

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3

4 MICHELE FOTINOS, on behalf of  
5 herself and as Guardian ad Litem  
6 for her minor children, R.F. and  
7 A.F.,

8 Plaintiff,

9 v.

10 JOHN FOTINOS; DAWN GROVER; RENEE  
11 LA FARGE; BONNIE MILLER; KAMALA  
12 HARRIS, Attorney General; JAYNE  
13 KIM, Chief Trial Counsel, State  
14 Bar of California; ROBYN PITTS,  
15 City of Belmont Police Officer;  
16 MARK REED, San Mateo County  
17 Deputy Sheriff; PATRICK CAREY,  
18 San Mateo County Deputy Sheriff;  
19 SHANNON MORGAN; CITY OF BELMONT;  
20 COUNTY OF SAN MATEO; and RENEE  
21 LAFARGE,

22 Defendant.  
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No. C 12-953 CW

ORDER DENYING  
PLAINTIFF'S  
APPLICATION FOR A  
TEMPORARY  
RESTRAINING ORDER

United States District Court  
For the Northern District of California

18 Plaintiff Michele Fotinos applies for a temporary restraining  
19 order on behalf of herself and her minor daughter R.F. against  
20 Defendants John Fotinos and Dawn Grover.<sup>1</sup> Having considered the  
21 application and the entire record in the case, the Court DENIES  
22 Plaintiff's application.

23 BACKGROUND

24 This case arises out of a nine-year custody battle between  
25 Plaintiff Michele Fotinos and her ex-husband, Defendant John

26  
27 <sup>1</sup> Although Plaintiff states that she moves ex parte, the  
28 application was served on Defendants' counsel through the  
Electronic Case Filing system.

1 Fotinos. In her complaint, Plaintiff accuses her ex-husband of  
2 physically and emotionally abusing their two children, R.F. and  
3 A.F. and alienating them from her. After numerous setbacks in her  
4 efforts to gain custody of her children in state court, on  
5 February 24, 2012, Plaintiff filed this lawsuit against numerous  
6 Defendants on behalf of herself and as guardian ad litem for R.F.  
7 and A.F.

8 Plaintiff submits evidence that, on June 29, 2012 she  
9 obtained, from the San Mateo County Court, domestic violence  
10 prevention restraining orders against her ex-husband and his  
11 partner Dawn Grover on behalf of her daughter R.F. See Exs. 1, 2.  
12 Those restraining orders state that they "end on" June 28, 2013 at  
13 midnight. Id. The orders also state that they "may be  
14 reevaluated at the conclusion of John Fotinos' criminal case."  
15 Id. The criminal case is ongoing. On June 26, 2013, Plaintiff  
16 submitted requests to the San Mateo County Court to renew the  
17 restraining orders "permanently." Exs. 3, 4. On July 2, 2013, a  
18 judicial officer of the San Mateo County Court entered a notice of  
19 hearing on the request to renew the restraining order against John  
20 Fotinos,<sup>2</sup> setting a hearing for July 18, 2013 at 9:00 AM. Ex. 5.  
21 The line on the Notice of Hearing form that states, "The  
22 restraining order (Order of Protection) stays in effect until the  
23 hearing date," is crossed off and initialed by the judicial  
24

25 <sup>2</sup> Although Plaintiff suggests that the renewal of both  
26 restraining orders has been "denied," the notice of hearing  
27 attached as an exhibit to the application for a temporary  
28 restraining order relates only to the restraining order against  
John Fotinos. There is no evidence regarding the resolution of  
the request to extend the restraining order against Dawn Grover.

1 officer. Id. In the instant application for a temporary  
2 restraining order, Plaintiff indicates that her attorney "sought a  
3 continuance to August 9, 2013" for the hearing on the request to  
4 renew the state restraining order. Application at 3.

5 Plaintiff now seeks a temporary restraining order from this  
6 Court, essentially extending the state court restraining orders.

7 LEGAL STANDARD

8 "The standard for issuance of a temporary restraining order  
9 is the same as that for issuance of a preliminary injunction."  
10 Burgess v. Forbes, 2009 WL 416843, at \*2 (N.D. Cal.). To obtain a  
11 preliminary injunction, the moving party must "establish that he  
12 is likely to succeed on the merits, that he is likely to suffer  
13 irreparable harm in the absence of preliminary relief, that the  
14 balance of equities tips in his favor, and that an injunction is  
15 in the public interest." Winter v. Natural Res. Def. Council,  
16 Inc., 129 S. Ct. 365, 374 (2008). Alternatively, a temporary  
17 restraining order could issue where "the likelihood of success is  
18 such that serious questions going to the merits were raised and  
19 the balance of hardships tips sharply in plaintiff's favor," so  
20 long as the plaintiff demonstrates irreparable harm and shows that  
21 the injunction is in the public interest. Alliance for the Wild  
22 Rockies v. Cottrell, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation  
23 and internal quotation and editing marks omitted).

24 DISCUSSION

25 I. Rooker-Feldman Doctrine

26 A federal district court, as a court of original  
27 jurisdiction, has no authority to review the determinations of a  
28 state court in judicial proceedings. 28 U.S.C. § 1257; District

1 of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983);  
2 Rooker v. Fidelity Trust Co., 263 U.S. 413, 415 (1923). The  
3 Rooker-Feldman doctrine has been described as "a powerful doctrine  
4 that prevents federal courts from second-guessing state court  
5 decisions by barring the lower federal courts from hearing de  
6 facto appeals from state-court judgments." Bianchi v. Rylaarsdam,  
7 334 F.3d 895, 898 (9th Cir. 2003). Here, the state court has not  
8 even issued a final ruling on Plaintiff's request to renew the  
9 restraining orders that Plaintiff seeks to replace with an order  
10 from this Court. A hearing on Plaintiff's state court request has  
11 been scheduled for July 18, 2013, although Plaintiff states that  
12 she has requested a continuance to August 9, 2013. The Court  
13 lacks jurisdiction to consider Plaintiff's request.

14 II. Merits of the Request

15 Even if the Court had jurisdiction to consider Plaintiff's  
16 request, the application for a temporary restraining order lacks  
17 merit. Although Plaintiff argues that there is a likelihood that  
18 she will prevail on her underlying claims, the only support for  
19 that argument is her assertion that "[j]ust considering the gender  
20 violence, assault and battery, false imprisonment, and defamation  
21 claims, the Court can easily conclude that there is a substantial  
22 likelihood that Plaintiffs will prevail on those claims in front  
23 of a jury." Application at 9. This is not enough to establish a  
24 likelihood of success on the merits.

25 Moreover, the Court notes that counsel for John Fotinos and  
26 Dawn Grover is operating under the assumption that the restraining  
27 orders remain in place. Barry Dec. Ex. 2 (email from counsel that  
28 states, "Since [the criminal case against John Fotinos] has not

1 resolved, the restraining order remains in place."). This  
2 assumption, together with Plaintiff's decision to seek a  
3 continuance of the state court hearing on her request to renew the  
4 restraining order, undermines any claim of irreparable harm in the  
5 absence of preliminary relief.

6 Finally, the purpose of a temporary restraining order is to  
7 preserve the status quo pending the complete briefing and thorough  
8 consideration contemplated by full proceedings pursuant to a  
9 preliminary injunction. See Granny Goose Foods, Inc. v.  
10 Teamsters, 415 U.S. 423, 438-39 (1974) (temporary restraining  
11 orders "should be restricted to serving their underlying purpose  
12 of preserving the status quo and preventing irreparable harm just  
13 so long as is necessary to hold a hearing, and no longer").  
14 Plaintiff asserts that the order she seeks is necessary because  
15 R.F. fears his father and his partner and the stress R.F. is  
16 experiencing as a result of the "denial" of the renewal of the  
17 restraining order is having serious detrimental effects on R.F.'s  
18 health. While the health problems Plaintiff describes are severe,  
19 it is not clear how issuance of the requested temporary  
20 restraining order will preserve the status quo as it relates to  
21 this case.

22 In this case, Plaintiff seeks "declaratory judgment that  
23 Defendants' actions violate Plaintiffs' right to equal protection  
24 and due process under the Fourteenth Amendment" and money damages  
25 against Defendants. See Second Amended Complaint, Docket No. 93.  
26 There is nothing to suggest that if Plaintiff succeeded on the  
27 merits of her case, she would be entitled to injunctive relief  
28

1 preventing John Fotinos or Dawn Grover from having contact with  
2 R.F.

3 CONCLUSION

4 For the reasons set forth above, the Court DENIES Plaintiff's  
5 application for a temporary restraining order (Docket No. 122).

6 IT IS SO ORDERED.

7  
8 Dated: 7/18/2013

  
9 CLAUDIA WILKEN  
10 United States District Judge  
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