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

RODOLFO VELASQUEZ,

Plaintiff,

No. CIV S-12-433 LKK CKD PS

vs.

CHASE HOME FINANCE LLC, et al.,

ORDER AND

Defendants.

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Plaintiff has filed a motion for sanctions, or in the alternative a motion for intervention to administrate loan documents. Plaintiff complains that defendant has not timely processed his loan modification application under the HAMP program. Because oral argument is not of material assistance, this matter is submitted on the briefs. E.D. Cal. L.R. 230(g).

The court construes plaintiff’s motion as a motion seeking affirmative preliminary injunctive relief. The legal principles applicable to a request for preliminary injunctive relief are well established. “The traditional equitable criteria for granting preliminary injunctive relief are (1) a strong likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if the preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in certain cases).” Dollar Rent A Car v. Travelers Indem. Co., 774 F.2d 1371, 1374 (9th Cir. 1985). The criteria traditionally are treated as alternative

1 tests. “Alternatively, a court may issue a preliminary injunction if the moving party demonstrates  
2 ‘either a combination of probable success on the merits and the possibility of irreparable injury or  
3 that serious questions are raised and the balance of hardships tips sharply in his favor.’” Martin  
4 v. International Olympic Comm., 740 F.2d 670, 675 (9th Cir. 1984) (quoting William Inglis &  
5 Sons Baking Co. v. ITT Continental Baking Co., 526 F.2d 86, 88 (9th Cir. 1975) (emphasis in  
6 original)). See also Alliance for the Wild Rockies v. Cottrell, 622 F.3d 1045, 1049-50 (9th Cir.  
7 2010).

8           On April 19, 2012, the undersigned issued findings and recommendations that  
9 defendants’ motion to dismiss be granted and this action be dismissed in its entirety. In light of  
10 that recommendation, plaintiff fails to demonstrate a strong likelihood of success on the merits.<sup>1</sup>  
11 Preliminary injunctive relief is accordingly not warranted.

12           Accordingly, IT IS HEREBY ORDERED that the hearing date of August 29,  
13 2012 on plaintiff’s motion for sanctions is vacated; and

14           IT IS HEREBY RECOMMENDED that plaintiff’s motion for sanctions (dkt. no.  
15 25), construed as a motion for preliminary injunctive relief, be denied.

16           These findings and recommendations are submitted to the United States District  
17 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within  
18 fourteen days after being served with these findings and recommendations, any party may file  
19 written objections with the court and serve a copy on all parties. Such a document should be  
20 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the  
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22           <sup>1</sup> Plaintiff’s claim under HAMP was specifically addressed in the findings and  
23 recommendations: “Plaintiff’s seventh cause of action is predicated on plaintiff’s contention that  
24 defendants have not followed the guidelines under the Home Affordable Modification Program  
25 (“HAMP”). As previously noted by the District Judge in the order on the motion for preliminary  
26 injunction, there is no private right of action against a lender under HAMP. See Pantoja v.  
Countrywide Home Loans, Inc., 640 F.Supp.2d 1177 (N.D. Cal. 2009); see also Wigod v. Wells  
Fargo Bank, N.A., 2012 WL 727646 at \*24 (7th Cir. 2012) (absence of private right of action  
under HAMP does not displace state cause of action). Accordingly, this claim is subject to  
dismissal.” Findings and Recommendations, filed April 19, 2012 (dkt. no. 22) at 6:9-16.

1 objections shall be served and filed within seven days after service of the objections. The parties  
2 are advised that failure to file objections within the specified time may waive the right to appeal  
3 the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: June 28, 2012

5   
6 CAROLYN K. DELANEY  
7 UNITED STATES MAGISTRATE JUDGE

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9 <sup>4</sup>  
velasquez.pi