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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CLEVELAND WALLACE, et al.,
Plaintiff,
v.
BUCKINGHAM PROPERTY
MANAGEMENT, et al.,
Defendants.

No. 2:16-cv-1000 TLN CKD PS

FINDINGS AND RECOMMENDATIONS

In this action, plaintiffs allege that defendants have engaged in a civil conspiracy to invade plaintiffs' privacy by unlawfully installing surveillance devices in their residence. Plaintiffs move for a temporary restraining order, requesting that their apartment management be enjoined from entering their home even when the management gives proper notice of intent to enter.

The standards governing the issuance of temporary restraining orders are "substantially identical" to those governing the issuance of preliminary injunctions. Stuhlbarg Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir.2001). Therefore, "[a] plaintiff seeking a [TRO] must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Am. Trucking Ass'n, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir.2009) (quoting Winter v. Natural Res. Def. Council, Inc.,

1 555 U.S. 7 (2008)). "A preliminary injunction is appropriate when a plaintiff demonstrates . . .
2 that serious questions going to the merits were raised and the balance of hardships tips sharply in
3 the plaintiff's favor." Alliance for the Wild Rockies v. Cottrell, 622 F.3d 1045, 1049-50 (9th Cir.
4 2010) (quoting Lands Council v. McNair, 537 F.3d 981, 97 (9th Cir. 2008) (en banc)). A TRO is
5 "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
6 entitled to such relief." Winter, 129 S. Ct. at 376.

7 The Ninth Circuit has reiterated that under either formulation of the principles, if the
8 probability of success on the merits is low, preliminary injunctive relief should be denied:
9 Martin explicitly teaches that "[u]nder this last part of the alternative test, even if the balance of
10 hardships tips decidedly in favor of the moving party, it must be shown as an irreducible
11 minimum that there is a fair chance of success on the merits." Johnson v. California State Bd. of
12 Accountancy, 72 F.3d 1427, 1430 (9th Cir. 1995) (quoting Martin v. International Olympic
13 Comm., 740 F.2d 670, 675 (9th Cir. 1984)).

14 Plaintiffs fail to address the merits of their claims. Defendants have filed motions to
15 dismiss, currently scheduled for hearing on August 24, 2016, which raise serious questions as to
16 the merits of plaintiffs' claims. Moreover, the harm plaintiffs claim in having apartment
17 management personnel enter their apartment is speculative at best. Plaintiffs' motion for
18 temporary restraining order is without merit.

19 Accordingly, IT IS HEREBY RECOMMENDED that plaintiffs' motion for temporary
20 restraining order (ECF No. 19) be denied.

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
23 after being served with these findings and recommendations, any party may file written
24 objections with the court and serve a copy on all parties. Such a document should be captioned
25 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

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1 within the specified time may waive the right to appeal the District Court's order. Martinez v.
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: August 11, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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