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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 KEYHAN MOHANNA,
8 Plaintiff,
9 v.
10 BANK OF AMERICA, N.A.,
11 Defendant.

Lead Case No. 16-cv-01033-HSG

**ORDER DENYING PLAINTIFF'S
APPLICATIONS FOR TEMPORARY
RESTRAINING ORDERS AND
PRELIMINARY INJUNCTIONS**

12 KEYHAN MOHANNA,
13 Plaintiff,
14 v.
15 WELLS FARGO BANK, N.A.,
16 Defendant.

Related Case No. 16-cv-01035-HSG
Related Case No. 16-cv-01036-HSG

[Related Cases Have Identical Captions]

Re: Dkt. No. 7 (1035 Case and 1036 Case)

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18 Pro se Plaintiff Keyhan Mohanna (“Plaintiff”) has filed three actions against two financial
19 institutions regarding his mortgages on three condominiums: (1) *Mohanna v. Bank of America,*
20 *N.A.*, No. 16-cv-1033-HSG (“1033 Case”); (2) *Mohanna v. Wells Fargo Bank, N.A.*, No. 16-cv-
21 1035-HSG (“1035 Case”); and (3) *Mohanna v. Wells Fargo Bank, N.A.*, No. 16-cv-1036-HSG
22 (“1036 Case”). In all three cases, Plaintiff seeks declaratory relief under the Truth in Lending Act,
23 15 U.S.C. § 1601, *et seq.* (“TILA”). The cases have all been related. Dkt. No. 6 (in all cases).

24 In the two actions against Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), Plaintiff
25 has filed two applications for a temporary restraining order and preliminary injunction, one of
26 which is to enjoin an impending trustee’s sale and the other of which is to enjoin enforcement of
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28

1 an unlawful detainer action.¹ Dkt. No. 7 (1035 Case) (“1035 Appl.”) & Dkt. No. 7 (1036 Case)
2 (“1036 Appl.”). In the 1035 Case, Wells Fargo has filed an opposition, Dkt. No. 16, and a request
3 for judicial notice, Dkt. No. 17 (“RJN”), but has not filed an opposition in the 1036 Case. Plaintiff
4 has filed a reply, Dkt. No. 27, and an opposition to the request for judicial notice, Dkt. No. 25.

5 Plaintiff did not calendar or request a hearing for his applications and, under Federal Rule
6 of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds that this matter is suitable
7 for disposition without oral argument. The Court has carefully considered the parties’ arguments
8 in their written submissions. For the reasons set forth below, the Court **DENIES** Plaintiff’s
9 application for a temporary restraining order and a preliminary injunction.

10 **I. REQUEST FOR JUDICIAL NOTICE**

11 The Court first considers Wells Fargo’s request for judicial notice of publicly-recorded real
12 estate instruments for the property at issue in the 1035 Case and Plaintiff’s bankruptcy petition.

13 Under Federal Rule of Evidence 201(b), publicly-recorded real estate instruments and
14 notices, including deeds of trust and default and foreclosure notices, are the proper subject of
15 judicial notice, unless their authenticity is subject to reasonable dispute. *Disabled Rights Action*
16 *Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004); *Gamboa v. Tr. Corps &*
17 *Cent. Mortg. Loan Servicing Co.*, No. 09-0007, 2009 WL 656285, at **2-3 (N.D. Cal. Mar. 12,
18 2009) (taking judicial notice of various publicly-recorded real estate instruments and notices that
19 directly related to the parties’ transactional history and claims). Similarly, filings in other courts
20 are also the proper subject of judicial notice when directly related to the case, but not for the truth
21 of the matters asserted therein. *Tigueros v. Adams*, 658 F.3d 983, 987 (9th Cir. 2011) (internal
22 citations omitted).

23 Plaintiff opposes Wells Fargo’s requests because he claims that the deeds of trust on the
24 properties at issue are void for reasons discussed below. Plaintiff does not contest, however, that
25 these are authentic documents. For that reason, the Court takes judicial notice of the documents

27 ¹ While Plaintiff has styled his application as “ex parte,” a declaration filed in the 1036 Case states
28 that advance notice of the filing was given to counsel for Wells Fargo, which was also served via
ECF. Dkt. No. 8.

1 only for the purpose of setting forth the factual background of the property at issue and not for its
2 current legal status or for the truth of the matters asserted therein. Additionally, the Court takes
3 judicial notice of the court documents because there is no basis to question their authenticity.

4 **II. BACKGROUND**

5 **A. Factual Allegations and Judicially-Noticed Facts**

6 Plaintiff refinanced his mortgages on two condominiums located in the same apartment
7 building in San Francisco with World Savings Bank, FSB (“WSB”) on December 21, 2006, and
8 February 13, 2007, respectively. Dkt. No. 1 (1035 Case) (“1035 Compl.”) at 7; Dkt. No. 1 (1036
9 Case) (“1036 Compl.”) at 7; RJN, Ex. A (deed of trust for 1035 Case). Plaintiff alleges that WSB
10 was not the actual source of the funds he used to refinance his mortgages, but instead the funds
11 came from an unknown “warehouse lender,” a third party from which WSB borrowed on terms
12 that also remain unknown to him. 1035 Compl. at 10-12; 1036 Compl. at 10-12.

13 Afterwards, Plaintiff alleges that WSB transferred, assigned, or otherwise sold his debts to
14 a private trust called World Savings REMIC 28 Trust on December 28, 2006, and February 26,
15 2007, respectively. 1035 Compl. at 9; 1036 Compl. at 9. Wells Fargo claims it was granted all
16 beneficial ownership in these debts when it acquired Wachovia Mortgage, FSB (“Wachovia”),
17 which apparently had previously purchased WSB and/or its assets. Opp. at 2; 1035 Compl. at 4;
18 1036 Compl. at 5. But Plaintiff alleges that Wells Fargo’s acquisition of Wachovia, and therefore
19 WSB’s assets, did not occur until December 31, 2008, well after his debts were transferred to the
20 private trust. 1035 Compl. at 9; 1036 Compl. at 9. On that basis, Plaintiff alleges that Wells
21 Fargo never acquired ownership of his debts. 1035 Compl. at 9-10; 1036 Compl. at 9-10.

22 In 2012, amidst news surrounding Wells Fargo’s mortgage practices, Plaintiff decided to
23 research and track the ownership of his debts on the mortgages. As a result of that inquiry, on
24 April 14, 2014, Plaintiff notified Wells Fargo that he was rescinding his mortgage on the property
25 at issue in the 1036 Case on the grounds that WSB failed to disclose the “true lender” of the funds
26 used to refinance, triggering a right of rescission under TILA. 1036 Compl. at 8 & Ex. C. Despite
27 that notice, Wells Fargo foreclosed on the property on September 25, 2014. *Id.* at 9.

28 After Wells Fargo filed a notice of default regarding Plaintiff’s property at issue in the

1 1035 case on December 8, 2014, Plaintiff submitted a materially identical notice of rescission on
2 August 14, 2015. 1035 Compl., Ex. C; RJN, Ex. B. In response, Wells Fargo recorded a notice of
3 trustee's sale on October 26, 2015. RJN, Ex. C. Wells Fargo claims that the sale was continued
4 from November 16, 2015, to April 11, 2016. Opp. at 3. After Plaintiff filed for bankruptcy on
5 April 11, 2016, the sale was again continued to May 18, 2016. RJN, Ex. D; Opp. at 3.

6 **B. Procedural History**

7 On March 1, 2016, Plaintiff filed three actions against two financial institutions, two of
8 which concern the impending foreclosure and unlawful detainer discussed above. On April 5,
9 2016, the magistrate judge initially assigned to the 1033 Case related all three actions. On April 7,
10 2016, Plaintiff filed the instant applications in the two actions against Wells Fargo. The actions
11 were reassigned to this Court on April 18, 2016, after Plaintiff declined magistrate jurisdiction.
12 Wells Fargo filed its opposition to the application in the 1035 Case on April 20, 2016. Plaintiff
13 filed a reply on April 28, 2016, along with a response to the case relation order.

14 In his application in the 1035 Case, Plaintiff seeks a temporary restraining order and
15 preliminary injunction enjoining the trustee's sale of the property at issue in that case, scheduled
16 for May 18, 2016. 1035 Appl. at 3; Opp. at 3; *see also* RJN, Ex. D. Plaintiff asserts that
17 preliminary relief is warranted because he properly rescinded his mortgage, but Wells Fargo failed
18 to take possession of the property within 20 days, an omission which he claims automatically
19 vested title in him under TILA. 1035 Appl. at 2-4. Wells Fargo does not contest Plaintiff's claim
20 that he would be irreparably injured by the sale, but argues that he cannot show a likelihood of
21 success on the merits because his rescission notice, even if warranted, was untimely. Opp. at 4.

22 In his application in the 1036 Case, Plaintiff seeks a temporary restraining order and
23 preliminary injunction enjoining enforcement of a successful unlawful detainer action that Wells
24 Fargo filed against him to end his possession of the property at issue in that case. 1036 Appl. at 3.

25 **III. LEGAL STANDARD**

26 Federal Rule of Civil Procedure 65(b) permits courts to issue a temporary restraining order
27 to enjoin conduct that would cause irreparable harm before a preliminary injunction can issue. *See*
28 *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp. 1320 (N.D. Cal. 1995).

1 The standard for issuing a temporary restraining order is the same as for a preliminary injunction.
2 *Gonzales v. Wells Fargo Bank*, No. 5:12-cv-03842, 2012 WL 3627820, at *1 (N.D. Cal. Aug. 21,
3 2012). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
4 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the
5 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat.*
6 *Resources Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Because the standards for both forms of
7 preliminary relief are the same, the Court proceeds to determine the propriety of both.

8 **IV. DISCUSSION**

9 Applying the factors set forth in *Winter v. Natural Resources Defense Council*, the Court
10 finds that neither a temporary restraining order nor a preliminary injunction is appropriate in either
11 of the Wells Fargo actions. Plaintiff’s case largely turns on whether he timely rescinded his
12 mortgages by sending Wells Fargo notices of rescission in April 2014 and August 2015. If
13 Plaintiff did not timely rescind his mortgages, then Wells Fargo did not need to accept his alleged
14 tender of his residence within 20 days on pain of title automatically vesting in Plaintiff.²

15 “Congress passed [TILA] to help consumers ‘avoid the uninformed use of credit, and to
16 protect the consumer against inaccurate and unfair credit billing.’” *Jesinoski v. Countrywide*
17 *Home Loans, Inc.*, — U.S. —, 135 S. Ct. 790, 791-92 (2015) (quoting 15 U.S.C. § 1601(a)). “[I]n
18 the case of any consumer credit transaction . . . in which a security interest . . . is . . . acquired in
19 any property which is used as the principal dwelling of the person to whom credit is extended,” 15
20 U.S.C. 1635(a), TILA “grants borrowers an unconditional right to rescind for three days, after
21 which they may rescind only if the lender failed to satisfy the Act’s disclosure requirements,”
22 *Jesinoski*, 135 S. Ct. at 792. To rescind a home-secured loan, a borrower must send the lender a
23 written notice of rescission. 15 U.S.C. § 1635(a); 12 C.F.R. 226(a)(2); *Jesinoski*, 135 S. Ct. at 792
24 (“[R]escission is effected when the borrower notifies the creditor of his intention to rescind.”).

25 Once a borrower has rescinded the loan, the lender must “return to the [borrower] any

26 _____
27 ² Plaintiff raises a subsidiary issue in both of the Wells Fargo actions about whether Wells Fargo
28 actually owns Plaintiff’s debt obligations. 1035 Compl. at 9; 1036 Compl. at 9, 23-24. Plaintiff
does not brief this issue or seek relief on this basis in either of his applications. Accordingly, the
Court does not now consider this claim.

1 money or property given as earnest money, downpayment, or otherwise . . . and shall take any
2 action necessary or appropriate to reflect the termination of any security interest created under the
3 transaction.” 15 U.S.C. § 1635(b). “Upon the performance of the creditor’s obligations . . . the
4 [borrower] shall tender the property to the [lender], except that if return of the property in kind
5 would be impracticable or inequitable, the [borrower] shall tender its reasonable value.” *Id.* “If
6 the [lender] does not take possession of the property within 20 days after tender by the [borrower],
7 ownership of the property vests in the [borrower] without obligation on his part to pay for it.” *Id.*

8 A borrower’s right to seek rescission under TILA is subject to a three-year statute of
9 repose. 15 U.S.C. § 1635(f). Any attempt to rescind more than three years after the date of the
10 “consummation of the transaction” is absolutely time-barred. *Jesinoski*, 135 S. Ct. at 792; *Beach*
11 *v. Ocwen Fed. Bank*, 523 U.S. 410, 412 (1998) (“§ 1635(f) completely extinguishes the right of
12 rescission at the end of the 3-year period.”). “Consummation,” within the meaning of TILA,
13 “means the time that a consumer becomes contractually obligated on a credit transaction.” 12
14 C.F.R. § 226.2(a)(13).³ Because § 1635(f) is a statute of repose, it is not subject to tolling. *See*
15 *McOmie-Gray v. Bank of Am. Home Loans*, 667 F.3d 1325, 1329-30 (9th Cir. 2012), *abrogated on*
16 *other grounds by Jesinoski*, 132 S. Ct. at 792;⁴ *see also Sotanski v. HSBC Bank USA, Nat’l Assoc.*,
17 No. 15-CV-01489, 2015 WL 4760506, at *6 (N.D. Cal. Aug. 12, 2015), *appeal filed*, No. 15-
18 16798 (9th Cir. Sept. 10, 2015) (equitable tolling does not apply to § 1635(f)’s deadline).

19 In this case, Plaintiff did not serve his notices of rescission until nearly eight years after he
20 executed his mortgage loans with WSB, well outside of § 1635(f)’s three-year deadline. *See* 1035

21 ³ State law controls whether and when a consumer has become contractually obligated under
22 TILA. *Jackson v. Grant*, 890 F.2d 118, 120 (9th Cir. 1989). Under California law, which the
23 parties agree is the controlling state law here, contractual obligation inheres when the parties are
24 capable of consenting and there is consent, a lawful object, and a sufficient cause or consideration.
25 *See* Cal. Civ. Code § 1550.

26 ⁴ *McOmie-Gray* held that a notice of rescission does not automatically rescind a transaction, and
27 found that, unless conceded by the lender, rescission is only accomplished by an enforcement
28 action. 667 F.3d at 1327 (“Rescission is not automatic upon a borrower’s mere notice of
rescission[.]”). *Jesinoski* abrogated *McOmie-Gray* on this point. *See* 132 S. Ct. at 792 (“The
language [of 15 U.S.C. § 1635(a)] leaves no doubt that rescission is effected when the borrower
notifies the creditor of his intention to rescind. It follows that, so long as the borrower notifies
within three years after the transaction is consummated, his rescission is timely. The statute does
not also require him to sue within three years.”). However, *McOmie-Gray*’s conclusion that
tolling is inapplicable to TILA’s three-year deadline because it is a statute of repose remains good
law post-*Jesinoski*. *See id.*

1 Compl. at 7 & Ex. C; 1036 Compl. at 7 & Ex. C. In the face of this apparent untimeliness,
2 Plaintiff alleges that both of transactions were never consummated as a matter of law, precluding
3 the three-year deadline from counting down, because WSB (Wells Fargo’s purported predecessor-
4 in-interest) never disclosed that it was using a warehouse lender. 1035 Compl. at 10-15; 1036
5 Compl. at 9-15. Plaintiff’s argument is that there was no valid consent to the refinancing contract
6 with WSB because WSB never disclosed that it was going to use a third-party lender to fulfill its
7 contractual obligation. In support of this argument, Plaintiff relies on *Jackson v. Grant*, 890 F.2d
8 118 (9th Cir. 1989), which held that a borrower holds a right of rescission under TILA where the
9 name of the lender is left blank on mortgage loan documents. The Ninth Circuit reasoned that
10 because “[n]o one, including [the purported lender], had agreed to extend credit to [the TILA
11 plaintiff],” “no loan transaction was consummated” within the meaning of TILA. 890 F.2d at 121.
12 Plaintiff thus argues that, under the reasoning of *Jackson*, the three-year deadline has not yet
13 started to run. Wells Fargo responds that courts have unanimously rejected Plaintiff’s theory that
14 the undisclosed use of a warehouse lender can preclude the consummation of a transaction under
15 TILA.

16 The Court agrees with Wells Fargo: Plaintiff has not shown that he is likely to succeed in
17 his argument that his mortgage loan transaction with WSB was never consummated. There are at
18 least two fatal problems with Plaintiff’s argument. The first is that he has not attached the loan
19 documents necessary for the Court to determine whether he agreed to permit WSB to use a third-
20 party lender. It is plausible that his loan agreement authorized WSB to delegate this obligation. If
21 Plaintiff executed a loan agreement that permitted WSB to use a third-party lender, there is no
22 basis to challenge contract formation. Because it is Plaintiff’s burden to show with evidence that
23 he has a likelihood of prevailing on the merits, the Court must deny his application on this basis
24 alone: the Court cannot determine whether Plaintiff consented to a third-party lending
25 arrangement without the loan documents.

26 The second problem is that district courts have unanimously found that a lender’s use of an
27 undisclosed third party to complete a secured transaction is insufficient to preclude consummation
28 under TILA. *See, e.g., Sotanski*, 2015 WL 4760506, at *6 (holding that a lender’s use of a third-


1 party lender does not preclude contract formation); *Ramos v. U.S. Bank*, No. 12-CV-1820, 2012
2 WL 4062499, at *1 n.1 (S.D. Cal. Sept. 14, 2012) (where loan paperwork “plainly identified” a
3 lender, “the loan was consummated regardless” of who the “true lender” was); *Mbaku v. Bank of*
4 *Am., N.A.*, No. 12-CV-00190, 2013 WL 425981, at *5 (D. Colo. Feb. 1, 2013) (because the “deed
5 of trust identifies [] the lender[,]” “plaintiffs were obligated on their mortgage to [that lender]”
6 without regard to any third party involvement). The Court finds this line of authority persuasive,
7 and agrees that the reasoning of these cases is dispositive at this stage.

8 **V. CONCLUSION**

9 For the foregoing reasons, the Court **DENIES** Plaintiff’s applications for a temporary
10 restraining order and a preliminary injunction in the Wells Fargo actions.

11 **IT IS SO ORDERED.**

12 Dated: May 2, 2016

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15 HAYWOOD S. GILLIAM, JR.
16 United States District Judge
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