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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
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8 ADIL HIRAMANЕК, *et al.*,

No. C-13-0228 EMC

9 Plaintiffs,

10 v.

**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION OR TEMPORARY
RESTRAINING ORDER**

11 L. MICHAEL CLARK, *et al.*,

12 Defendants.

(Docket No. 40)

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15 Plaintiff Roda Hirananeк, proceeding pro se, has filed an ex parte motion for an “immediate
16 temporary Preliminary Injunction” or a temporary restraining order against Defendant the Superior
17 Court of California (County of Santa Clara). Having reviewed the papers filed, and all other
18 evidence of record, the Court hereby **DENIES** the request for relief.¹

19 **I. DISCUSSION**

20 A. Notice

21 As a preliminary matter, the Court notes that it is troubled by Ms. Hirananeк’s decision to
22 pursue relief on an ex parte basis.² Ms. Hirananeк has not provided any reason as to why it was
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24 ¹ The Court notes that its order of September 3, 2013, precluded Ms. Hirananeк from filing
25 any motion until after the Superior Court and Judge Clark have made an appearance in this
26 case and the case management conference is held on November 21, 2013. *See* Docket No. 39 (Order
27 at 12). Although Ms. Hirananeк has violated the Court’s order by filing the pending motion, the
28 Court shall not reject the motion on that basis – although it could, particularly given the lack of
substantive merit to the motion.

² Several days after she filed her motion, Ms. Hirananeк filed a certificate of service in
which her son claims that he delivered a copy of the motion to the Superior Court. *See* Docket No.
42 (certificate of service). The motion, however, was simply directed “Superior Court of California,

1 necessary for her to proceed on such a basis. Nor can the Court divine of any such reason.
2 Accordingly, the Court would well be within its right to deny Ms. Hirananeck's motion on the basis
3 that ex parte relief is not justified.

4 B. Delay

5 Aside from the notice problem, Ms. Hirananeck's request for relief is problematic because
6 she delayed in seeking relief. *See Oakland Trib., Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377
7 (9th Cir. 1985) (stating that "[p]laintiff's long delay before seeking a preliminary injunction implies
8 a lack of urgency and irreparable harm"); *Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211,
9 1213 (9th Cir. 1984) (stating that "[a] delay in seeking a preliminary injunction is a factor to be
10 considered in weighing the propriety of relief"). Here, the allegedly wrongful conduct identified by
11 Ms. Hirananeck took place at a state court hearing on August 16, 2013. *See* Docket No. 40
12 (Hirananeck Decl., Ex. D). However, she did not seek any relief from this Court until almost a
13 month later.

14 Ms. Hirananeck argues that she did not delay because she filed the motion with this Court
15 within two court days of her receiving a transcript of the August 16 hearing. *See* Mot. at 2. But that
16 argument is unconvincing because she has failed to demonstrate that it was not possible for her to
17 seek relief from this Court without having a copy of the transcript. Notably, all that the transcript
18 reflects is that Ms. Hirananeck argued to the state court that she did not appear in person because she
19 is disabled. Ms. Hirananeck could easily have submitted that evidence to the Court through her own
20 declaration.

21 C. Merits of Request for Relief

22 Ms. Hirananeck's motion for relief is also flawed on the merits.³

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24 Court Services." Mr. Hirananeck also claims that he e-mailed a copy of the motion to the Superior
25 Court at "sscivilinfo@scscourt.org." This does not appear to constitute valid service and thus the
26 motion is still considered ex parte.

26 ³ For purposes of this opinion, the Court assumes that *Younger* abstention, *see Younger v.*
27 *Harris*, 401 U.S. 37 (1971), is not applicable. Previously, Ms. Hirananeck sought similar
28 preliminary injunctive relief, but the Court denied the relief based on *Younger* abstention (among
other independent grounds). *See* Docket No. 29 (Order at 1-2). Here, Ms. Hirananeck is essentially
asking the Court to reconsider its *Younger* abstention ruling.

1 First, contrary to what she suggests, what she is seeking is really a mandatory injunction and
2 not a prohibitory one because, essentially, what she seeks from this Court is an order instructing the
3 state court to allow her to make telephonic appearances.⁴

4 Second, she has failed to show a likelihood of success on the merits or even serious questions
5 going to the merits. *See Conservation Cong. v. United States Forest Serv.*, 720 F.3d 1048, — (9th
6 Cir. 2013) (stating that “[a] preliminary injunction is an ‘extraordinary remedy’ that requires the
7 movant to show [*inter alia*] it is likely to succeed on the merits”). Although Ms. Hirananeck claims
8 that Judge Manoukian of the Superior Court discriminated against her on the basis of her disability,
9 there is no real evidence to support that claim.

10 For example, there is no evidence that, prior to the August 16 hearing, Ms. Hirananeck asked
11 Judge Manoukian permission to appear telephonically at the hearing because of her disability.⁵
12 While Ms. Hirananeck did bring up her disability with Judge Manoukian on the actual day of the
13 hearing, at that late point in time, it was not unfair or unreasonable for Judge Manoukian to cut her
14 off. Ms. Hirananeck could have raised the issue of her disability with Judge Manoukian earlier, but
15 she did not.⁶

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17 The Court assumes that *Younger* abstention is not a bar for purposes of this motion because
18 Ms. Hirananeck has raised at least one argument that may have some merit – *i.e.*, that the second
19 *Younger* factor (*i.e.*, that the state court proceeding implicates important state interests) cannot be
20 met here. *See Portrero Hills Landfill, Inc. v. County of Solano*, 657 F.3d 876, 886 (9th Cir. 2011)
21 (stating that, “[t]o establish a vital interest in the state’s judicial functions, an abstention proponent
must assert more than a state’s generic interest in the resolution of an individual case or in the
enforcement of a single state court judgment”; “[r]ather, the interest at stake must go to the core of
the administration of a State’s judicial system, and its importance must be measured by considering
its significance broadly”) (internal quotation marks omitted).

22 ⁴ In her proposed order, Ms. Hirananeck has tried to draft an injunction that is prohibitory in
23 nature but that attempt falls flat for the reason discussed above. Moreover, Ms. Hirananeck’s
24 proposed injunction is problematic because it is, in effect, an obey-the-law injunction. Such
injunctions are generally disfavored. *See EEOC v. Autozone, Inc.*, No. 12-1017, 707 F.3d 824, 2013
U.S. App. LEXIS 3311, at *38-39 (7th Cir. Feb. 15, 2013).

25 ⁵ For purposes of this opinion, the Court assumes that Ms. Hirananeck is disabled. Ms.
26 Hirananeck has submitted at least some evidence to support her claim of disability. *See* Docket No.
28-2 (sealed document).

27 ⁶ Even though, in the past, Ms. Hirananeck’s request for a telephonic appearance as an
28 accommodation had been denied, *see, e.g.*, Hirananeck Decl., Ex. C (response to request for
accommodation, dated February 15, 2013) (stating “you failed to provide sufficient information as to
why you are not able to appear in person” but noting that “parties are allowed to appear by phone for

1 To the extent Ms. Hirananeck argues that she had brought up the issue of her disability with
2 Judge Manoukian previously, that is not clear from the record. The exhibit she submits reflects that
3 the request for an accommodation was made to a different judge (Carol Overton). *See* Hirananeck
4 Decl., Ex. H (request for accommodation). Furthermore, that was a request for an accommodation
5 made months earlier (in June 2013) and in conjunction with a completely different event (*i.e.*, a
6 deposition and not a court hearing). Finally, even if the request was given to Judge Manoukian, Ms.
7 Hirananeck states in her declaration that Judge Manoukian referred the request to another person in
8 the Superior Court, *see* Hirananeck Decl., Ex. E (Hirananeck Decl. ¶ 2), which suggests that (1) he
9 did not look into any evidence supporting her claim of disability and that (2) he was therefore
10 unaware of the nature of her disability when Ms. Hirananeck referenced it at the August 16 hearing.

11 As for Ms. Hirananeck’s point that, under the California Rules of Court, a party may make a
12 telephonic appearance for certain kinds of hearings, including discovery hearings, regardless of
13 whether the party is disabled, that is true. *See generally* Cal. R. of Court 3.670. However, a specific
14 procedure must be followed in order to make a telephonic appearance, and Ms. Hirananeck has not
15 made an adequate showing that she followed that process. For example, there is no evidence that
16 Ms. Hirananeck gave notice to Judge Manoukian that she would be appearing telephonically for the
17 August 16 hearing. *See* Cal. R. of Court 3.670(g) (providing that a party choosing to appear by
18 telephone must either place the phrase “Telephone Appearance” below the title of the moving,
19 opposing, or reply papers or, at least three days before the appearance, notify the court and all other
20 parties of the intent to appear by telephone, either orally or in writing); Hirananeck Decl., Ex. E
21 (Hirananeck Decl. ¶ 3) (simply stating that she “scheduled a Court-Call appearance for Aug. 16,
22 2013 hearing”). And even if Ms. Hirananeck did give proper notice, that fact did not preclude Judge
23 Manoukian from requiring her personal appearance, *see* Cal. R. of Court 3.670(e)(2), which he did,
24 *i.e.*, through the tentative order, stating that “Plaintiff Roda Hirananeck is to appear.” Hirananeck
25 Decl., Ex. A (tentative order).

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28 [certain] proceedings . . . as a regular court process”), that does not mean that a request would
necessarily be denied in the future, particularly if there were new facts in support.

1 To the extent Ms. Hirananeck suggests that she was not given sufficient notice of the
2 personal appearance requirement, the record is inconclusive. Although Ms. Hirananeck claims at
3 one point in her papers that the tentative was issued only “a few hours before the hearing time,”
4 Hirananeck Decl., Ex. E (Hirananeck Decl. ¶ 5), she states at another point that the tentative came out
5 the day before. See Hirananeck Decl., Ex. E (Decl. ¶ 8). The latter is consistent with the state
6 court’s order, which states that the tentative was posted on the afternoon of August 15. See
7 Hirananeck Decl., Ex. G (Order at 1). Because the hearing was not until the following morning, Ms.
8 Hirananeck did have time to contact the Superior Court to ask for relief from the personal appearance
9 requirement prior to the hearing. Cf. Cal. R. of Court 3.670(h) (indicating that one day’s notice can
10 be reasonable in certain circumstances). And in any event, the provision in the California Rules of
11 Court that a party be given reasonable notice of a personal appearance requirement applies only
12 where a party has followed the notice procedure as specified in California Rule of Court 3.670(g),
13 see Cal. R. of Court 3.670(h) (stating that, “[a]fter a party has requested a telephone appearance
14 under (g), if the court requires the personal appearance of the party, the court must give reasonable
15 notice”), and, as noted above, Ms. Hirananeck has failed to provide sufficient evidence that she
16 complied with that procedure.

17 Third, even if Judge Manoukian had discriminated against Ms. Hirananeck on the basis of her
18 disability, that does not mean that she automatically has standing to pursue injunctive relief. See
19 *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983) (stating that “[past] exposure to illegal
20 conduct does not in itself show a present case or controversy regarding injunctive relief . . . if
21 unaccompanied by any continuing present adverse effects”). There must be a “real and immediate”
22 threat of repeat conduct by Judge Manoukian or the Superior Court. *Id.* at 105. Here, Ms.
23 Hirananeck has failed to make such a showing. The mere fact that she is scheduled to appear before
24 Judge Manoukian again in the future, see Hirananeck Decl. ¶ 13, is not enough. It is not clear, for
25 example, whether Judge Manoukian will in fact require Ms. Hirananeck to appear personally again if
26 she requests a telephonic appearance pursuant to California Rule of Court 3.670. And it is not clear
27 that the relief that she seeks would necessarily be denied if, e.g., she asks for a telephonic
28 appearance as an accommodation based on her disability which is supported by competent evidence.

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II. CONCLUSION

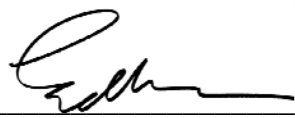
For each of the foregoing reasons, Ms. Hiranek's request for relief is denied.

The Court reiterates its prior ruling that both Plaintiffs are barred from filing any motion until after the Superior Court and Judge Clark have made an appearance in this case and the case management conference is held on November 21, 2013. *See* Docket No. 39 (Order at 12).

This order disposes of Docket No. 40.

IT IS SO ORDERED.

Dated: September 13, 2013



EDWARD M. CHEN
United States District Judge