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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Sirrium
pro per

Plaintiff,
Petitioner

v.

JOSEPH R. TOMKINSON and/or his
successor, individually, and in his official
capacity as CEO OF IMPAC FUNDING
CORP dba IMPAC FUNDING GROUP
19500 Jamboree Rd
Irvine, CA 92612

BILL BECKMANN and/or his successor,
Individually, and in his official capacity as
PRES/CEO OF MERS
1901 East Voorhess, Ste. C
Danville, IL 61834

BRIAN T. MOYNIHAN, and/or his
successor, individually, and in his official
capacity as PRES/CEO OF BAC HOME
LOANS SERVICING, LP,/ BANK OF
AMERICA N.A., & RECONTRUST CO.,
subsidiary of BANK OF AMERICA
100 North Tryon Street
Charlotte, NC 28255

RECONTRUST COMPANY, fully owned
by BANK OF AMERICA
2380 Performance Drive
Richardson, TX 75082

No. 2:13-cv-00986 TLN-CMK

ORDER

1 SETH WAUGH and/or his successor,
2 individually, and in his official capacity as
3 PRES/CEO of DEUTSCHE BANK
4 NATIONAL TRUST COMPANY
1761 E. St. Andrews Place
Santa Ana, CA 92705

5 Does 1-2000, et al

6 Defendants.

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8 This matter comes before the Court on Plaintiff Sirrium’s “Emergency Ex Parte Petition
9 Emergency TRO” (“TRO Application”). (ECF No. 1.) Plaintiff Sirrium (“Plaintiff”) appearing
10 *pro per* asks the Court to stop her eviction scheduled for Wednesday May 22, 2013. Defendants
11 appear to be companies Impac Funding Group, MERS, Bank of America N.A., Recontrust Co.,
12 and Deutsche Bank National Trust Co., and their chief executive officers, Joseph R. Tomkinson,
13 Bill Beckmann, Brian T. Moynihan, and Seth Waugh.¹ Defendants have not had an opportunity
14 to respond to this TRO Application filed less than 48 hours from Plaintiff’s alleged eviction date.

15 Although *pro se* pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519,
16 520-21 (1972), they are not immune from the Federal Rules of Civil Procedure. *See Ghazali v.*
17 *Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995). To qualify for a temporary restraining order, the
18 moving party must demonstrate (1) a probability of success on the merits and the possibility of
19 irreparable harm, or (2) that the lawsuit raises serious questions and the balance of hardship tips
20 sharply in the movant's favor. *See Hoopa Valley Tribe v. Christie*, 812 F.2d 1097, 1102 (9th Cir.
21 1986); *Regents of Univ. of Cal. v. American Broadcasting Companies, Inc.*, 747 F.2d 511, 515
22 (9th Cir. 1984); *see also* Fed. R. Civ. P. 65.

23 The Eastern District of California Local Rules impose additional requirements for a
24 temporary restraining order. Under Local Rule 231(b) “[i]n considering a motion for a temporary
25 restraining order, the Court will consider whether the applicant could have sought relief by
26 motion for preliminary injunction at an earlier date without the necessity for seeking last-minute

27 ¹ It is not clear whether Plaintiff means to sue the companies only, their CEOs or both, but for purposes of this Order,
28 this Court will construe the pleadings liberally where the petitioner is appearing *pro se*. *See Haines v. Kerner*, 404
U.S. 519, 520-21 (1972).

1 relief by motion for temporary restraining order. Should the Court find that the applicant unduly
2 delayed in seeking injunctive relief, the Court may conclude that the delay constitutes laches or
3 contradicts the applicant's allegations of irreparable injury and may deny the motion solely on
4 either ground.” E.D. Cal. L. R. 231(b); *see also Lamon v. Plier*, No. CIVS03-0423FCD-CMK-P,
5 2006 WL 120088, at *2 (E.D. Cal. Jan. 12, 2006) (recommending injunctive relief be denied),
6 *injunctive relief denied as moot and report adopted by* 2006 WL 2583277 (E.D. Cal. Sept. 6,
7 2006).

8 The Court has considered the TRO Application and the supporting documentation. The
9 Court denies the TRO Application. First, Plaintiff fails to show any likelihood of success on the
10 merits. *See Winters v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008) (“A
11 plaintiff seeking a preliminary injunction must establish that [s]he is likely to succeed on the
12 merits. . . .”). Plaintiff’s TRO Application only states that “[a]ll of the allegations and beliefs are
13 well founded and well supported with evidence. The crimes and violations involved in this case
14 are supported by clear merits and foundation when analyzed by an unbiased professional such as
15 a judge. All of the claims can be proven to be with strong merits.” (ECF No. 1, 20:16-20.)
16 However, the TRO Application is largely incomprehensible, consisting of long excerpts of
17 exhibits, news articles, and legal documents from other cases. At best, the TRO Application
18 appears to allege that the Defendants’ had no legal right to transfer or assign her mortgage to
19 anyone, and alleges that Defendants and other third party individuals violated various laws in
20 doing so. However, Plaintiff’s claims for relief, even if true, do not explain how these violations
21 led to the allegedly improper foreclosure sale of Plaintiff’s property and eviction.

22 Moreover, Plaintiff provides no explanation as to why she waited to file this TRO
23 Application on the eve of eviction. Several documents attached to Plaintiff’s TRO Application
24 indicate that she has had ample time to mount a legal challenge to Defendants’ loan and
25 foreclosure practices:

- 26 • In a letter from Bank of America dated August 20, 2012, Bank of America informs
27 Plaintiff that her loan was referred to foreclosure on March 25, 2011, and the property
28 went into foreclosure sale on February 17, 2012. (ECF No. 1, 60.)

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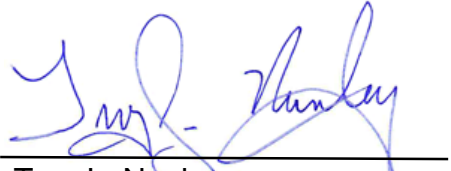
- A “Notice of Default and Election to Sell Under Deed of Trust,” recorded date of April 4, 2011. (ECF No. 1, 75-77.)
- A “Notice of Trustee’s Sale” to take place on July 27, 2011, recorded date of July 5, 2011. (ECF. No. 1, 79-80.)
- A “Trustee’s Deed Upon Sale” reading that the trustee sold real property at a public action on February 17, 2012, recorded date of March 13, 2012. (ECF No. 1, 92-94.)
- Plaintiff also sent several letters to Defendants and other third parties regarding this property on January 6, 2013. (ECF No. 1, 96-108.)

In light of the above, the Court concludes that Plaintiff’s unexplained delay in bringing her TRO Application constitutes laches, she has unreasonably delayed in seeking injunctive relief, and her actions contradict the allegations of irreparable injury.

For the reasons set forth above, Plaintiff’s Application for a Temporary Restraining Order is DENIED.

IT IS SO ORDERED.

Dated: May 21, 2013



Troy L. Nunley
United States District Judge