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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KZSA BROADCASTING, INC., A )  
California corporation; DIAMOND )  
BROADCASTING, a California )  
corporation, )  
  
Plaintiffs, )  
  
v. )  
  
IMMACULATE HEART RADIO EDUCATIONAL )  
BROADCASTING, INC., a California )  
non-profit corporation, DOUGLAS )  
M. DAGGS, SUCCESSOR TRUSTEE OF THE )  
SYLVIA DELLAR TRUST, SUCCESSOR )  
TRUSTEE OF THE DELLAR FAMILY TRUST;) )  
Roes 1-10, )  
  
Defendants. )  
\_\_\_\_\_ )

2:10-cv-01213-GEB-EFB

ORDER DENYING PLAINTIFFS'  
EX PARTE APPLICATION FOR A  
TEMPORARY RESTRAINING ORDER

Plaintiffs have filed an application for an ex parte temporary restraining order ("TRO") in which they request that the court enjoin Defendants from:

- (1) removing, storing, concealing[,] preventing access and removal of, use, direct or indirect use, direct or indirect blocking access to or peaceful removal of any and all of Plaintiff's broadcast transmission equipment, including a 200 foot antenna transmission tower and all property removed by Defendants on or about May 4, 2010 from the property Plaintiffs formally leased by Plaintiffs to an undisclosed location and all broadcast and transmission equipment that remains on the property that Plaintiffs' formerly leased (collectively "The KZSA/Diamond Property"); and (2) to immediately cease and desist from making use of any of The KZSA/Diamond Property directly or indirectly by any means.

1 (TRO Application 2:1-15.) Plaintiffs, however, have not shown they  
2 are entitled to an ex parte TRO.

3 Federal Rule of Civil Procedure 65(b)(1) prescribes:

4 The court may issue a temporary restraining order  
5 without written or oral notice to the adverse  
6 party or its attorney only if:

7 (A) specific facts in an affidavit or a verified  
8 complaint clearly show that immediate and  
9 irreparable injury, loss, or damage will  
10 result to the movant before the adverse party  
11 can be heard in opposition; and

12 (B) the movant's attorney certifies in writing any  
13 efforts made to give notice and the reasons  
14 why it should not be required.

15 Fed. R. Civ. P. 65(b)(1). Further, Local Rule 231(a) details the type  
16 of notice the movant is required to provide to the adverse party:

17 Except in the most extraordinary of circumstances,  
18 no temporary restraining order shall be granted in  
19 the absence of actual notice to the affected party  
20 and/or counsel, by telephone or other means, or a  
21 sufficient showing of efforts made to provide  
22 notice. Appropriate notice would inform the  
23 affected party and/or counsel of the intention to  
24 seek a temporary restraining order, the date and  
25 time for hearing to be requested of the Court, and  
26 the nature of the relief requested. Once a specific  
27 time and location has been set by the Court, the  
28 moving party shall promptly give additional notice  
of the time and location of the hearing.

19 E.D. Cal. R. 231(a).

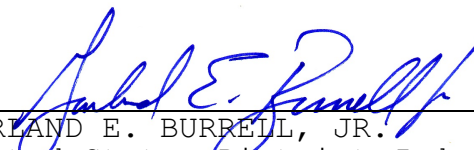
20 Plaintiffs' TRO application includes declarations from Paula  
21 Nelson, the owner of KZSA Broadcasting, Inc. and Diamond Broadcasting  
22 Inc., and S. Raye Mitchell, Plaintiffs' counsel. However, neither of  
23 these declarations satisfy the requirements in Federal Rule of Civil  
24 Procedure 65(b)(1) and Local Rule 231(a) concerning notice and  
25 Plaintiffs' obligation to demonstrate irreparable injury.

26 Further, Plaintiffs' TRO application and the supporting  
27 declarations refer to a TRO application Defendant Daggs filed in  
28 "Sacramento Superior Court to obtain a temporary restraining order

1 . . . to bar [Plaintiff] KZSA [Broadcasting, Inc.] from obtaining  
2 [KZSA's] property which [Plaintiffs' assert] has been unlawfully  
3 converted." (Nelson Decl. ¶ 10.) This indicates that the relief  
4 Plaintiffs seek through their TRO application in federal court could  
5 conflict with relief Defendant Daggs seeks in the TRO application he  
6 filed earlier in the Sacramento Superior Court. Specifically,  
7 Defendant Daggs' TRO application could lead to an injunction  
8 precluding Plaintiffs from obtaining and possessing the same property  
9 Plaintiffs seek to have this federal court compel Defendants to allow  
10 Plaintiffs to possess. This indicates that even if Plaintiffs could  
11 ultimately satisfy applicable injunction factors in this federal  
12 action, since control of the property appears to be litigated in two  
13 courthouses-federal court and state court-Plaintiffs would need to  
14 address whether equity and comity "counsels in favor of deferring to  
15 [Defendant Daggs'] parallel state-court suit." Moses H. Cone Memorial  
16 Hosp. v. Mercury Const. Corp., 460 U.S. 1, 28 (1983).

17 For the stated reasons, Plaintiffs' ex parte TRO application  
18 is DENIED.

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20 Dated: May 20, 2010

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23 GARLAND E. BURRELL, JR.  
24 United States District Judge  
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