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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 KAVEH KHAST
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13 Plaintiff,
14 vs.
15 WASHINGTON MUTUAL BANK;
16 JP MORGAN CHASE BANK;
17 CALIFORNIA RECONVEYANCE
18 COMPANY, and DOES 1-10 INCLUSIVE
19 Defendants

Case No. 10 CV 2168 IEG (JMA)

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PRELIMINARY INJUNCTION

[Fed. Rules Civ. Proc. 65 et seq.]

Date: To be Determined
Time:
Courtroom: 1, Hon. Irma E. Gonzalez

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 The Ninth Circuit has prescribed the following equitable criteria for determining whether
22 to grant injunctive relief:

23 (1) The likelihood of the moving party's success on the merits; (2) the possibility of
24 irreparable injury to the moving party if relief is not granted; (3) the extent to which
25 the balance of hardships favors the respective parties; and (4) in certain cases,
26 whether the public interest will be advanced by granting preliminary relief. The
27 moving party must show either (1) a combination of probable success on the merits
28 and the possibility of irreparable harm, or (2) the existence of serious questions going
to the merits, the balance of hardships tipping sharply in its favor, and at least a fair
chance of success on the merits.....[T]he required degree of irreparable harm
increases as the probability of success decreases.

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1 Owner Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co. 367 F.3d 1108, 1111
2 (9th Cir. 2004) (quoting Miller ex rel. N.L.R.B. v. Cal. Pac. Med. Ctr., 19 F.3d 449, 456 (9th Cir.
3 1994)). The standard for granting a temporary restraining order is the same as the standard for
4 entering a preliminary injunction. Bronco Wine Co. v. U.S. Dep't of Treasury, 997 F. Supp. 1309,
5 1313 (E.D. Cal. 1996); Franklin v. Scribner, Civil No. 07-0438 BTM (LSP), 2007 WL 1491100,
6 at 3 (S.D. Cal. May 21, 2007). The temporary restraining order "should be restricted to serving [its]
7 underlying purpose of preserving the *status quo* and preventing irreparable harm just so long as is
8 necessary to hold a hearing and no longer." Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto
9 Truck Drivers Local No. 70, 415 U.S. 423, 439 (1974); accord L.A. Mem'l Coliseum Comm'n v.
10 Nat'l Football League, 634 F.2d 1197, 1200 (9th Cir. 1980); Del Toro Chacon v. Chertoff, 431 F.
11 Supp. 2d 1135, 1139-40 (W.D. Wash. 2006).

12 On the basis of Plaintiff's application and supporting documentation, Plaintiff will suffer
13 irreparable injury if the Court does not grant injunctive relief. Defendants are and have been
14 attempting to foreclose on Plaintiffs property. Losing ones home through foreclosure is an irreparable
15 injury. See ChronkHITE v. Kemp, 741 F. Supp. 822, 825 (E.D. Wash. 1989) (irreparable injury
16 established where deed of trust contained a power of sale clause, and foreclosure would result in
17 Plaintiff losing home and all equity.)

18 The remaining equitable factors likewise support Plaintiffs application and request for a
19 Preliminary Injunction. The balance of hardships tips sharply in favor of the Plaintiff. For Plaintiff
20 to lose his home would present a far greater hardship than postponing the foreclosure sale.
21 Whereas the balance of hardships so clearly points in Plaintiffs direction, Plaintiff is allowed to make
22 a lesser showing on the merits. See Johnson v. Cal. State Bd. of Accountancy, 72 F.3d 1427, 1430
23 (9th Cir. 1995) (where balance of hardships tips sharply in Plaintiff's favor, Plaintiff need only show
24 "fair chance of success on the merits"). In the instant case, Plaintiff has shown at least a "fair chance
25 of success." Plaintiffs signature of the Forbearance and Release Agreement did not waive Plaintiffs
26 right to rescind the loan because of violations of the Truth-in-Lending Act, (TILA), for the waiver
27 provisions in that agreement did not comply with all the requirements of Regulation Z.
28 See 12 C.F.R. § 226.15(e).

1 Furthermore, Plaintiff has a “fair chance of success”, on the merits, whereas, Plaintiff asserts
2 that by luring borrowers into their bogus “loan modification” scheme, Defendants have violated, and
3 continue to violate California Business & Professions Code § 17200, (prohibiting unfair business
4 practices), and 17500, (prohibiting false or misleading statements), and the Fair Debt Collection
5 Practices Act, 15 U.S.C. 1692, et seq.

6 **CONCLUSION**

7 WHEREFORE, Plaintiff prays the Court grant its application and enjoin and restrain
8 Defendants, and each of them, and their agents, assigns, employees, officers, attorneys and
9 representatives from engaging in or performing any act to deprive Plaintiff of ownership or
10 possession of the real property commonly known as and located at: 7234 Encelia Dr., La Jolla
11 California 92037, including but not limited to instituting, prosecuting or maintaining foreclosure or
12 sale proceedings on the property, from recording any deeds or mortgages regarding the Property or
13 from otherwise taking any steps whatsoever to deprive Plaintiff of ownership on the Property.

14 The foregoing memorandum of points and authorities is respectfully submitted by, KAVEH
15 KHAST, Plaintiff, In Pro Se.

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17 Dated: October 20, 2010

By: 

KAVEH KHAST
Plaintiff, In Pro Se

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TABLE OF AUTHORITIES

Case Law

Owner Operator Indep. Drivers Ass’n, Inc. v. Swift Transp. Co. 367 F.3d 1108, 1111 (9th Cir. 2004) (quoting Miller ex rel. N.L.R.B. v. Cal. Pac. Med. Ctr., 19 F.3d 449, 456 (9th Cir. 1994)). 2

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Franklin v. Scribner, Civil No. 07-0438 BTM (LSP), 2007 WL 1491100, at 3 (S.D. Cal. May 21, 2007) 2

Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70, 415 U.S. 423, 439 (1974) 2

accord L.A. Mem’l Coliseum Comm’n v. Nat’l Football League, 634 F.2d 1197, 1200 (9th Cir. 1980) 2

Del Toro Chacon v. Chertoff, 431 F. Supp. 2d 1135, 1139-40 (W.D. Wash. 2006) 2

Chronkhite v. Kemp, 741 F. Supp. 822, 825 (E.D. Wash. 1989) 2

See Johnson v. Cal. State Bd.of Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) 2

Statutes

12 C.F.R. § 226.15(e) 3

15 U.S.C. §§ 1602(u) 3

15 U.S.C. § 1602(u) 3

15 U.S.C. 1639(a)(2) 3

12 C.F.R. § 226.32(c) 3

15 U.S.C. § 1635(a) 3

12 C.F.R. § 226.23(b)(1) 3

15 U.S.C. § 1635(f); 3

12 C.F.R. § 226.15(a)(3) 3

12 C.F.R. 226.23(a)(3) 3