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

10 GEORGE DALLAS MCKINNEY, JR.,

Case No.: 15cv307-MMA (WVG)

11
12 Plaintiff,

**ORDER DENYING APPLICATION
FOR TEMPORARY RESTRAINING
ORDER**

13 v.

[Doc. No. 27]

14 CITI RESIDENTIAL LENDING INC.;
15 QUALITY LOAN SERVICE
16 CORPORATION; CITIMORTGAGE,
17 INC.; ASSET SENTRY, A LEGAL
18 CORPORATION, TRUSTEE, UTA 5848-
19 131029 TRUST DATED 10/28/13;
LAURUS GROUP, INC.; and DOES 1-
50, inclusive,

Defendants.

20 Plaintiff George Dallas McKinney, Jr. (“Plaintiff”) has filed a Complaint against
21 Defendants Citi Residential Lending, Inc. (“Citi Lending”), Quality Loan Service
22 Corporation (“Quality Loan”), CitiMortgage, Inc. (“CitiMortgage”), Asset Sentry, a legal
23 corporation as trustee, UTA 5848-131209 trust dated 10/28/13 (“Asset Sentry”), and
24 Laurus Group, Inc. (“Laurus”), alleging, among other things, fraud and deceit, wrongful
25 foreclosure, violation of the Fair Housing Act, and violation of California’s Unfair
26 Competition Law. Doc. No. 1. Plaintiff now seeks a temporary restraining order,
27 apparently to prevent the execution of a writ of possession and lockout.

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1 **BACKGROUND**

2 Plaintiff's residence at 5848 Arboles Street, San Diego, California 92120 (the
3 "property") was sold at a foreclosure sale on in late 2013.¹ See Doc. Nos. 1, 27.
4 Plaintiff filed this action against Defendants on February 12, 2015. Doc. No. 1. On June
5 17, 2015, Defendant Quality Loan filed a motion to dismiss for failure to state a claim.
6 Doc. No. 5. On June 25, 2015, Defendants Citi Lending and CitiMortgage also filed a
7 motion to dismiss for failure to state a claim. Doc. No. 7. Defendant Asset Sentry
8 subsequently joined in the June 25, 2015, motion to dismiss. Doc. No. 10. On December
9 3, 2015, the Court granted the motions to dismiss, and ordered Plaintiff to file his first
10 amended complaint, if any, within 14 days of the Order.² Doc. No. 18.

11 Plaintiff did not file an amended complaint. Accordingly, on January 8, 2016,
12 Defendants Citi Lending and CitiMortgage filed a motion to dismiss pursuant to Federal
13 Rule of Civil Procedure 41(b) for failure to amend the complaint within the time allowed
14 by the Court. Doc. No. 20. Defendant Quality Loan joined in the motion, Doc. No. 21,
15 and on January 11, 2016, Defendant Asset Sentry filed a similar motion to dismiss, Doc.
16 No. 22. The Court took the unopposed motions to dismiss under submission on the
17 papers and without oral argument pursuant to Civil Local Rule 7.1.d.1 on February 3,
18 2016. Doc. No. 23. On February 8, 2016, Plaintiff substituted in new counsel. See Doc.
19 Nos. 24, 28. It appears that Plaintiff has continued to reside at the property since it was
20 sold in 2013, and now seeks an ex parte temporary restraining order restraining the San
21 Diego County Sheriff's Department from evicting Plaintiff from the property. Doc. No.
22 27. Plaintiff filed a motion to set aside judgment pursuant to Federal Rule of Civil
23 procedure 60(b), but withdrew the motion shortly thereafter. See Doc. Nos. 25, 26.

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25 ¹ Although Plaintiff asserts in his application that his home was sold on November 6, 2013, the Trustee's
26 Deed Upon Sale attached as exhibit I to Plaintiff's complaint indicates that the property was sold at
27 public auction on October 29, 2013.

28 ² On December 8, 2015, the Court issued an Amended Order Granting Motions to Dismiss solely for the
purpose of clarifying that Plaintiff's claim under the Fair Housing Act was dismissed without prejudice,
and not *with* prejudice. Doc. No. 19.

1 Plaintiff has not refiled her motion. Defendant Asset Sentry filed an opposition to
2 Plaintiff's ex parte application for temporary restraining order on February 9, 2016. Doc.
3 No. 29.

4 LEGAL STANDARD

5 A temporary restraining order ("TRO") may be granted upon a showing "that
6 immediate and irreparable injury, loss, or damage will result to the movant before the
7 adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). The purpose of
8 such an order, as a form of preliminary injunctive relief, is to preserve the status quo and
9 prevent irreparable harm "just so long as is necessary to hold a hearing, and no longer."
10 *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974). A
11 request for a TRO is evaluated by the same factors that generally apply to a preliminary
12 injunction. *See Stuhlbarg Int'l. Sales Co. v. John D. Brushy & Co.*, 240 F.3d 832, 839
13 n.7 (9th Cir. 2001). However, a TRO is an "extraordinary remedy" and is "never granted
14 as of right," *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Instead, the
15 moving party bears the burden of demonstrating that "he is likely to succeed on the
16 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
17 the balance of equities tips in his favor, and that an injunction is in the public interest."
18 *Id.* at 20. Although a plaintiff must satisfy all four of the requirements set forth in
19 *Winter*, this Circuit employs a sliding scale whereby "the elements of the preliminary
20 injunction test are balanced, so that a stronger showing of one element may offset a
21 weaker showing of another." *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,
22 1131 (9th Cir. 2011). Accordingly, if the moving party can demonstrate the requisite
23 likelihood of irreparable harm and show that an injunction is in the public interest, a
24 preliminary injunction may issue so long as there are serious questions going to the
25 merits and the balance of hardships tips sharply in the moving party's favor. *Id.*

26 DISCUSSION

27 As a preliminary matter, Plaintiff's TRO application was filed without notice to
28 Defendants, and Plaintiff's attorney does not certify in writing her "efforts made to give

1 notice and the reasons why it should not be required” pursuant to Federal Rule of Civil
2 Procedure 65(b)(1)(B). Plaintiff also fails to include “specific facts in an affidavit or a
3 verified complaint clearly show that immediate and irreparable injury, loss, or damage
4 will result to the movant before the adverse party can be heard in opposition.” Fed. R.
5 Civ. P. 65(b)(1)(A). For instance, the affidavits from Plaintiff’s son and Plaintiff’s
6 attorney fail to state that Plaintiff George Dallas McKinney Jr. currently resides at the
7 property, or that Plaintiff will be evicted from the property. Accordingly, Plaintiff’s
8 application must be denied on these grounds alone.

9 Furthermore, Plaintiff’s application for TRO appears to be based solely on “the
10 pending Motion to pursuant to Rule 60(b).” However, there is no pending motion, as
11 Plaintiff withdrew her motion shortly after filing, and has not refiled. *See* Doc. Nos. 25,
12 26. Therefore, Plaintiff fails to meet his burden to demonstrate that any of the *Winter*
13 factors are met. Even were Plaintiff to file a Rule 60(b) motion, it is unclear what Order
14 Plaintiff would be seeking relief from. *See generally* 21A Fed. Proc., L. Ed. § 51:127
15 (“The term ‘final’ applies to orders and proceedings as well as judgments, and limits the
16 applicability of Rule 60(b) to judgments and orders which have been entered and which
17 are independently ‘final decisions’ under 28 U.S.C.A. § 1291, the statute providing
18 appellate review of final decisions of District Courts.”).

19 Additionally, the Anti-Injunction Act forbids a federal court from enjoining or
20 staying state court proceedings “except as expressly authorized by Act of Congress, or
21 where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28
22 U.S.C. § 2283. The exceptions to the Anti-Injunction Act are narrowly construed and
23 “doubts as to the propriety of a federal injunction against a state court proceeding should
24 be resolved in favor of permitting the state action to proceed.” *Lou v. Belzberg*, 834 F.2d
25 730, 739 (9th Cir. 1987). A request for a TRO enjoining a state court unlawful detainer
26 action does not fall into one of the exceptions listed in the Act. *See e.g., Sato v.*
27 *Wachovia Mortgage, FSB*, 2012 WL 368423, *2 (N.D. Cal. Feb. 3, 2012); *Diaz v.*
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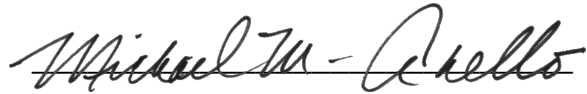
1 *National City Bank*, 2012 WL 2129916, *1 (S.D. Cal. Jun. 12, 2012). Accordingly, it
2 appears the injunctive relief sought here is prohibited by the Anti-Injunction Act.

3 **CONCLUSION**

4 For the reasons set forth above, Plaintiff's ex parte application for TRO, Doc. No.
5 27, is **DENIED**.

6 **IT IS SO ORDERED.**

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8 Dated: February 9, 2016

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10 Hon. Michael M. Anello
11 United States District Judge
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