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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS STEVENS DUMAS,

NO. CIV. S-10-1523 LKK/DAD

Plaintiff,

v.

O R D E R

FIRST NORTHERN BANK, dba  
FIRST NORTHERN, et al.,

Defendants.

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This case concerns the pending foreclosure of plaintiff's home. Plaintiff has filed an ex parte motion for a temporary restraining order ("TRO") to restrain the trustee sale of plaintiff's home, currently scheduled for January 13, 2011. Plaintiff filed his TRO application on Friday, January 7, 2011 at 9:44 pm. Local Rule 231 instructs the court to "consider whether the applicant could have sought relief by motion for preliminary injunction at an earlier date without the necessity for seeking last-minute relief by motion for a temporary restraining order." A court may deny a motion for a TRO solely on the ground that the

1 last-minute nature of a filing constitutes laches, or contradicts  
2 an allegation of irreparable injury. Local Rule 231(b).


3 In this case, plaintiff could have sought relief earlier, and  
4 has offered no explanation for not doing so. A Notice of Trustees's  
5 Sale of plaintiff's home was recorded on April 27, 2010. Dec. T.  
6 Dumas in Supp. of TRO ¶7. That Notice informed plaintiff that a  
7 trustee's sale was scheduled in May, 2010. The sale was postponed  
8 at least three times. Id. at ¶37. By way of explanation for not  
9 bringing the application earlier, plaintiff points to the prior  
10 postponements of the trustee's sale, and also states that "in the  
11 interim," the case was removed to federal court by the defendants.  
12 The court notes that this case was removed to this court on June  
13 17, 2010. Removal of the case in June does not explain plaintiff's  
14 failure to file an application for a TRO as soon as plaintiff  
15 learned of the January 13, 2011 trustee sale. Plaintiff has not  
16 alleged that defendants failed to comply with Cal. Civ. Code 2924f,  
17 which requires twenty-days notice before a trustee's sale can take  
18 place. The court finds that plaintiff's application for a temporary  
19 restraining order is barred by laches.

20 Accordingly, plaintiff's motion for a temporary restraining  
21 order, ECF No. 41, is DENIED.

22 IT IS SO ORDERED.

23 DATED: January 11, 2011.

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LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT