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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JANAR WASITO,

Plaintiff,

v.

WELLS FARGO BANK, N.A.;
SPECIALIZED LOAN SERVICING
LLC; and DOES 1-100, inclusive,

Defendants.

Case No.: 3:17-cv-01507-BEN

**ORDER DENYING TEMPORARY
RESTRAINING ORDER**

On July 26, 2017, Plaintiff Janar Wasito, proceeding pro se, filed an ex parte motion for a temporary restraining order (“TRO”) to postpone the July 28, 2017 foreclosure sale on his residence. He also submitted a request for judicial notice to support his ex parte motion. The Court has reviewed and considered both filings.

The Court is familiar with the allegations in this case, as they are substantially the same as his allegations in Case No. 17-cv-1279. In that case, on July 6, 2017, the Court granted Plaintiff a temporary restraining order to delay the foreclosure sale on his house. The Court issued the TRO to preserve the status quo until a hearing could be held. The Court held a preliminary injunction hearing on July 13, 2017. After careful consideration of the parties’ arguments and the governing law, the Court denied Plaintiff’s request for a

1 preliminary injunction. The Court held that Plaintiff had not demonstrated a likelihood of
2 success on the merits, that the balance of equities tips in his favor, or that the public
3 interest favors enjoining the foreclosure. The same reasons lead this Court to conclude
4 that a temporary restraining order should not issue in this case.

5 **I. Background**

6 Plaintiff claims that Defendants Wells Fargo Bank, N.A. and Specialized Loan
7 Servicing LLC, the previous and current servicers of his loan, respectively, breached a
8 duty of care in processing and reviewing his applications for a loan modification.

9 Plaintiff's theory is that Wells Fargo improperly denied him a loan modification in 2013.
10 Because he was allegedly improperly denied a loan modification in September 2013, he
11 believes he overpaid his monthly mortgage payments until May 2015. At the preliminary
12 injunction hearing, Plaintiff conceded he has not made his monthly mortgage payments
13 since May 2015. He brings claims for negligence and negligent infliction of emotional
14 distress.

15 **II. Legal Standard**

16 A temporary restraining order is extraordinary relief, the underlying purpose of
17 which is to preserve the status quo before a preliminary injunction hearing may be held.
18 *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No.*
19 *70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974). For a TRO to issue, the movant must
20 show either (1) a combination of likelihood of success on the merits and the possibility of
21 irreparable harm, or (2) that serious questions going to the merits are raised and the
22 balance of hardships tips sharply in favor of the moving party. *Jones v. H.S.B.C. (USA)*,
23 844 F. Supp. 2d 1099, 1099 (S.D. Cal. 2012) (citing *Immigrant Assistance Project of Los*
24 *Angeles Cnty. Fed'n of Labor v. INS*, 306 F.3d 842, 873 (9th Cir. 2002). “[T]hese two
25 formulations represent two points on a sliding scale in which the required degree of
26 irreparable harm increases as the probability of success decreases.” *Dep’t of Parks &*
27 *Recreation of Cal. v. Bazaar del Mundo Inc.*, 448 F.3d 1118, 1123 (9th Cir. 2006). If the
28 movant shows no chance of success, injunctive relief should not issue. *Id.* at 1124.

1 **III. Discussion**

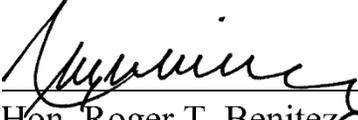
2 Some California courts impose a duty of care on a lender or loan servicer in
3 reviewing a loan for a potential modification. *Alvarez v. BAC Home Loans Servicing,*
4 *L.P.*, 228 Cal. App. 4th 941 (2014). *But see Marques v. Wells Fargo Bank, N.A.*, No. 16-
5 cv-03973, 2016 WL 5942329, at *6-7 (N.D. Cal. Oct. 13, 2016) (discussing split in
6 authority regarding whether loan servicers owe borrowers a duty of care in processing
7 modification applications and declining to impose a duty of care). However, even if this
8 Court finds such a duty, Plaintiff has not demonstrated a likelihood of success or serious
9 questions going to the merits of his claims. The Court heard Plaintiff's arguments
10 regarding the allegedly negligent 2013 loan modification denial at the preliminary
11 injunction hearing and considered the evidence offered. Plaintiff appealed the denial of
12 that modification, and his appeal was denied. (*See Decl. of Specialized Loan Servicing,*
13 *LLC* ¶ 11, Case No. 17-cv-1279, Doc. No. 23). He also applied for and was denied other
14 loan modifications over the years. (*See id.* ¶¶ 18, 30-32). Plaintiff fails to explain why
15 these reviews were not adequate to correct the alleged error in the 2013 modification
16 denial.

17 Plaintiff has not made a mortgage payment in over two years. He has not made a
18 credible offer of tender. He has not demonstrated a likelihood of success or serious
19 questions going to the merits, nor has he shown why it would be equitable to postpone
20 the foreclosure sale again.

21 Plaintiff's motion for a temporary restraining order is **DENIED**.

22 **IT IS SO ORDERED.**

23 Dated: July 27, 2017

24 
25 Hon. Roger T. Benitez
26 United States District Judge
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