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

FLOYD KNAPP,

Plaintiff,

CIV. NO. S-10-2889 KJM GGH PS

vs.

JP MORGAN CHASE BANK, N.A., et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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On June 10, 2011, this court issued an order to show cause to defendants to explain why they should not be enjoined from attempting to enforce any state court eviction notice against plaintiff. Defendants were directed to file a response by 4:00 p.m. on June 15, 2011. Having received no response by defendants at that time, the court now issues the following findings and recommendations.

Therefore, “[a] plaintiff seeking [preliminary injunctive relief] must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Am. Trucking Ass'n, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir.2009) (*quoting* Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, \_\_\_, 129 S. Ct. 365, 374 (2008)). However, the serious questions test survives Winter. A preliminary injunction is appropriate when a plaintiff demonstrates . . . “serious questions going to the merits and a hardship balance [] tips sharply toward the plaintiff, ... assuming the other two elements of the Winter test are also met.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-32 (9th

1 Cir. 2011).

2 Plaintiff filed this action in state court on September 27, 2010, and defendants JP  
3 Morgan Chase Bank (“Chase”), N.A., Chase Home Finance LLC (“CHF”), and Federal National  
4 Mortgage Association (Fannie Mae”) removed it to this court on October 27, 2010, on the basis  
5 of diversity. Content to use the state processes for eviction proceedings, defendants were  
6 apparently not content to rely on state process for responding to the action filed by plaintiff in  
7 state court but rather removed this action to federal court.

8 Plaintiff alleges that he was in loan modification discussions with Chase  
9 beginning in September, 2009 because he was struggling to make his mortgage payments on his  
10 residence. (First Amended Compl. at ¶¶ 10, 14.) The amended complaint states that CHF  
11 informed him by attached letter on August 2, 2010 that he had completed the first step of the  
12 “trial loan modification,” and that CHF “would very much like to make [his] loan modification  
13 permanent.” (*Id.* at ¶ 17.) Plaintiff alleges that CHF’s request for necessary documents from him  
14 and their notice to him that he had completed the first step of his trial loan modification, resulted  
15 in a contract to modify his loan. (*Id.* at ¶ 18, *Comp.*, Ex. 6.) Thereafter, plaintiff alleges,  
16 defendants failed to modify his loan but instead sold his home to Fannie Mae on August 13,  
17 2010. The amended complaint alleges claims for breach of contract against Chase and CHF, and  
18 quiet title against Fannie Mae. Plaintiff seeks declaratory and injunctive relief, and  
19 compensatory damages.

20 Defendants have previously asserted that as a result of plaintiff’s default on his  
21 mortgage loan and his failure to cure this default, the deed of trust was assigned to Fannie Mae  
22 on August 19, 2009, and the home was sold on August 13, 2010 at auction.

23 On May 20, 2011, the undersigned vacated defendants’ motion to dismiss as  
24 moot, and deemed plaintiff’s proposed amended complaint, filed with his opposition, as filed on  
25 the date of that order. Defendants were directed to file a response to the amended complaint  
26 within 28 days of that order. Following that order, on May 27, 2011, plaintiff filed a “request for

1 stay of action,” which the court construes as a request for injunctive relief. Due to inadvertence  
2 in the Clerk’s Office, that motion was not forwarded to the undersigned until several days later.  
3 Plaintiff’s motion states that pursuant to an unlawful detainer action filed against him in state  
4 court, he would soon be forced to vacate the property at issue in the instant case.<sup>1</sup> That filing  
5 prompted the undersigned to immediately issue the order to show cause. The order specifically  
6 states: “defendants shall show cause by June 15, 2011 at 4:00 p.m. why they should not be  
7 enjoined from attempting to enforce any eviction notice against plaintiff. The court may order  
8 personal appearances at a later scheduled hearing.” Order, filed June 10, 2011.<sup>2</sup> (Dkt. # 25.)

9           The issuance of the order to show cause was based on serious questions that state  
10 law, including state contractual law, would preclude defendants’ alleged dichotomous action.  
11 Plaintiff may be entitled to specific performance of the mortgage loan modification. Clearly, if  
12 plaintiff were to be evicted from his home, he would suffer irreparable harm, and at present the  
13 balance of hardships tips sharply in plaintiff’s favor. Defendants have not filed a timely response  
14 to the order to show cause. By failing to timely file supporting papers in response to the order,  
15 defendants have conceded the propriety of injunctive relief.<sup>3</sup>

16           Accordingly, IT IS HEREBY RECOMMENDED that a preliminary injunction be  
17 entered, subject to later modification as appropriate, restraining defendants from seeking to  
18 enforce an eviction order, including initiating contact with state authorities so that the eviction

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20 <sup>1</sup> According to the undersigned’s courtroom deputy, plaintiff telephoned her to say that  
he would be evicted from the property on Thursday, June 16, 2011.

21 <sup>2</sup> Under the Anti-Injunction Act, 28 U.S.C. § 2283, it would be very doubtful that this  
22 court could restrain state court eviction proceedings per se.

23 <sup>3</sup>The undersigned does note that an untimely opposition was filed approximately two  
24 hours past the due date by defendants Chase Home Mortgage and Federal National Mortgage  
25 Association. Defendant must realize that when the court gives not only a date but also an hour  
26 deadline, such deadlines are firmly fixed. And “close enough” in terms of timely filing is not  
“good enough.”

That being said, the court notes that defendants expressly do not oppose the granting of  
an injunction. Moreover, the plaintiff payment requirement requested by defendant dovetails  
with the requirement recommended to the district judge.

