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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SCOTT E. POMBRIO,)	NO. CV 10-5604-GHK (MAN)
)	
Plaintiff,)	
)	
v.)	ORDER DENYING REQUESTS FOR
)	INJUNCTIVE RELIEF
CITY-COUNTY OF LOS ANGELES, et al.,)	
)	
Defendants.)	
_____)	

This action commenced on August 16, 2010, after plaintiff was granted leave to proceed without prepayment of the filing fee and filed his original complaint. On August 20, 2010, plaintiff filed his First Amended Complaint ("Complaint") The Complaint rests on asserted violations of the American With Disabilities Act ("ADA") that allegedly occurred in connection with plaintiff's unsuccessful attempts to enter the Los Angeles County Law Library ("LACLL") and the Los Angeles Public Library, Main Branch ("LAPL") with his personal possessions in tow and/or utilize the exterior premises of the LAPL in late July 2010. (Complaint at 3-5.) The named defendants in this action are the City of Los Angeles, the County of Los Angeles, and Los Angeles Mayor Antonio Villaraigosa. (*Id.* at 1, 3, 5.)

1 The Complaint alleges a single cause of action. (Complaint at 7-
2 9.) Plaintiff contends that defendants have violated the ADA by
3 implementing and/or enforcing a policy at LACLL and LAPL that prohibits
4 library users from bringing "bags" containing their personal possessions
5 into the libraries and from "check[ing]" such bags and possessions
6 and/or leaving them on outside patios. (*Id.* at 3-4.) Plaintiff alleges
7 that he is homeless and physically disabled, it causes him pain to walk
8 up and down hills, and the above library policies are barriers to his
9 ability to use such libraries. (*Id.* at 3, 8-9.) Although this is
10 somewhat unclear, plaintiff also appears to rest his ADA claim on a July
11 31, 2010 incident at the LAPL, during a private party held on the
12 exterior library premises on a Saturday evening, when "security guards"
13 prevented plaintiff from utilizing a fountain and forced him to exit the
14 premises via a stairway. (*Id.* at 5.) Plaintiff alleges that these
15 policies and events constituted discrimination on the basis of his
16 physical disability in violation of the ADA. (*Id.* at 7-9.)¹

17
18 As plaintiff has been advised by Order of August 17, 2010, United
19 States Magistrate Judge Margaret A. Nagle presently is screening the
20 Complaint pursuant to 28 U.S.C. § 1915(e)(2). Thus, as yet, no
21 defendant has been served with process in this case.

22
23 On August 16, 2010, plaintiff filed a Motion For A Preliminary
24

25 ¹ The original complaint indicated that it was brought under
26 both the ADA and 42 U.S.C. § 1983, and it alleged federal constitutional
27 violations in addition to ADA violations. The instant Complaint states
28 expressly (at 1) that it is brought pursuant to the ADA, as well as
California statutory and regulatory law, and appears to have omitted the
Section 1983 claim, although this is somewhat unclear given the bare
references to "42 USC § 1983" set forth at the top of pages 5-9.

1 Injunction ("Motion"). The Motion states that the relief sought is an
2 order granting plaintiff, along with his property, "full and equal
3 access" to all of "defendants['] buildings, facilities, libraries."
4 (Motion at 1.) However, in an accompanying memorandum of points and
5 authorities ("Memorandum"), plaintiff appears to limit the relief sought
6 to unencumbered access, with his property, to LACLL and LAPL. Plaintiff
7 complains that, on July 28, 2010, he was not allowed to bring into LACLL
8 bags containing his possessions, even though he had been allowed to do
9 so the day before. Plaintiff alleges that it is physically difficult
10 and/or painful for him to have to leave his bags elsewhere when he needs
11 to use LACLL. (Memorandum at 1-3.) Plaintiff asserts that
12 "disadvantaged" and homeless persons, such as himself, should have full
13 access to both libraries, whether by being allowed to bring their
14 possessions inside or through the use of a procedure by which the
15 libraries check the possessions of persons desiring entry. (*Id.* at 3.)
16

17 On September 3, 2010, plaintiff filed an "Amended TRO Request Per
18 42 USCS § 2000a-3(a) Status Of Action Request" and related proposed
19 order ("Request"). Plaintiff asks that: a hearing be scheduled for the
20 Motion; and a temporary restraining order issue, pending such hearing
21 and prior to service of the defendants with process, directing LACLL and
22 LAPL to grant him access with "all of plaintiff's property."
23

24 The Request does not comply with the requisites for the issuance of
25 a temporary restraining order set forth in Rule 65 of the Federal Rules
26 of Civil Procedure. The Complaint is not verified, and plaintiff has
27 not submitted an affidavit. Plaintiff has not certified why notice to
28 defendants was not given and should not be required. Accordingly, the

1 requested temporary restraining order may not issue without notice. See
2 Fed. R. Civ. P. 65(b)(1).

3
4 In addition, it is well-settled that “[a] district court must have
5 personal jurisdiction over a party before it can enjoin its actions.”
6 Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 111-12, 89
7 S. Ct. 1562, 1570 (1969); accord Zepeda v. United States I.N.S., 753
8 F.2d 719, 727 (9th Cir. 1983). No defendant has been served with the
9 Summons and Complaint in this action. The Court, therefore, does not
10 yet have personal jurisdiction over any defendant and cannot issue
11 injunctive relief against them. See also Fed. R. Civ. P. 65(a)(1)
12 (“[t]he court may issue a preliminary injunction only on notice to the
13 adverse party”).

14
15 Further, preliminary injunctive relief may not issue unless the
16 moving party establishes “that he is likely to succeed on the merits,
17 that he is likely to suffer irreparable harm in the absence of
18 preliminary relief, that the balance of equities tips in his favor, and
19 that an injunction is in the public interest.” Winter v. Natural
20 Resources Defense Council, Inc., ___ U.S. ___, 129 S. Ct. 365, 374
21 (2008). The Ninth Circuit has concluded that its “serious questions”
22 test for the issuance of a preliminary injunction remains viable after
23 Winter, holding that “[a] preliminary injunction is appropriate when a
24 plaintiff demonstrates . . . that serious questions going to the merits
25 were raised and the balance of hardships tips sharply in the plaintiff’s
26 favor.” Alliance for Wild Rockies v. Cottrell, ___ F.3d ___, 2010 WL
27 2926463, *7 (9th Cir. July 28, 2010)(citation omitted).

1 Plaintiff's allegations do not meet either formulation of the test.
2 While the screening process has not yet been completed, it appears that
3 the Complaint may not be ordered served upon any defendant and, instead,
4 may be dismissed with leave to amend. Hence, there can be no finding of
5 probable success on the merits at this time. While plaintiff asserts
6 hardship, he has not established -- through competent evidence -- any
7 such hardship. Significantly, by the Request and the Motion, plaintiff
8 does not seek to maintain the status quo. Rather, he seeks to have this
9 Court effect a significant change in the status quo, namely, to issue an
10 order prohibiting two large public libraries from enforcing their
11 policies limiting the items patrons may bring into the libraries. Given
12 the safety or other public interest concerns potentially underlying such
13 policies, the showing by plaintiff is inadequate to warrant the relief
14 requested. Under the circumstances before it, the Court concludes that
15 plaintiff has not met his burden of showing that: he is likely to
16 suffer irreparable injury in the absence of injunctive relief, the
17 balance of equities tips in his favor, and an injunction is in the
18 public interest; or that the balance of hardships tips sharply in his
19 favor.

20

21 Accordingly, the Request and Motion are DENIED.

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23 IT IS SO ORDERED.

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25 DATED: 9/8/10.

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GEORGE H. KING
UNITED STATES DISTRICT JUDGE

1 PRESENTED BY:

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Margaret A. Nagle

MARGARET A. NAGLE

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UNITED STATES MAGISTRATE JUDGE

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