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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DIOMA BURKS,  
Plaintiff,  
v.  
VINCE CASO,  
Defendant.

No. 2:17-cv-00894-MCE-DB

**ORDER**

On April 27, 2017, Plaintiff Dioma Burks filed a Complaint in this Court alleging fourteen causes of action against Defendant Vince Caso related to conditions of and rental payments for the home Plaintiff rents, and also related to the imminent eviction of Plaintiff from that rental property. ECF No. 1. It appears Plaintiff’s primary allegations are that Defendant increased rent and utilities without providing notice, charged extra rent, accepted “side payments,” provided improper notices to pay or quit, retaliated against Plaintiff, forged the rental agreement, and failed to correct what were uninhabitable living conditions. ECF No. 1. Plaintiff’s Complaint additionally seeks a preliminary injunction and/or temporary restraining order, presumably preventing Defendant from evicting Plaintiff from the home. ECF No. 1. The Court addresses what it construes as Plaintiff’s request for temporary restraining order in more detail below and, for the reasons set forth hereafter, that request is DENIED.

1 As a preliminary matter, Eastern District Local Rule 231 governs Temporary  
2 Restraining Orders. Rule 231(a) provides that “except in the most extraordinary of  
3 circumstances, no temporary restraining order shall be granted in the absence of actual  
4 notice to the affected party and/or counsel, by telephone or other means, or a sufficient  
5 showing of efforts made to provide notice.” E.D. Cal. Local R. 231(a) (citing Fed. R. Civ.  
6 P. 65(b)). Rule 231(c) additionally requires the filing of, among other things, “an affidavit  
7 detailing the notice or efforts to effect notice to the affected parties or counsel or showing  
8 good cause why notice should not be given.” Id. 231(c)(5).

9 Furthermore, subsection (b) of Rule 231 states that “[i]n considering a motion for  
10 a temporary restraining order, the Court will consider whether the applicant could have  
11 sought relief by motion for preliminary injunction at an earlier date without the necessity  
12 for seeking last minute relief by motion for temporary restraining order. Should the Court  
13 find that the application unduly delayed in seeking injunctive relief, the Court may  
14 conclude that the delay constitutes laches or contradicts the applicant’s allegations of  
15 irreparable injury and may deny the motion solely on either ground.” Id. 231(b).

16 Finally, subsection (c) lists the documents to be filed by a party seeking a  
17 temporary restraining order. Id. 231(c). Under that rule, “[n]o hearing on a temporary  
18 restraining order will normally be set unless” certain documents are provided to the Court  
19 and to the affected parties or their counsel. Id. Those documents are: (1) a complaint;  
20 (2) a motion for a temporary restraining order; (3) a brief on all relevant legal issues  
21 presented by the motion; (4) an affidavit in support of the existence of an irreparable  
22 injury; (5) an affidavit detailing the notice or efforts to effect notice to the affected parties  
23 or counsel or showing good cause why notice should not be given; (6) a proposed  
24 temporary restraining order with a provision for a bond; (7) a proposed order with blanks  
25 for fixing the time and date for hearing a motion for preliminary injunction, the date for  
26 the filing of responsive papers, the amount of the bond, if any, and the date and hour of  
27 issuance; and (8) where the temporary restraining order is requested ex parte, the  
28 proposed order shall further notify the affected party of the right to apply to the Court for

1 modification or dissolution on two (2) days' notice or such shorter notice as the Court  
2 may allow. Id.

3 In the present case, Plaintiff has failed to meet the requirements of Rule 231.  
4 First, although Plaintiff indicates that she provided notice of the temporary restraining  
5 order to Defendant, she has not filed the required affidavit establishing as much.  
6 Additionally, though Plaintiff also indicates in her papers that she will suffer irreparable  
7 harm absent the requested relief, she has not filed this required affidavit either. Lastly, it  
8 appears to the Court that Plaintiff has delayed in bringing this action, cutting against any  
9 imminency argument. The most recent three-day notice to pay or quit was served on  
10 Plaintiff in February 2017, and the unlawful detainer that appears to have sparked  
11 Plaintiff's present suit was filed in Sacramento County Superior Court on March 10,  
12 2017. The Court is therefore not convinced that Plaintiff is justified in now—more than a  
13 month and a half later—seeking emergency relief. Plaintiff's argument that she was  
14 unaware that the unlawful detainer was proceeding forward is not convincing. For these  
15 reasons alone, Plaintiff's request may be denied.

16 As for the merits of Plaintiff's motion, the purpose of a temporary restraining order  
17 is to preserve the status quo pending the complete briefing and thorough consideration  
18 contemplated by full proceedings pursuant to a preliminary injunction. See Granny  
19 Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 438-39 (1974) (temporary restraining  
20 orders "should be restricted to serving their underlying purpose of preserving the status  
21 quo and preventing irreparable harm just so long as is necessary to hold a hearing, and  
22 no longer"); see also Reno Air Racing Ass'n., Inc. v. McCord, 452 F.3d 1126, 1131  
23 (9th Cir. 2006); Dunn v. Cate, No. CIV 08-873-NVW, 2010 WL 1558562, at \*1 (E.D. Cal.  
24 April 19, 2010).

25 Issuance of a temporary restraining order, as a form of preliminary injunctive  
26 relief, is an extraordinary remedy, and Plaintiff has the burden of proving the propriety of  
27 such a remedy. See Mazurek v. Armstrong, 520 U.S. 968, 972 (1997). In general, the  
28 showing required for a temporary restraining order and a preliminary injunction are the

1 same. Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F.3d 832, 839 n.7  
2 (9th Cir. 2001).

3 The party requesting preliminary injunctive relief must show that “he is likely to  
4 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
5 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in  
6 the public interest.” Winter v. Natural Resources Defense Council, 555 U.S. 7, 20  
7 (2008); Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter).  
8 The propriety of a temporary restraining order hinges on a significant threat of  
9 irreparable injury that must be imminent in nature. Caribbean Marine Serv. Co. v.  
10 Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

11 Alternatively, under the so-called sliding scale approach, as long as the Plaintiff  
12 demonstrates the requisite likelihood of irreparable harm and shows that an injunction is  
13 in the public interest, a preliminary injunction can still issue so long as serious questions  
14 going to the merits are raised and the balance of hardships tips sharply in Plaintiff's  
15 favor. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011)  
16 (concluding that the “serious questions” version of the sliding scale test for preliminary  
17 injunctions remains viable after Winter).

18 As indicated above, the Court is not convinced that Plaintiff has met this standard.  
19 Specifically, nothing in Plaintiff's Complaint indicates that the threat of Plaintiff losing her  
20 home is imminent such that the extreme remedy of a temporary restraining order is  
21 justified. Moreover, it appears to the Court that Plaintiff has delayed in bringing this  
22 action in the first place, which, again cuts against any imminence finding. For these  
23 additional reasons, Plaintiff's request may be denied.

24 Lastly, the Court finds Plaintiff has not established a likelihood of success on the  
25 merits of her claims, nor has she raised serious questions going to their merits. To the  
26 contrary, the Court is unclear as to what claims Plaintiff pursues or the bases for those  
27 claims. As best as this Court can tell, it appears Plaintiff alleges what may amount to  
28 affirmative defenses to Defendant's pending unlawful detainer action, rather than a

1 potentially successful separate federal suit. For this additional reason, Plaintiff's request  
2 is denied.

3           Given the denial of Plaintiff's temporary restraining order request, the Court going  
4 forward will construe Plaintiff's motion at ECF No. 1 as a motion for preliminary  
5 injunction. Due to the pendency of the unlawful detainer in state court, however, Plaintiff  
6 is ordered to show cause in writing on or before **May 8, 2017** as to why this case should  
7 not be dismissed for lack of jurisdiction. Any response from Defendant shall be filed on  
8 or before **May 15, 2017**. If the Court desires a hearing on this matter, such hearing will  
9 take place on **May 18, 2017**, at 2:00 PM in Courtroom 7. Plaintiff shall provide notice of  
10 this order, briefing schedule, and date and time for hearing to Defendant by **May 3,**  
11 **2017.**

12           IT IS SO ORDERED.

13 Dated: May 2, 2017

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15 MORRISON C. ENGLAND, JR.  
16 UNITED STATES DISTRICT JUDGE  
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