

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

‘O’

Case No. 2:17-cv-04017-CAS(AGRx) Date July 27, 2017

Title CHIARA SALOMONI v. ANGELINA VENTURELLA ET AL.

Present: The Honorable CHRISTINA A. SNYDER

Catherine Jeang

Not Present

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings: (IN CHAMBERS) - PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION (Dkt. 9, filed June 14, 2017)

I. INTRODUCTION

On April 11, 2017, plaintiff Chiara Salomoni filed the instant action against defendants Angelina Venturella, Lynn Venturella, and Does 1–50, inclusive in Los Angeles County Superior Court. Dkt. 1 (“Compl.”). Plaintiff alleges the following claims : (1) breach of contract; (2) breach of fiduciary duty (3) breach of implied covenant of good faith and fair dealing; (4) conversion; (5) interference with economic advantage; (6) unjust enrichment/restitution; (7) copyright infringement; (8) unfair business acts in violation of the California Business & Professions Code § 17200; and (9) declaratory relief. Id. The gravamen of plaintiff’s complaint is that defendants wrongfully locked her out of social media and bank accounts associated with the parties’ joint business, Project Mermaids (collectively, “the Project Mermaids accounts”).

On May 30, 2017, Lynn Venturella removed the action to federal court because plaintiff’s seventh cause of action, violation of the Copyright Act of 1976, “arises under” federal law. Id. All defendants joined in the notice of removal. Id.

On June 14, 2017, plaintiff filed a motion for preliminary injunction, asking the Court to enjoin defendants from blocking plaintiff’s access to the Project Mermaids accounts. Dkt. 9 (“Motion”). On June 27, 2017, defendants filed an opposition to the Motion. Dkt. 12 (“Opp’n”). On July 3, 2017, plaintiff filed a reply. Dkt. 13 (“Reply”). Having carefully considered the parties’ arguments, the Court concludes as follows.

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II. BACKGROUND

Plaintiff Chiara Solomoni is an immigrant residing in Los Angeles, California. Compl. ¶¶ 4, 21. Plaintiff and Angelina Venturella formed a joint business together, Project Mermaids. Id. ¶ 9. Lynn Venturella is defendant Angelina Venturella’s mother. Dkt. 12-1, Declaration of Lynn Venturella (“Lynn Decl.”) ¶ 4. Lynn is also plaintiff’s legal visa sponsor.¹ Compl. ¶ 21. Lynn registered and purchased the URL projectmermaids.com and licensed it to Project Mermaids. Lynn Decl. ¶ 7. Lynn helped arrange some of the disputed agreements in this action. Id. ¶ 5. Non-party Eric Ducharme is the founder of Mertailor, a company that “produces elaborate mermaid costumes.” Opp’n at 2. Eric provided mermaid costumes to Project Mermaids and Angelina pursuant to various agreements. Dkt. 12-2, Declaration of Angelina Venturella (“Angelina Decl.”) ¶ 5. Non-party Save Our Beach Charity is a charity organization that allowed Project Mermaids and Angelina to use its name to pursuant to various agreements. Id.

There are three purported agreements in dispute. The first is a combination of two written agreements, signed between Angelina, Eric, and Save Our Beach Charity (the “Book Agreements”). Plaintiff later allegedly became a party to the Book Agreements. The second is an oral agreement between plaintiff and Angelina (the “Partnership Agreement”). It appears that the third agreement (the “February Agreement”) was intended to clarify the Book and Partnership Agreements. The February Agreement was signed by plaintiff and Angelina as an acknowledgment of plaintiff’s duties. The agreements are discussed in detail below.

A. The Book Agreements

In June 2013, Angelina entered into the Book Agreements with Eric Ducharme and Save Our Beach Charity. Lynn Decl. ¶ 5. Pursuant to the Book Agreements, Eric would provide Angelina mermaid costumes and Angelina would photograph celebrities wearing Eric’s costumes. Angelina Decl. ¶ 10. The photographs would then be compiled into a book to raise awareness for ocean conservation (the “Ocean Conservation Book”). Id.

¹ The scope of Lynn’s sponsorship is not clear. Lynn avers she is plaintiff’s “legal sponsor and legal exclusive manager.” Dkt. 9-1, Declaration of Chiara Salomoni (“Salomoni Decl.”), Ex. L.

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¶ 5. Save Our Beach Charity allowed Angelina to use its name for “credibility,” in exchange for 50% of the proceeds from the Ocean Conservation Book sales. Id. The remaining 50% of the proceeds would be split among Eric and Angelina evenly. Id.

According to Angelina, in September 2013, plaintiff reached out to Angelina and expressed an interest in participating in the Book Agreements. Id. ¶ 7. Defendants maintain that at that time, Eric, Angelina, and plaintiff agreed to publish the Ocean Conservation Book together, using photographs taken by both Angelina and plaintiff. Opp’n at 1. Plaintiff disputes that such an agreement was formed. Reply at 9. On September 24, 2013, Lynn sent Angelina an email which stated, in relevant part:

[T]his is an agreement between Angelina Venturella and Chiara Salomoni. Angelina is producing a book and art show that is named The Mermaid Project. Chiara Salomoni is going to help and co produce [sic] the project . . . [T]he profit from both the book and the show will have to be split between the charity, Eric the tailman, Chiara and Angelina.

Angelina Decl., Ex. 7. Lynn contends that she sent the email to Angelina for review before sending it to plaintiff. Lynn Decl. ¶ 6. Plaintiff denies ever receiving any such email from defendants. Dkt. 13-1, Supplemental Declaration of Chiara Salomoni (“Supp. Salomoni Decl.”) ¶ 56.

B. The Partnership Agreement

Around October or November 2013, plaintiff and Angelina entered into an oral 50/50 partnership agreement (“Partnership Agreement”) “with equal control and approval rights” to provide “photography services to individuals outfitted in mermaid costume and dress . . . under the business name, Project Mermaids.” Compl. ¶ 9; Salomoni Decl. ¶ 1. Under the Partnership Agreement, plaintiff was the primary underwater photographer and Angelina was the primary land photographer. Compl. ¶ 10. Lynn purchased the URL www.projectmermaids.com on October 3, 2013. See Angelina Decl., Ex. 6. Lynn subsequently licensed use of the URL to Angelina. Lynn Decl. ¶ 8. In November 2013, plaintiff and Angelina filed a fictitious business name statement as co-partners doing business as “Project Mermaids.” Salomoni Decl., Ex. B. That same month, plaintiff and Angelina opened an Instagram account for Project Mermaids where they would post their

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original photography to promote the Ocean Conservation Book, as well as advertise Project Mermaids.² Angelina Decl. ¶ 8; Salomoni Decl. ¶¶ 2, 5.

In addition, plaintiff and Angelina initiated photography tours. *Id.* Despite the 50/50 Partnership Agreement, funds from the tours were not shared equally among them, rather, they “would [each] keep whatever money [they] made from [their] customers less . . . travel costs and other expenses.” Angelina Decl. ¶ 10; Reply at 2. It is not clear from the evidence submitted what duties the Partnership Agreement imposed on plaintiff and Angelina.

C. The February Agreement

On February 11, 2016, plaintiff signed an agreement with Angelina agreeing to certain terms. Salomoni Decl., Ex. F (“February Agreement”). According to Angelina, she and Eric were concerned with plaintiff’s performance under the Book Agreements and the February Agreement was formed “to assuage [their] fears” and “define [plaintiff’s] obligations” under the Book Agreements and the Partnership Agreement.³ Angelina Decl. ¶ 12; Opp’n at 4, 7. However, plaintiff argues that Eric did not sign the February Agreement and that it was not made “for the benefit of Eric.” Reply at 17. Rather, plaintiff maintains that the February Agreement was signed to “reinforce[] the terms of the *Partnership [Agreement,]*” “[reinforce plaintiff’s] duties as 50/50 co-owner[] of Project Mermaids, and primary underwater photographer[,]” “[and] address management differences between [plaintiff and Angelina] at the time.” Reply at 9 (emphasis added); Salomoni Decl. ¶ 12. The February Agreement provides, in pertinent part:

² Angelina maintains that pursuant to the Partnership Agreement, the partners had a duty to post at least forty original photographs per month to the Project Mermaids Instagram account to promote the Ocean Conservation Book, and fewer posts advertising their respective photography tours. Angelina Decl. ¶ 12. Plaintiff disputes that there was an agreement “as to the number of posts required by the partners” prior to February 2016. Reply at 9.

³ Defendants aver that plaintiff was not posting enough original photography on the Project Mermaids social media accounts in promotion of the Ocean Conservation Book. Angelina Decl. ¶¶ 12, 18; Lynn Decl. ¶¶ 11–17.

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- 1.) I Chiara Salomoni am the primary underwater photographer for the project. . . .
- 3.) I understand and agree that all the images shot on behalf of Project Mermaids can only be used to promote the project for the purposes of the art show and book release.
- 4.) All images related to the project will be used on the website, social media and approved third party media, and on each photographer’s personal website and social media accounts. . . .
- 6.) Any images not selected for the purpose of the art show or the book may be used for personal sale or promotion. . . .
- 8.) I agree that all images used for the purpose of promotion/press, not for the book, will be promoted via the Project Mermaids social media accounts and executed by a Social Media Coordinator. . . .
- 10.) I acknowledge that I will be held accountable to a specific social media schedule, but that schedule is subject to change monthly, based on sponsorship agreements or opportunities. a.) I agree that I will be liable for loss of partnership or termination of this contract if I use a third party social media service or application. b.) I agree that all passwords of the social media accounts will be available to Angelina Venturella, Chiara Salomoni, Edward Garcia, and Cristina Whalin. . . .
- 14.) I agree that I am committing my work and images to the art show and the book to be released in 2016.
- 15.) I agree that [I] will honor my commitment and that there is no clause in this contract for backing out of the agreement.
- 16.) I agree that if the book is published by a third party publishing company I am splitting the lump sum payment out in 4 ways: %50 percent [sic] will go to Save Our Beach.org, and the remaining 50% will be split equally between Angelina Venturella, Chiara Salomoni, and Eric Ducharme. . . .

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19.) I agree that Cristina Whalin is the Project Manager will be sourcing all sponsorship opportunities.

See February Agreement. Notably, the February Agreement does not expressly define defendants’ duties, nor does it explicitly state that defendants agree to the listed terms. It appears to be signed only by Angelina and plaintiff.

D. The Lockout

Around April 2016, conflicts arose between plaintiff and Angelina. Plaintiff contends that around April 2016, she attempted to file taxes on behalf of Project Mermaids but Angelina was non-responsive to her emails. Supp. Salomoni Decl. ¶ 9. Angelina contends that around this time, plaintiff began developing her own mermaid photography business, Mermaids for Change, in direct competition with Project Mermaids, and used photographs taken for Project Mermaids to advertise Mermaids for Change. Angelina Decl. ¶ 13.

However, plaintiff maintains that she launched Mermaids for Change in October 2016 as an “educational organization that does not photograph celebrity mermaids and . . . for the promotion of [her] underwater photography tours,” after Angelina again ignored plaintiff’s initiative to file taxes. Supp. Salomoni Decl. ¶¶ 47–78. Plaintiff contends that use of Project Mermaids photography to advertise Mermaids for Change took place *after* defendants locked her out of the Project Mermaids accounts and had commenced the Project Mermaids tours without her. Reply at 12–13.

According to plaintiff, in June or July 2016, Angelina used \$65,000 from the tour funds for personal expenses. Compl. ¶ 13. As a result, Angelina was allegedly unable to cover her expenses for her next tour stop and borrowed money from plaintiff. Id. ¶¶ 14–15. Around November 2016, Angelina allegedly withdrew \$2,100 from Project Mermaids’ business checking account, funds which belonged to plaintiff as part of her tour booking. Id. ¶ 17.

In November 2016, while plaintiff was out of the country, defendants blocked plaintiff from the Project Mermaids accounts. Salomoni Decl. ¶ 13. The parties disagree as to why plaintiff was locked out. Plaintiff alleges that defendants changed the passwords to the accounts due to a disagreement about temporary changes plaintiff made

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to the Project Mermaids website. Id. Defendants allege that they changed the passwords to the accounts because, beginning around June 2016, plaintiff “was not doing her part of posting nearly enough under-water photographs . . . did not answer emails of customers at the rate she promised, did not reach out to celebrities . . . [and] created the competing Mermaids for Change business.” Angelina Decl. ¶ 14.

Defendants allege that in late 2016, plaintiff organized several photoshoots under the guise of Project Mermaids, but later used the photographs for Mermaids for Change, in violation of the February Agreement. Angelina Decl. ¶¶ 15–16 & Ex. 10.

On January 12, 2017, Lynn emailed plaintiff stating that defendants planned to make some changes to the company. Salomoni Decl., Ex. J. Lynn suggested to plaintiff that the partners form a corporation in order to “file the company taxes and 1099s . . . [and] so the brand continues to build.” Id. Lynn wrote:

[T]oday we have changed all the passwords and log ins and they will stay that way until we have all come to an agreement. . . . In the next few days I will send you two different options and offers for you to discuss with your legal advisers. One will be if you join the corporation, the other will be if you prefer to work solo. In the mean time [sic], please send any posts that you wish to post on [I]nstagram to Ang[elina].

Id. Lynn further wrote that plaintiff’s “delays [in filing taxes] are causing issues for tax filing [and] had [they] formed the corporation in December as was requested, [they] could have filed [taxes] as a corporation.” Id. Lynn also assured plaintiff that “[she] should be seeing those [missing] funds returned any day.” Id. (referring to the \$2,100 Angelina took from the Project Mermaids bank account).

Plaintiff responded that same day, expressing her “extreme[] disappoint[ment] [that] decisions were made without a word to [her] about it first, nor [her] consent.” Id. Plaintiff maintained that she did not delay tax filing and that she tried to file taxes in 2016 twice but Angelina was nonresponsive. Id. Plaintiff asserted that defendants had no right to lock plaintiff out of the accounts because she jointly owned Project Mermaids, and further demanded the missing \$2,100 that Angelina had previously taken from the account. Id. That evening, Lynn again emailed plaintiff the two offers she had earlier mentioned: (1) Angelina and plaintiff receive 49% stock each in the newly formed

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Project Mermaids corporation, and Lynn retains 2% stock to “break any tie vote”; or (2) plaintiff owns no stock and thus has no ownership in the Project Mermaids corporation but may “still participate in the book, show and tour at the same financial agreement.” Id.

On January 13, 2017, Lynn wrote to plaintiff that “the money [\$2,100] should be returned [sic] to the account really soon.” Id., Ex. I. On January 28, 2017, Lynn followed up on her January 12 emails, informing plaintiff that they “cant [sic] wait indefinitely” for her response to the two offers. Id., Ex. K. Lynn wrote, “[w]e need to hear from you by February 10th or we will go ahead and form the corporation.” Id. Lynn also requested that plaintiff file a 1099 tax return. Id. Lynn informed her that defendants would file the 1099 on plaintiff’s behalf should she fail to do so prior to January 31, 2017. Id.

During the next few days, plaintiff and Lynn exchanged several emails wherein Lynn again asked plaintiff to file a 1099 and accept one of her offers, and plaintiff again maintained that she was a 50% owner of Project Mermaids and could not be locked out of the accounts. Id. On January 28, 2017, plaintiff wrote the following email to Lynn:

Lynn, given where we are and since you are attempting to file a 1099 for me and treat me as a subcontractor, I hereby request that we retroactively dissolve me from the company. I believe that this is the best course of action and I continue to reserve all rights as to the ownership of my respective assets contributed to the entity at any time. To immediately resolve the most critical outstanding financial matters, following are my initial requests:

- 1) [T]hat the \$2100 taken from the account that belongs to be me immediately repaid;
- 2) I retain 100% ownership in and all rights to my images. Further, I have the right to go get my own book produced and printed so I can hold up my part of the original deal and give a cut to charity and a cut to Eric;

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3) [M]y new website link will be listed on Project Mermaids website as link to the underwater tour.⁴

Id.

On February 2, 2017, Lynn wrote to plaintiff, “It bothered me a lot when you told me not to contact you any more. I think you have forgotten that I am your legal sponsor and that you also have legal obligations to me both as your sponsor and your legal exclusive manager.” Id., Ex. L. In response, plaintiff wrote “Lynn, [d]ue to the legal complications (and related publicity) that you . . . were involved in, I was advised by my Immigration lawyer to remove you as my sponsor and have since done so.” Id. Plaintiff claims that because she no longer has a visa sponsor, her immigration status is in jeopardy, she is “unable to seek other forms of work without a visa,” and cannot leave the country because she may be denied re-entry. Salomoni Decl. ¶¶ 35–37.

Plaintiff alleges that in January 2017, defendants commenced the Project Mermaids tour without her. Compl. ¶ 22. In April 2017, plaintiff attempted to gain access to the Project Mermaids Twitter and Instagram accounts by filing complaints to the respective companies, but was unsuccessful. Id. ¶ 25. Plaintiff alleges that in May 2017, defendants posted certain images on the Project Mermaids Instagram accounts that stirred controversy among supporters and harmed Project Mermaids’ reputation. Id. ¶ 30 & Ex. W. In addition, plaintiff avers that defendants posted advertisements seeking to hire underwater photographers, in violation of plaintiff’s sole rights under the February 2016 Agreement. Id. Plaintiff continued to develop her independent photography business through a website she created for Mermaids for Change. See Angelina Decl., Exs. 14–15.

III. LEGAL STANDARDS

“A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). Therefore, a district court should enter a preliminary injunction only “upon a clear showing that the plaintiff is

⁴ Plaintiff maintains that her offer to be dissolved from the company was conditioned upon these three requests and that she remains a part of the company because defendants did not satisfy her requests. Opp’n at 14.

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entitled to such relief.” *Id.* at 22. Such a showing requires that the plaintiff establish that he or she “is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20; see *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009); see also *Johnson v. Couturier*, 572 F.3d 1067, 1081 (9th Cir. 2009); *Am. Trucking Ass’ns Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Alternatively, “‘serious questions going to the merits’ and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the Winter test are also met.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011) (interpreting *Winter* and explaining that the “sliding scale” test for preliminary injunctive relief remains valid). A “serious question” is one on which the movant “has a fair chance of success on the merits.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1421 (9th Cir. 1984).

A plaintiff seeking a preliminary injunction must show more than the “possibility” of irreparable injury; he must demonstrate that irreparable injury is “likely” in the absence of preliminary relief. *Winter*, 555 U.S. at 22; *Am. Trucking*, 559 F.3d at 1052. It is not enough that the claimed harm be irreparable—it also must be imminent. *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Further, “a plaintiff must *demonstrate* immediate threatened injury as a prerequisite to preliminary injunctive relief,” rather than merely allege imminent harm. *Id.* (emphasis in original). Conclusory affidavits are insufficient to demonstrate irreparable harm. *Am. Passage Media Corp. v. Cass Commc’ns, Inc.*, 750 F.2d 1470, 1473 (9th Cir. 1985).

IV. DISCUSSION

Plaintiff seeks a preliminary injunction on the basis of her claims for breach of contract, breach of fiduciary duty, and breach of the implied covenant of good faith and fair dealing. Motion at 12–14. Defendants concede that the parties were partners pursuant to the Partnership Agreement. See Opp’n at 1. A “[p]artnership is a fiduciary relationship.” *Jones v. Wells Fargo Bank*, 112 Cal. App. 4th 1527, 1540 (2003); see Cal. Corp. Code. § 16404. Plaintiff argues that by excluding her from the Project Mermaids accounts, defendants have prevented plaintiff from conducting business activities and pursuing business opportunities. Motion at 14–15. Plaintiff further claims that: (a) Angelina withdrew and never returned \$2,100 belonging to plaintiff from the Project Mermaids bank account, Salomoni Decl. ¶ 14; (b) Angelina appropriated \$65,000 of

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Project Mermaids funds for her personal use, *id.* ¶ 11; (c) defendants attempted to pressure plaintiff into dissolving the partnership and presented her with two unfavorable propositions, *id.*, Ex. J; and (d) when plaintiff refused to accept defendants’ propositions, Lynn impliedly threatened plaintiff’s immigration status. Salomoni Decl. ¶ 16. Courts have found that excluding a co-partner from the partnership or from partnership property and diverting partnership funds for personal use constitute breaches of fiduciary duty. See Second Measure, Inc. v. Kim, 143 F. Supp. 3d 961, 979–80 (N.D. Cal. 2015)); Schmidt v. Summit Funding, Inc., No. 6:15-cv-0640-TC, 2015 WL 4876822, at *3 (D. Or. Aug. 13, 2015); BlueEarth Biofuels, LLC v. Hawaiian Elec. Co., 780 F. Supp. 2d 1061, 1081–82 (D. Haw. 2011); Pellegrini v. Weiss, 165 Cal. App. 4th 515, 524–27. The Court finds that plaintiff has presented evidence demonstrating that she has a “fair chance of success” on the merits of her breach of fiduciary duty claim. Sierra On-Line, 739 F.2d at 1421.⁵

However, plaintiff fails to demonstrate that she is likely to suffer irreparable harm in the absence of a preliminary injunction. Plaintiff argues that she will suffer two types of harm. First, plaintiff argues that defendants’ May 2017 Instagram post “directly damages the Project Mermaids brand,” causing her irreparable harm. Motion at 15. However, plaintiff has “merely allege[d],” and not “*demonstrated[d]* [that] immediate threatened injury” is likely as a result of defendants’ May 2017 post. Caribbean Marine,

⁵ It does not appear that plaintiff can succeed on the merits her claims for breach of contract and breach of the covenant of good faith and fair dealing. Plaintiff cannot succeed on her breach of contract claim because: (1) she fails to allege the parties’ duties and defendants’ breach of the Partnership Agreement; (2) she fails to show that she performed her duties under the Partnership Agreement; and (3) she may not obtain injunctive relief on the basis of the February Agreement because she does not allege a breach of the February Agreement in her complaint. Plaintiff cannot succeed on her claim for breach of the covenant of good faith and fair dealing because: (1) she fails to establish that defendants breached any contractual duty, see Racine & Laramie, Ltd. v. Dep’t of Parks & Recreation, 11 Cal. App. 4th 1026, 1031 (1992) (“The implied covenant of good faith and fair dealing rests upon the existence of some specific contractual obligation.”); and (2) she has not demonstrated “something beyond breach of the [alleged] contractual duty itself,” a required showing for a claim for breach of the implied duty of good faith and fair dealing, Careau & Co. v. Sec. Pac. Bus. Credit, Inc., 222 Cal. App. 3d 1371, 1395 (1990).

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844 F.2d at 674. To establish a likelihood of irreparable harm, a party must adduce evidence of likely irreparable harm and may not rely on conclusory or speculative allegations. Herb Reed Enterprises, LLC v. Florida Entm’t Mgmt., Inc., 736 F.3d 1239, 1250 (9th Cir. 2013). Plaintiff’s “conclusory” speculation that defendants’ March 2017 Instagram post damaged the Project Mermaids brand does not support a finding of irreparable harm.

Second, plaintiff argues that, because she is unable to access the Project Mermaids accounts, she is “prevented . . . from earning a living . . . [and] is unable to properly mitigate her damages as her primary means of generating income is via underwater photography shoots.” Motion at 14–15. In addition, plaintiff contends that, because she removed Lynn as her immigration sponsor, she cannot seek employment elsewhere or leave the country. Id. Plaintiff submitted evidence of a loan, obtained to cover her legal fees for the pending litigation, to demonstrate that she has suffered irreparable financial harm resulting from her inability to access the Project Mermaids accounts. See Salomoni Decl., Ex. N. The Supreme Court has instructed that “the temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury. . . . Mere injuries, however substantial, in terms of money, time and energy necessarily expended . . . are not enough.” Sampson v. Murray, 415 U.S. 61, 90 (1974) (citations and quotation marks omitted). Plaintiff has not provided evidence demonstrating that she is unable to seek employment in the United States as a result of her current immigration status. In fact, defendants have presented evidence that plaintiff is conducting underwater photoshoot tours through her solo business, Mermaids for Change. See Angelina Decl., Exs. 14, 15. Plaintiff does not dispute this and maintains that she “cannot be expected to sit on her hands and not attempt to earn her livelihood while [d]efendants continue to operate the Project Mermaids business.” Reply at 13. Plaintiff’s claims of damages are compensable with money and therefore do not constitute irreparable harm. Plaintiff has not otherwise demonstrated that she faces an imminent threat of irreparable harm absent a preliminary injunction.

Because plaintiff has failed to demonstrate irreparable harm, the Court need not address the balance of hardships and public interest factors. In any event, the balance of hardships and public interest are, at most, neutral factors here.

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V. CONCLUSION

In accordance with the foregoing, although there are “serious questions going to the merits” of plaintiff’s breach of fiduciary duty claim, plaintiff has failed to demonstrate she will suffer immediate irreparable harm in the absence of preliminary relief. Accordingly, the Court **DENIES** plaintiff’s request for a preliminary injunction.

IT IS SO ORDERED.

Initials of Preparer 00 00
CMJ