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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL STINSON, an individual,

Plaintiff,

v.

SPECIALIZED LOAN SERVICING,
LLC; and Does 1-50, inclusive,

Defendants.

No. 2:16-cv-01903-MCE-GGH

MEMORANDUM AND ORDER

Presently before the Court is Plaintiff Michael Stinson’s (“Plaintiff”) application for Temporary Restraining Order (“TRO”) against Defendant Specialized Loan Servicing, LLC (“SLS”) to prevent the foreclosure sale of his home located at 1780 Birchwood Lane in Tracy, California, scheduled for November 6, 2017. Plaintiff filed his application on October 31, 2017; Defendant filed an opposition on November 2, 2017; and Plaintiff replied on November 3, 2017. With the sale of his home scheduled for Monday, November 6, the Court granted Plaintiff’s application by Minute Order on November 3, expressly providing that the application was granted in order to provide the Court with sufficient time to review the parties’ filings, and that a formal order would follow. The following is the Court’s formalized Memorandum and Order granting Plaintiff’s application for TRO.

1 **BACKGROUND**

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3 According to Plaintiff's First Amended Complaint ("FAC"), SLS began servicing
4 Plaintiff's existing home loan at least as of December 2014. In or around December
5 2014, Plaintiff sought a loan modification with SLS. The Court will not recite all facts
6 surrounding Plaintiff's allegations here, but suffice it to say that Plaintiff claims he was
7 given the runaround by SLS, was not assigned a single point of contact ("SPOC") as
8 required under the Homeowners Bill of Rights ("HOBR"), and was asked to resubmit
9 documents on multiple occasions that he claims he already submitted. On more than
10 one occasion, Plaintiff's application for loan modification was closed and he was asked
11 to reapply, which he did. Plaintiff alleges that at least as of the date of his FAC, he still
12 had not received a final determination of his most recent loan modification application,
13 which he submitted in May or June of 2016.¹ Still, SLS recorded a Notice of Default
14 ("NOD") in June 2016, and a Notice of Trustee's Sale in October 2016. Plaintiff filed the
15 pending action in August 2016, and filed his FAC in November 2016. The FAC alleges
16 violations of Cal. Civil Code §§ 2923.7 and 2924.10 (the HOBR), and 15 U.S.C. §
17 1691(a) (the Equal Credit Opportunity Act).

18 Since the filing of the FAC, it appears SLS is no longer the servicer of Plaintiff's
19 loan and has not been since December 2016. It also appears Plaintiff is aware of this
20 fact, because in January 2017, Plaintiff submitted a loan modification application to
21 Shellpoint Mortgage Servicing ("Shellpoint"), the current loan servicer. Shellpoint denied
22 that application in May 2017. Plaintiff appealed, which appeal was denied at least as of
23 July 2017. Under the June 2016 NOD and October 2016 Notice of Trustee's Sale filed
24 by SLS, Shellpoint then moved forward with foreclosure proceedings. The Trustee's
25 Sale was scheduled for November 6, 2017, at 10 a.m.

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27 ¹ The Court is unclear of the exact date. Plaintiff's FAC provides that he submitted his most recent
28 application in May 2016 (FAC at 4), whereas his Application for TRO provides that it was submitted
June 30, 2016 (TRO App. at 4).

1 favor. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011)
2 (concluding that the “serious questions” version of the sliding scale test for preliminary
3 injunctions remains viable after Winter).

4 5 ANALYSIS

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7 Applying the alternate sliding scale test, the Court finds that issuance of a TRO is
8 appropriate to preserve the status quo pending a hearing on Plaintiff’s request for
9 preliminary injunction. Plaintiff has established a likelihood of irreparable harm to the
10 extent that the sale of his home was scheduled for November 6, 2017. Similarly, the
11 balance of hardships tips sharply in Plaintiff’s favor because if the sale had not been
12 enjoined, Plaintiff would have lost his home of twenty years whereas issuance of this
13 TRO simply means Defendant will have to wait to foreclose until the Court has
14 determined—after reviewing additional briefing from the parties—that foreclosure is
15 appropriate. A TRO in this case is in the public’s interest as it is being used to ensure
16 compliance with federal laws designed to protect the public.

17 As for the last factor, the Court finds that serious questions as to the merits of
18 Plaintiff’s claims have sufficiently been raised. On November 3, 2016, the Court
19 dismissed Plaintiff’s first, second, and fourth causes of action without prejudice. Therein,
20 the Court found that Plaintiff had adequately alleged material violations of the HOBR² but
21 dismissed his claims because—at that time—Plaintiff did not allege that foreclosure was
22 pending and therefore was not entitled to the injunctive relief he sought. Because the
23 foreclosure sale is now indeed pending, that is no longer a hurdle Plaintiff must
24 overcome.

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27 ² The Court also noted that with regard to Plaintiff’s third loan modification application, Plaintiff had
28 not alleged a material violation of § 2923.7 because the application was still pending. Though Plaintiff maintains in his FAC that he has not heard back from SLS, because servicing has since been transferred to Shellpoint who denied an application and a subsequent appeal, it seems Plaintiff has now sufficiently alleged a material violation with respect to the “pending” application as well.

1 November 23, 2017. The parties are encouraged to focus on the questions identified by
2 the Court, but may raise any relevant arguments in their briefs. No bond shall be
3 required.

4 IT IS SO ORDERED.

5 Dated: November 8, 2017

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