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## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID A. THOMAS,

Plaintiff,

No. C 11-04420 JSW

v.

WELLS FARGO BANK, N.A., et al.,

Defendants.

**ORDER DENYING  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER**

Now before the Court for consideration is the *ex parte* application for a temporary restraining order (“TRO”) filed by Plaintiff David A. Thomas (“Plaintiff”). The Court has considered the Plaintiff’s papers, relevant legal authority, and the record in this case, and it finds the matter suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). For the reasons set forth in the remainder of this Order, Plaintiff’s application is DENIED.

Plaintiff seeks to have this Court enjoin the unlawful detainer action currently pending in state court. In the action before this Court, Plaintiff seeks to cancel the instruments relating to Defendants’ foreclosure on the property at issue and to set aside the trustee sale. In addition, Plaintiff brings a claim for wrongful foreclosure, an accounting and for declaratory relief. Upon a motion to dismiss filed by Defendant Wells Fargo Bank, N.A (“Wells Fargo”), as the successor in interest to Wachovia Mortgage FSB, the Court dismissed Plaintiff’s claims with leave to amend. Wells Fargo argued, and the Court agreed, that all of Plaintiff’s claims were preempted by the Home Owners Loan Act (“HOLA”). The Court noted that Plaintiff’s claims were all premised on his contention that Wells Fargo was not the lender or beneficiary of the

1 loan because its predecessor, Wachovia, sold the note into a mortgage backed securities pool.  
2 Such claims are preempted by HOLA because they fall squarely within the specific preemption  
3 of state claims that deal with “investment” in mortgages as set forth in the regulations  
4 promulgated under HOLA in 12 C.F.R. § 560.2(b)(10).

5 Although the Court provided Plaintiff with leave to amend to allege claims which are  
6 not preempted by HOLA, Plaintiff’s claims are still premised on his contention that Wells Fargo  
7 was not the lender or beneficiary of the loan because its predecessor, Wachovia, sold the note  
8 into a mortgage backed securities pool. Accordingly, Plaintiff’s claims still appear to be  
9 preempted.

10 In order to obtain a temporary restraining order or preliminary injunctive relief, Plaintiff  
11 “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable  
12 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that  
13 an injunction is in the public interest.” *Winter v. Natural Resources Defense Council*, 555 U.S.  
14 7, 129 S. Ct. 365, 374 (2008) (citations omitted). The *Winter* court also noted that because  
15 injunctive relief is “an extraordinary remedy,” it “may only be awarded upon a clear showing  
16 that the plaintiff is entitled to such relief.” 129 S.Ct. at 375-76 (citing *Mazurek v. Armstrong*,  
17 520 U.S. 968, 972 (1997) (*per curiam*)). Thus “[i]n each case, courts ‘must balance the  
18 competing claims of injury and must consider the effect on each party of the granting or  
19 withholding of the requested relief.’” *Id.* at 376 (citing *Amoco Production Co. v. Gambell*, 480  
20 U.S. 531, 542 (1987)). On an ex parte motion for a TRO, the moving plaintiff must allege  
21 “specific facts in an affidavit or a verified complaint clearly show[ing] that immediate and  
22 irreparable injury, loss, or damage will result to the movant before the adverse party can be  
23 heard in opposition.” Fed. R. Civ. Proc. 65(b)(1)(A).

24 Following *Winter*, courts in the Ninth Circuit may apply a sliding scale test when there  
25 is a lesser showing of likelihood of success that amount to “serious questions on the merits” and  
26 the balance of hardships tips strongly in the plaintiff’s favor, as long as the plaintiff satisfies the  
27 other two prongs under *Winter* by showing that there is a likelihood of irreparable injury and  
28

1 that the injunction is in the public interest. *Alliance For The Wild Rockies v. Cottrell*, 632 F.3d  
2 1127, 1134 (9th Cir. 2011).

3  
4 Because all of Plaintiff’s claims against Wells Fargo appear to be preempted, Plaintiff  
5 has not demonstrated a likelihood of success on the merits. Moreover, even if Plaintiff had  
6 demonstrated a likelihood of success on the merits, the Court is precluded from issuing his  
7 requested TRO for another, independent reason. Pursuant to the Anti-Injunction Act, a federal  
8 court “may not grant an injunction to stay proceedings in a State court except as expressly  
9 authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or  
10 effectuate its judgments.” 28 U.S.C. § 2283. “The limitations expressed in the Anti-Injunction  
11 Act ‘rest[] on the fundamental constitutional independence of the States and their courts,’  
12 *Atlantic Coast Line R.R. Co. v. Bhd. of Locomotive Eng’rs*, 398 U.S. 281, 287 (1970), and  
13 reflect ‘Congress’ considered judgment as to how to balance the tensions inherent in such a  
14 system,’ *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988).” *Sandpiper Village*  
15 *Condo. Ass’n v. Louisiana-Pacific Corp.*, 428 F.3d 831, 842 (9th Cir. 2005). “[T]he Act is  
16 designed to prevent friction between federal and state courts by barring federal intervention in  
17 all but the narrowest of circumstances.” *Id.* Although there are exceptions to the Anti-  
18 Injunction Act, “the court cannot discern ... how the request to simply stay the unlawful detainer  
19 action falls into one of the exceptions listed in the Act.” *Sato v. Wachovia Mortgage, FSB*,  
20 2012 WL 368423, \*2 (N.D. Cal. Feb. 3, 2012). Accordingly, the Court DENIES Plaintiff’s  
21 application for a TRO.

22 **IT IS SO ORDERED.**

23 Dated: March 28, 2012

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA  
4

5 THOMAS et al,

Case Number: CV11-04420 JSW

6 Plaintiff,

**CERTIFICATE OF SERVICE**

7 v.

8 WELLS FARGO BANK, N.A. et al,


9 Defendant.  
10 \_\_\_\_\_/

11 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.  
12 District Court, Northern District of California.

13 That on March 28, 2012, I SERVED a true and correct copy(ies) of the attached, by  
14 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter  
15 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an  
16 inter-office delivery receptacle located in the Clerk's office.

17 David A. Thomas  
18 19500 Mount Jasper Drive  
19 Castro Valley, CA 94552

20 Dated: March 28, 2012

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk