

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 MARK WARREN,

11 Plaintiff,

12 v.

13 WELLS FARGO & CO., WELLS
14 FARGO BANK, N.A., et al.

15 Defendants.

Case No.: 3:16-cv-2872-CAB-(NLS)

**ORDER ON EX PARTE MOTION
FOR TEMPORARY RESTRAINING
ORDER & REQUEST FOR
PRELIMINARY INJUNCTION
[Doc. No. 10]**

16 On January 27, 2017, Plaintiff filed an *Ex Parte* Application for a Temporary
17 Restraining Order and Preliminary Injunction and Attorney Fees. [Doc. No. 10.] That
18 same day, Judge Sammartino issued a briefing scheduling on the application. [Doc. No.
19 11.] Consistent with the schedule, Defendants Wells Fargo Bank, N.A. and Wells Fargo
20 Co. (collectively “Wells Fargo” or Defendants) filed their Response in Opposition on
21 February 3, 2017, [Doc. No 13], and on February 10, 2017, Plaintiff filed his Reply [Doc.
22 No. 16]. A hearing on Plaintiff’s Temporary Restraining Order (“TRO”) Application was
23 scheduled for February 16, 2017 before Judge Sammartino. [Doc. No. 17.] Following a
24 last minute recusal the TRO hearing was held before the undersigned. [Doc. No. 18.]

25 At the February 16, 2017 hearing the parties discussed whether a TRO or
26 Preliminary Injunction should issue. Wells Fargo argued in favor of a TRO, requested the
27 opportunity to brief the Preliminary Injunction and asked the Court to set an Order to Show
28 Cause on the Preliminary Injunction. Plaintiff’s position was that Defendants were seeking

1 a second bite of the apple, that they had ample time to prepare their evidence and failed to
2 do so. The undersigned agreed to review the procedural background of the case to see if
3 Defendants were on notice that the hearing was to be an actual preliminary injunction
4 hearing instead of a TRO hearing and if an OSC for Preliminary Injunction needed to be
5 set. Wells Fargo agreed to Plaintiff's requested TRO and was enjoined from selling
6 Plaintiff's residence for 120 days.

7 After review of the record, the Court finds that an OSC on the Preliminary Injunction
8 would be appropriate. Due to the pending public auction of the property Defendants were
9 only given seven days to brief both the TRO and Preliminary Injunction. While their
10 Response in Opposition to Plaintiff's motion focused on making legal arguments in support
11 of their position that Plaintiff failed to satisfy the requirements for injunctive relief,
12 Defendants' opposition presented little if any evidence to dispute the facts. However,
13 Defendants specifically requested "sufficient time to brief the issues for the OSC [roughly
14 three weeks] in order to prepare an opposition that will allow it to present a full evidentiary
15 record showing that Wells Fargo has properly serviced the loan and that Plaintiff is in fact
16 in default." [Doc. No. 13:8-12.] Judge Sammartino did not address Defendants request.
17 Furthermore, the Order setting the hearing references Plaintiff's "*Ex Parte* Motion for
18 Temporary Restraining Order" and set a "hearing on Plaintiff's TRO Application" can be
19 read to support Defendants contention that they were under the impression that they would
20 get additional time to brief the Preliminary Injunction issue. [Doc. No. 17 1:27-2:1.]

21 Accordingly, the Court hereby **ORDERS** that a hearing on the Request for
22 Preliminary Injunction will be held on **June 8, 2017**, at **10:00 a.m.** in **Courtroom 4C**.
23 Defendants shall have up to and including **May 18, 2017** to file their response in opposition

24 //

25 //

26 //

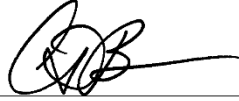
27 //

28

1 to Plaintiff's request for preliminary injunction. Plaintiff shall have up to and including
2 **June 1, 2017** to file his reply.

3 It is **SO ORDERED**.

4 Dated: May 2, 2017



Hon. Cathy Ann Bencivengo
United States District Judge

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28