

1 California. He also serves as the director of Defendant Heartland Coalition, Inc.
2 (“Heartland Coalition”) and Defendant United Green Industries (“UGI”). Heartland
3 is a California non-profit corporation with its principal place of business in the
4 Southern District of California. UGI is a California for-profit corporation with its
5 principal place of business in the Southern District of California.

6 Defendants Alan Cassell and James P. Gormican are both individuals. They
7 also serves as directors and/or officers of Heartland Coalition and UGI. Defendant
8 Chris Kleber is an individual.

9 Defendant Rock West Companies, Inc. (“Rock West”), is a California
10 corporation with its principal place of business in the Southern District of California.
11 Defendant Gormican is the principal of Rock West.

12 Plaintiff contends that he owns 25% of stock in UGI. Defendants Mark
13 Hanson and Alan Cassell also own 25% each of stock in UGI. Plaintiff also owns
14 various items of personal property valued at more than \$15,000. Plaintiff maintains
15 that his personal property is located in the UGI offices.

16 On January 16, 2014, Defendant Hanson proposed an attempted asset sale of
17 UGI to Rock West for \$300,000. Plaintiff contends this sale was not reasonable
18 because UGI’s asserts were valued at \$500,000. Plaintiff alleges that the remaining
19 directors and shareholders immediately rejected the proposed sale. Additionally,
20 Plaintiff submitted a written letter of objection and protest in response to the
21 proposed sale, which he sent to the remaining directors and proposed buyer.

22 On January 24, 2014, Defendant Hanson unilaterally sold UGI asserts to
23 another buyer, Defendants Cassell and Kleber, for the same price. Plaintiff contends
24 that the three Defendants knew that Defendant Hanson did not have the authority to
25 do so. On January 27, 2014, Defendant Hanson resold the same property, UGI, to
26 Defendants Gormican and Rock West under the same terms that had previously been
27 rejected. Plaintiff contends that Defendant Gormican knew that Defendant Hanson
28 lacked the authority to do so.

1 Plaintiff contends that Defendant Hanson notified him of the sale and then
2 locked UGI's offices, stole Plaintiff's personal property, and threatened to steal
3 Plaintiff's remaining property if Plaintiff was not out of the building before the new
4 buyer moves in on Sunday, February 16, 2014. Plaintiff contends that he was never
5 presented with any valid notice ordering him to vacate UGI's premises.

6 Plaintiff now moves for a TRO compelling Defendants to return Plaintiff's
7 personal property and to cease and enjoin the transfer of corporate assets to third
8 parties. Plaintiff contends that he will suffer irreparable harm absent a TRO because
9 Defendants have threatened to steal and destroy more of Plaintiff's property on
10 Sunday, February 16, 2014 if Plaintiff does not move out of his business location.

11 LEGAL STANDARD

12 **A. *Temporary Restraining Order***

13 The standard for a TRO is the same as for a preliminary injunction. *See*
14 *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n. 7 (9th Cir.
15 2001). "A plaintiff seeking a preliminary injunction must establish that he is likely
16 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
17 preliminary relief, that the balance of equities tips in his favor, and that an injunction
18 is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20
19 (2008)

20 In the Ninth Circuit, courts may apply a sliding scale approach in which
21 "elements of the preliminary injunction test are balanced, so that a stronger showing
22 of one element may offset a weaker showing of another." *Alliance for the Wild*
23 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). For example, "a stronger
24 showing of irreparable harm to plaintiff might offset a lesser showing of likelihood
25 of success on the merits." *Id.* Additionally, a "preliminary injunction is appropriate
26 when a plaintiff demonstrates . . . that serious questions going to the merits were
27 raised and the balance of hardships tips sharply in the plaintiff's favor." *Id.* at 1134-
28 35 (citing *Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008)).

1 Plaintiff states generally that “defendants made several misrepresentation to the
2 plaintiff with regard to important facts,” and claims that these representations were
3 false, he does not indicate what the representations were, what important facts they
4 related to, or how they were false. *See* Compl. ¶ 25. These allegations are
5 insufficient to show that Plaintiff will likely succeed on the merits of his claim for
6 fraud.

7 2. **RICO**

8 A RICO claim requires the plaintiff to demonstrate: (1) conduct (2) of an
9 enterprise (3) through a pattern, i.e., at least two acts that are sufficiently related, (4)
10 of racketeering activity.” *See Miller v. Glen & Helen Aircraft, Inc.*, 777 F.2d 496,
11 498 (9th Cir. 1985) (citing *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479 (1985)).
12 To demonstrate the existence of an enterprise, the plaintiff must allege an entity
13 “associated together for a common purpose of engaging in a course of conduct.”
14 *Croteau v. Nat’l Better Living Ass’n, Inc.*, 290 F.R.D. 521, 533 (D. Mont. 2013)
15 (quoting *U.S. v. Turkette*, 452 U.S. 576, 583 (1981)). This requires “evidence of an
16 ongoing organization, formal or informal, . . . function[ing] as a continuing unit.” *Id.*

17
18 Again, Plaintiff has not demonstrated a likelihood of success on the merits as
19 to his RICO claim. Plaintiff alleges that “[t]he predicate acts which constitute this
20 pattern of racketeering activity were part of a scheme to swindle the plaintiff and
21 others similarly situated by stealing and selling property that was not their to sell or
22 buy.” Compl. ¶ 32. Plaintiff, however, has not sufficiently identified the precise
23 conduct at issue, or alleged any facts to support the existence of an enterprise.
24 Although Plaintiff claims that “the defendants used the Unites States Postal Service,
25 caused items to be delivered by commerical interstate carrier,” Plaintiff does not
26 identify which items or how or when Defendants purportedly mailed. Accordingly,
27 even construing this allegation liberally, the Court finds that Plaintiff has not
28 demonstrated a likelihood of success of the merits as to his RICO claim.

1 **3. Conversion**

2 Under California law, the elements of a conversion claim are (1) plaintiff's
3 ownership or right to possession of the property at the time of the conversion; (2)
4 defendants' conversion by a wrongful act or dispossession of plaintiff's property
5 rights; and (3) damages. *Hartford Financial Corp. v. Burns*, 96 Cal. App.3d 591,
6 598, 158 Cal. Rptr. 169 (1979); *see also Miles, Inc. v. Scripps Clinic & Research*
7 *Found*, 810 F. Supp. 1091, 1094 (S.D. Cal. 1993).

8 Here, Plaintiff claims that he has personal property in the UGI office that
9 Defendant has threatened to steal if Plaintiff was not out of the building before the
10 new buyer is scheduled to move in. Apart from these bare-bone allegations, Plaintiff
11 has not identified the property at issue or how Defendant purportedly converted or
12 dispossessed Plaintiff of this property. Even construing his allegations liberally,
13 Plaintiff has not demonstrated a likelihood of success on the merits of his conversion
14 claim.

15 As explained above, Plaintiff has not demonstrated a likelihood of success on
16 the merits of his claims. As such, the Court will deny Plaintiff's motion for a TRO.
17 *See Guzman v. Shewry*, 552 F.3d 941, 948 (9th Cir. 2009) (“[A]t an irreducible
18 minimum, the moving party must demonstrate a fair chance of success on the merits,
19 or questions serious enough to require litigation.”).

20 **B. Irreparable harm in the Absence of a TRO**

21 Even if Plaintiff had demonstrated a likelihood of success, Plaintiff has not
22 shown that he will likely suffer irreparable harm absent a TRO. “Under *Winter*,
23 plaintiffs must establish that irreparable harm is *likely*, not just possible, in order to
24 obtain a preliminary injunction.” *Cottrell*, 632 F.3d at 1131 (citing *Winter*, 555 U.S.
25 at 21) (emphasis in original). Here, Plaintiff argues that he will be immediately and
26 irreparably harmed by Defendants' actions because Defendants are attempting to
27 evict Plaintiff from his former place of business before he can remove his remaining
28 personal property from the premises. Plaintiff estimates the value of said personal

1 property to be \$15,000.00. This type of alleged irreparable injury constitutes
2 monetary harm. The fact that adequate compensatory damages will ultimately be
3 available in the ordinary course of litigation weighs heavily against a claim of
4 “irreparable harm.” *Sampson v. Murray*, 415 U.S. 61, 90 (1974). “[M]onetary harm
5 is usually not enough to constitute irreparable harm.” *Los Angeles Memorial*
6 *Coliseum Comm’ v. NFL*, 634 F.2d 1197, 1202 (9th Cir. 1980).

7 **CONCLUSION**

8 Based on the foregoing, the Court **DENIES** Plaintiff’s motion for a
9 Temporary Restraining Order.

10 **IT IS SO ORDERED.**

11
12 DATED: February 14, 2014

13 

14 Hon. Michael M. Anello
15 United States District Judge