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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOYCE MURRELL,

Plaintiff,

v.

WALTER THEILER, et al.,

Defendants.

No. 2:09-cv-00234-MCE-KJM-PS

ORDER

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Plaintiff, who is proceeding in pro se, has filed two "Emergency" Motions with this Court, the first seeking "Recovery of Embezzled Funds and Execution on Swiss Judgment" and the second requesting "Recovery [for the] Unlawful Seizure of her Home, Assets and Property." Plaintiff previously filed the same Motions on or about February 4, 2009. Those Motions were denied, without prejudice, on March 25, 2009 given Plaintiff's failure to provide any notice to Defendants of her pending requests. On March 8, 2009, Plaintiff resubmitted her Motions along with proofs of service indicating that the numerous Defendants to this proceeding were sent copies of the Motions via certified mail.

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1 Because she appears to be seeking emergency injunctive
2 relief from the Court on an expedited basis without a noticed
3 hearing date and accompanying briefing schedule, Plaintiff's
4 Motions most clearly resemble requests for issuance of a
5 Temporary Restraining Order.

6 Issuance of a Temporary Restraining Order, as a form of
7 preliminary injunctive relief, is an extraordinary remedy, and
8 Plaintiff has the burden of proving the propriety of such a
9 remedy by clear and convincing evidence. See Granny Goose Foods,
10 Inc. v. Teamsters, 415 U.S. 423, 442 (1974). In order to warrant
11 issuance of such relief, Plaintiff must demonstrate either: 1) a
12 combination of probable success on the merits and a likelihood of
13 irreparable injury; or 2) that serious questions are raised and
14 the balance of hardships tips sharply in favor of granting the
15 requested injunction. Stuhlbarq Int'l Sales Co., Inc. v. John D.
16 Brush & Co., Inc., 240 F.3d 832, 839-40 (9th Cir. 2001); Winter
17 v. Natural Resources Defense Council, 129 S. Ct. 365, 375 (2008).
18 (likelihood rather than possibility of success on the merits
19 required for issuance of preliminary injunctive relief). These
20 two alternatives represent two points on a sliding scale, pursuant
21 to which the required degree of irreparable harm increases or
22 decreases in inverse correlation to the probability of success on
23 the merits. Roe v. Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998);
24 United States v. Nutri-cology, Inc., 982 F.2d 1374, 1376 (9th Cir.
25 1985). Under either formulation of the test for granting
26 injunctive relief, however, Plaintiff must demonstrate a
27 significant threat of irreparable injury. Oakland Tribune, Inc.
28 v. Chronicle Publ. Co., 762 F.2d 1374, 1376 (9th Cir. 1985).

1 The primary purpose of injunctive relief is to preserve the
2 status quo pending a determination on its merits. Chalk v.
3 United States Dist. Ct., 840 F.2d 701, 704 (9th Cir. 1988).
4 Although injunctive relief seeking to alter the status quo is not
5 automatically rejected, it is subject to higher scrutiny and
6 carries a heavy burden of persuasion. Tom Doherty Assocs., Inc.
7 v. Saban Entertainment, Inc., 60 F.3d 27, 33-34 (2d Cir. 1995).

8 Examination of Plaintiff's filings here shows that, in
9 requesting injunctive relief, she is not attempting to preserve
10 the status quo but rather to alter the alleged results of a
11 complicated pattern of embezzlement dating back more than ten
12 years, to approximately 1997. Plaintiff goes on to claim that
13 her business operations ceased in November 2001 due to alleged
14 embezzlement, and that she was evicted from her home in October
15 of 2004, also as a result of alleged fraud and/or embezzlement.
16 Therefore, Plaintiff appears to be asking the Court to change the
17 results of events that occurred in some instances more than a
18 decade ago. As such, the propriety of Plaintiff's requests in
19 the context of injunctive relief is subject to increased scrutiny.

20 The Court concludes that Plaintiff cannot meet that
21 heightened burden of persuasion, and that her request for
22 injunctive relief fails on multiple grounds. First, the
23 propriety of a temporary restraining order, in particular, hinges
24 on a significant *threat* of irreparable injury (Simula, Inc.
25 Autoliv, Inc., 175 F.3d 716, 725 (9th Cir. 1999)) that must be
26 *imminent* in nature. Caribbean Marine Serv. Co. v. Baldrige, 844
27 F.2d 668, 674 (9th Cir. 1988); Midgett v. Tri-County Metro.
28 Transp. Dist. of Oregon, 254 F.3d 846, 850-51 (9th Cir. 2001).

1 Past harm alone is insufficient. Instead, in order to obtain
2 injunctive relief, plaintiff must show a real and immediate
3 threat that she will be harmed again. City of Los Angeles v.
4 Lyons, 461 U.S. 95, 111 (1983); Plumley v. Landmark Chevrolet
5 Inc., 122 F.3d 308, 312 (5th Cir. 1997).

6 Here, the vast bulk of Plaintiff's complaints concern
7 injuries that occurred many years ago as a result of a purported
8 embezzlement scheme that began in the 1990's and culminated in
9 her business operations ceasing in 2001 and her home and personal
10 belongings being seized in 2004. Those losses have already
11 occurred, and in and of themselves are inadequate to support the
12 issuance of injunctive relief in the present. Any current threat
13 of irreparable harm here seems to stem from allegations 1) that
14 Plaintiff cannot afford to pay for continued storage of her
15 remaining personal items, and that said items may consequently be
16 sold to pay storage fees; 2) that funds embezzled by Defendant
17 Theiler may be subject to further dissipation following his
18 January 2008 death through inheritance and/or the assumption of
19 control by other individuals; and 3) that Plaintiff desperately
20 needs funds to pay for long-deferred surgery and other living
21 expenses.

22 Plaintiff's reliance on these circumstances to establish the
23 requisite irreparable harm is flawed for two reasons. First,
24 there is no indication that the losses cannot be adequately
25 compensated through monetary damages: in fact, Plaintiff's very
26 description of her plight as enumerated above shows simply that
27 Plaintiff needs money to avert the perceived injuries from
28 occurring.

1 The threat of money damages alone is not ordinarily enough to
2 constitute irreparable harm. Sampson v. Murray, 415 U.S. 61, 90
3 (1974). Courts do not issue injunctions to protect legal
4 remedies, or remedies that are monetarily compensable. Wisdom
5 Import Sales Co., L.L.C. v. Labatt Brewing Co., Ltd., 339 F.3d
6 101, 113-14 (2d Cir. 2003). Second, much of the irreparable
7 injury that Plaintiff attempts to remedy consists of speculation
8 that embezzled funds will be further depleted, and speculation
9 that if she continues to postpone surgery needed since at least
10 2002 that she may suffer further injury. Speculative injuries,
11 however, are insufficient to justify the issuance of injunctive
12 relief. Goldie's Bookstore, Inc. v. Sup. Ct., 739 F.2d 466, 472
13 (9th Cir. 1984).

14 The Court concludes that Plaintiff has not identified
15 irreparable injury sufficient to justify the imposition of
16 injunctive relief, particularly in view of the fact that she is
17 subject to an even higher standard of persuasion in that regard
18 in seeking, not to maintain the status quo, but to disgorge funds
19 that Defendants are currently said to have in their possession.
20 Plaintiff has not shown that her claimed damages cannot be
21 compensated by a monetary award, and as stated above money
22 damages are not enough to constitute irreparable harm.

23 Sampson v. Murray, 415 U.S. at 90.

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1 Since irreparable harm must always be established to justify
2 injunctive relief (see Oakland Tribune, Inc. v. Chronicle Publ.
3 Co., 762 F.2d at 1376), the Court need not even address whether
4 there is any probability that Plaintiff will prevail on the
5 merits of her claims, and it declines to do so. Plaintiff's
6 "Emergency" Motions, which the court has construed as seeking
7 temporary injunctive relief, are therefore DENIED.

8 IT IS SO ORDERED.

9 Dated: April 10, 2009

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12 MORRISON C. ENGLAND, JR.
13 UNITED STATES DISTRICT JUDGE
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