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6 *California Board of Registered Nursing,*

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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12 **RAM NEHARA,**

13 Plaintiff,

14 v.
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16 **STATE OF CALIFORNIA, ET AL.,**

17 Defendants.
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CASE NO.: 1:10-CV-00491-OWW-SKO

**ORDER DENYING PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Date: April 15, 2010
Time: 12:00 p.m.
Courtroom: 3
Judge: Hon. Oliver W. Wanger

19 On April 15, 2010, plaintiff RAM NEHARA's motion for a temporary restraining order
20 and preliminary injunction was heard by the Honorable Oliver W. Wanger in Courtroom 3 of the
21 above-referenced court. Michael D. Anderson, Esq. of Anderson & Associates appeared by
22 telephone on behalf of plaintiff, and Helene E. Swanson, Deputy Attorney General with the
23 Office of the Attorney General, California Department of Justice, appeared by telephone on
24 behalf of defendant California Board of Registered Nursing (Board). After considering the
25 moving and opposing papers, and oral argument of counsel, the Court denies with prejudice the
26 motion for a temporary restraining order and preliminary injunction, on the following grounds:

- 27 1. Plaintiff's motion is denied because he has not exhausted his administrative
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1 remedies in state court, nor has plaintiff shown an excuse applies to him or that these remedies
2 are not effective. An administrative tribunal has been convened and an administrative law judge
3 (ALJ) heard testimony from the parties during a hearing, and took his decision under submission.
4 After the ALJ submits his proposed decision in writing to the Board, the Board has 100 days in
5 which to adopt or reject the proposed decision. If the plaintiff does not agree with the decision
6 which is adopted by the Board, there are procedures for review of that decision by the Superior
7 Court under California Code of Civil Procedure section 1094.5 et seq., and the Superior Court's
8 order is subject to review via a petition to the Court of Appeal of the State. Ultimately, the
9 decision is reviewable by the United States Supreme Court, if a petition is granted by that court.

10 2. Plaintiff's motion is also denied based upon the *Younger v. Harris*, 401 U.S. 37,
11 91 S. Ct. 746, 27 L.Ed.2d 669 (1971), and *Rooker-Feldman (District of Columbia Court of*
12 *Appeals v. Feldman*, 460 U.S. 462, 486 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-
13 416 (1923)) abstention doctrines. Pursuant to *Yellow Freight System, Inc. v. Donnelly*, 494 U.S.
14 820, 110 S. Ct. 1566, 108 L. Ed. 2d 834 (1990), the federal and state courts have concurrent
15 jurisdiction over employment discrimination claims under Title 7 of the Civil Rights Act of 1964
16 (42 U.S.C.S. 2000e et seq.). The State of California has an important local interest in regulating
17 the practice of California nurses to assure their continued competence and to protect the public's
18 safety, health and welfare. The Board has the power to investigate and determine whether their
19 nursing licenses should be suspended, revoked or otherwise disciplined, based upon justified
20 circumstances and good cause. Under the *Younger* abstention doctrine, the federal court should
21 abstain from issuing injunctive relief which would interfere with the ongoing, quasi-judicial state
22 administrative case, and the administrative tribunal has concurrent authority to decide issues
23 concerning plaintiff's competency as a nurse and his registered nursing license. *Rooker-Feldman*
24 is also invoked here, where plaintiff is requesting that the federal court interfere with the ongoing
25 state administrative case, in which ALJ Humberto Flores has already heard testimony and taken
26 his ruling under submission, for a decision within 30 days of the administrative hearing.

27 3. Moreover, the motion is denied because plaintiff has not demonstrated a valid
28 basis for injunctive relief. Under the four-part test set forth in *Winter v. NRDC, Inc.*, 129 S. Ct.

1 365, 172 L. Ed. 2d 249 (2008), the party seeking an injunction must demonstrate: (1) a likelihood
2 that he will succeed on the merits; (2) the possibility that, without an injunction, he will suffer
3 irreparable injury; (3) the balance of equities tips in his favor; and (4) that an injunction is in the
4 public interest. With respect to (1), the Court in effect cannot make a determination of the
5 likelihood of plaintiff's success on the merits, due to the extent of the evidentiary dispute on the
6 underlying claims which exists. Also, there is no reason why plaintiff cannot call the same
7 witnesses he has identified in the state proceeding in state court, as well as in federal court.

8 As for (2), the plaintiff has not shown he will suffer an irreparable injury if an injunction
9 does not issue. Plaintiff is not currently working as a nurse, and he needs a licensing decision so
10 that the current uncertainty over his license status does not continue indefinitely. Consequently,
11 there will be more harm done by not having the ALJ issue a decision, than there would be by
12 allowing the ALJ to issue his decision, which is imminent.

13 With regard to factors (3) and (4), it would not serve the best interests of the public if the
14 federal court were to issue an injunction enjoining the state licensing case, and if it failed to
15 extend comity to the elaborate state standards and procedural mechanisms of California for
16 reviewing licensure disputes in the field of nursing, and pursuant to the full faith and credit clause
17 under 28 U.S.C.A. section 1738.

18 4. Plaintiff's motion for a temporary restraining order is also denied because he has
19 failed to submit facts showing that he could not have sought relief by motion for preliminary
20 injunction at an earlier date, without the necessity for seeking last-minute relief by motion for
21 temporary restraining order. Eastern District Local Rule 231(b), Fed. R. Civ. P. 65.

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23 DATED: May 10, 2010

/s/ OLIVER W. WANGER
JUDGE OF THE UNITED STATES DISTRICT
COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

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