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

8 Nelson C. Bowers,

No. CV-13-0093-PHX-GMS

9 Plaintiff,

ORDER

10 v.

11 Great Western Bank of South Dakota,
12 David Fitzgibbons, Fitzgibbons Law Office,
13 Paul Babeu, Pinal County Sheriff, et. al.,

14 Defendants.

15 Pending before the Court are Plaintiff's Application for an Emergency Injunction
16 and Restraining Order (Doc. 3), Plaintiff's Motion for Default Judgment (Doc. 8), and
17 Defendants' Cross Petition for Temporary Restraining Order and Preliminary Injunction
18 (Doc. 13). For the reasons discussed below, both Plaintiff's and Defendants' applications
19 for emergency relief are denied and Plaintiff's Motion for Default Judgment is denied.¹

20 This action arises out of competing claims to the ownership of vehicles subject to
21 a state court debt judgment. On January 3, 2011, Plaintiff Nelson Bowers entered into a
22 loan agreement with Glen Gabriel to enable Gabriel to purchase vehicles for his towing
23 and car sales business. (Doc. 1 ¶ 8.) The parties agreed that in the event of a third-party

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25 ¹ On January 15, 2013, the Court ordered Plaintiff to serve Defendants with his ex
26 parte Application for an Emergency Injunction and Restraining Order. (Doc. 4.) The
27 Court further ordered Defendants to respond to Plaintiff's Application within seven days.
28 (*Id.*) However, the Court's Order was not provided to Defendants when served with
Plaintiff's Application on January 16, 2013. (Doc. 10 at 2.) Defendants were first made
aware of the time limit for their response on January 30, 2013 when they received
Plaintiff's Motion for Default. (*Id.*) Defendants filed their Response to Plaintiff's
Application seven days later on February 7, 2013.

1 judgment against Gabriel, he would surrender the vehicles and titles to Plaintiff. (Doc.
2 14-7, Ex. J at 2.) However, neither party recorded this lien on the vehicles.

3 On June 19, 2012, Great Western Bank (the “Bank”) filed a state court action
4 against Gabriel after he defaulted on a loan. (Doc. 14 ¶ 5.) The state court granted default
5 judgment to the Bank and its counsel, David Fitzgibbons, initiated post-collection
6 proceedings against Gabriel. (*Id.* ¶ 6.) On October 26, 2012, the state court issued a writ
7 of general execution to seize property to satisfy the judgment. (Doc. 14-6, Ex. B.) The
8 writ was served on Gabriel on November 14, 2012. (Doc. 14 ¶ 10.) At the time, the
9 Arizona Department of Motor Vehicles’ registrar reflected that Gabriel owned title to the
10 vehicles he had purchased pursuant to the loan agreement with Plaintiff. (Doc. 13 at 2.)
11 After Plaintiff was informed of an attempt to seize the vehicles to satisfy the judgment, he
12 repossessed them and changed the motor vehicle registrations from Gabriel’s name to his
13 name on November 15, 2012. (*Id.*) On January 14, 2013, the state court issued a writ of
14 garnishment and summons against Plaintiff because he claimed to own the vehicles.
15 (Doc. 14-8, Ex. K.) Numerous attempts to serve Plaintiff were unsuccessful and the state
16 court allowed service to occur by posting on Plaintiff’s property. (Doc. 14 ¶ 23; Doc. 14-
17 8, Ex. M.)

18 On January 15, 2013, Plaintiff filed this action alleging that the Pinal County
19 Sheriff’s Office (the “Sheriff”), the Bank, and Fitzgibbons are violating the Fourth, Fifth,
20 Seventh and Fourteenth Amendments to the U.S. Constitution by attempting to seize the
21 disputed vehicles from his possession. (Doc. 1.) On the same day, he filed an ex parte
22 motion requesting the Court to enjoin Defendants from seizing the vehicles “titled and
23 owned” by him until true ownership is determined. (Doc. 3 at 2.)

24 Along with their Response to Plaintiff’s Motion, Defendants filed a cross petition
25 to enjoin Plaintiff “from selling, conveying or otherwise transferring” the disputed
26 vehicles and to request that they be transferred to a third party pending further orders of
27 the Court. (Doc. 13 at 3.)

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1 A district court may grant a preliminary injunction or temporary restraining order
2 under two sets of circumstances. *Guzman v. Shewry*, 552 F.3d 941, 948 (9th Cir. 2009).
3 First, a plaintiff must demonstrate: “(1) a strong likelihood of success on the merits, (2)
4 the possibility of irreparable injury to plaintiff if preliminary relief is not granted, (3) a
5 balance of hardships favoring the plaintiff, and (4) advancement of the public interest (in
6 certain cases).” *Id.* (internal quotations omitted). Alternatively, a temporary restraining
7 order or preliminary injunction is appropriate “if the plaintiff demonstrates either a
8 combination of probable success on the merits and the possibility of irreparable injury or
9 that serious questions are raised and the balance of the hardships tips sharply in [its]
10 favor.” *Id.* (internal quotations omitted).

11 Plaintiff does not demonstrate that there is a strong likelihood of success on the
12 merits or that serious questions are raised by his Complaint. He alleges that the Bank and
13 the Sheriff attempted to seize his vehicles pursuant to the state court writs in violation of
14 his due process rights.² The gist of the Complaint is that the enforcement of the state
15 court’s debt judgment through the writ of general execution against Gabriel and the writ
16 of garnishment against Plaintiff are unconstitutional. Plaintiff is in fact challenging the
17 state court’s writs because his constitutional claims are “inextricably intertwined” with
18 those writs. *Feldman*, 460 U.S. at 483 n.16 (“[T]he federal claim is inextricably
19 intertwined with the state court judgment if the federal claim succeeds only to the extent
20 that the state court wrongly decided the issues before it.”); *see also Worldwide Church of*
21 *God v. McNair*, 805 F.2d 888, 892–93 (9th Cir. 1986).

22 The Court will not review the state court writs and their execution. “[R]eview of
23 state court decisions may only be conducted in the United States Supreme Court. Lower
24 federal courts may not review such decisions.” *Partington v. Gedan*, 961 F.2d 852, 864
25 (9th Cir.), *cert. denied*, 506 U.S. 999 (1992) (citing *Dist. of Columbia Ct. of App. v.*
26 *Feldman*, 460 U.S. 462, 476, 482, 486 (1983)); *Rooker v. Fidelity Trust Co.*, 263 U.S.

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28 ² Defendants admit that the Sheriff has not been able to seize the vehicles because
Plaintiff concealed them. (Doc. 9 ¶ 14; Doc. 13 at 6.)

1 413, 416 (1923)). The Court may not enjoin the state court writs even if Plaintiff's
2 Complaint alleges that the execution of those writs is unconstitutional. *Feldman*, 460 U.S.
3 at 486; *Worldwide Church of God v. McNair*, 805 F.2d 888, 893 n.4 (9th Cir.
4 1986) (noting that there is no federal court jurisdiction to enjoin state court orders even if
5 constitutional issues are raised in a § 1983 suit); *Branson v. Nott*, 62 F.3d 287, 291 (9th
6 Cir. 1995); *see also Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2010) (holding
7 that federal district court may not enjoin state court orders regarding pension benefits).
8 Plaintiff cannot state constitutional claims against the Bank and Fitzgibbons because they
9 are private actors whose actions are not fairly attributable to the government. *Morse v. N.*
10 *Coast Opportunities, Inc.*, 118 F.3d 1338, 1340 (9th Cir. 1997) (internal citations
11 omitted); *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982). Therefore, there is no
12 likelihood of success on the merits of Plaintiff's claims.

13 Defendants also request injunctive relief to prevent Plaintiff from selling or
14 transferring the disputed vehicles pending the execution of the state court orders. The
15 Court will not do so. Because Plaintiff has not stated a claim for relief in federal court
16 and complete diversity among the parties is not present, there is no subject matter
17 jurisdiction for Defendants' counterclaim against Plaintiff. Both Plaintiff and Defendants
18 must pursue any relief in the state court action. Accordingly,

19 **IT IS THEREFORE ORDERED** that Plaintiff's Application for an Emergency
20 Injunction and Restraining Order (Doc. 3) is **denied**.

21 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Default Judgment (Doc.
22 8) is **denied**.

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