

THE SUPERIOR COURT OF  
CALIFORNIA

COUNTY OF ALAMEDA

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**Case Details**

**Case Number:**  
**RG18906713**

**Title: Yamagishi VS Nationstar  
Mortgage LLC**

Case Summary	Register of Action	Participants
Tentative Rulings	Future Hearings	Minutes

Date	Action
8/20/2018	This Tentative Ruling is made by Judge Michael M. Markman Plaintiff's Motion for Preliminary Injunction is GRANTED. Pending trial of this matter or further Court order, Defendants and their agents and representatives and all persons acting in concert with them are enjoined from selling, attempting to sell, or causing to be sold the real property located at 2703 Matthews Street, Berkeley CA 94702. Plaintiff has filed a verified Complaint alleging that Defendants failed to comply

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with Civil Code section 2923.5 prior to recording the notice of default on February 13, 2018. Defendants argue that they did comply with Civil Code section 2923.5, but they did not submit any evidence supporting that assertion with their opposition papers. The Court finds that, based solely on the evidentiary record presented in connection with this Motion, Plaintiff has demonstrated a reasonable probability of prevailing on her claim that Defendants failed to comply with Civil Code section 2923.5. Plaintiff's motion for preliminary injunction is granted solely on that basis. Plaintiff's Fourth Cause of Action, seeking "Proof of Authority to Represent for all Defendants", is NOT the Court's basis for issuing the preliminary injunction, and the Court does not find that Plaintiff has established a reasonable possibility of entitlement to any relief under that cause of action. The Court rejects Defendants' argument that this action is barred by res judicata based on Plaintiff's prior cases filed in this Court (Cases Nos. RG14-721534, RG16-839726, and RG17-852775.) Plaintiff's 2014 and 2016 cases were concluded by Plaintiff's voluntary dismissal of those cases without prejudice, so there was no final judgment on the merits. As to Plaintiff's 2017 case, that did involve a final judgment on the merits against Plaintiff, but it did not involve identical claims. Plaintiff's 2017 case did not involve any claim that Defendants failed to comply with Civil Code section 2923.5. The Court also rejects Defendants' argument that Plaintiff cannot challenge the pending nonjudicial foreclosure without tendering the amount owed on the secured debt. Tender is NOT required to allege a

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claim for violation of Civil Code section 2923.5. (See Mabry v. Superior Court (2010) 185 Cal.App.4th 208, 225.) The hearing on this Motion was continued from its originally scheduled date of August 7, 2018 for the parties to file evidence pertaining to the amount of the preliminary injunction bond that should be required, pursuant to Code of Civil Procedure section 529. The parties were to file any such evidence by August 14. Plaintiff filed a declaration addressing that issue on August 14; Court records do not reflect that Defendants have filed any papers addressing that issue. Based on the papers filed by Plaintiff, the Court determines that an appropriate amount for the preliminary injunction bond is \$12,000. Plaintiff is to post a bond in the amount of \$12,000 no later than August 31, 2018, and provide proof to Defendants by that date that she has done so. If Plaintiff fails to do so, Defendants may seek to dissolve the preliminary injunction through a properly noticed ex parte application, pursuant to California Rules of Court, Rule 3.1200 et seq. In addition, if this case is not resolved, by trial or otherwise, by March 1, 2019, Defendants may file a noticed motion seeking to require Plaintiff to post an additional bond as a condition of maintaining the preliminary injunction.

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