relief may be granted. On April 13,
14 2010, Magistrate Judge Kim Mueller issued Findings and
15 Recommendations granting Defendants’ Motion.

16 While the Court need not at this time formally adopt Judge
17 Mueller’s findings, as a result of the request for a Temporary
18 Restraining order, the recommendation dismissing Plaintiff’s
19 claims serves as an indication that such claims fall short of the
20 “likelihood of success” necessary for granting a TRO. Rather,
21 the magistrate judge questioned the legal sufficiency of each of
22 Plaintiff’s eleven causes of action.

23 The Court can not, on these grounds, provide Plaintiff the
24 extraordinary relief requested. The very purpose of a TRO is to
25 preserve the status quo, which in this case is one where
26 Plaintiff’s home was contracted as a security interest for her
27 mortgage loan.

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1 Thus to enjoin Defendants from exercising its rights over said
2 security interest, without clear legal justification, would not
3 preserve, but drastically alter, the status quo.

4 Consequently, for the reasons stated above, Plaintiff's
5 Application for Temporary Restraining Order is DENIED without
6 prejudice.

7 IT IS SO ORDERED.

8 Dated: April 14, 2010

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11 MORRISON C. ENGLAND, JR.
12 UNITED STATES DISTRICT JUDGE
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