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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STORMWATER SYSTEMS, INC., dba
SAFE DRAIN, INC., a California
corporation, et al.

Plaintiffs,

v.

DOUGLAS REITMEYER, an individual,
et al.,

Defendants.

No. 2:14-cv-0472-MCE-CKD

MEMORANDUM AND ORDER

This case presents a complex dispute among former business associates. On October 21, 2014, Stormwater Systems, Inc. ("Stormwater") filed a complaint against Douglas Reitmeyer ("Reitmeyer"). ECF No. 1. Thereafter, on November 12, 2014, Plaintiffs Stormwater dba Safe Drain, Inc. ("Safe Drain"), John Deming ("Deming"), and Safe Drain International, Inc. ("International") (collectively "Plaintiffs") filed the operative First Amended Complaint ("FAC") against Reitmeyer, Michael Brasberger, Sr. ("Brasberger, Sr."), Michael Brasberger, Jr. ("Brasberger, Jr.") and the Brasbergers' company ASHMB, LLC (collectively "Defendants"). ECF No. 5. On November 20, 2014, thirty days after the filing of the initial complaint and eight days after they filed the FAC, Plaintiffs filed the instant Application for a Temporary Restraining Order ("Application"). ECF No. 9. Reitmeyer filed an opposition to the Application on November 24, 2014.

1 ECF No. 13. On November 25, 2014, the Court held a hearing at which counsel for
2 Plaintiffs and Reitmeyer appeared.¹ At the conclusion of the hearing, the Court orally
3 denied Plaintiffs' Application. ECF No. 17. This Memorandum and Order serves as the
4 Court's formal ruling on the matter. Any conflict between this Memorandum and Order
5 and the Court's oral decision shall be resolved according to this Memorandum and
6 Order.

8 BACKGROUND

10 Thus far, the Court has heard from Plaintiffs and only one Defendant. Although
11 there is little agreement among the parties about the events that have transpired over
12 the past year, the Court's very basic understanding of the facts follows.

13 Deming has conducted business through Safe Drain² since approximately 2000,
14 selling storm drain catch basins that capture pollutants and contaminants before they
15 can enter the sewer system. FAC, ECF No. 5 ¶¶ 14, 16. Deming used the domain
16 <safedrain.com>. Id. ¶ 37. In late 2013, Deming and Reitmeyer formed International, a
17 Nevada corporation, to sell the drains through ten regional offices that correspond to the
18 regional divisions established by the Environmental Protection Agency ("EPA"). Id. ¶ 22.
19 Each regional office would be run by a regional sales director, who would earn 60% of
20 the profits generated by drain sales Id. ¶ 24. Safe Drain would receive the remaining
21 profits. Id. Brasberger, Sr. and Brasberger, Jr. are regional sales directors of two
22 regional offices. Id. ¶ 25.

23 By mid-2014, business relations between Deming and Reitmeyer had started to
24 deteriorate. Plaintiffs allege that at an early July 2014 meeting, Deming and others,
25 including Brasberger, Sr., confronted Reitmeyer about his alleged misuse of corporate

26 ¹ It appears that neither the Brasbergers nor ASHMB, LLC, had been served with a summons and
27 FAC at the time of the hearing. ECF No. 12.

28 ² Deming changed the name of the business to Stormwater Systems, Inc. due to other pending
litigation.

1 funds. Id. ¶ 43. On July 7, 2014, Deming and another regional sales manager,
2 Benjamin “Buzz” Holmes, incorporated a new company called Safe Drain International
3 Delaware with the purpose of selling drains without Reitmeyer’s interference. Id. ¶ 47.
4 The Brasbergers and ASHMB were involved in this new company. Id. ¶ 48.

5 Also during this time, Plaintiffs learned that Reitmeyer transferred the
6 <safedrain.com> domain into his own name in January 2014. Id. ¶ 43. Moreover,
7 Reitmeyer threatened to keep the domain until he “got what he wanted.” Id. ¶ 44. On
8 July 20, 2014, Deming took steps to rectify this alleged malfeasance by writing to the
9 domain agent, GoDaddy, and explaining that the domain name at issue had been taken
10 illegally. Id. ¶ 45. GoDaddy was nonetheless unable to assist Deming due to the
11 passage of time since the domain was transferred. Id. ¶ 46. Consequently, on July 24,
12 2014, attorney Lawrence Townsend, who had represented International and eventually
13 filed the initial complaint in this action, wrote to Reitmeyer about his allegedly unlawful
14 acts in connection with the domain name. Opp’n, ECF No. 14-1, Ex. 20. Townsend’s
15 missive noted that Reitmeyer’s “liability for such a clear case of cybersquatting under
16 federal law is not only an injunction and transfer of the domain name, but also statutory
17 damages up to \$100,000 and an award of Safe Drain’s attorneys’ fees.” Id. (emphasis
18 added).

19 Shortly after the formation of Safe Drain International Delaware, Deming’s
20 relationship with the Brasbergers also began to sour. Indeed, by October 2, 2014, and
21 in some instances much earlier, Plaintiffs allege Deming learned that Brasberger, Jr.
22 (1) terminated Deming’s administrative rights to the Customer Relationship Management
23 System (“CRM”), which cut off Deming’s ability to control marketing, customer service,
24 and sales of the company’s extensive customer base, ECF No. 5 ¶ 49; (2) had been
25 preventing Deming from accessing contacts and leads in the CRM systems for months
26 prior, id. ¶ 50; (3) took control of the website and substituted his personal contact
27 information for all but two of the ten EPA regions, including Deming’s region, id. ¶ 53;
28 and (4) altered the site so all leads would be sent to Brasberger, Jr. alone, id. ¶ 54.

1 According to Plaintiffs, on October 4, 2014, Deming met with Brasberger, Sr. and
2 Holmes in an attempt to resolve their issues related to the control of the business. Id. ¶
3 59. Deming asserts that at the meeting the parties agreed that Defendants “would
4 release all control of accounting, the CRM system,...the domain and website, and all
5 other facets of...corporate operations” on October 6, 2014. Id. ¶ 64. Plaintiffs also claim
6 that this meeting resulted in Defendants strong arming Deming into signing an
7 agreement, a copy of which has not been provided to the Court, without giving him
8 adequate time to read it or consult with a lawyer. Id. ¶¶ 61-65.

9 According to Plaintiffs, October 6th came and went and Defendants did not
10 perform their end of the bargain. Rather, they refused to return control of the website,
11 domain, CRM system, and accounting, and also terminated Plaintiffs’ control over the
12 business’ Facebook page and changed all contact information thereon. Id. ¶¶ 66-67. In
13 addition, according to Plaintiffs, beginning in mid-October Defendants began telling third
14 parties that Deming was unable to pay his bills, had not filed corporate tax returns and
15 that Safe Drain, Inc. was a defunct corporation. Id. ¶¶ 73, 82-83.

16 On October 19, 2014, Reitmeyer allegedly contacted Palm Tree, the
17 <safedrain.com> website manager, and indicated he owned and controlled the domain
18 for the protection of himself and other investors. Id. ¶ 73. Additionally, Deming alleges
19 that on this date Defendants took control of all <safedrain.com> emails, including
20 Deming’s personal account, and began sending emails to customers while posing as
21 Deming. ECF No. 9 at 8.

22 23 STANDARD

24
25 Issuance of a temporary restraining order, as a form of preliminary injunctive
26 relief, is an extraordinary remedy, and Plaintiffs have the burden of proving the propriety
27 of such a remedy. See Mazurek v. Armstrong, 520 U.S. 968, 972 (1997). In general,
28 the showing required for a temporary restraining order and a preliminary injunction are

1 the same. Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F.3d 832, 839
2 n.7 (9th Cir. 2001).

3 The party requesting preliminary injunctive relief must show that “he is likely to
4 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
5 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
6 the public interest.” Winter v. Natural Resources Def. Council, 555 U.S. 7, 20 (2008);
7 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter). The
8 propriety of a TRO hinges on a significant threat of irreparable injury that must be
9 imminent in nature. Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674
10 (9th Cir. 1988).

11 Alternatively, under the so-called sliding scale approach, as long as the Plaintiffs
12 demonstrate the requisite likelihood of irreparable harm and show that an injunction is in
13 the public interest, a preliminary injunction can still issue so long as serious questions
14 going to the merits are raised and the balance of hardships tips sharply in Plaintiffs’
15 favor. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011)
16 (concluding that the “serious questions” version of the sliding scale test for preliminary
17 injunctions remains viable after Winter).

18 Mandatory injunctions are subject to heightened scrutiny even beyond that
19 normally applied to preliminary injunctive relief generally. Dahl v. HEM Pharms. Corp.,
20 7 F.3d 1399, 1403 (9th Cir. 1993). They are particularly disfavored and will not be
21 granted unless extreme or very serious harm will result. Marlyn Pharms., Inc. v. Mucos,
22 571 F.3d 873, 879 (9th Cir. 2009). The court must accordingly be “extremely cautious”
23 about granting such relief. Martin v. Int'l Olympic Comm., 740 F.2d 670, 675 (9th Cir.
24 1984).

25 ANALYSIS

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27 In their Application, Plaintiffs ask that the Court order Defendants to:

- 28 1. Refrain from holding funds properly belonging to Plaintiffs;

- 1 2. Refrain from withdrawing or transferring any funds from any account of
2 Plaintiffs;
- 3 3. Refrain from holding property properly belonging to Plaintiffs, including, but
4 not limited to, demo units, valves, and other items of equipment; sales
5 literature (brochures and cut sheets) and/or trade show displays;
- 6 4. Refrain from holding proprietary software and rights properly belonging to
7 Plaintiffs, including, but not limited to, email accounts, Customer
8 Relationship Management (“CRM”) software, and Facebook account(s);
- 9 5. Refrain from any and all use of the “Safe Drain” mark, including, but not
10 limited to, advertising, websites, social media, production, sales, and/or
11 solicitations;
- 12 6. Refrain from contacting any vendors of Plaintiffs;
- 13 7. Provide Plaintiffs with the names of all customers or potential customers
14 who have made inquiry as to any Safe Drain product from and after
15 January 1, 2014;
- 16 8. Refrain from harassing Deming or any other staff member of Plaintiffs;
- 17 9. Refrain from providing access to any person, other than Plaintiffs, of any
18 Safe Drain proprietary information, funds, and accounts; and
- 19 10. Refrain from contacting any customer of Plaintiffs and/or from using
20 Plaintiffs’ customer lists. ECF No. 9-1 at 21-22.

21 Plaintiffs are not simply seeking to maintain the status quo until a preliminary
22 injunction can be issued. Instead, the relief requested seeks to alter business
23 relationships and would involve a substantial alteration of the parties’ respective
24 positions. Therefore, this Application is for a mandatory injunction, which the Court must
25 view with heightened scrutiny. Dahl, 7 F.3d at 1403.

26 A careful analysis of the sequence of events shows that Plaintiffs have been less
27 than expeditious about bringing this dispute to the Court’s attention. While many of the
28 facts are in dispute, Plaintiffs’ counsel repeatedly represented at the hearing that

1 Deming was aware by October 19, 2014, that Defendants had wrested full control of the
2 business from him and had no interest in compromising. On October 21, 2014, Plaintiffs
3 finally filed a two count complaint naming Reitmeyer as the sole defendant. ECF No. 1.
4 The initial complaint was not accompanied by an application for a TRO or preliminary
5 injunction. Neither did Plaintiffs immediately seek a TRO when they filed the operative
6 First Amended Complaint twenty-two days later, ECF No. 5; rather, they waited an
7 additional eight days to file their TRO application, ECF No. 9. Plaintiffs' delay militates
8 against the showing of imminent and irreparable harm required for preliminary injunctive
9 relief. Because Plaintiffs have not treated this situation as an emergency over the
10 preceding months, the Court will not grant relief on an emergency basis.

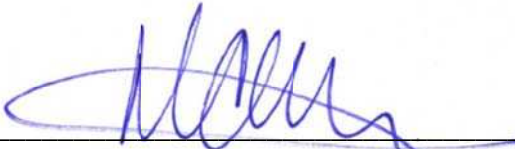
11 Additionally, given the convoluted nature of this case, the widely divergent factual
12 position taken by the parties, and the fact that a number of the Defendants have not
13 even yet been served, adjudicating this matter on an emergency basis, without full and
14 complete briefing, is unwarranted and unwise. See Martin, 740 F.2d at 675.

15 16 CONCLUSION

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18 Given the considerations outlined above and for the reasons stated on the record
19 during the November 25, 2014 hearing, Plaintiffs' Application for a Temporary
20 Restraining Order, ECF No. 9, is DENIED.³

21 IT IS SO ORDERED.

22 DATED: December 1, 2014

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24 
25 MORRISON C. ENGLAND, JR., CHIEF JUDGE
26 UNITED STATES DISTRICT COURT

27
28 ³ As the Court noted on the record during the TRO hearing, the parties' actions between now and the hearing on Plaintiffs' Application for a Preliminary Injunction, which is currently set for January 22, 2015, will be heavily scrutinized.