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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

NEALE E. JOHNSON,  
Plaintiff,  
v.  
BANK OF AMERICA , N.A., et al.,  
Defendants.

Case No.15-CV-03181-LHK  
**ORDER RE EX PARTE APPLICATION  
FOR TRO; ORDER TO SHOW CAUSE  
RE PRELIMINARY INJUNCTION**  
Re: Dkt. No. 3

On July 9, 2015, Plaintiff Neale Johnson (“Plaintiff”) filed the instant ex parte application for a temporary restraining order and order to show cause. (“Mot.”), ECF No. 3. Having considered Plaintiff’s motion, the relevant law, and the record in this case, the Court GRANTS Plaintiff’s ex parte application for a temporary restraining order and order to show cause.

**I. BACKGROUND**

**A. Factual Background**

Plaintiff is a resident of California. Compl. ¶ 2. Defendant Bank of America is “domiciled in North Carolina, where it has its headquarters and its principal place of business.” *Id.* Defendant PNC Bank is “domiciled in Delaware [sic], where it has its headquarters and its principal place of

1 business.” *Id.*

2 Plaintiff avers that he purchased the property located at 14515 Mountain Quail Road,  
3 Salinas, CA (“Property”) in or around 2001. *Id.* ¶ 9. The Property is a single-family residence and  
4 Plaintiff’s primary dwelling place. *Id.* ¶ 10. In 2005, Plaintiff executed a deed of trust and  
5 promissory note, a first lien on the Property, in favor of National City Mortgage. *Id.* ¶ 9.  
6 According to Plaintiff, “shortly thereafter,” Defendant Bank of America became the servicer and  
7 beneficiary under the deed of trust. *Id.* Between “2005 and 2008,” Defendant PNC became the  
8 servicer of Plaintiff’s loan. *Id.*

9 On or about August 2014, Plaintiff contacted his loan servicer, Defendant PNC, to inquire  
10 about a loan modification. *Id.* ¶ 10. On September 9, 2014, Defendant PNC assigned Joyce B. as  
11 Plaintiff’s “single point of contact” (“SPOC”) to assist with Plaintiff’s loan modification  
12 application.<sup>1</sup> *Id.* On September 10, 2014, Defendant PNC assigned Crystal D. as Plaintiff’s SPOC.  
13 *Id.* In November 2014, Defendant PNC again switched Plaintiff’s SPOC to Raina W. *Id.* Plaintiff  
14 alleges that he was “never able to contact and speak with any of his appointed contacts regarding  
15 his loan modification,” and that all of the assigned contacts “failed to assist [Plaintiff] with  
16 coordinating documents associated with his loan modification.” *Id.*

17 On September 30, 2014, Plaintiff submitted a completed loan modification application. *Id.*  
18 ¶ 12. Following Plaintiff’s submission, Defendant PNC sent Plaintiff letters requesting additional  
19 documents and information regarding Plaintiff’s application. *Id.* Plaintiff avers that he “always  
20 timely submitted the requested documents to” Defendant PNC. *Id.* Plaintiff further alleges that  
21 Defendant PNC failed to provide Plaintiff with written acknowledgement of its receipt of  
22 Plaintiff’s supplemental documents. *Id.* ¶ 13. Consequently, Plaintiff contacted his SPOC to  
23 confirm that Defendant PNC had received Plaintiff’s supplemental materials, but “on most of, if  
24 not all occasions, his appointed single point of contact never picked up the phone,” and never

25 \_\_\_\_\_  
26 <sup>1</sup> As discussed *infra*, the California Homeowner’s Bill of Rights requires that a mortgage servicer  
27 appoint a “single point of contact” if a borrower “requests a foreclosure prevention alternative.”  
28 Cal. Civ. Code § 2923.7.

1 returned Plaintiff's calls despite Plaintiff's voicemails requesting that the contact do so. *Id.* ¶ 14.

2 On May 5, 2015, Defendant PNC sent Plaintiff a denial letter stating that Plaintiff's loan  
3 modification application had been denied "based on insufficient income." *Id.* ¶ 15. That letter  
4 additionally provided that Plaintiff could dispute the denial within 30 days, i.e., June 4, 2015, by  
5 either faxing or mailing a designated appeal form. *Id.* On June 4, 2015, Plaintiff sent his appeal  
6 request via facsimile on "two separate occasions to ensure that the requests were received timely."  
7 *Id.* ¶ 16. Plaintiff alleges he was able to fax his appeal form and supporting documents without  
8 error. *Id.* However, on June 5, 2015, Defendant PNC sent Plaintiff a letter indicating that  
9 Defendant PNC would not review Plaintiff's appeal as it was not received within 30 days of the  
10 date of the denial letter. *Id.* Plaintiff's SPOC during this time, Raina W., allegedly "did not exert  
11 any effort in ensuring [Plaintiff's] right to an appeal." *Id.* ¶ 17.

12 On June 17, 2015, Defendant PNC recorded a notice of trustee's sale against the Property  
13 and sent Plaintiff a notice of trustee's sale to be conducted on July 13, 2015. *Id.* ¶ 18. Plaintiff  
14 alleges that Defendant PNC has not posted a notice of sale on Plaintiff's property. *Id.*

15 Plaintiff alleges violations of various provisions of the California Homeowners Bill of  
16 Rights. *See* Cal. Civ. Code §§ 2923.6, 2923.7, 2924.10, 2924f. More specifically, Plaintiff alleges  
17 that Defendants failed to comply with § 2923.6's 30-day appeal period; § 2923.7's duties of an  
18 assigned single point of contact; § 2924.10's requirement that Defendants provide written  
19 acknowledgement of the receipt of any and all documents received in connection with a first lien  
20 loan modification; and § 2924f's requirement that Defendants post a notice of sale on the Property  
21 at least 20 days before the date of sale.

22 Plaintiff seeks a temporary restraining order, preliminary and permanent injunction,  
23 declaratory relief, damages, disgorgement, specific performance, damages, and attorney's fees and  
24 costs. *Id.* Prayer for Relief.

25 **B. Procedural History**

26 Plaintiff filed a complaint and the instant ex parte motion for temporary restraining order  
27

1 on July 9, 2015. ECF Nos. 1, 3.

2 **II. LEGAL STANDARD**

3 Because Plaintiff seeks issuance of a temporary restraining order without notice to the  
4 Defendants, Plaintiff must satisfy both the general standard for temporary restraining orders and  
5 the requirements for ex parte orders set forth in Federal Rule of Civil Procedure 65(b). The  
6 standard for issuing a temporary restraining order is identical to the standard for issuing a  
7 preliminary injunction. *Brown Jordan Int'l, Inc. v. Mind's Eye Interiors, Inc.*, 236 F. Supp. 2d  
8 1152, 1154 (D. Haw. 2002); *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F.  
9 Supp. 1320, 1323 (N.D. Cal. 1995). “A plaintiff seeking a preliminary injunction must establish  
10 that he [or she] is likely to succeed on the merits, that he [or she] is likely to suffer irreparable  
11 harm in the absence of preliminary relief, that the balance of equities tips in his [or her] favor, and  
12 that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,  
13 20 (2008) (emphasis added).

14 Moreover, the party seeking the injunction bears the burden of proving these elements.  
15 *Klein v. City of San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009). “A preliminary injunction is  
16 ‘an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear  
17 showing, carries the burden of persuasion.’” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012)  
18 (citation omitted) (emphasis in original).

19 Federal Rule of Civil Procedure 65(b)(1) states that the court may issue a temporary  
20 restraining order without notice only if: “A) specific facts in an affidavit or a verified complaint  
21 clearly show that immediate and irreparable injury, loss, or damage will result to the movant  
22 before the adverse party can be heard in opposition; and B) the movant’s attorney certifies in  
23 writing any efforts made to give notice and the reasons why it should not be required.” Also  
24 related to notice, the Court’s Local Rule 65–1(b) states that, unless relieved by the Court for good  
25 cause shown, “on or before the day of an ex parte motion for a temporary restraining order,  
26 counsel applying for the temporary restraining order must deliver notice of such motion to  
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1 opposing counsel or party.”

2 **III. DISCUSSION**

3 Plaintiff’s request for a temporary restraining order (“TRO”) focuses on two of Plaintiff’s  
4 claims for relief: Cal. Civ. Code § 2923.6’s 30-day period within which to file an appeal, and Cal.  
5 Civ. Code § 2923.6’s duties imposed on a statutorily mandated “single point of contact”  
6 (“SPOC”). Mot. at 6–7. As discussed above, Plaintiff bears the burden of showing that the *Winter*  
7 factors are satisfied. For the reasons stated below, the Court concludes that Plaintiff has satisfied  
8 the *Winter* requirements.

9 **A. Likelihood of Success on the Merits**

10 Under the first *Winter* factor, Plaintiff must show a “likelihood of success on the merits.”  
11 *Winter*, 555 U.S. at 20. The Court addresses this factor below.

12 **1. Section 2923.6 Claim**

13 Plaintiff’s first claim against Defendants is premised on Cal. Civ. Code § 2923.6’s  
14 additional statutory protections of homeowners. Section 2923.6 provides, in relevant part:

15 (c) If a borrower submits a complete application for a first lien loan  
16 modification offered by, or through, the borrower’s mortgage  
17 servicer. . . beneficiary, or authorized agent shall not record a notice  
18 of default or notice of sale, or conduct a trustee’s sale, while the  
19 complete first lien loan modification application is pending. **A  
mortgage servicer, mortgagee, trustee, beneficiary, or  
authorized agent shall not record a notice of default or notice of  
sale or conduct a trustee’s sale until any of the following occurs:**

20 (1) The mortgage servicer makes a written determination that the  
21 borrower is not eligible for a first lien loan modification, and **any  
appeal period pursuant to subdivision (d) has expired.**

22 . . .

23 (d) If the borrower’s application for a first lien loan modification is  
24 denied, **the borrower shall have at least 30 days from the date of  
the written denial to appeal the denial** and to provide evidence  
that the mortgage servicer’s determination was in error.

25 Here, Plaintiff both alleges and has submitted the documents referenced in his complaint showing  
26 that Plaintiff submitted an application for a first lien loan modification to Defendants. *See* Compl.

1 ¶ 12; Declaration of Neale Johnson (“Pl. Decl.”), ECF Nos. 3-4, 3-5, Exh. C. Plaintiff has also  
2 submitted Defendants’ written denial letter dated May 5, 2015. Pl. Decl., Exh. E. Under  
3 § 2923.6(d), Plaintiff was entitled to “at least 30 days from the date of the written denial to appeal  
4 the denial.” Cal. Civ. Code § 2923.6(d).

5 Plaintiff alleges that he faxed a completed appeal form and supporting documents to  
6 Defendant PNC twice on June 4, 2015, which is exactly 30 days from May 5, 2015. Compl. ¶ 16.  
7 The Court also notes that Defendant PNC’s May 5, 2015 denial letter also explicitly stated that  
8 “[t]o be considered for an appeal, we must receive your completed Appeal Form by June 4, 2015.”  
9 See Pl. Decl., Exh. E. Plaintiff has submitted a copy of his submitted appeal form, which is dated  
10 June 4, 2015. *Id.*, Exh. F. Moreover, Defendant PNC’s denial letter appears to indicate that  
11 Defendant PNC did, in fact, receive Plaintiff’s appeal form and materials. See *id.*, Exh G. Despite  
12 Plaintiff’s apparently timely submission of an appeal form, Defendant PNC’s June 5, 2015 letter  
13 denied Plaintiff’s appeal request because “[P]laintiff’s request was not received within 30 days of  
14 the date of your original Offer/denial letter.” Pl. Decl., Exh. G.

15 Based on these allegations and supporting documents, the Court finds that Plaintiff has  
16 sufficiently alleged a claim under Cal. Civ. Code § 2923.6 and has shown a likelihood of success  
17 on the merits. Section 2923.6 explicitly prohibits mortgage servicers from conducting or noticing  
18 trustee’s sales until the expiration of designated time periods. Section 2923.6’s prohibitions are  
19 mandatory: once a borrower submits a first lien loan modification application, a mortgage servicer  
20 or other designated party “*shall* not record . . . a notice of sale or conduct a trustee’s sale until” a  
21 statutory condition occurs. Cal. Civ. Code § 2923.6(c) (emphasis added). Here, Defendants  
22 allegedly denied Plaintiff’s appeal as untimely and proceeded to notice a trustee’s sale. Even  
23 assuming that Defendants’ denial of Plaintiff’s appeal as untimely is ultimately determined to  
24 comply with the 30-day appeal period provided for in § 2623.6(d), Plaintiff further notes that  
25 under § 2396.6(e), Defendants were obligated to wait a minimum of 15 days after Defendants’  
26 June 5, 2015 denial letter before recording a notice of sale. Mot. at 6–7. Instead, Defendants  
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1 allegedly recorded a notice of sale on June 17, 2015, 3 days earlier than the period provided for in  
2 § 2623.6. Accordingly, the Court finds that Plaintiff has submitted sufficient evidence to show a  
3 likelihood of success on the merits with respect to Defendants’ lack of compliance with § 2923.6  
4 in two respects: (1) the 30-day period within which to file an appeal; and (2) the 15-day waiting  
5 period before recording a notice of sale.

6 **2. Section 2923.7 Claim**

7 Plaintiff’s second claim is premised on Defendants’ alleged failure to provide a “single  
8 point of contact” (“SPOC”) that complied with the requirements put forth in Cal. Civ. Code §  
9 2923.7. Section 2923.7, in addition to imposing a duty on a mortgage service to provide a SPOC,  
10 imposes the following responsibilities:

11 (b) The single point of contact shall be responsible for doing all of  
12 the following:

13 (1) Communicating the process by which a borrower may apply for  
14 an available foreclosure prevention alternative and the deadline for  
any required submissions to be considered for these options.

15 (2) Coordinating receipt of all documents associated with available  
16 foreclosure prevention alternatives and notifying the borrower of  
any missing documents necessary to complete the application.

17 (3) Having access to current information and personnel sufficient to  
18 timely, accurately, and adequately inform the borrower of the  
current status of the foreclosure prevention alternative.

19 (4) Ensuring that a borrower is considered for all foreclosure  
20 prevention alternatives offered by, or through, the mortgage  
servicer, if any.

21 (5) Having access to individuals with the ability and authority to  
22 stop foreclosure proceedings when necessary.

23 (c) The single point of contact shall remain assigned to the  
24 borrower’s account until the mortgage servicer determines that all  
loss mitigation options offered by, or through, the mortgage servicer  
have been exhausted or the borrower’s account becomes current.

25 (d) The mortgage servicer shall ensure that a single point of contact  
26 refers and transfers a borrower to an appropriate supervisor upon  
request of the borrower, if the single point of contact has a  
supervisor.

1 (e) For purposes of this section, “single point of contact” means an  
2 individual or team of personnel each of whom has the ability and  
3 authority to perform the responsibilities described in subdivisions  
(b) to (d), inclusive. The mortgage servicer shall ensure that each  
member of the team is knowledgeable about the borrower’s situation  
and current status in the alternatives to foreclosure process.

4 Plaintiff contends that none of the three individuals assigned as Plaintiff’s SPOC complied with  
5 the following three requirements under § 2923.7(b): (1) none of the SPOCs coordinated receipt of  
6 Plaintiff’s documents associated with foreclosure alternative requests or notified Plaintiff of  
7 missing documents as required under § 2923.7(b)(2); (2) none of the SPOCs ensured that Plaintiff  
8 was “considered for all foreclosure prevention alternatives offered” by Defendants under  
9 § 2923.7(b)(4); and (3) Raina W., Plaintiff’s last assigned SPOC, should have alerted “individuals  
10 with the ability and authority to stop foreclosure proceedings,” but failed to do so under  
11 § 2923.7(b)(5).

12 Here, the Court finds that Plaintiff has sufficiently alleged plausible claims under  
13 § 2923.7(b). Plaintiff has specifically alleged that Plaintiff contacted all three of his assigned  
14 SPOCs at various times to seek additional information, and to confirm receipt of his loan  
15 modification application, appeal, and supporting materials. *Id.* ¶ 14. Plaintiff further alleges that he  
16 was unable to ever reach the SPOCs, and that despite Plaintiff’s voicemails requesting that the  
17 SPOC return Plaintiff’s call, the SPOCs never did so. *Id.* Factual allegations that a SPOC has  
18 failed to communicate with a homeowner and failed to comply with the specific obligations laid  
19 out in § 2923.7 are sufficient to plead a violation of § 2923.7. *See, e.g., Pernermon v. Wells Fargo*  
20 *Bank, N.A.*, 47 F. Supp. 3d 982, 999–1000 (N.D. Cal. 2014); *cf. Greene v. Wells Fargo Bank,*  
21 *N.A.*, No. 15-00048 JSW, 2015 WL 3945996, at \*1 (N.D. Cal. June 26, 2016).

22 Accordingly, the Court concludes that Plaintiff has sufficiently shown a likelihood of  
23 success on the merits with respect to Plaintiff’s § 2923.7 claim. As Plaintiff has satisfied this first  
24 requirement with respect to both Plaintiff’s §§ 2923.6 and 2923.7 claims, the Court turns to the  
25 remainder of the *Winter* factors.



1           **B. Irreparable Injury**

2           Here, Plaintiff stands to lose his home, which as Plaintiff notes, if it is sold to a bona fide  
3 purchaser, Plaintiff will never be able to replace it. Mot. at 11. Plaintiff has lived at the Property  
4 since 2001, and the loss of an interest in real property is an irreparable harm. *See Park Village*  
5 *Apartment Tenants Ass’n v. Mortimer Howard Trust*, 636 F.3d 1150, 1159 (9th Cir. 2011) (“It is  
6 well-established that the loss of an interest in real property constitutes an irreparable injury.”); *see*  
7 *also Sundance Land Corp. v. Cmty. First Fed. Sav. & Loan Ass’n*, 840 F.2d 653, 661 (9th Cir.  
8 1988) (holding that real property is always considered unique for injury purposes). Moreover, the  
9 fact that Plaintiff may never be able to recover the Property if it is sold at the trustee’s sale  
10 scheduled for July 13, 2015 would also make Plaintiff’s injury irreparable. *See Taylor v. Westly*,  
11 488 F.3d 1197, 1202 (9th Cir. 2007) (“Once the property is sold, it may be impossible for  
12 plaintiffs to reacquire it, thus creating the requisite ‘irreparable harm.’”); *see also Morris v.*  
13 *Residential Credit Solutions*, No. 14-CV-1460, 2015 WL 428114, at \*9 (E.D. Cal. Feb. 2, 2015).

14           In sum, the Court concludes that Plaintiff has shown a likelihood of imminent, irreparable  
15 harm.

16           **C. Balance of Hardships**

17           The Court now considers the balance of the parties’ respective hardships. As discussed  
18 above, it is beyond dispute that Plaintiff faces imminent, irreparable injury in the form of losing  
19 his family residence at a trustee’s sale scheduled for three days from the date of this Order.  
20 Moreover, the Court notes that the statutory remedy under §§ 2923.6 and 2923.7 is that any  
21 trustee’s sale would be enjoined “until the court determines that the mortgage servicer . . . has  
22 corrected and remedied the violation or violations giving rise to the action for injunctive relief.”  
23 Cal. Civ. Code § 2924.12(a)(1).

24           Keeping that in mind, the Court concludes that the balance of hardships weighs heavily in  
25 favor of injunctive relief. As other courts in this District have recognized, the corresponding  
26 hardship to Defendants would likely be minimal as a short delay in the foreclosure sale would not  
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1 threaten Defendants’ security interest in the Property, and the probability that delay would result  
2 in other damage is also likely minimal. *Greene*, 2015 WL 3945996, at \*2; *see also Gilmore v.*  
3 *Wells Fargo Bank N.A.*, No. 14-2389 CW, 2014 WL 3749984, at \*5 (N.D. Cal. July 29, 2014)  
4 (“[T]he potential harm to [defendant] is unlikely to be substantial . . . a preliminary injunction  
5 would have only delayed foreclosure for a relatively short period of time.”). More specifically, if  
6 the Court ultimately determines that Plaintiff’s claims lack merit, Defendants would be able to  
7 proceed with the trustee’s sale. *See Gilmore*, 2014 WL 3749984, at \*5. While Defendants may  
8 face some small hardship as a result of a delayed trustee’s sale, that hardship must be weighed  
9 against the irreparable injury that Plaintiff faces if the trustee’s sale is allowed to go forward  
10 without giving Plaintiff an opportunity to adjudicate his claims against Defendants. *See Greene*,  
11 2015 WL 3945996, at \*2; *Gilmore*, 2014 WL 3749984, at \*5.

12 Weighing these competing hardships, the Court concludes that the balance of hardships  
13 weighs heavily in Plaintiff’s favor.

14 **D. Public Interest**

15 As the Ninth Circuit has explained, the public interest factor under *Winter* “‘primarily  
16 addresses impact on non-parties rather than parties’ . . . . It embodies the Supreme Court’s  
17 direction that ‘in exercising their sound discretion, courts of equity should pay particular regard  
18 for the public consequences in employing the extraordinary remedy of injunction.’” *Bernhardt v.*  
19 *Los Angeles Cnty.*, 339 F.3d 920, 931–32 (9th Cir. 2003) (quoting *Weinberger v. Romero-Barcelo*,  
20 456 U.S. 305, 312 (1982)).

21 Here, the Court recognizes the public’s interest in timely, predictable enforcement of  
22 secured interests in real property. On the other hand, the California legislature enacted §§ 2923.6  
23 and 2923.7 as part of the Homeowner’s Bill of Rights to “ensure that, as part of the nonjudicial  
24 foreclosure process, borrowers are considered for, and have a meaningful opportunity to obtain,  
25 available loss mitigation options, if any, offered by or through the borrower’s mortgage servicer,  
26 such as loan modifications or other alternatives to foreclosure.” Cal. Civ. Code § 2923.4. A part of  
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1 ensuring that borrowers have a “meaningful opportunity to obtain” certain loss mitigation options  
2 necessarily includes the procedural protections for borrowers, including time periods within which  
3 to challenge mortgage servicers’ decisions, as well as the affirmative duties imposed on mortgage  
4 servicers. *See, e.g., Greene*, 2015 WL 3945996, at \*2. The public therefore has a strong interest in  
5 ensuring that the statutorily created procedural protections for homeowners are available not only  
6 in spirit, but also in practice.

7 Moreover, as other courts in this District have recognized, “[d]ue to the ‘adverse impact  
8 foreclosures have on households and communities,’ there is a ‘strong public interest in preventing  
9 unlawful foreclosures.’” *Gilmore*, 2014 WL 3749984, at \*5 (quoting *Sharma v. Povident Funding*  
10 *Assocs., LP*, No. 09-5968 VRW, 2010 WL 143474, at \*2 (N.D. Cal. Jan. 8, 2010)).

11 Accordingly, the Court finds that the public interest favors an injunction.

12 **E. The *Winter* Factors**

13 In sum, the Court finds that Plaintiff has shown a likelihood of success with respect to the  
14 merits of his §§ 2923.6 and 2923.7 claims against Defendants, that there is a likelihood of  
15 irreparable injury, that the balance of hardships tips heavily in favor of Plaintiff, and that the  
16 public interest favors enforcement of the procedural protections of the Homeowner’s Bill of  
17 Rights. Accordingly, the Court finds that Plaintiff has satisfied the requirements for the issuance  
18 of a temporary restraining order. *See Winter*, 555 U.S. at 20.

19 **F. Federal Rule of Civil Procedure 65**

20 As Plaintiff has submitted his request for a temporary restraining order as an ex parte  
21 motion, Plaintiff must also satisfy the requirements of Federal Rule of Civil Procedure 65 and  
22 Civil Local Rule 65-1.

23 As a threshold matter, the Court admonishes Plaintiff that Plaintiff has been on notice of  
24 the allegedly wrongful recording of the July 13, 2015 trustee’s sale since June 17, 2015. Plaintiff  
25 did not seek counsel until July 7, 2015, less than one week before the scheduled date of the  
26 trustee’s sale. Plaintiff filed his ex parte application for a TRO on Thursday afternoon, July 9,  
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1 2015, to enjoin the trustee’s sale scheduled for Monday, July 13, 2015, at 10 a.m. *See* Pl. Decl.,  
2 Exh. H. Ex parte proceedings are disfavored because they do not afford the opposing party an  
3 opportunity to be heard. *See Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438–39  
4 (1974). However, for the reasons discussed below, the Court concludes that Plaintiff has satisfied  
5 the requirements for an ex parte TRO under Rule 65, but cautions Plaintiff that if Plaintiff delays  
6 filing for relief again in the future, the Court will be unsympathetic to arguments that an injury is  
7 so imminent that the opposing side cannot be heard. The Court will not reward Plaintiff’s creation  
8 of an ex parte emergency by Plaintiff’s delay in his effort to seek relief.

9 In support of his motion, Plaintiff has submitted the declaration of Sarah Shapero, an  
10 attorney at Plaintiff’s counsel’s law firm, declaring that Ms. Shapero undertook multiple efforts to  
11 give notice of the instant motion to both Defendant Bank of America and Defendant PNC on July  
12 9, 2015. *See* ECF No. 3-2. Ms. Shapero’s declaration therefore complies with Rule 65’s  
13 requirement that Plaintiff’s attorney “certif[y] in writing any efforts made to give notice and the  
14 reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1)(B); *see also* Civil Local Rule 65-1  
15 (requiring party to give notice of motion the day before or day of the filing of an ex parte TRO  
16 motion). In addition, Plaintiff’s counsel Ken Hoang has filed a declaration explaining that Plaintiff  
17 approached counsel’s law firm on Tuesday, July 7, 2015. ECF No. 3-3 (“Hoang Decl.”), ¶ 2.  
18 Counsel drafted and filed the complaint “as quickly as possible,” and indeed filed the complaint in  
19 this action two days later in the afternoon of Thursday, July 9, 2015. *Id.* ¶ 3. As the foreclosure  
20 sale is scheduled for Monday, July 13, 2015, at 10 a.m., counsel for Plaintiff avers that a  
21 “regularly noticed Motion for Preliminary Injunction was not possible.” *Id.* Despite Plaintiff’s  
22 delay in seeking relief, the Court finds good cause for issuing a TRO ex parte this time. However,  
23 as stated above, Plaintiff is hereby on notice that Plaintiff’s delay in filing a TRO application in  
24 the future when Plaintiff has been notice of a foreclosure sale for weeks will not be deemed an ex  
25 parte emergency. The Court will not countenance abuse of the judicial process and strategic  
26 gamesmanship.

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Additionally, Rule 65(c) provides that “the court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). However, Rule 65(c) “invests the district court with discretion as to the amount of security required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). Here, the Court finds that requiring the issuance of a bond would be unnecessary. *See id.* (noting that “[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining his or her conduct.”). As discussed above, Defendants have a security interest in the Property that will not be impacted by a short delay in the foreclosure sale. Moreover, if Plaintiff’s claims turn out to lack merit, or if Defendants cure the procedural violations at issue, Defendants will still have the opportunity to sell the Property. Accordingly, no bond will be required at this time.

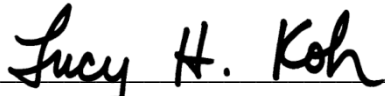
**IV. CONCLUSION**

For the foregoing reasons, the Court GRANTS Plaintiff’s ex parte request for a temporary restraining order. Defendants are hereby temporarily enjoined and restrained from selling, transferring, conveying, or foreclosing on the Property located at 14515 Mountain Quail Road, Salinas, CA 93908 pending further order of the Court.

Plaintiff shall file his Motion for Preliminary Injunction no later than 8:00 p.m. on July 13, 2015. Defendants shall file their response no later than 5:00 p.m. on July 20, 2015. The Court will then set a date for the hearing on Plaintiff’s Motion for a Preliminary Injunction.

**IT IS SO ORDERED.**

Dated: July 10, 2015

  
\_\_\_\_\_  
LUCY H. KOH  
United States District Judge