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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DIANE CAHILL, No. 2:11-cv-01688-MCE-JFM
Plaintiff,
v. MEMORANDUM AND ORDER
BANK OF AMERICAN, NA, et al.,
Defendants.

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Presently before the Court is Plaintiff's third Motion for Temporary Restraining Order ("Motion") (ECF No. 7). For the following reasons, Plaintiff's Motion is DENIED.

On June 23, 2011, the Court rejected Plaintiff's initial motion for temporary restraining order (ECF No. 2) on grounds it failed to provide adequate notice in accordance with the provisions of Local Rule 231. The Court likewise rejected Plaintiff's second motion (ECF No. 5), filed on June 29, 2011, for a failure to comply with Rule 231. Plaintiff has since filed a third Motion (ECF No. 7) that still fails to comply with Rule 231.

1 In her latest filing, Plaintiff again included a copy of her
2 notice indicating that her second Motion was served on various
3 Defendants by certified mail on June 27, 2011. In addition,
4 Plaintiff provided an affidavit indicating that she attempted to
5 telephone various Defendants at a variety of primarily toll-free
6 numbers and that she faxed copies of her motion papers to those
7 Defendants as well. According to Plaintiff, "Certified Letters
8 and fax was the best means to notify the parties as phone calls
9 resulted in representatives of the defendants not knowing what to
10 do with the information." Plaintiff's conclusory assertion is
11 again insufficient under Rule 231 to detail why the above
12 attempts represented the best way to provide notice to Defendants
13 at the addresses most likely to provide such notice. Plaintiff
14 fails to articulate why simply sending certified letters or faxes
15 to unknown individuals within the Defendant entities is more apt
16 to provide notice to Defendants than, for example, personal
17 service on Defendants' California agents for service of process.
18 Given that Plaintiff has had almost two weeks in which to notify
19 Defendants of her intent to file this Motion, and despite
20 scheduling of the Trustee's Sale for tomorrow, July 6, no exigent
21 circumstances justify granting Plaintiff's requested relief now
22 without notice.

23 Regardless, notwithstanding Plaintiff's above failures,
24 Plaintiff's Motion is substantively inadequate as well. Issuance
25 of a temporary restraining order, as a form of preliminary
26 injunctive relief, is an extraordinary remedy, and a Plaintiff
27 has the burden of proving the propriety of such a remedy by clear
28 and convincing evidence. See Mazurek v. Armstrong, 520 U.S. 968,

1 972 (1997); Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423,
2 441 (1974). Certain prerequisites must be satisfied prior to
3 issuance of a temporary restraining order. See Granny Goose, 415
4 U.S. at 439 (stating that the purpose of a temporary restraining
5 order is "preserving the status quo and preventing irreparable
6 harm just so long as is necessary to hold a hearing [on the
7 preliminary injunction application], and no longer"). In
8 general, the showing required for a temporary restraining order
9 is the same as that required for a preliminary injunction.
10 Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240
11 F.3d 832, 839 n.7 (9th Cir. 2001). To prevail, "[a] plaintiff
12 seeking a preliminary injunction must establish that he is likely
13 to succeed on the merits, that he is likely to suffer irreparable
14 harm in the absence of preliminary relief, that the balance of
15 equities tips in his favor, and that an injunction is in the
16 public interest." Winter v. Nat'l Res. Def. Council, Inc., 555
17 U.S. 7, 129 S. Ct. 365, 374 (2008). Alternatively, under the so-
18 called sliding scale approach, as long as the Plaintiffs
19 demonstrate the requisite likelihood of irreparable harm and show
20 that an injunction is in the public interest, a preliminary
21 injunction can still issue so long as serious questions going to
22 the merits are raised and the balance of hardships tips sharply
23 in Plaintiffs' favor. Alliance for Wild Rockies v. Cottrell, 632
24 F.3d 1127, 1134-35 (9th Cir. 2011) (finding that sliding scale
25 test for issuance of preliminary injunctive relief remains viable
26 after Winter). Plaintiff has failed to make the requisite
27 showing that she is either likely to succeed on the merits of her
28 claims or that she has raised serious questions going to those

1 merits. Accordingly, for the reasons just stated, Plaintiff's
2 Motion for Temporary Restraining Order (ECF No. 7) is DENIED.

3 IT IS SO ORDERED.

4 Dated: July 5, 2011



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7 MORRISON C. ENGLAND, JR.
8 UNITED STATES DISTRICT JUDGE
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