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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SEAN M. PARK, MICHELLE PARK

Plaintiffs,

vs.
WACHOVIA MORTGAGE, FSB,
WACHOVIA MORTGAGE
CORPORATION, EXECUTIVE TRUST
SERVICES, CHICAGO TITLE
COMPANY PARK CAMINO BRANCH,
SHEPPARD RICHTER, DOES 1-10

Defendants.

CASE NO. 10cv1547-WQH-RBB

ORDER

HAYES, Judge:

On July 26, 2010, Plaintiffs Sean M. Park and Michelle Park, proceeding pro se, initiated this action by filing a Complaint and filed an Amended Complaint on August 11, 2010. (Doc. # 1, 3). On September 3, 2010, Plaintiffs filed an Ex Parte Motion for a Temporary Restraining Order. (Doc. # 17).

Rule 65 provides:

The court may issue a preliminary injunction only on notice to the adverse party.
...

The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

- (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

1 (B) the movant’s attorney certifies in writing any efforts made to
2 give notice and the reasons why it should not be required.

3 Fed. R. Civ. P. 65(a)(1) & (b)(1).

4 The Motion for a Temporary Restraining Order contains a return of service on “Carlos
5 Gonzales - ‘ETS’ - Ex Parte Fed Ex w/ direct signature” and “Mark Rachers - Ex Parte Fed Ex
6 w/ direct signature.” (Doc. # 17 at 3-4). When the nonmovant has received notice, the
7 standard for issuing a temporary restraining order is the same as that for issuing a preliminary
8 injunction. *See Brown Jordan Int’l, Inc. v. Mind’s Eye Interiors, Inc.*, 236 F. Supp. 2d 1152,
9 1154 (D. Haw. 2002); *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F.
10 Supp. 1320, 1323 (N.D. Cal. 1995). “[A] preliminary injunction is an extraordinary and drastic
11 remedy, one that should not be granted unless the movant, by a clear showing, carries the
12 burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original)
13 (quotation omitted). Without considering whether this notice was adequate, the Court finds
14 that the motion for a temporary restraining order and/or a preliminary injunction fails to
15 comply with the requirements of Rule 65.

16 To obtain preliminary injunctive relief, a plaintiff must show “that he is likely to
17 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
18 relief, that the balance of equities tips in his favor, and that an injunction is in the public
19 interest.” *Winter v. NRDC*, --- U.S. ----, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008); *see*
20 *also Am. Trucking Ass’n, Inc. v. City of L.A.*, 559 F.3d 1046, 1052 (9th Cir. 2009).


21 At a minimum, “the moving party must demonstrate a significant threat of irreparable
22 injury.” *Arcamuzi v. Continental Air Lines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987) (citation
23 omitted). “[A]n injunction cannot issue merely because it is possible that there will be an
24 irreparable injury to the plaintiff; it must be likely that there will be.” *Am. Trucking Ass’n*, 559
25 F.3d at 1052. “Issuing a preliminary injunction based only on a possibility of irreparable harm
26 is inconsistent with our characterization of injunctive relief as an extraordinary remedy that
27 may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*,
28 129 S. Ct. at 375-76. The Amended Complaint is not verified and the Motion does not contain
an affidavit stating specific facts showing Plaintiffs are likely to suffer irreparable injury.

1 (Doc. # 3, 17).

2 If the moving party fails to meet the “minimum showing” of a likelihood of irreparable
3 injury, a court “need not decide whether [the movant] is likely to succeed on the merits.”
4 *Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc.*, 762 F.2d 1374, 1377 (9th Cir. 1985).

5 IT IS HEREBY ORDERED that the Ex Parte Motion for a Temporary Restraining
6 Order is DENIED without prejudice. (Doc. # 17).

7 DATED: September 8, 2010

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9 **WILLIAM Q. HAYES**
United States District Judge

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