

1 Plaintiffs TransCoastal Partners, LLC, Couba Du Large Joint
2 Venture, Stuart G. Hagler, David J. May, and Wilbur A.
3 Westmoreland ("Plaintiffs") move for a Temporary Restraining
4 Order and Preliminary Injunction¹ against Defendants Preston
5 DuFauchard, in his official capacity as California Corporations
6 Commissioner (the "Commissioner"), and the California Department
7 of Corporations (the "Department").

8 Plaintiffs' motion is based on the grounds that the
9 Commissioner and Department improperly issued a Desist and
10 Refrain Order to Plaintiffs on November 29, 2007 ("the D&R"),
11 ordering Plaintiffs to cease offering and selling securities in
12 the State of California without first registering or qualifying
13 such securities under California securities laws when Plaintiffs
14 offered and sold the joint venture interests in question (in the
15 Couba Du Large Joint Venture) pursuant to Regulation D (Rules 501
16 - 508 [17 C.F.R. 230.501 et seq.]), promulgated pursuant to the
17 Securities Act of 1933, as amended. Plaintiffs argue that
18 because they timely filed with the SEC and the Department the
19 appropriate Forms D and U-2 and paid the statutory filing fees,
20 the Commissioner and Department are preempted under the National
21 Securities Markets Improvement Act of 1966, 15 U.S.C. § 77r
22 ("NSMIA") from issuing a D&R to Plaintiffs for purported
23 violations of state registration requirements.

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25 ¹ Although Plaintiffs' Motion is captioned as a motion for
26 both a temporary restraining order and a preliminary injunction,
27 this Order will only address the temporary restraining order.
28 Should Plaintiffs wish to be heard on a motion for a preliminary
injunction, Plaintiffs should set the motion on the Court's
regular calendar allowing appropriate time for briefing pursuant
to the Federal Rules of Civil Procedure and the Local Rules for
the Eastern District of California.

1 Plaintiffs now move this Court to enter a Temporary
2 Restraining Order and Preliminary Injunction immediately
3 enjoining Defendants and their officers, agents, employees,
4 representatives, and all persons in privity with them, from:

5 1. Requiring that Plaintiffs register and/or qualify the
6 sale of joint venture interests in the State of California when
7 Plaintiffs have filed the appropriate Forms D under Rule 506,
8 have complied with all notice filing requirements, and have paid
9 the required fees;

10 2. Entering orders that prohibit Plaintiffs from selling
11 joint venture interests in the State of California on the basis
12 of state registration violations when Plaintiffs have filed the
13 appropriate Forms D under Rule 506, have complied with all notice
14 filing requirements, and have paid the required fees;

15 3. Making permanent and enforcing the D&R entered on or
16 about November 29, 2007 to Plaintiffs;

17 4. Requiring Plaintiffs to participate in any administrative
18 hearing relating to the D&R; and

19 5. Publicizing in any manner, including on any website, the
20 D&R entered on or about November 29, 2007.

21 6. Plaintiffs further hereby move this Court to Order that
22 any deadline by which Plaintiffs must seek relief from the D&R
23 entered on or about November 29, 2007, including the deadline to
24 file a request for hearing, shall be tolled until thirty (30)
25 days following a final disposition of this matter or thirty (30)
26 days after the denial of the request for preliminary injunction.

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1 Issuance of a temporary restraining order, as a form of
2 preliminary injunctive relief, is an extraordinary remedy, and
3 Plaintiffs have the burden of proving the propriety of such a
4 remedy by clear and convincing evidence. See Granny Goose Foods,
5 Inc. v. Teamsters, 415 U.S. 423, 442 (1974). In order to warrant
6 issuance of such relief, certain prerequisites must be satisfied.
7 Under the so-called "traditional" standard, an injunction may be
8 had if the court determines that (1) the moving party will suffer
9 the possibility of irreparable injury if the relief is denied;
10 (2) there is a strong likelihood that the moving party will
11 prevail on the merits at trial; (3) the balance of potential harm
12 favors the moving party; and (4) the public interest favors
13 granting relief. Johnson v. Cal. State Bd. of Accountancy, 72
14 F.3d 1427, 1430 (9th Cir. 1995) Under the "alternative"
15 standard, an injunction properly issues when a party demonstrates
16 either: (1) a combination of probable success on the merits and
17 the possibility of irreparable injury if relief is not granted;
18 or (2) the existence of serious questions going to the merits
19 combined with a balancing of hardships tipping sharply in favor
20 of the moving party. Id., see also Idaho Sporting Congress, Inc.
21 v. Alexander, 222 F.3d 562, 565 (9th Cir. 2000); Earth Island
22 Institute v. U.S. Forest Service, 442 F.3d 1147, 1158 (9th Cir.
23 2006). The requirement for showing a likelihood of irreparable
24 harm increases or decreases in inverse correlation to the
25 probability of success on the merits, with these factors
26 representing two points on a sliding scale. United States v.
27 Nutri-cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992).

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1 The propriety of a temporary restraining order, in
2 particular, hinges on a significant threat of irreparable injury
3 (Simula, Inc. Autoliv, Inc., 175 F.3d 716, 725 (9th Cir. 1999))
4 that must be imminent in nature. Caribbean Marine Serv. Co. v.
5 Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

6 Application of this standard to the instant matter shows
7 that Plaintiffs have failed to demonstrate their entitlement to a
8 temporary restraining order at the present time. First,
9 Plaintiffs have failed to show an imminent injury. The
10 Department issued the D&R on November 29, 2007. Plaintiffs'
11 remedy at that time was to file a request for a hearing with a
12 state administrative law judge. That hearing would have had to
13 have been held within fifteen (15) days of the request.
14 Plaintiffs did not request the hearing and instead elected to
15 wait twenty-one (21) days and seek this remedy in federal court.
16 Plaintiffs have given no reason for the delay and such a delay
17 goes against Plaintiffs' claims of imminent injury and the need
18 for an immediate remedy. Had Plaintiffs sought a hearing before
19 an administrative law judge initially, they would already have
20 had a decision. Accordingly, Plaintiffs can hardly argue they
21 will suffer an imminent injury if this temporary restraining
22 order is not granted.

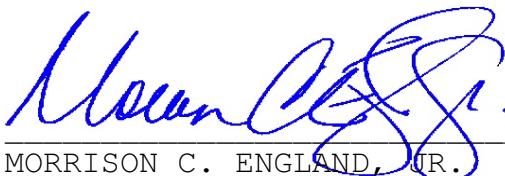
23 Second, in terms of the requirement for irreparable harm,
24 such harm generally turns upon a substantial injury that is
25 neither accurately measurable or adequately compensable by money
26 damages. See, e.g., Ross-Simons of Warwick, Inc. v. Baccarat,
27 Inc., 102 F.3d 12, 18 (1st Cir. 1996). Here, Plaintiff's have
28 failed to demonstrate irreparable harm.

1 The fact that Ohio is requiring Plaintiffs to confirm compliance
2 with Federal Rule 502(c) within thirty (30) days is not an
3 irreparable injury. Ohio is not refusing to allow Plaintiffs to
4 continue conducting business. Further, Plaintiffs argue that
5 they will lose business opportunities and suffer harm to their
6 business reputation and goodwill. These constitute monetary
7 damages and Plaintiffs have not alleged the difficulty of
8 calculation necessary to sustain a temporary restraining order.

9 For the foregoing reasons, Plaintiffs Motion for a Temporary
10 Restraining Order is DENIED.

11 IT IS SO ORDERED.

12 Dated: December 20, 2007

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15 MORRISON C. ENGLAND, JR.
16 UNITED STATES DISTRICT JUDGE
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