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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BRUNO J. BICOCCA, an individual;  
DIANNA BICOCCA, an individual

Plaintiffs,

v.

WELLS FARGO BANK N.A.; NBA  
DEFAULT SERVICES, LLC; and  
DOES 1 through 20, inclusive,

Defendants.

No. 2:17-cv-01158-MCE-CMK

**MEMORANDUM AND ORDER**

On May 1, 2017, Plaintiffs Bruno J. Bicocca and Dianna Bicocca (“Plaintiffs”) filed this action in state court against Wells Fargo Bank N.A. and NBS Default Services, LLC (“Defendants” unless otherwise noted). Plaintiffs’ Complaint alleges, inter alia, that Defendants proceeded with foreclosure proceedings against Plaintiffs’ home in violation of California’s Homeowner’s Bill of Rights, a 2012 legislative reform package which made various changes to provisions in the California Civil Code pertaining to foreclosure safeguards. On June 1, 2017, Defendants removed Plaintiffs’ lawsuit to this Court, citing diversity of citizenship pursuant to 28 U.S.C. § 1441(b). Defendants subsequently filed a Motion to Dismiss which is scheduled to be heard on August 10, 2017. Plaintiffs responded, on June 22, 2017, by filing a Motion to Remand set for hearing on July 27,

1 2017, before filing on July 7, 2017, the Application for Temporary Restraining Order now  
2 before the Court. That request seeks to enjoin a Trustee's Sale set for July 12, 2017,  
3 and as set forth below it is GRANTED.

## 4 5 **BACKGROUND**

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7 In 2007, Plaintiffs financed their purchase of real property located in Chico,  
8 California by taking out a residential mortgage with Wells Fargo's predecessor in  
9 interest, World Savings Bank FSB. After Plaintiffs apparently fell into arrears on their  
10 mortgage, NBS, as current trustee, recorded a Notice of Default on January 13, 2017.  
11 Thereafter, on April 17, 2017, NBS recorded a Notice of Trustee's Sale initially  
12 scheduled for May 8, 2017. The Trustee's Sale has since been continued to July 12,  
13 2017, and Plaintiffs now ask the Court to enjoin that sale on various grounds  
14 encompassed within the HBOR, including but not limited to Wells Fargo's alleged failure  
15 to assess foreclosure prevention options as required by California Civil Code § 2923.55,  
16 Wells Fargo's alleged failure to provide a Single Point of Contact ("SPOC") to speak with  
17 Plaintiffs concerning their loan status as required by § 2923.7, and Wells Fargo's alleged  
18 failure to provide a full written notice identifying the reasons why their loan modification  
19 request was denied pursuant to § 2923.6. Plaintiffs also allege unfair business practices  
20 under California Business and Professions Code §17200 based on these contentions.

## 21 22 **STANDARD**

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24 The purpose of a temporary restraining order ("TRO") is to preserve the status  
25 quo pending the complete briefing and thorough consideration contemplated by full  
26 proceedings pursuant to a preliminary injunction. See Granny Goose Foods, Inc. v.  
27 Teamsters, 415 U.S. 423, 438-39 (1974) (temporary restraining orders "should be  
28 restricted to serving their underlying purpose of preserving the status quo and preventing

1 irreparable harm just so long as is necessary to hold a hearing, and no longer”); see also  
2 Reno Air Racing Ass’n., Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006); Dunn v.  
3 Cate, No. CIV 08-873-NVW, 2010 WL 1558562, at \*1 (E.D. Cal. April 19, 2010).

4 Issuance of a temporary restraining order, as a form of preliminary injunctive  
5 relief, is an extraordinary remedy, and Plaintiffs have the burden of proving the propriety  
6 of such a remedy. See Mazurek v. Armstrong, 520 U.S. 968, 972 (1997). In general,  
7 the showing required for a temporary restraining order and a preliminary injunction are  
8 the same. Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F.3d 832, 839  
9 n.7 (9th Cir. 2001).

10 The party requesting preliminary injunctive relief must show that “he is likely to  
11 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
12 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in  
13 the public interest.” Winter v. Natural Resources Defense Council, 555 U.S. 7, 20  
14 (2008); Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter).  
15 The propriety of a TRO hinges on a significant threat of irreparable injury that must be  
16 imminent in nature. Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th  
17 Cir. 1988).

18 Alternatively, under the so-called sliding scale approach, as long as the Plaintiffs  
19 demonstrate the requisite likelihood of irreparable harm and show that an injunction is in  
20 the public interest, a preliminary injunction can still issue so long as serious questions  
21 going to the merits are raised and the balance of hardships tips sharply in Plaintiffs’  
22 favor. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011)  
23 (concluding that the “serious questions” version of the sliding scale test for preliminary  
24 injunctions remains viable after Winter).

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## ANALYSIS

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2 In the absence of any response from Defendants, the Court must assume that  
3 Plaintiffs' allegations are well-founded and consequently that they have demonstrated a  
4 likelihood of success on the merits sufficient to justify, at this time, a temporary  
5 restraining order. Plaintiffs allege, for example, that Wells Fargo's declaration that it had  
6 assessed Plaintiff's financial situation and explored options for avoiding foreclosure, as  
7 required by California Civil Code § 2923.55(f), was false because no such contacts had  
8 been made. The Court's finding in that regard is nonetheless based only on the  
9 evidence and allegations presented by Plaintiffs' application and is made without the  
10 Court having the benefit of hearing Defendants' version of events. This Temporary  
11 Restraining Order is thus being granted only to afford all parties an opportunity to be  
12 heard prior to any Trustee's Sale on Plaintiffs' property.

13 Having determined a likelihood of success at this time based on the current  
14 posture of this matter, the Court notes that Plaintiffs have also satisfied the remaining  
15 factors for obtaining a TRO. They have adequately shown irreparable harm by alleging  
16 they will lose their primary residence if Defendants' Trustee's Sale goes forward on July  
17 12, 2017 as scheduled. In addition, the balance of equities tips sharply in Plaintiffs' favor  
18 as a TRO in this instance merely delays Defendants' right to foreclose until all parties  
19 have been given an opportunity to be heard on the merits of Plaintiffs' allegations.<sup>1</sup>  
20 Finally, an injunction is in the public's interest as it is being issued to assure compliance  
21 with state laws designed to protect the public.

## CONCLUSION

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25 For all the above reasons, the Court GRANTS Plaintiffs' Application for  
26 Temporary Restraining Order (ECF No. 7). Defendants are hereby enjoined from

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

1 proceeding forward with the Trustee's Sale on Plaintiffs' property presently scheduled for  
2 July 12, 2017.

3 A hearing on the issuance of a preliminary injunction is set for August 10, 2017, at  
4 2:00 p.m. in Courtroom No. 7. That hearing will coincide with the hearings on the other  
5 two motions presently pending before the Court so that they can be adjudicated  
6 simultaneously. Defendants and their agents, servants, employees and representatives,  
7 are ordered to show cause at the August 10, 2017 hearing why they should not be  
8 enjoined from continuing to foreclose on Plaintiffs' real property located at 124 W. 19th  
9 St., Chico, California 95928 during the pendency of this lawsuit. In the meantime,  
10 pending that hearing and determination of preliminary injunction, Defendants, along with  
11 their officers, agents, employees, representatives and all persons acting in concert or  
12 participating with it, are restrained from engaging in or performing directly or indirectly  
13 any of the following acts: advertising, selling, transferring, conveying, foreclosing upon,  
14 evicting or any other conduct adverse to Plaintiffs regarding their real property located at  
15 124 W. 19th St., Chico, California 95928.

16 Plaintiffs' opening brief in support of preliminary injunction shall be filed and  
17 served on or before July 20, 2017. Opposition by Defendants, if any, must be submitted  
18 not later than July 27, 2017, and Plaintiffs' deadline for filing a reply is August 3, 2017.

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

25 IT IS SO ORDERED.

26 Dated: July 11, 2017

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MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE