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

TRACY D. LAWSON,

Plaintiff,

No. 2:11-cv-01163 KJM KJN PS

v.

CITICORP TRUST BANK, FSB, A  
MEMBER OF CITIGROUP; CR TITLE  
SERVICES, INC.; PRIMERA  
FINANCIAL SERVICES HOME  
MORTGAGES, INC.; TIMOTHY  
GEITHNER, SECRETARY OF THE  
TREASURY, UNITED STATES; ERIC  
HOLDER, U.S. ATTORNEY  
GENERAL, AS ALIEN PROPERTY  
CUSTODIAN,

Defendants.

FINDINGS AND RECOMMENDATIONS

Presently before the court is plaintiff’s “Verified Emergency Motion For  
Temporary Restraining Order and Preliminary Injunction 2nd Application” (“TRO  
Application”).<sup>1</sup> For the reasons stated below, the undersigned recommends that plaintiff’s TRO  
Application be denied without prejudice to the refiling of a procedurally proper application for a  
temporary restraining order and/or preliminary injunction. In light of the objection and response

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<sup>1</sup> This action proceeds before the undersigned pursuant to Eastern District of California  
Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 period required by 28 U.S.C. § 636(b)(1) and Local Rules 304(b) and 304(d), and the potential  
2 irreparable injury that plaintiff might suffer as early as July 11, 2011, plaintiff shall be permitted  
3 to immediately file a procedurally proper application for a temporary restraining order and/or  
4 preliminary injunction prior to the resolution of these findings and recommendations by the  
5 district judge assigned to this case.

6 I. BACKGROUND

7 Plaintiff filed this action on May 2, 2011, seeking to, in part, set aside the  
8 foreclosure of her home located at 7400 Franklin Boulevard, in Sacramento, California. (See  
9 generally Compl., Dkt. No. 1.) Along with her complaint, plaintiff filed an application for a  
10 temporary restraining order and preliminary injunction, seeking to maintain the status quo and  
11 prevent the trustee's sale of her home. (See Verified Emergency Motion For Temporary  
12 Restraining Order and Preliminary Injunction, Dkt. No. 2.) Plaintiff's first application for  
13 emergency relief did not indicate the date of the purported trustee's sale.

14 On May 2, 2011, United States District Judge Kimberly J. Mueller ordered  
15 plaintiff: (1) "to notify the court within three (3) days of the date on which the foreclosure is  
16 scheduled"; and (2) within twenty-four hours of being served with th[e] order, to provide notice  
17 to defendants . . . of the motion for a temporary restraining order and preliminary injunction."  
18 (Order, May 2, 2011, at 1, Dkt. No. 6.) Plaintiff failed to comply with Judge Mueller's May 2,  
19 2011 order, and, accordingly, Judge Mueller subsequently denied plaintiff's application for  
20 emergency relief. (See Order, May 12, 2011, Dkt. No. 7.)

21 On June 16, 2011, defendants Citicorp Trust Bank ("Citicorp"), and C.R. Title  
22 Services, Inc. ("C.R. Title") filed a motion to dismiss plaintiff's complaint pursuant to Federal  
23 Rule of Civil Procedure 12(b)(6). (Mot. to Dismiss, Dkt. No. 9.) A hearing on Citicorp's and  
24 C.R. Title's motion to dismiss is set for July 28, 2011.

25 On June 24, 2011, plaintiff filed the TRO Application that is pending before the  
26 court. (Dkt. No. 10.) Plaintiff's TRO Application indicates that she has received written notice

1 that a “sale date is set for 7/11/11.” (TRO Application at 3.) Attached to plaintiff’s TRO  
2 Application is a Notice of Trustee’s Sale, which indicates that a trustee’s sale of the subject  
3 property is scheduled to take place on July 11, 2011, at 1:30 p.m. (Lawson Decl., Ex. A, Dkt.  
4 No. 10, Doc. No. 10-1.) Plaintiff’s declaration essentially represents that the filing of her  
5 application constitutes notice to all defendants of her ex parte TRO Application. (Lawson Decl.  
6 at 2.) Plaintiff’s Temporary Restraining Order (“TRO”) Checklist (“TRO Checklist”) indicates  
7 that plaintiff has not discussed alternatives to a TRO hearing with defendants or asked defendants  
8 to stipulate to a TRO. (TRO Checklist at 1, Dkt. No. 10, Doc. No. 10-2.)

## 9 II. LEGAL STANDARDS

10 “A plaintiff seeking a preliminary injunction must establish that he [or she] is  
11 likely to succeed on the merits, that he [or she] is likely to suffer irreparable harm in the absence  
12 of preliminary relief, that the balance of equities tips in his [or her] favor, and that an injunction  
13 is in the public interest.” Winter v. Natural Resources Def. Council, Inc., 129 S. Ct. 365, 374  
14 (2008); accord Earth Island Institute v. Carlton, 626 F.3d 462, 469 (9th Cir. 2010). The standard  
15 that governs the issuance of a preliminary injunction is “substantially identical” to the standard  
16 that governs the issuance of a temporary restraining order. See Stuhlbarg Int’l Sales Co. v. John  
17 D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001); see also Lockheed Missile & Space Co.,  
18 Inc. v. Hughes Aircraft Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995) (“The standard for issuing  
19 a temporary restraining order is identical to the standard for issuing a preliminary injunction.”);  
20 accord Cal. Independent Sys. Operator Corp v. Reliant Energy Servs., Inc., 181 F. Supp. 2d 1111,  
21 1126 (E.D. Cal. 2001).

22 Additionally, this court’s Local Rules imposes several procedural requirements on  
23 applications for emergency relief. Those requirements are contained in Local Rule 231 and the  
24 rules referred to therein.

## 25 III. DISCUSSION

26 The undersigned recommends that plaintiff’s TRO Application be denied on

1 procedural grounds. Plaintiff's application is procedurally deficient for a number of reasons and,  
2 moreover, is confusing in terms of the relief sought.

3 As an initial matter, plaintiff's TRO Application is ambiguous in regards to the  
4 party or parties against whom plaintiff seeks emergency relief. Although the text of her TRO  
5 Application seeks emergency relief against defendants Citicorp and C.R. Title, her TRO  
6 Checklist lists the sole opposing party as "Bank of America et al." (Compare TRO Application  
7 at 3, with TRO Checklist at 1.) However, Bank of America is not a named defendant in this  
8 action, and it is entirely unclear why plaintiff appears to be seeking relief against Bank of  
9 America.

10 In terms of procedural deficiencies, plaintiff failed to file multiple required  
11 documents with the court.<sup>2</sup> Local Rule 231(c) provides:

12 **(c) Documents to Be Filed.** No hearing on a temporary restraining order  
13 will normally be set unless the following documents are provided to the  
14 Court and, unless impossible under the circumstances, to the affected  
15 parties or their counsel:

16 (1) a complaint;

17 (2) a motion for temporary restraining order;

18 (3) a brief on all relevant legal issues presented by the motion;

19 (4) an affidavit in support of the existence of an irreparable injury;

20 (5) an affidavit detailing the notice or efforts to effect notice to the affected  
21 parties or counsel or showing good cause why notice should not be given,  
see L.R. 142;

22 (6) a proposed temporary restraining order with a provision for a bond, see  
23 L.R. 151;

24 (7) a proposed order with blanks for fixing the time and date for hearing a  
25 motion for preliminary injunction, the date for the filing of responsive  
26 papers, the amount of the bond, if any, and the date and hour of issuance,  
see L.R. 137; and

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<sup>2</sup> To the extent that plaintiff is only seeking a preliminary injunction, her application does not conform with the notice requirements of Local Rules 144, 230, and 231(d).

1 (8) in all instances in which a temporary restraining order is requested ex  
2 parte, the proposed order shall further notify the affected party of the right  
3 to apply to the Court for modification or dissolution on two (2) days'  
4 notice or such shorter notice as the Court may allow. See Fed. R. Civ.  
5 P. 65(b).

6 First, plaintiff's TRO Application does not include "a brief on all relevant legal  
7 issues presented by the motion." E. Dist. Local Rule 231(c)(3). Plaintiff acknowledges through  
8 her TRO Checklist that she did not file such a legal brief. (TRO Checklist at 2.) Plaintiff's brief  
9 of the legal issues pertaining to the relief sought would be particularly helpful in this case,  
10 because plaintiff's complaint asserts numerous wrongs against various defendants. It is unclear  
11 which claims for relief plaintiff believes justify emergency injunction relief. A legal brief would  
12 potentially assist in the narrowing of issues for the court.<sup>3</sup>

13 Second, plaintiff has not filed a "proposed temporary restraining order with a  
14 provision for a bond" as required by Local Rule 231(c)(6), or the proposed order required by  
15 Local Rule 231(c)(7). Again, plaintiff's TRO Checklist confirms that plaintiff did not file these  
16 documents with the court. (TRO Checklist at 2.)

17 For these reasons, the undersigned recommends that plaintiff's TRO Application  
18 be denied. However, plaintiff may file a procedurally sufficient application for a temporary  
19 restraining order and/or preliminary injunction.

#### 20 IV. CONCLUSION

21 For the foregoing reasons, IT IS HEREBY RECOMMENDED that plaintiff's  
22 "Verified Emergency Motion For Temporary Restraining Order and Preliminary Injunction 2nd  
23 Application" (Dkt. No. 10) be denied without prejudice to the refile of a procedurally proper  
24 application for a temporary restraining order and/or preliminary injunction. Again, plaintiff may  
25 immediately file a procedurally proper application for a temporary restraining order and/or

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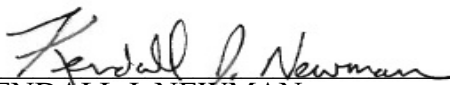
26 <sup>3</sup> The undersigned notes that there has been no pre-judging of plaintiff's case or TRO  
Application, and by inviting plaintiff to file a procedurally proper application for a TRO or  
preliminary injunction the undersigned does not intend to convey to plaintiff that her filing of a legal  
brief would necessarily result in the issuance of a TRO or preliminary injunction.

1 preliminary injunction, notwithstanding the objection and response periods noted below.

2           These findings and recommendations are submitted to the United States District  
3 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
4 days after being served with these findings and recommendations, any party may file written  
5 objections with the court and serve a copy on all parties. Id.; see also E. Dist. Local Rule 304(b).  
6 Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
7 Recommendations.” Any response to the objections shall be filed with the court and served on  
8 all parties within fourteen days after service of the objections. E. Dist. Local Rule 304(d).  
9 Failure to file objections within the specified time may waive the right to appeal the District  
10 Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d  
11 1153, 1156-57 (9th Cir. 1991).

12           IT IS SO RECOMMENDED.

13 DATED: June 27, 2011

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16 KENDALL J. NEWMAN  
17 UNITED STATES MAGISTRATE JUDGE  
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