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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHANDRA M. BELISO,

Plaintiff,

No. CIV S-10-2131 JAM GGH PS

vs.

WELLS FARGO BANK, N.A. dba as
AMERICA'S SERVICING COMPANY, et al.,

Defendants.

ORDER

_____ /

Presently before the court is plaintiff's second application for temporary restraining order, filed December 23, 2010. Plaintiff previously filed an application for temporary restraining order on November 24, 2010, and the undersigned recommended that it be denied on December 10, 2010. These findings and recommendations also recommended that defendants' motions to dismiss be granted and the action be dismissed. Those findings and recommendations are currently pending before the district court.

The instant application for TRO seeks to prevent plaintiff's eviction from her home which was foreclosed upon, and/or sale of the property. This application is repetitive of plaintiff's first application which was fully considered by the court. Furthermore, the application was not served on defendants. Therefore, it will be stricken.

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After the findings and recommendations were issued and contemporaneously with the instant TRO application, plaintiff filed a first amended complaint which was not accompanied by a motion to amend. Once a motion to dismiss has been filed, a plaintiff has 21 days in which to amend as of right. Fed. R. Civ. P. 15(a)(1)(B). The motion to dismiss in this case, a Rule 12(b) motion, was filed on September 10, 2010; the amended pleading was filed on December 23, 2010. Therefore, plaintiff's time in which to amend as of right expired prior to December 23. Plaintiff has not filed a motion to amend. Plaintiff's amended complaint will therefore be stricken.

Accordingly, IT IS HEREBY ORDERED that:

- 1. Plaintiff's ex parte application for temporary restraining order, filed December 23, 2010, (dkt. #21), is stricken; and
- 2. Plaintiff's December 23, 2010 amended complaint, (dkt. # 23), is stricken.

DATED: December 27, 2010

 /s/ Gregory G. Hollows
U. S. MAGISTRATE JUDGE

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