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FILED

09 MAY 26 PM 12:47

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: 
DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL STEWART,

vs. Plaintiff,

CITY OF SAN DIEGO; PAM ROWLETT,
Defendants.

CASE NO. 09cv844-IEG(WMc)
Order Denying Request for
Temporary Restraining Order

Plaintiff Michael Stewart, proceeding pro se, has filed a motion for a temporary restraining order against Defendant Pam Rowlett. For the reasons explained below, the Court DENIES Plaintiff's motion.

The purpose of a temporary restraining order is to preserve the status quo before a preliminary injunction hearing may be held; its provisional remedial nature is designed merely to prevent irreparable loss of rights prior to judgment. See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers, 415 U.S. 423, 439 (noting that a temporary restraining order is restricted to its "underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer"). The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. A party seeking injunctive relief under Federal Rule of Civil Procedure 65 must show either (1) a combination of probable success on the merits and the possibility of irreparable harm, or (2) that serious questions are raised and the balance of hardships tips sharply in the moving party's favor.

1 Sun Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1119 (9th Cir. 1999); Roe v. Anderson,
2 134 F.3d 1400, 1402 (9th Cir. 1998). “These two formulations represent two points on a sliding
3 scale in which the required degree of irreparable harm increases as the probability of success
4 decreases.” Roe, 134 F.3d at 1402 (quoting United States v. Nutricology, Inc., 982 F.2d 394, 397
5 (9th Cir. 1992)). “The greater the relative hardship to the moving party, the less probability of
6 success must be shown.” National Ctr. for Immigrants Rights v. INS, 743 F.2d 1365, 1369 (9th
7 Cir. 1984).

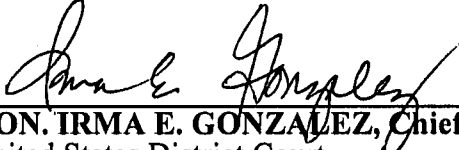
8 As currently set forth, Plaintiff has demonstrated neither likelihood of success on the merits
9 nor irreparable injury. Plaintiff’s complaint alleges that Defendant Pam Rowlett, a San Diego
10 Police Officer, approached Plaintiff on Saturday, June 14, 2008, and conducted an unlawful search
11 of his car. Plaintiff further alleges that Officer Rowlett harassed Plaintiff, and unlawfully searched
12 his car, on two prior occasions. In his current request for a temporary restraining order, Plaintiff
13 states that Officer Rowlett again contacted Plaintiff on May 15, 2009. Plaintiff believes Officer
14 Rowlett’s contact is motivated by racial profiling, and Plaintiff states that he feels threatened
15 because of the contact. Plaintiff does not, however, indicate that Officer Rowlett actually
16 threatened him or conducted any unlawful search of his car. Plaintiff does not state any facts from
17 which the Court can conclude the May 15, 2009 contact violated Plaintiff’s constitutional rights or
18 has placed Plaintiff in danger of immediate, irreparable harm.

19 Therefore, Plaintiff’s motion for a temporary restraining order, requiring Defendant
20 Rowland to avoid contact with Plaintiff, is DENIED.

21 **IT IS SO ORDERED.**

22
23 Dated: _____

5/22/09

24 
25 HON. IRMA E. GONZALEZ, Chief Judge
26 United States District Court
27 Southern District of California
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