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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8  
9 Gerald C. Trussell

10 Plaintiff,

11 v.

12 Clark Hills, an individual and as Trustee for  
13 GLOBAL TRUST DEPOSITORY, and  
Does

14 Defendants.

No. CV-12-02328-PHX-JAT

**ORDER**

15  
16 Pending before the Court is Plaintiff's *ex parte* Complaint and Application for a  
17 Temporary Restraining Order ("TRO") against Defendants. (Doc. 1).

18 **I. MATERIAL FACTS**

19 Plaintiff claims he purchased four Venezuelan Bondagro Bonds ("Bonds") on an  
20 unspecified date in the early 1990's. In November 2008, Plaintiff alleges he turned the  
21 Bonds over to Defendant Clark Hills, President of Citi Secured Deposit, in order for  
22 Defendant Hills to deposit the Bonds in a safe deposit box located at CitiBank. (Doc. 1 at  
23 2); (*See id.* at 10). The Safekeeping Receipt, apparently issued by Citi Secured Deposit,  
24 verified that four bonds were deposited with a combined note value of \$50,000,000.00.  
25 (*Id.* at 10). Plaintiff says no paperwork was exchanged or signed between the parties and  
26 no consideration was given when the Bonds were physically turned over to Defendant  
27 Hills. (*Id.* at 2). Plaintiff alleges that several weeks after the Bonds were deposited  
28 Defendant Hills told Plaintiff that the deposit would cost \$4000.00 for Defendant's

1 services. (*Id.* at 3). Plaintiff says he paid this amount. (*Id.*) On January 18, 2010,  
2 Plaintiff claims Defendants sent a letter to Plaintiff’s office in the British Virgin Islands.  
3 (*Id.*) The letter was allegedly not received by Plaintiff until an unspecified time in 2012.  
4 (*Id.*) On May 26, 2012, Plaintiff says he received an email from Defendant that informed  
5 Plaintiff that Defendant was going to file abandoned property collection rights as of June  
6 1, 2012. (*Id.*) That same day, Plaintiff allegedly notified Defendant by email that any  
7 debt owed by Plaintiff would be worked out. (*Id.* at 4). It is unclear whether Defendant  
8 agreed to work the debt out. It appears that Defendant did not go through with  
9 liquidating the Bonds in June because on October 23, 2012, Plaintiff says Defendant  
10 emailed Plaintiff again stating that on November 1, 2012, Defendant would auction off  
11 the Bonds for the fees Plaintiff owed. (*Id.*)

12 Plaintiff is proceeding *pro se* and has filed for a TRO without notice to Defendant,  
13 to enjoin Defendant from auctioning off the Bonds and supporting documentation  
14 Plaintiff claims Defendant also has. (*Id.*) Plaintiff claims Defendant has breached his  
15 fiduciary duty. (*Id.*) Further, Plaintiff argues a TRO is warranted because Plaintiff will  
16 suffer irreparable injury by Defendant auctioning the Bonds and supporting  
17 documentation material contained in “3 inch binders”.<sup>1</sup> (*Id.* at 5). Plaintiff also claims he  
18 will suffer additional damages and losses “due to the original document 3 inch binders  
19 and additional bonds in the amount of \$USD1,15,000,000.”<sup>2</sup> (*Id.*)

## 20 **II. LEGAL STANDARD**

21 Rule 65(b) of the Federal Rules of Civil Procedure governs when a court can issue  
22 a TRO. When a plaintiff asks the court to grant a TRO without giving notice to the  
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24 <sup>1</sup> It is unclear how many binders Plaintiff alleges Defendant has containing  
25 supporting documentation. Plaintiff does not contend in his statement of facts that “3  
26 inch binders” were turned over to Defendant at any time, nor does the Safekeeping  
27 Receipt (Doc. 1 at 10) include information about any supporting documentation held by  
28 Defendant or any information about “3 inch binders”.

<sup>2</sup> Plaintiff has not claimed that any other bonds were turned over to Defendant so it  
is unclear what or where these additional bonds are and what amount  
“\$USD1,15,000,000” actually constitutes.

1 defendant the court may issue the order “only if [] specific facts in [the] complaint clearly  
2 show that immediate and irreparable . . . loss . . . will result to the movant before the  
3 adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The  
4 circumstances in which a court may issue a TRO without giving notice to the adverse  
5 party are extremely limited. *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1131 (9th  
6 Cir. 2006).

7           The stringent restrictions imposed by . . . Rule 65 on the availability  
8 of *ex parte* temporary restraining orders reflect the fact that our entire  
9 jurisprudence runs counter to the notion of court action taken before  
10 reasonable notice and an opportunity to be heard had been granted to both  
11 sides of a dispute. *Ex parte* temporary restraining orders are no doubt  
12 necessary in certain circumstances, but under federal law they should be  
13 restricted to serving their underlying purpose of preserving the status quo  
14 and preventing irreparable harm just so long as necessary to hold a hearing,  
15 and no longer.

16           Consistent with this overriding concern, courts have recognized very  
17 few circumstances justifying the issuance of an *ex parte* TRO. For  
18 example, an *ex parte* TRO may be appropriate where notice to the adverse  
19 party is impossible either because the identity of the adverse party is  
20 unknown or because a known party cannot be located in time for the  
21 hearing. . . .

22           In cases where notice could have been given to the adverse party,  
23 courts have recognized a very narrow band of cases in which *ex parte*  
24 orders are proper because notice to the defendant would render fruitless the  
25 further prosecution of the action. In the trademark arena, such cases  
include situations where an alleged infringer is likely to dispose of the  
infringing goods before the hearing. To justify an *ex parte* proceeding on  
this latter ground, the applicant must do more than assert that the adverse  
party would dispose of evidence if given notice. Plaintiffs must show that  
defendants would have disregarded a direct court order and disposed of the  
goods within the time it would take for the hearing and must support such  
assertions by showing that the adverse party has a history of disposing of  
evidence or violating court orders or that persons similar to the adverse  
party have a history.

26 *Id.* (citations and quotations omitted).

27           The standard for issuing a TRO is the same as that for issuing a preliminary  
28 injunction. See *Brown Jordan Int’l, Inc. v. The Mind’s Eye Interiors, Inc.*, 236 F.Supp.2d

1 1152, 1154 (D.Haw. 2007). In *Winter v. Natural Resources Defense Council*, 555 U.S. 7  
2 (2008), the United States Supreme Court explained the proper standard for issuing a  
3 preliminary injunction. The Ninth Circuit Court of Appeals discussed and applied *Winter*  
4 in *American Trucking Associations, Inc. v. City of Los Angeles*, 559 F.3d 1046 (9th Cir.  
5 2009). The Court of Appeal’s interpretation of *Winter* confirms that a plaintiff must  
6 prove four separate factors to be granted a preliminary injunction or a TRO. The Ninth  
7 Circuit held, “[a] plaintiff seeking a preliminary injunction must establish that he is likely  
8 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
9 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in  
10 the public interest.” *Am. Trucking Ass’ns*, 559 F.3d at 1052 (quoting *Winter*, 555 U.S. at  
11 20). The Court now applies this standard to the case at bar and finds Plaintiff has not met  
12 the burden required of him.

### 13 **III. ANALYSIS**

14 Even if the Court assumes that Plaintiff is likely to succeed on the merits—a  
15 finding this Court is not making in this Order—Plaintiff has failed to carry his burden of  
16 demonstrating that he is likely to suffer irreparable harm if the Court does not grant his  
17 motion for a TRO.

18 Harm is irreparable when it cannot be remedied except through injunctive relief.  
19 *Designer Skin, LLC v. S & L Vitamins, Inc.*, No. CV 05-3699, 2008 WL 4174882, at \*5  
20 (D. Ariz. Sept. 5, 2008); *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 518  
21 F.Supp.2d 1197, 1210 (C.D. Cal. 2007) (noting how irreparable harm has been defined  
22 by different Circuit Courts of Appeals). Economic damages are not traditionally  
23 considered irreparable because the injury can later be remedied by a damage award. *Cal.*  
24 *Pharmacists Ass’n v. Maxwell Jolly*, 563 F.3d 847, 852 (9th Cir. 2009) (modified on  
25 other grounds) (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974) (holding “that the  
26 temporary loss of income, ultimately to be recovered, does not usually constitute  
27 irreparable injury. . . . The possibility that adequate compensatory or other corrective  
28 relief will be available at a later date, in the ordinary course of litigation, weighs heavily

1 against a claim of irreparable harm.”). Equitable remedies, such as injunctive relief, are  
2 not available if an adequate remedy at law exists. *Id.* Plaintiff’s sole claim here is that  
3 losing the bond assets and supporting documentation material constitute the irreparable  
4 injury. (Doc. 1 at 5). Even if the Court considered the unspecified number of 3 inch  
5 binders containing supporting documentation separate unique and irreplaceable personal  
6 property, as the Court has explained above, Plaintiff has not claimed that Defendant has  
7 in his possession any supporting documentation nor does Plaintiff offer any evidence that  
8 this supporting documentation exists. Further, the bond assets are precisely the type of  
9 economic assets that can be compensated for by monetary damages after both sides have  
10 been heard. If Plaintiff’s claim has merit he could be fully compensated for any loss he  
11 suffers. Plaintiff has neither claimed nor shown that he will suffer anything other than  
12 monetary damages. The Court finds Plaintiff is not at risk for suffering irreparable harm.  
13 Accordingly, Plaintiff cannot establish the four factors the Supreme Court has said are  
14 required for this Court to grant a TRO.

15 **IV. CONCLUSION**

16 Base on the foregoing,

17 **IT IS ORDERED** that Plaintiff’s Complaint & Application for a Temporary  
18 Restraining Order (Doc. 1) is denied.

19 Dated this 31st day of October, 2012.

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James A. Teilborg  
United States District Judge