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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER D. SCHNEIDER,  
Plaintiff,

NO. CIV. S-11-2953 LKK/DAD PS

v.

O R D E R

BANK OF AMERICA N.A., BANK  
OF AMERICA MORTGAGE, BANK  
OF AMERICA HOME LOANS  
SERVICING LP, BALBOA  
INSURANCE CO., HOME RETENTION  
GROUP, QUALITY LOAN SERVICE  
CORP., CLIFF COLER, DOES 1-40,  
Defendants.

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Plaintiff Christopher Schneider, pro se, files this motion for a temporary restraining order to prevent Defendants from "taking possession of, selling, or showing Plaintiff's home located at 16291 Stone Jug Rd., Sutter Creek, CA 95688." Pl's Mot., ECF No. 9, at 2 (Nov. 14, 2011). Defendant and trustee Quality Loan Service Corp. has set the date for the sale of Plaintiff's property for Friday, November 18, 2011. Id. For the reasons stated herein, the court GRANTS Plaintiff's motion for a temporary restraining

1 order.

2 **I. FACTS**

3 On November 7, 2011, Plaintiff Christopher Schneider filed a  
4 complaint against, inter alia, Defendants Bank of America, N.A.;  
5 Bank of America Mortgage; Bank of America Home Loan Servicing,  
6 L.P.; Balboa Insurance Co.; Home Retention Group; and Quality Loan  
7 Service Corp. Pl's Mot., ECF No. 1.

8 Plaintiff alleges, inter alia, the following facts. In 2001,  
9 Plaintiff bought the property in dispute in this case, with  
10 financing obtained from Bank of America, N.A., in the amount "of  
11 or around \$132,000 at 8% interest fixed for a term of 30 years,  
12 this equated to a monthly payment of \$968.57 per month." Id. at  
13 5.

14 Initially, the loan paperwork required that Plaintiff make two  
15 monthly payments: (1) \$968.57 per month for the principal and  
16 interest; and (2) \$57.20 per month for mortgage insurance, as  
17 required by law, and paid into an escrow account set up by the  
18 lender. Id. at 5-6. Plaintiff made these monthly payments "until  
19 a new appraisal on his property was done in or around November of  
20 2004." Id. at 6. After reappraisal, Bank of America, N.A.,  
21 dropped the mortgage insurance required and closed Plaintiff's  
22 escrow account, thereby lowering Plaintiff's monthly payments "from  
23 \$1025.77 to \$968.57 for [principal and interest] only, and per the  
24 Deed of Trust the monthly payment on the note was to be \$968.57  
25 until 02/01/31." Id.

26 In or around May 2010, Plaintiff received a notice from

1 Defendants that Bank of America Home Loan Servicing, L.P., had not  
2 received a copy of Plaintiff's homeowner's insurance policy. Id.  
3 Plaintiff argues that, because Defendants, for "the prior 8-9  
4 years," had not asked for copies of the policies, they had not  
5 attempted to enforce any of the contract provisions that specified  
6 how Plaintiff was to maintain such insurance, and they had not sent  
7 him prior notices that they had concerns with the way he insured  
8 his property, Defendant's silence constitutes a waiver. Id. In  
9 "December 2010, after 6 months continuous effort," Plaintiff  
10 received a binding insurance policy, with coverage effective until  
11 December 2011. Id. at 7. Plaintiff sent a copy of this policy to  
12 Defendants Bank of America, N.A. and Bank of America Home Loan  
13 Servicing, L.P., at that time. Id.

14 Because Plaintiff was uninsured from May to December of 2010,  
15 Defendants placed a lender placed policy ("LPP") on his property  
16 during that time, which was allegedly cancelled by Defendants in  
17 December 2010, but for which Plaintiff was billed "until March  
18 2011." Id. Plaintiff requested details of the LPP that Defendants  
19 purchased for his property on his behalf to ensure that Plaintiff  
20 was not being held to a different standard in insurance provision  
21 than Defendants, and "offered a full tender of the amounts ow[  
22 on this LPP," but Defendants "did not respond," and instead,  
23 "created an improper and involuntary escrow account and demanded  
24 an increase in [Plaintiff's] payment to compensate for their  
25 actions." Id. at 7-8.

26 As a result of the parties' dispute over these insurance

1 funds, and therefore a resulting dispute over Plaintiff's total  
2 payments required per month (including the amount of his principal  
3 and interest), Defendants, "in or around October 2010," began to  
4 refuse payments that the Plaintiff tendered in the amount of  
5 \$968.57 per month, and instead, "demanded Plaintiff's monthly  
6 payment to immediately become \$1179.70." See id. at 8; see also  
7 Pl's Mot., ECF No. 9, at 4. Plaintiff then "opened a dispute  
8 account under Civil Code § 1500 in the name of the original  
9 creditor (Bank of America, N.A.) in order to preserve his rights  
10 in this dispute," and has "deposited his monthly payments of  
11 \$968.57 into that account" since that time. See Pl's Mot., ECF No.  
12 1, at 8. Plaintiff alleges that (1) he sent Defendants timely  
13 monthly notices of such deposits; (2) he made that account and all  
14 the amounts in it unconditionally the property of Defendants; and  
15 (3) that he made full, proper, and timely tender of payments with  
16 the specific intent of performance in full each month. Pl's Mot.,  
17 ECF No. 9, at 4.

18 Plaintiff alleges that, even though Defendants had 7 months  
19 to object to Plaintiff's account, they "made no such efforts," and  
20 now "seek the drastic measure of foreclosure on Plaintiff's home  
21 when he is not even late on his payments." Id. at 5.

22 Now before the court is Plaintiff's motion for a temporary  
23 restraining order, filed on November 14, 2011, to prevent  
24 Defendants from "taking possession of, selling, or showing  
25 Plaintiff's home located at 16291 Stone Jug Rd., Sutter Creek, CA  
26 95688." Id. at 2. Defendant and trustee Quality Loan Service

1 Corp. has set the date for the sale of Plaintiff's property for  
2 Friday, November 18, 2011. Id. In support of his motion for a  
3 TRO, Plaintiff has submitted a declaration setting forth his  
4 attempts to notify Defendants of his TRO motion. Pl's Decl., ECF  
5 No. 7 (Nov. 10, 2011).

6 **II. STANDARD OF REVIEW FOR FED. R. CIV. P. 65 MOTION FOR**  
7 **A TEMPORARY RESTRAINING ORDER**

8 Fed. R. Civ. P. 65 provides authority to issue either  
9 preliminary injunctions or temporary restraining orders.  
10 Ordinarily, a plaintiff seeking a preliminary injunction must  
11 demonstrate that it is "[1] likely to succeed on the merits, [2]  
12 that he is likely to suffer irreparable harm in the absence of  
13 preliminary relief, [3] that the balance of equities tips in his  
14 favor, and [4] that an injunction is in the public interest." Am.  
15 Trucking Ass'ns v. City of Los Angeles, 559 F.3d 1046, 1052 (9th  
16 Cir. 2009) (quoting Winter v. Natural Res. Def. Council, 129 S. Ct.  
17 365, 374 (2008)). The requirements for a temporary restraining  
18 order are largely the same. Stuhlberg Int'l Sales Co. v. John D.  
19 Brush & Co., 240 F.3d 832, 839 (9th Cir. 2001); see also Wright and  
20 Miller, 11A Fed. Prac. & Proc. Civ. § 2951 (2d ed.). A TRO is an  
21 emergency measure, intended to preserve the status quo pending a  
22 fuller hearing on the injunctive relief requested.

23 Courts apply a more stringent standard where an adverse party  
24 has not received notice of a motion for a TRO. Specifically, courts  
25 may only "issue a temporary restraining order without written or  
26 oral notice to the adverse party or its attorney if: [¶] (A)

1 specific facts in an affidavit or a verified complaint clearly show  
2 that immediate and irreparable injury, loss, or damage will result  
3 to the movant before the adverse party can be heard in opposition;  
4 and [¶] (B) the movant's attorney certifies in writing any efforts  
5 made to give notice and the reasons why it should not be required."  
6 Fed. R. Civ. P. 65(b)(1).

## 7 **II. Analysis**

8 Plaintiff seeks a temporary restraining order enjoining  
9 Defendants' foreclosure of his home loan. Because the foreclosure  
10 sale is scheduled for Friday, November 18, 2011, Plaintiff's loss  
11 will result before the Defendants can be heard in opposition.  
12 Plaintiff, proceeding pro se, has submitted a declaration setting  
13 forth his efforts to notify the Defendants of Plaintiff's plans to  
14 file a TRO in this case. Although Plaintiff did not receive a  
15 response to his efforts to notify the Defendants of his plan to  
16 file motion for a TRO in this case, due to the serious risk of loss  
17 faced by Plaintiff, and Plaintiff's efforts to notify the  
18 Defendant, the court determines that confirmation of the  
19 Defendants' receipt of notice is not required in this instance.  
20 Thus, these facts satisfy the requirements of Federal Rule of Civil  
21 Procedure 65(b)(1).

22 The balance of equities tip sharply in support of Plaintiff  
23 because he will lose his home on November 18, 2011 if a temporary  
24 restraining order does not issue. In contrast, defendants will  
25 suffer no serious hardship as their security in the home will  
26 remain. Similarly, Plaintiff faces irreparable harm of foreclosure

1 of his home. See, e.g., Sundance Land Corp. v. Community First  
2 Federal Sav. & Loan Ass'n., 840 F.2d 653 (9th Cir. 1988) (loss of  
3 real property, because it is unique, is an irreparable injury).  
4 Furthermore, the court determines that it is in the public interest  
5 to require lenders to comply with existing California statutes  
6 enacted to protect homeowners from unnecessary foreclosures.  
7 Because each of these elements tip in Plaintiff's favor, Plaintiff  
8 must only establish a serious question as to his likelihood of  
9 success for the court to issue a TRO.

10 Here, Plaintiff has submitted evidence indicating that, per  
11 the terms of his initial loan agreement, he has made regular  
12 payments of \$968.57 directly to Defendants, or to an account opened  
13 in Defendant Creditor's name. Plaintiff has also indicated that  
14 he has made attempts to pay the initial amount that caused the  
15 dispute between the parties--that is, the insurance costs which the  
16 Defendants have charged Plaintiff for insurance costs incurred  
17 between May and December 2010--but that the Defendants have failed  
18 to respond to these inquiries and offers regarding these insurance  
19 payments. The court determines that these facts establish a  
20 serious possibility that Plaintiff could succeed on the merits of  
21 his complaint.

22 Accordingly, the court ORDERS as follows:

23 [1] Plaintiff's request for a TRO to enjoin the  
24 Defendant's foreclosure of Plaintiff's property located  
25 at 16291 Stone Jug Rd., Sutter Creek, CA 95688, is  
26 GRANTED. This order is issued as of 5:00 p.m. on

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November 17, 2011 and will expire fourteen (14) days after its issuance.

[2] Pursuant to Eastern District of California Local Rule 302(c)(21), this case is REFERRED to Magistrate Judge Dale A. Drozd for all further pretrial proceedings.

IT IS SO ORDERED.

DATED: November 17, 2011.



LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT