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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") Motion for Preliminary Injunction seeking to prevent the foreclosure sale of his home located at 1780 Birchwood Lane in Tracy, California. Plaintiff filed an application for Temporary Restraining Order ("TRO") on October 31, 2017, and, with the sale of his home scheduled for Monday, November 6, the Court granted Plaintiff's request by Minute Order on November 3 and by written Memorandum and Order on November 8, 2017. ECF Nos. 35, 40, 42. The November 8 written Order set a Preliminary Injunction hearing for November 27. Pursuant to the Court's briefing schedule, Plaintiff filed the present Motion for Preliminary Injunction on November 13, and Defendant Specialized Loan Servicing, LLC ("SLS") filed an Opposition on November 20. ECF Nos. 43 and 46. On review of the party's filings and pursuant to Local Rule 230(g), the Court submitted the matter and vacated the November 27, 2017, hearing by Minute Order on November 22,

1 2017. ECF No. 47. The Minute Order provided that a written order on Plaintiff's
2 Preliminary Injunction would issue, and that written Order follows here.

3 4 **BACKGROUND**

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6 According to Plaintiff's First Amended Complaint ("FAC"), SLS serviced Plaintiff's
7 already existing home loan as of, at least as is relevant here, December 2014. In or
8 around that time, Plaintiff sought a loan modification with SLS. The Court will not recite
9 all of Plaintiff's allegations here, but suffice it to say that Plaintiff claims he was given the
10 runaround by SLS, was not assigned a single point of contact ("SPOC") as required
11 under the Homeowners Bill of Rights ("HOBR"), and was asked to repeatedly resubmit
12 documents on multiple occasions. In more than one instance, Plaintiff's application for
13 loan modification was closed and he was asked to reapply, which he did. Plaintiff
14 alleges that at least as of the date of his FAC, he still had not received a final
15 determination of his most recent loan modification application, which he submitted in
16 May or June of 2016. Still, SLS recorded a Notice of Default ("NOD") in June 2016 and
17 a Notice of Trustee's Sale in October 2016. Plaintiff filed the pending action in August
18 2016 and filed his FAC a few months later in November. The FAC alleges violations of
19 California Civil Code §§ 2923.7 and 2924.10 (the HOBR), and 15 U.S.C. § 1691(a) (the
20 Equal Credit Opportunity Act or "ECOA").

21 Since the filing of the FAC, however, SLS transferred servicing of Plaintiff's loan
22 to Shellpoint Mortgage Servicing ("Shellpoint"). It appears this transfer took place in
23 December 2016, and that Plaintiff thereafter submitted a loan modification application to
24 Shellpoint, the current loan servicer, in January 2017. Shellpoint denied that application
25 in May 2017. Plaintiff appealed, and the denial was affirmed in or before July 2017.

26 Under the June 2016 NOD and October 2016 Notice of Trustee's Sale filed by
27 SLS, Shellpoint then moved forward with foreclosure proceedings. The Trustee's Sale
28 was originally scheduled for November 6, 2017, until the Order from this Court granting

1 Plaintiff's TRO application temporarily enjoined that sale pending the Court's present
2 ruling.

3
4 **STANDARD**

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6 "A preliminary injunction is an extraordinary and drastic remedy." Munaf v. Geren,
7 553 U.S. 674, 690 (2008). "[T]he purpose of a preliminary injunction is to preserve the
8 status quo between the parties pending a resolution of a case on the merits."
9 McCormack v. Hiedeman, 694 F.3d 1004, 1019 (9th Cir. 2012). A plaintiff seeking a
10 preliminary injunction must establish that he is (1) "likely to succeed on the merits;"
11 (2) "likely to suffer irreparable harm in the absence of preliminary relief;" (3) "the balance
12 of equities tips in his favor;" and (4) "an injunction is in the public interest." Winter v.
13 Natural Res. Defense Council, 555 U.S. 7, 20 (2008). "If a plaintiff fails to meet its
14 burden on any of the four requirements for injunctive relief, its request must be denied."
15 Sierra Forest Legacy v. Rey, 691 F. Supp. 2d 1204, 1207 (E.D. Cal. 2010) (citing Winter,
16 555 U.S. at 22). "In each case, courts 'must balance the competing claims of injury and
17 must consider the effect on each party of the granting or withholding of the requested
18 relief.'" Winter, 555 U.S. at 24 (quoting Amoco Prod. Co. v. Gambell, 480 U.S. 531, 542
19 (1987)). A district court should enter a preliminary injunction only "upon a clear showing
20 that the plaintiff is entitled to such relief." Winter, 555 U.S. at 22 (citing Mazurek v.
21 Armstrong, 520 U.S. 968, 972 (1997)).

22 Alternatively, under the so-called sliding scale approach, as long as the plaintiff
23 demonstrates the requisite likelihood of irreparable harm and shows that an injunction is
24 in the public interest, a preliminary injunction can still issue so long as serious questions
25 going to the merits are raised and the balance of hardships tips sharply in the plaintiff's
26 favor. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134-35 (9th Cir. 2011)
27 (concluding that the "serious questions" version of the sliding scale test for preliminary
28 injunctions remains viable after Winter).

1 **ANALYSIS**

2

3 In issuing the TRO, the Court found that Plaintiff had established a likelihood of
4 irreparable harm in the impending sale of his primary residence, that the balance of
5 hardships tipped sharply in Plaintiff's favor, and that a TRO was in the public's interest
6 as it was being used to ensure compliance with laws designed to protect the public. The
7 Court also found that serious questions as to the merits of Plaintiff's claims had
8 sufficiently been raised, specifically noting that Plaintiff's FAC set forth viable causes of
9 action, but that the Court had questions concerning—inter alia—the availability of
10 injunctive relief where, as here, the foreclosing servicer is not the Defendant in this
11 action. The Court therefore set a briefing schedule for Plaintiff's request for preliminary
12 injunction and directed the parties to pay particular attention in their briefs to the
13 questions set forth in the Court's Order. See ECF No. 42. On review of the parties'
14 briefing in connection with Plaintiff's request for preliminary injunction, the Court
15 concludes that Plaintiff has failed to establish any likelihood of success on the merits of
16 his claims under either standard set forth above.¹

17 As a preliminary matter, while the bulk of Plaintiff's motion is focused on alleged
18 dual tracking by SLS, Plaintiff has not actually pled a dual tracking claim in his FAC.
19 Rather, Plaintiff only sets forth violations of sections 2923.7 and 2924.10 of the HOBR
20 (pertaining to assignment of an SPOC and acknowledgment of receipt of loan
21 modification application, respectively) and the ECOA. Because Plaintiff's motion is silent
22 on his causes of action under both the ECOA and Section 2924.10, however, the Court
23 finds no likelihood of success on the merits of those claims and focuses the following
24 analysis on Plaintiff's potential claim for dual tracking and/or his claim for failure to
25 assign an SPOC. To that end, the Court concludes that even if Plaintiff were to amend

26 ¹ Despite being given multiple opportunities, Plaintiff has failed to provide any support for his
27 apparent contention that the Court can properly enjoin Shellpoint based on SLS's alleged HOBR
28 violations. In any event, the Court need not reach that issue because, even if injunctive relief were proper
under the present circumstances, Plaintiff has failed to establish a likelihood of success on the merits of
his claims against SLS.

1 his complaint to include a dual tracking cause of action, the Court’s ruling would not
2 change because—as set forth below—SLS has provided ample evidence to refute
3 Plaintiff’s arguments.

4 With regard to these remaining claims, Plaintiff specifically asserts that: (1) he
5 was approved for a trial payment plan in early 2015, but after making two timely
6 payments, his trial plan was cancelled without warning in June 2015 because certain
7 documents had expired; (2) he thereafter completed a new application, which was also
8 closed without warning in January 2016; (3) he then submitted another new application
9 in May 2016, for which he was assigned the “Customer Resolution Department” with its
10 general 1-800 number as his SPOC; and (4) despite many attempts to contact his SPOC
11 regarding his May application, Plaintiff has been unable to speak with anyone and has
12 yet to receive a decision on the merits of his application. A Notice of Default was
13 recorded in the end of June 2016, and a Notice of Trustee Sale recorded in October
14 2016. Plaintiff argues that these allegations amount to a violation of the HOBR’s
15 prohibition against dual tracking and, presumably, a violation of the requirement that
16 servicers assign applicants an SPOC.

17 On the other hand, Defendant has submitted extensive evidence—most of which
18 coincides with Plaintiff’s version of the facts—in support of its position that no violations
19 actually occurred. Taken together, Defendant’s exhibits² establish the following:

20 (1) Plaintiff was approved for a loan modification trial plan
21 in January 2015 and was assigned “Billy” as his SPOC in
22 May. Plaintiff either withdrew from the trial or the trial was
otherwise cancelled in June 2015,³ Exs. F-J;

23 (2) Plaintiff submitted a new application in July 2015, and
24 Defendant thereafter mailed an acknowledgment of receipt
and assigned “Katie” as Plaintiff’s SPOC; that application was
denied later that month, Exs. K-N.

25 ² All references to exhibits are to the exhibits attached to the Declaration of Cynthia Wallace ISO
26 Defendant SLS’s Opposition to Plaintiff’s Application for Preliminary Injunction (“Wallace Decl.”), ECF No.
46-1.

27 ³ Exhibit J provides that Plaintiff withdrew from the trial plan; Defendant has provided that the trial
28 was cancelled because Plaintiff defaulted on his third trial payment. Defendant contends that Plaintiff was
informed of the basis for the cancelation by phone, Wallace Decl. at ¶ 27.

1 (3) Plaintiff applied again in September 2015, was
2 thereafter sent an acknowledgment and two separate SPOC
3 assignments, Exs. O-S. The second SPOC, assigned by a
4 letter dated October 7, 2015, was “Billy,” Ex. R. SLS sent a
5 denial letter in December 2015, Ex. S.

6 (4) Plaintiff submitted a new application again in
7 January 2016, Ex T. SLS thereafter mailed two separate
8 acknowledgments of receipt to Plaintiff, dated just one day
9 apart on February 1 and 2, 2016, Exs. U-V. Though
10 Defendant claims that the second of these letters assigned
11 “Billy” as Plaintiff’s SPOC, the letter appears to be nothing
12 more than a second acknowledgment, directing Plaintiff to
13 contact the Customer Resolution Department with questions,
14 see Ex. V. The letter is, however, signed by “Billy,” Plaintiff’s
15 previously-assigned SPOC, *id.* That application was denied
16 by letter in February 2016, Ex. W.

17 (5) Plaintiff applied again in May 2016, was asked for
18 additional documentation, and denied by letter later that
19 month, Exs. X-Z.

20 The parties seem to agree that SLS recorded a Notice of Default in the end of
21 June 2016, and a Notice of Trustee Sale in October 2016. They also agree that SLS
22 subsequently transferred servicing to Shellpoint in December 2016, and Plaintiff
23 thereafter filed another loan modification application with Shellpoint, which was denied in
24 May 2017, appealed, and affirmed in July 2017. Shellpoint then moved forward with
25 foreclosure.

26 Based on the timeline described above—which is supported by Defendant’s
27 extensive exhibits—the Court finds Plaintiff has failed to establish any likelihood of
28 success on the merits of his remaining claims. Indeed, the numerous letters from SLS
show that while communication may not have been perfect between SLS and Plaintiff,
Plaintiff was provided multiple letters in response to each of his applications—including
letters assigning an SPOC—and each application was timely denied by written
correspondence.

While it appears Plaintiff asserts he was not assigned an SPOC in connection
with his January 2016 and/or May 2016 applications, the correspondence that follows
those applications make clear that “Billy” was Plaintiff’s continuing SPOC from his initial
assignment in October 2015, until loan servicing was transferred to Shellpoint in

1 December 2016. Nothing in the HOBR requires assignment of a new SPOC with each
2 application, and nothing indicates that “Billy’s” assignment otherwise ended at any point.
3 To the extent Plaintiff contends that his assigned SPOC was not communicative at any
4 given time, Plaintiff has offered no evidence to support such a contention. Rather, it
5 appears from SLS’s many letters (not to mention the many phone calls described in the
6 declaration of Ms. Wallace) that Plaintiff was informed of the status of his various
7 applications and that Plaintiff’s failure to complete his trial plan was through no fault of
8 Defendant. See, e.g., Ex. H (setting forth trial payment amounts and due dates in
9 March, April, and May 2015). Consequently, Plaintiff has failed to establish a likelihood
10 of success on the merits of his claim under Section 2923.7 of the HOBR.

11 As for any claim of dual tracking, Plaintiff’s final loan modification application of
12 May 2016 was denied in writing later that month. SLS subsequently recorded a Notice
13 of Default in the end of June 2016, and a Notice of Trustee Sale in October 2016.
14 Because Plaintiff’s application had been denied the month prior to SLS recording the
15 NOD, the Court cannot find any evidence that SLS engaged in dual tracking.

16
17 **CONCLUSION**
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19 For the reasons set forth above, Plaintiff’s Motion for Preliminary Injunction, ECF
20 No. 43, is DENIED, and the TRO issued by the Court on November 3, 2017, ECF
21 Nos. 40, 42, is VACATED.

22 IT IS SO ORDERED.

23 Dated: November 30, 2017

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26 MORRISON C. ENGLAND, JR.
27 UNITED STATES DISTRICT JUDGE
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