

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JANET MUSSO, et al.,)

Plaintiffs,)

vs.)

MORTGAGE ELECTRONIC
 REGISTRATION SYSTEMS, INC., et al.,)

Defendants.)

Case No.: 2:17-cv-00392-GMN-NJK

ORDER

Pending before the Court are the Emergency Motions for Temporary Restraining Order (“TRO”), Preliminary Injunction, and Declaratory Relief, (ECF Nos. 12, 13), filed by pro se Plaintiffs Janet Musso and John J. Musso (collectively “Plaintiffs”).¹ For the reasons set forth herein, Plaintiffs’ Motions are **DENIED**.

I. BACKGROUND

This case concerns a mortgage and foreclosure dispute regarding the property located at 4150 Ridgewood Avenue Las Vegas, NV 89120 (“the Property”). (Mot. for TRO 4:27–31, ECF No. 12). On or about May 18, 2016, Plaintiffs obtained a \$100,000 mortgage loan from Mandalay Mortgage and US Bank. (Id.). This loan was secured by the Property. (Id.). Plaintiffs assert that the loan was “not properly assigned and/or transferred to Defendants. . . .” (Compl. ¶ 34, Ex. A to Def. Pet. Removal, ECF No. 1). Accordingly, Plaintiffs argue that Defendants lack standing to foreclose on the Property. (Id. ¶ 57).

On December 1, 2016, Plaintiffs filed their Complaint in the Clark County District Court. Shortly thereafter, Defendant Mortgage Electronic Registration Systems, Inc., removed

¹ In light of Plaintiffs’ pro se status, the Court has liberally construed their filings, holding them to standards less stringent than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 the action to this Court. (Def. Pet. Removal, ECF No. 1). On March 20, 2017, Plaintiffs filed
2 the instant Motions for injunctive relief.

3 **II. LEGAL STANDARD**

4 Preliminary injunctions and temporary restraining orders are governed by Rule 65 of the
5 Federal Rules of Civil Procedure, which provides that a “court may issue a preliminary
6 injunction only on notice to the adverse party.” Fed. R. Civ. P. 65(a)(1).

7 In contrast, a “court may issue a temporary restraining order without written or oral
8 notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified
9 complaint clearly show that immediate and irreparable injury, loss, or damage will result to the
10 movant before the adverse party can be heard in opposition; and (B) the movant’s attorney
11 certifies in writing any efforts made to give notice and the reasons why it should not be
12 required.” Fed. R. Civ. P. 65(b)(1). A temporary restraining order “should be restricted to
13 serving [its] underlying purpose of preserving the status quo and preventing irreparable harm
14 just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd.*
15 *of Teamsters Local No. 70*, 415 U.S. 423, 439 (1974).

16 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
17 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
18 that the balance of equities tips in his favor, and that an injunction is in the public interest.”
19 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Injunctive relief is “an
20 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
21 entitled to such relief.” *Id.* at 22. “[C]ourts must balance the competing claims of injury and
22 must consider the effect on each party of the granting or withholding of the requested relief.”
23 *Id.* at 24 (internal quotation marks omitted).

24 The Ninth Circuit has held that “serious questions going to the merits and a hardship
25 balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming

1 the other two elements of the Winter test are also met.” Alliance for the Wild Rockies v.
2 Cottrell, 632 F.3d 1127, 1132 (9th Cir. 2011) (internal quotation marks omitted).

3 “In deciding a motion for a preliminary injunction, the district court ‘is not bound to
4 decide doubtful and difficult questions of law or disputed questions of fact.’” *Int’l Molders’ &*
5 *Allied Workers’ Local Union No. 164* v. Nelson, 799 F.2d 547, 551 (9th Cir. 1986) (quoting
6 *Dymo Indus., Inc. v. Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir. 1964)).

7 “The urgency of obtaining a preliminary injunction necessitates a prompt determination
8 and makes it difficult to obtain affidavits from persons who would be competent to testify at
9 trial.” *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984). “The trial court
10 may give even inadmissible evidence some weight, when to do so serves the purpose of
11 preventing irreparable harm before trial.” *Id.*

12 **III. DISCUSSION**

13 Upon review of the arguments and facts alleged in the instant Motions and in the
14 Complaint, the Court finds that Plaintiffs are not entitled to a TRO or preliminary injunction.
15 Importantly, Plaintiffs have failed to meet their burden of establishing a likelihood of success
16 on the merits in accordance with Alliance for the Wild Rockies and Winter.

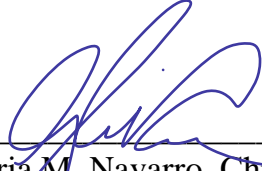
17 In their Motions for a TRO and Preliminary Injunction, Plaintiffs argue that they are
18 likely to prevail on the merits because the Complaint has “successfully alleged nine causes of
19 action against Defendants. . . .” (Mot. for TRO 9:14–18). According to Plaintiffs, they have
20 “alleged and can demonstrate at trial that Defendants breached their [Pooling and Servicing
21 Agreement] contract and through misrepresentation are about to foreclose on Plaintiff’s real
22 property. . . .” (Id. 9:27–28). Plaintiffs also argue that “because of the securitization process
23 Defendants and their predecessors in interest failed to properly assign Plaintiff’s Mortgage note
24 and Deed of Trust according to state law and the [Pooling and Servicing Agreement] governing
25 the original loan.” (Id. 9:29–31).

1 Plaintiffs misapply the standard for obtaining a preliminary injunction. The pertinent
2 question is not whether Plaintiffs have “alleged” claims against the defendants, but rather
3 whether Plaintiffs have demonstrated a likelihood of success on the merits of those claims. See
4 Winter, 555 U.S. at 20. A plaintiff cannot obtain an injunction by merely showing that success
5 on the merits is “possible.” See Quiroga v. Chen, 735 F. Supp. 2d 1226, 1228 (D. Nev. 2010).
6 Here, Plaintiffs have failed to show a likelihood of success on the merits. Moreover, Plaintiffs
7 have also failed to address the other three factors under Winter. Accordingly, the Court finds
8 Plaintiffs are not entitled to injunctive relief.

9 **IV. CONCLUSION**

10 **IT IS HEREBY ORDERED** that Plaintiffs’ Emergency Motions for Temporary
11 Restraining Order, Preliminary Injunction, and Declaratory Relief, (ECF Nos. 12, 13), are
12 **DENIED.**

13 **DATED** this 23 day of March, 2017.

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17 Gloria M. Navarro, Chief Judge
18 United States District Judge
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