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8 NOT FOR CITATION
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 MICHAEL BLOMQUIST,
13 Plaintiff,
14 v.
15 WASHINGTON MUTUAL, et.al.,
16 Defendant.

Case Number C 07-04108 JF
ORDER¹ DENYING PLAINTIFF'S
MOTION FOR TRO, MOTION TO
SEAL DOCUMENTS AND REQUEST
TO PROCEED *IN FORMA PAUPERIS*
AND GRANTING PLAINTIFF'S
REQUEST FOR ECF ACCESS.
[re: docket nos. 9, 10, 11, 12]

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19 **I.BACKGROUND**

20 On August 9, 2007, Plaintiff Michael Blomquist ("Plaintiff"), a licensed mortgage and
21 real estate agent, filed this action against Washington Mutual, Kerry K. Killinger, Joseph W.
22 Saunders, Countrywide Home Loans, Inc., Angelo Mozillo, Ken Thompson, Citigroup Corp.,
23 Sandford Weill, Charles Prince, Goldman Saches Group, Inc., Henry Paulson, Bear Stearns Co.,
24 James Cayne, The McGraw Hill Co., Harold McGraw III, Wells Fargo & Co., Patricia R.
25 Callahan, Herbert M. Sandler, Rock Holdings, Inc., Experian Corp., Fimalac, Inc., Moodys
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28 ¹ This disposition is not designated for publication and may not be cited.

1 Corp., James E. Gilleran, John M. Reich, John D. Hawke Jr., John C. Dugan, Susan Schmidt
2 Bies, Donald E. Powell, Sheila C. Blair and Does 1-50 (“Defendants”). On September 10, 2007,
3 Plaintiff amended his complaint. The First Amended Complaint (“FAC”) alleges four claims for
4 relief brought pursuant to the California Civil Code, the California Financial Code and the
5 California Business and Professions Code: (1) false or deceptive statements that restrain trade
6 and create unfair competition; (2) unsafe and unsound lending that restrains trade and creates
7 unfair competition; (3) sale of products below cost to restrain trade and create unfair competition;
8 and (4) fraud and conspiracy that restrains trade and creates unfair competition. The fifth and
9 sixth claims are brought pursuant to the United States Constitution and federal laws: (5) failure to
10 supervise lending and banking agencies in violation of the United States Constitution Article II §
11 2 and the Administrative Procedure Act brought against “Agencies;”² and (2) fraudulent
12 transaction of domestic securities in violation of 15 U.S.C. §§ 77w, 78b(3), 78i, 78j, 78k-1, 78L,
13 78o-6, 78uuu. FAC at ¶¶ 49-69.

14 Through these claims, Plaintiff accuses Defendants of fraudulent and misleading loan and
15 security activity. Plaintiff’s allegations relate to the sale of “stated income” or “no income
16 verification” loans (“NIV loans”), option adjustable rate mortgage loans (“option ARMs”) and
17 100% financing and income tax practices. Plaintiff’s description of these products is as follows:
18 NIV loans are loans offered without requiring that the borrower provide income documentation.
19 *Id.* at ¶ 34. Option ARMs are mortgages with an interest rate that adjusts to match the market
20 rate; while the payments due on these mortgages often remain fixed for a period of one year, the
21 interest rate typically begins to adjust during the second month. *Id.* at ¶¶ 36, 37. 100% finance
22 loans cover the entire purchase price of the borrower’s new home. The lender is able to benefit
23 from these loans by taking advantage of a tax deduction equal to the lump sum amount of the
24 loan. *Id.* at ¶ 38.

25 According to the FAC, NIV loan practices changed in 2004. While previously, only
26 borrowers with excellent credit standing were eligible for these loans, in 2004 the guidelines

27 ² Plaintiff has not named any Agencies as defendants.
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1 were relaxed to allow any individual with a Form W-2 to apply. Plaintiff alleges that,
2 consequently, 90% of all NIV loans are based upon inflated borrower incomes. *Id.* at ¶ 35.
3 Plaintiff also alleges that option ARM worksheets configured when interest rates are low are
4 inherently misleading. Plaintiff claims that 90% of option ARM borrowers only can make the
5 minimum payments. *Id.* at ¶¶ 36, 37. With respect to 100% financing and income tax practices,
6 Plaintiff claims that the borrower typically has very few assets and therefore, is not able to take
7 on the taxes imposed following his purchase. *Id.* at ¶ 38. Finally, Plaintiff alleges that “risk
8 layering,” the combined packaging of these products, is unsafe for borrowers and lenders. *Id.* at
9 ¶ 39.

10 Plaintiff is the sole owner of Michael Scott Properties, Inc. He alleges that the products
11 and practices described in the FAC have restrained him from mortgage and real estate commerce
12 because of legal, fiduciary, ethical and moral conflicts. *Id.* at ¶ 4. Additionally, Plaintiff states
13 that he purchased Defendants’ securities and consequently, suffered from the effect these
14 practices have had on the price of such securities.³ *Id.* at ¶ 6. On September 10, 2007, Plaintiff
15 filed a request for a temporary restraining order (“TRO”), a motion to seal documents, an
16 amended application to proceed *in forma pauperis* and a request to access the electronic case file
17 (“ECF”). On September 13, 2007 Plaintiff’s case was reassigned to this Court. The Court took
18 Plaintiff’s requests under submission.

19 20 **II. TEMPORARY RESTRAINING ORDER**

21 Plaintiff has requested a TRO with respect to the advertising and origination of option
22 ARMs. Plaintiff filed his request without notice to Defendants. The standard for issuing a
23 temporary restraining order (“TRO”) is the same as that for issuing a preliminary injunction.
24 *Brown Jordan International, Inc. v. Mind’s Eye Interiors, Inc.*, 236 F.Supp.2d 1152, 1154 (D.
25 Hawaii 2002); *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F.Supp. 1320,
26 1323 (N.D. Cal. 1995). In the Ninth Circuit, a party seeking a preliminary injunction must show

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28 ³ Plaintiff does not state whether he is a current shareholder.

1 either (1) a likelihood of success on the merits and the possibility of irreparable injury, or (2) the
2 existence of serious questions going to the merits and the balance of hardships tipping in the
3 movant's favor. *Roe v. Anderson*, 134 F.3d 1400, 1401-02 (9th Cir. 1998); *Apple Computer, Inc.*
4 *v. Formula Int'l, Inc.*, 725 F.2d 521, 523 (9th Cir. 1984). These formulations represent two
5 points on a sliding scale in which the required degree of irreparable harm increases as the
6 probability of success decreases. *Roe*, 134 F.3d at 1402. A showing of likely success on the
7 merits gives rise to a presumption of irreparable harm in copyright and trademark cases. *Triad*
8 *Systems Corp. v. Southeastern Express Co.*, 64 F.3d 1330, 1335 (9th Cir. 1995); *International*
9 *Jenson, Inc. v. Metrosound U.S.A., Inc.*, 4 F.3d 819, 827 (9th Cir. 1993).

10 A TRO may be granted without notice to the adverse party *only if* "(1) it clearly appears
11 from specific facts shown by affidavit or by the verified complaint that immediate and irreparable
12 injury, loss, or damage will result to the applicant before the adverse party or that party's attorney
13 can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the
14 efforts, if any, which have been made to give the notice and the reasons supporting the claim that
15 notice should not be required." Fed. R. Civ. P. 65(b). Moreover, in this district an applicant for
16 TRO must give notice to the adverse party "[u]nless relieved by order of a Judge for good cause
17 shown." Civ. L.R. 65-1(b).

18 Plaintiff has not met his burden under Local Rule 65-1(b) of demonstrating an immediate
19 and irreparable injury that will result *to him, the applicant*, if he is denied a TRO. Plaintiff's
20 request for a TRO reiterates the allegation in the FAC that *borrowers* are harmed by option
21 ARMs because most option ARMs are based upon inflated incomes. Plaintiff does not explain
22 how the continued advertising and origination of option ARMs would cause an immediate injury
23 *to him*, or why notice should not be given to Defendants. Accordingly, the application for a
24 TRO will be denied.

25 III. REQUEST TO SEAL DOCUMENTS

26 Plaintiff has requested that all of the documents he filed with Magistrate Judge Seeborg,
27 including both his original complaint and the FAC, be placed under seal. Pursuant to recent
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1 changes in the Civil Local Rules, blanket orders providing for the filing of documents under seal
2 no longer are effective. Civil Local Rule 79-5 sets forth new requirements for the filing of
3 documents under seal, stating in relevant part that:

4 No document shall be filed under seal except pursuant to a Court
5 order that authorizes the sealing of the particular document or
6 portion thereof and is narrowly tailored to seal only that material
7 for which good cause to seal has been established. Any order
8 sealing any documents shall direct the sealing of only those
9 documents, pages or, if practicable, those portions of documents or
10 pages, which contain the information requiring confidentiality. All
11 other portions of such documents shall be included in the public
12 file.

13 Civ. L. R. 79-5(b).

14 Accordingly, within ten (10) days of the date of this order, Plaintiff shall file and serve
15 declarations from competent witnesses setting forth the facts which justify sealing. If the Court
16 finds that good cause has been shown, the Court will order the Clerk of the Court to file under
17 seal those portions of the documents which merit sealing. *See* Civ. L. R. 79-5(d). If the Court
18 finds that good cause has not been shown, the Court will order the Clerk of the Court to return
19 the documents to Plaintiff and the documents will not be placed in the file. *See Id.*

20 **IV. APPLICATION TO PROCEED *IN FORMA PAUPERIS***

21 An application to proceed *in forma pauperis* may be granted if the district court is
22 satisfied that the plaintiff is unable to pay the filing fees necessary to pursue the action. 28
23 U.S.C. § 1915(a)(1). Here, Plaintiff's application reveals that he has a gross income of
24 \$55,000.00 per month. In addition, Plaintiff earns income from a home-based business⁴ and
25 owns two automobiles. In light of these assets, it would appear that Plaintiff is able to pay the
26 relatively modest filing fee necessary to pursue this action. Accordingly, the application to
27 proceed *in forma pauperis* will be denied.

28 **V. REQUEST FOR ACCESS TO ECF**


Plaintiff's request for access to the electronic case filing system is granted.

⁴ Plaintiff did not provide the Court with the income generated by his home business.

1 **VI.ORDER**

2 Good cause therefor appearing, IT IS HEREBY ORDERED that Plaintiff's request for a
3 temporary restraining order, motion to seal documents, and amended application to proceed *in*
4 *forma pauperis* are DENIED. Plaintiff's request to access the electronic filing system is
5 GRANTED.

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7 DATED: October 12, 2007.
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11 JEREMY FOGEL
12 United States District Judge
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This Order has been served upon the following persons:

Micahel Blomquist michaelblomquist@yahoo.com