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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY THOMAS,  
Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST, et  
al.,  
Defendants.

No. C 12-00472 CRB

**ORDER DENYING EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER**

Plaintiff Jeffrey Thomas filed a complaint against Deutsche Bank National Trust and other banking defendants (“Defendants”) alleging several claims arising out of the attempted foreclosure of his home. Dkt. 1. He then filed an ex parte application for a temporary restraining order enjoining defendants from going ahead with the scheduled Trustee’s sale of his home, set for March 16, 2012. Dkt. 3. Plaintiff argues that his Note was securitized and sold, and Wells Fargo Bank, N.A. no longer has any legal relationship to the loan or the Plaintiff. Mot. at 2. Since Defendants providing documentation refuting this point, while Plaintiff provided no evidence, along with Plaintiff’s long delay in seeking injunctive relief, the Court DENIES the motion for a temporary restraining order.

**I. FACTUAL BACKGROUND**

In 2007, Plaintiff obtained a \$472,500.00 mortgage loan from World Savings Bank, FSB (“World Savings”), evidenced by a Note and secured by a Deed of Trust to Plaintiff’s property located at 31306 San Andreas Drive, Union City, California 94587 (the “Property”).

1 Compl. (dkt. 1) ¶¶ 11, 16, 17; Defendants’ Request for Judicial Notice (dkt. 7-1) Ex. A.<sup>1</sup>  
2 World Savings was the original beneficiary under the Deed of Trust. RJN Ex. A. Plaintiff  
3 alleges World Savings sold the Note on April 3, 2007, to the World Savings Bank REMIC,  
4 of which Deutsche Bank National Trust is the Trustee. In support of this allegation, Plaintiff  
5 cites to World Savings’ parent corporation’s 10-K, which Plaintiff alleges states generally  
6 “We often securitized our portfolio loans into mortgage-backed securities . . . . Securitization  
7 activity for the year . . . amount to \$34.3 billion . . . .”<sup>2</sup> The recorded documents with respect  
8 to the Property do not contain any assignment of the Deed of Trust from World Savings to  
9 any other entity. Hasenkampf Decl. ¶¶ 2-3; RJN Ex. A.

10 On January 1, 2008, World Savings Bank, FSB changed its name to Wachovia  
11 Mortgage, FSB. Dolan Decl. ¶ 3. On November 1, 2009, Wachovia Mortgage, FSB changed  
12 its name to Wells Fargo Bank Southwest, N.A., and then merged into and became a division  
13 of Wells Fargo. *Id.* Thus, it appears from the document that Wells Fargo is the current  
14 beneficiary under the Deed of Trust.

15 On February 4, 2010, ETS Services, LLC (“ETS”), as agent for beneficiary Wells  
16 Fargo, recorded a Notice of Default with respect to the Property. RJN Ex. B. The Notice of  
17 Default was based on Plaintiff’s failure to make his loan payment due on July 15, 2009, and  
18 all subsequent payments thereafter. *Id.* On May 7, 2010, Wells Fargo recorded a  
19 Substitution of Trustee substituting ETS as Trustee under the Deed of Trust. RJN Ex. C.  
20 Subsequently, also on May 7, 2010, ETS recorded a Notice of Trustee’s Sale with respect to

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22 <sup>1</sup> The Court GRANTS Defendants’ Request for Judicial Notice because the documents are public  
23 records “capable of accurate and ready determination by resort to sources whose accuracy cannot be  
reasonably questioned.” Fed. R. Evid. 201(b)(2).

24 <sup>2</sup> This statement comes from the only evidence Plaintiff attached to his application, a declaration  
25 of Plaintiff’s counsel that attaches “the Securitization Audit performed on Thomas’ loan.” Yesk Decl.  
26 (dkt. 3-1). This attachment is the affidavit of Teri L. Petit, a “Forensic Loan Auditor” in Illinois. Yesk  
27 Decl. Ex. A. It does not appear from the affidavit that Ms. Petit has personal knowledge of the facts  
28 attested to, as required by Federal Rule of Evidence 602 (“A witness may testify to a matter only if  
evidence is introduced sufficient to support a finding that the witness has personal knowledge of the  
matter.”). Thus, the Court does not give weight to this affidavit. This is aside from the fact that  
Plaintiff’s counsel failed to file the actual supporting exhibits to the affidavit with his declaration, and  
the fact that the “supporting documents” do not relate to the specific loan at issue (*e.g.*, the general  
statement regarding securitization in the 10-K), and are not even currently available (*e.g.*, a dead link  
to a Reuters article).

1 the property. RJN Ex. D. A second Notice of Trustee’s Sale was recorded with respect to  
2 the Property on June 16, 2011. RJN Ex. E. Plaintiff did not appear to raise any objections to  
3 these notices, or the rights of Wells Fargo with respect thereto, until filing his Complaint on  
4 January 30, 2012. He then moved for an ex parte temporary restraining order on February  
5 29, 2012.

6 **II. LEGAL STANDARD**

7 The standard for issuing a preliminary injunction is well established, and mirrors that  
8 for a temporary restraining order. Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co.,  
9 Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2001). “[I]njunctive relieve [is] an extraordinary  
10 remedy that may only be awarded upon a clear showing that the [movant] is entitled to such  
11 relief.” Winter v. Natural Res. Defense Council, Inc., 555 U.S. 7, 22 (2008). The party  
12 seeking relief must demonstrate that: (1) it is likely to succeed on the merits; (2) it is likely to  
13 suffer irreparable harm absent relief; (3) the balance of equities tips in its favor; and (4) the  
14 requested relief is in the public interest. Id. at 20. Under the Ninth Circuit’s “sliding scale”  
15 approach, the first and third elements can be balanced such that “serious questions” going to  
16 the merits and a balance of hardships that “tips sharply” towards the movant is sufficient so  
17 long as the other two elements are met. Alliance for the Wild Rockies v. Cottrell, 632 F.3d  
18 1127, 1134-35 (9th Cir. 2011).

19 **III. DISCUSSION**

20 Plaintiff fails to raise serious questions on the merits, nor to demonstrate a likelihood  
21 of irreparable harm, thus he fails to meet the requirements for a temporary restraining order.

22 Plaintiff’s main argument for why the foreclosure cannot go forward is that the loan  
23 was securitized, and therefore, Wells Fargo does not have authority to foreclose. California  
24 Civil Code section 2924, *et seq.* create a framework for regulation of non-judicial  
25 foreclosure, and these “provisions cover every aspect of exercise of the power of sale  
26 contained in a deed of trust.” Gomes v. Country Wide Home Loans, Inc., 192 Cal. App. 4th  
27 1149, 1154 (2011) (citations omitted). Section 2924(a)(1) permits a trustee, mortgagee, or  
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1 beneficiary, or any of their authorized agents to initiate the foreclosure procedure. Id. at  
2 1155.

3 Wells Fargo’s predecessor, World Savings, was the beneficiary under the Deed of  
4 Trust associated with Plaintiff’s loan, and Wells Fargo is the current beneficiary according to  
5 the documents associated with the loan. RJN Ex. A; Hasenkampf Decl. ¶¶ 2-3. Therefore,  
6 under California law, it had the authority to appoint a trustee and initiate foreclosure  
7 proceedings. Gomes, 192 Cal. App. 4th at 1155. This is what happened on February 4,  
8 2010, when ETS, Wells Fargo’s agent, recorded the Notice of Default as authorized by  
9 Section 2924(a)(1). RJN Ex. B. ETS was then substituted in as trustee by the beneficiary of  
10 record, as authorized by Section 2934a. RJN Ex. C. After three months had elapsed (as  
11 required by Section 2924(a)(2)), on May 7, 2010, ETS recorded a Notice of Trustee's Sale.  
12 RJN, Ex. D. On June 16, 2011, ETS recorded a subsequent Notice of Trustee's Sale so as not  
13 to run afoul of the requirement in Section 2924g(c)(1) that postponement of the sale “not []  
14 exceed a total of 365 days from the date set forth in the notice of sale.”

15 Thus, at least at this point, the evidence demonstrates that Wells Fargo has always  
16 been the beneficiary under the Deed of Trust, is authorized to initiate the foreclosure, and did  
17 so in compliance with California law. Therefore, Plaintiff fails to demonstrate a likelihood  
18 of success on the merits.

19 Moreover, Plaintiff fails to demonstrate irreparable harm. Wells Fargo initiated the  
20 foreclosure process in February 2010. This is over two years before Plaintiff filed for  
21 emergency relief. RJN Exs. B, D. Delay in seeking injunctive relief can imply a lack of  
22 urgency and irreparable harm, and weighs against the propriety of such relief. Miller ex rel.  
23 NLRB v. Cal. Pac. Med. Ctr., 991 F.2d 536, 544 (9th Cir. 1993); Lydo Enters. v. City of Las  
24 Vegas, 745 F.2d 1211, 1213 (9th Cir. 1984).

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court DENIES the ex parte application for a temporary  
3 restraining order.

4 **IT IS SO ORDERED.**

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7 Dated: March 9, 2012

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CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE