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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TERRANCE A MOODY,

Plaintiff,

v.

METAL SUPERMARKET FRANCHISING
AMERICA, INC.,

Defendant.

No. C 13-5098 PJH

**ORDER DENYING APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

United States District Court
For the Northern District of California

Before the court is plaintiff's "ex parte application for temporary restraining order and order to show cause re: preliminary injunction," filed on November 7, 2013. Though the request is styled as an "ex parte" request, the declaration of plaintiff's counsel indicates that he "contacted defense counsel by phone and informed him that plaintiff was filing this motion." Dkt. 11-1 at 3. Thus, plaintiff is not requesting that the temporary restraining order be issued without notice, and the requirements of Federal Rule of Civil Procedure 65(b)(1) do not apply.

This case arises out of a contractual dispute between plaintiff Terrance Moody ("plaintiff") and defendant Metal Supermarkets Franchising America, Inc. ("defendant"). In 2003, the parties entered into a franchising agreement for a term of ten years. Under the terms of the agreement, defendant has the option to purchase the assets of plaintiff's franchise at the end of the ten-year term, on November 14, 2013. Defendant has indicated its intent to exercise that purchase option, and the parties now disagree as to the proper formula to calculate the purchase price. Plaintiff filed suit in state court on October 7, 2013, seeking a declaration as to the purchase price of the franchise's assets. Defendant removed the case to this court on October 31, 2013. However, before filing the notice of

1 removal, defendant filed a demand for arbitration with the American Arbitration Association
2 (“AAA”) in Washington, D.C. Plaintiff now seeks a temporary restraining order prohibiting
3 defendant from proceeding with the arbitration, arguing that the relevant franchise
4 agreement provides for disputes to be resolved in court, and further arguing that any
5 arbitration provision in the agreement is unconscionable and unenforceable.

6 Requests for temporary restraining orders are governed by the same general
7 standards that govern the issuance of a preliminary injunction. See New Motor Vehicle Bd.
8 v. Orrin W. Fox Co., 434 U.S. 1345, 1347 n.2 (1977); Stuhlbarg Int’l Sales Co., Inc. v. John
9 D. Brush & Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir. 2001).

10 A plaintiff seeking a preliminary injunction must establish that he is likely to succeed
11 on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
12 that the balance of equities tips in his favor, and that an injunction is in the public interest.
13 Winter v. Natural Resources Defense Council, Inc., 129 S.Ct. 365, 374 (2008).

14 Alternatively, the plaintiff may demonstrate that serious questions going to the merits
15 were raised and that the balance of hardships tips sharply in the plaintiff's favor, “so long
16 as the plaintiff also shows that there is a likelihood of irreparable injury and that the
17 injunction is in the public interest.” Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127,
18 1135 (9th Cir. 2011). A “serious question” is one on which the plaintiff has “a fair chance of
19 success on the merits.” Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415,
20 1421 (9th Cir. 1984).

21 An injunction is a matter of equitable discretion” and is “an extraordinary remedy that
22 may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”
23 Winter, 129 S.Ct. at 376, 381.

24 In this case, the court finds that plaintiff has failed to adequately allege any
25 irreparable harm that would result from the failure to issue a temporary restraining order,
26 and thus DENIES plaintiff’s request. Plaintiff argues that, if the arbitration were to go
27 forward, he would “be required to pay substantial amounts of money, thousands of dollars,
28 to AAA in ‘administrative fees’ in Washington, D.C.,” that he would be “required to pay tens

1 of thousands of dollars to the arbitrator in the action,” that he would be “required to retain
2 Washington, D.C. counsel to defend the AAA arbitration, again amounting to tens of
3 thousands of dollars,” and that he would “be forced to incur significant travel and housing
4 expenses to go to Washington, D.C. to defend himself.” Dkt. 11 at 7-8. None of these
5 alleged harms are irreparable – on the contrary, it is well-established that “monetary injury
6 is not normally considered irreparable” because money can be replaced. See, e.g., Los
7 Angeles Memorial Coliseum Commission v. National Football League, 634 F.2d 1197, 1202
8 (9th Cir. 1980). Plaintiff also claims that he “has been notified by the AAA that his response
9 to [defendant’s] demand for arbitration is due Monday, November 4th,” but that deadline
10 passed before the filing of this request, so the court does not consider it. Finally, plaintiff
11 argues that “[t]here may be conflicting decisions between this court and the arbitrator in the
12 AAA arbitration.” Id. at 8. While plaintiff is correct about the possibility of conflicting
13 decisions, any harm that would result from conflicting decisions would again be in the form
14 of monetary loss. If plaintiff is correct regarding the enforceability of the arbitration
15 provision, he may seek damages for any harm incurred. However, plaintiff has not
16 demonstrated the irreparable harm needed to satisfy the Winter test, and thus his request
17 for a temporary restraining order and for an order to show cause re: preliminary injunction
18 is DENIED.

19 **IT IS SO ORDERED.**

20 Dated: November 8, 2013

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23 PHYLLIS J. HAMILTON
24 United States District Judge
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