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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

VERNON DECK,  
  
                            Plaintiff,  
  
            v.  
  
WELLS FARGO BANK, N.A., National  
Association, as Trustee for Option One  
Mortgage Loan Trust 2003-1, Asset-  
Backed Certificates, Series 2003-1;  
OCWEN LOAN SERVICING, LLC, a  
Delaware limited liability company;  
POWER DEFAULT SERVICES, INC.,  
a corporation; and all parties and all  
persons or entities with any claims to  
real property located at 1124  
Hawthorne Loop, Roseville, California  
95678, and Does 1–20, inclusively,  
  
                            Defendants.

No. 17-cv-00234-MCE-KJN PS

**MEMORANDUM AND ORDER**

On February 2, 2017, Plaintiff Vernon Deck (“Plaintiff”) filed a Complaint (ECF No. 1) and a Motion for Temporary Restraining Order (“TRO,” ECF No. 3), which the Court denied on February 6, 2017 due to various procedural flaws in Plaintiff’s request, and specifically Plaintiff’s failure to comply with Local Rule 231 in its entirety. (ECF No. 4.) On February 9, 2017, Plaintiff filed an Amended Application for Temporary Restraining Order purporting to cure the defects present in his initial motion. (ECF

1 No. 5.) With the sale of his home scheduled for February 10, this Court granted  
2 Plaintiff's amended application by Minute Order that same day. (ECF No. 6.)

3 By his amended application, Plaintiff seeks a TRO against Defendants Wells  
4 Fargo Bank, Ocwen Loan Servicing, and Power Default Services, as well as any other  
5 parties with claims to the real property located at 1124 Hawthorne Loop in Roseville,  
6 California 95678 (collectively, "Defendants") to prevent the trustee's sale of that property,  
7 which was set for February 10, 2017. The following is the Court's memorandum and  
8 order on Plaintiff's Application for TRO, which more fully explains the Court's reasoning  
9 in GRANTING the motion by prior Minute Order (ECF No. 6).

## 11 BACKGROUND

13 In his Complaint, Plaintiff alleges various violations of the California Civil Code  
14 and the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, as well as  
15 fraudulent misrepresentation. Plaintiff additionally brings a claim to quiet title and a claim  
16 for declaratory judgment.

17 Plaintiff claims that the sale of his primary residence is improper because he paid  
18 off the note in its entirety sometime before the notice of default ("NOD") was recorded in  
19 2012. Plaintiff additionally claims that even if the note was not paid off, Defendants  
20 made various errors in the handling of his mortgage and foreclosure proceedings, which  
21 errors render any trustee sale improper. Most significantly, Plaintiff claims that  
22 Defendants did not contact him prior to recording the NOD, promised in a conversation  
23 not to foreclose on his property, and ignored multiple attempts by Plaintiff to contact  
24 them regarding his mortgage status after he made what he understood to be his final  
25 payment.

26 As indicated above, because Plaintiff has seemingly cured the procedural defects  
27 present in his initial motion for TRO, the Court now considers the merits of Plaintiff's  
28 amended motion.

## STANDARD

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3 The purpose of a temporary restraining order is to preserve the status quo  
4 pending the complete briefing and thorough consideration contemplated by full  
5 proceedings pursuant to a preliminary injunction. See *Granny Goose Foods, Inc. v.*  
6 *Teamsters*, 415 U.S. 423, 438-39 (1974) (temporary restraining orders “should be  
7 restricted to serving their underlying purpose of preserving the status quo and preventing  
8 irreparable harm just so long as is necessary to hold a hearing, and no longer”); see also  
9 *Reno Air Racing Ass’n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006); *Dunn v.*  
10 *Cate*, No. CIV 08-873-NVW, 2010 WL 1558562, at \*1 (E.D. Cal. April 19, 2010).

11 Issuance of a temporary restraining order, as a form of preliminary injunctive  
12 relief, is an extraordinary remedy, and Plaintiff has the burden of proving the propriety of  
13 such a remedy. See *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). In general, the  
14 showing required for a temporary restraining order and a preliminary injunction are the  
15 same. *Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7  
16 (9th Cir. 2001).

17 The party requesting preliminary injunctive relief must show that “he is likely to  
18 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
19 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in  
20 the public interest.” *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20  
21 (2008); *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter*).  
22 The propriety of a TRO hinges on a significant threat of irreparable injury that must be  
23 imminent in nature. *Caribbean Marine Serv. Co. v. Baldrige*, 844 F.2d 668, 674  
24 (9th Cir. 1988).

25 Alternatively, under the so-called sliding scale approach, as long as the Plaintiff  
26 demonstrates the requisite likelihood of irreparable harm and shows that an injunction is  
27 in the public interest, a preliminary injunction can still issue so long as serious questions  
28 going to the merits are raised and the balance of hardships tips sharply in Plaintiff’s

1 favor. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011)  
2 (concluding that the “serious questions” version of the sliding scale test for preliminary  
3 injunctions remains viable after Winter).

## 4 5 **ANALYSIS**

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7 In the absence of any response from Defendants, the Court assumes Plaintiff’s  
8 allegations are well-founded and consequently that he has demonstrated a likelihood of  
9 success on the merits of his claims sufficient to justify issuance of a TRO at this time.  
10 The Court’s finding in that regard, however, is based solely on the evidence and  
11 allegations Plaintiff sets forth in his amended motion, as Defendants have not yet had an  
12 opportunity to respond. This TRO is therefore being granted only to afford all parties an  
13 opportunity to be heard prior to any trustee’s sale of Plaintiff’s property.

14 Having determined a likelihood of success at this time, the Court finds that  
15 Plaintiff has also satisfied the remaining factors for obtaining a TRO. He has adequately  
16 shown irreparable harm by alleging that he will lose his primary residence if Defendants’  
17 trustee’s sale goes forward. In addition, the balance of the equities tips sharply in  
18 Plaintiff’s favor as a TRO in this instance merely delays Defendants’ right to foreclose  
19 until all parties have been given the opportunity to be heard on the merits of Plaintiff’s  
20 allegations.<sup>1</sup> Finally, a TRO is in the public’s interest as it is being used to ensure  
21 compliance with federal and state laws designed to protect the public.

## 22 23 **CONCLUSION**

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25 For all of the above reasons, the Court GRANTS Plaintiff’s Amended Application  
26 for Temporary Restraining Order. (ECF No. 5.) Given Plaintiff’s representation that he

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27 <sup>1</sup> Because the Court finds that the equities tip sharply in Plaintiff’s favor and Plaintiff has at a  
28 minimum raised serious questions as to the merits of his claim, a TRO is justified under the sliding scale  
approach as well.

1 called all three Defendants and either left a message or spoke to someone directly, it  
2 appears that notice has been provided to Defendants. Pending the Court's  
3 determination regarding a preliminary injunction, Defendants are hereby enjoined from  
4 engaging in or performing, directly or indirectly, any of the following acts: advertising,  
5 selling, transferring, conveying, foreclosing upon, evicting, or any other conduct adverse  
6 to Plaintiff regarding his real property located at 1124 Hawthorne Loop in Roseville,  
7 California 95678.

8 Defendants are hereby ordered to show cause in writing as to why the Court  
9 should not issue a preliminary injunction restraining them from engaging in or  
10 performing, directly or indirectly, any of the following acts: advertising, selling,  
11 transferring, conveying, foreclosing upon, evicting, or any other conduct adverse to  
12 Plaintiff regarding his real property located at 1124 Hawthorne Loop in Roseville,  
13 California 95678. As indicated in the Court's Minute Order (ECF No. 6), Defendants  
14 shall file a written response on or before **February 16, 2017**, and any reply from Plaintiff  
15 shall be filed by **February 21, 2017**. If the Court desires a hearing on this matter, such  
16 hearing will take place on **February 23, 2017, at 2:00 p.m.** in Courtroom 7. Plaintiff  
17 shall provide notice of this order, briefing schedule, and date and time for hearing to  
18 Defendants by **February 14, 2017**.

19 Though it appears Plaintiff provided Defendants with notice of his request for  
20 TRO, because Defendants did not have an opportunity to respond prior to issuance of  
21 the TRO, the affected parties may apply to the Court for modification or dissolution of  
22 this TRO on two (2) days' notice or upon such shorter notice as the Court may allow.  
23 See Local Rule 231(c)(8); Fed. R. Civ. P. 65(b). No bond shall be required.

24 IT IS SO ORDERED.

25 Dated: February 13, 2017

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MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE