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

ANGELA MCLEAN,

vs.

AURORA LOAN SERVICING, etc., et al.,

Plaintiff,

Defendants.

CASE NO. 11cv0455-LAB (NLS)
**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

Plaintiff Angela Mclean moves for a preliminary injunction to grant access to her online mortgage account and to return her monthly mortgage payment to its pre-suit amount. Mclean alleges that Defendant Aurora Loan Servicing raised her monthly mortgage payment and locked her out of her online account in retaliation for filing of this suit, which contests the assignment of her mortgage to Aurora and its alleged refusal to engage in a fair loan modification process. (Compl. at ¶¶ 12–20.) Mclean has failed to demonstrate that she will likely suffer irreparable harm absent the granting of her motion for a preliminary injunction.

I. DISCUSSION

A preliminary injunction is “an extraordinary and drastic remedy” that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. *Munaf v. Green*, 553 U.S. 674, 689–90 (2008) (quoting 11A Wright & Miller, *Federal Practice & Procedure* § 2948 (2d ed. 1995)). There are four elements a plaintiff must clearly demonstrate in order

1 to obtain a preliminary injunction: (1) likelihood of success on the merits; (2) likelihood of
2 irreparable harm absent the preliminary injunction; (3) the balance of equities favors the
3 plaintiff; and (4) the injunction is in the public interest. See *Winter v. Natural Resources Def.*
4 *Council, Inc.*, 555 U.S. 7, 20 (2008). However, if a plaintiff cannot demonstrate the likelihood
5 of irreparable harm absent the preliminary relief, the Court does not need to address the
6 other three elements. See *Ctr. for Food Safety v. Vilsack*, 636 F.3d 1166, 1174 (9th Cir.
7 2011).

8 The harm the plaintiff seeks to prevent with the preliminary injunction must be both
9 *likely* and *irreparable*. “Under *Winter*, plaintiffs must establish that irreparable harm is *likely*,
10 not just possible, in order to obtain a preliminary injunction.” *Alliance for Wild Rockies v.*
11 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). “The key word in this consideration is
12 *irreparable*. Mere injuries, however substantial, in terms of money, time and energy
13 necessarily expended in the absence of a stay, are not enough.” *Sampson v. Murray*, 415
14 U.S. 61, 90 (1974) (emphasis added) (citation and internal quotation marks omitted).

15 The first harm that Mclean alleges will befall her without preliminary relief is her
16 continued inability to access her online mortgage account. Mclean claims to have been
17 “locked” out of her account since March 2011. However, Mclean has not alleged facts
18 showing that her inability to access her account online has or will injure her irreparably.
19 Mclean has been informed of her mortgage payments in advance of their due dates and has
20 paid them in full each time. (Mot. for Prelim. Inj. at 6 (“Ms. Mclean continues to make her
21 payments on time, despite the fact that she has no access to her account”)) Out of
22 distrust for Aurora, she has declined to make payments by mail, and instead has used
23 Western Union. (Decl. of Mclean, ¶ 7.) While having access to a mortgage account online
24 would be more convenient than having to make payments by mail (or some alternative such
25 as the one Mclean is using), denial of this convenience does not constitute irreparable harm.

26 The second harm that Mclean alleges is the “financial harm of an unexplained
27 increase in her monthly mortgage payment,” a purely economic harm. However, economic
28 injury, by itself, does not constitute irreparable harm. See *Rent-A-Center, Inc. v. Canyon TV*

1 & *Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991). Except in unusual
2 circumstances, see *Wright & Miller, supra*, when a plaintiff can be made whole through
3 pecuniary damages there is no *irreparable* harm. The increased mortgage payments do not
4 justify the extraordinary measure of a preliminary injunction.

5 Mclean alleges her property may be foreclosed on, and her credit rating damaged.
6 This harm, however, is too speculative to merit the granting of the preliminary injunction.
7 Mclean mistakenly relies on *Simula v. Autoliv*, 175 F.3d 716, 724 (9th Cir. 1999), for the
8 proposition that she must demonstrate a “significant threat of irreparable injury.” (Mot. for
9 Prelim. Inj. at 6.) But the standard is that irreparable harm must be *likely*. See *Cottrell*, 632
10 F.3d at 1131. Though Mclean has been able to pay the increased mortgage payments, she
11 says that because her husband’s pay was cut and because they are expecting a child, she
12 cannot afford her current mortgage obligations. (Dec. of Mclean at ¶ 16.) While the loss of
13 real property through foreclosure may constitute irreparable harm in some cases,¹ Mclean
14 has not shown the likelihood of foreclosure. Nor has she shown it is likely Aurora will
15 damage her credit rating by reporting her non-payment of disputed amounts to credit
16 bureaus.

17 Mclean in passing also mentions Aurora’s failure to modify her loan, despite repeated
18 requests and extensive correspondence, as giving rise to irreparable harm. (Mot. for Prelim.
19 Inj. at 5:3–5.) But the complaint does not seek loan modification, and Mclean has no
20 statutory right to loan modification. *Mabry v. Superior Ct.*, 185 Cal.App.4th 208, 231 (Cal.
21 App. 4 Dist. 2010).

22 None of the Court’s discussion of these issues is intended as a ruling or comment on
23 the merits. It may be that Mclean is being treated unfairly by Aurora. But the fact remains,
24 she has not shown that she will likely suffer irreparable harm absent preliminary relief. The
25 Court does not reach the other *Winter* factors. See *Ctr. for Food Safety*, 636 F.3d at 1174.

27 ¹ Mclean cites *Sundance Land Corp. v. Cmty. First Fed’l Sav. & Loan Ass’n*, 840 F.2d
28 653 (9th Cir. 1988) for the proposition that loss of real property may constitute a threat of
irreparable injury. But this does not address the problem here, that foreclosure is only
speculative at this point.

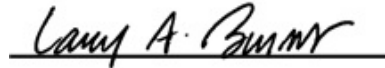
1 **II. CONCLUSION**

2 For these reasons, the Court holds that Mclean has not alleged and cannot show a
3 likelihood of irreparable harm. Mclean's motion for a preliminary injunction is therefore

4 **DENIED.**

5 **IT IS SO ORDERED.**

6 DATED: October 3, 2011

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8 **HONORABLE LARRY ALAN BURNS**
9 United States District Judge

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