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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

TYRELL GLASS; DUSTIN SCHNATZ;  
and JORDAN TERRADO, individually  
and on behalf of all others similarly  
situated,,  
  
Plaintiffs,  
  
v.  
  
FMM ENTERPRISES, INC; EC  
LENDING, LLC; GTPD ENTERPRISES,  
INC; CYNTHIA WASH; RYAN  
MCAWEEENEY; NEIL BILLOCK, and  
DOES 1-10 jointly and severally,  
  
Defendants.

Case No.: 3:17-cv-0563-JAH-KSC  
  
**ORDER GRANTING PLAINTIFFS’  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

Before the Court is Plaintiffs’ Ex Parte Motion for a Temporary Restraining Order  
[“TRO”] regarding improper communications with the punitive class. [Doc. No. 66]. Tyrell  
Glass, Dustin Schnatz, and Jordan Terrado (“Plaintiffs”) seek an order restraining and  
enjoining FMM Enterprises, Inc., Cynthia Walsh, Ryan McAweeney, and Neil Billock  
 (“Defendants”), and their counsel, from engaging in unsolicited communications with  
potential class members regarding this action. See Doc. No. 66.

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1 **BACKGROUND**

2 Plaintiffs brought a class action against Defendants alleging labor law violations,  
3 including the Fair Labor Standards Act (“FLSA”). See Doc. No. 61. Plaintiffs’ filed a  
4 Motion to Prohibit Ex Parte Communications with Potential Members of the Class [Doc.  
5 No. 63], which is scheduled to be heard by this Court on February 12, 2018. Plaintiffs then  
6 filed this Motion for TRO on January 16, 2018. [Doc. No. 66]. In Plaintiffs’ Motion for  
7 TRO, they allege Defendants’ counsel has been contacting and meeting with potential class  
8 members to obtain releases using misrepresentations or outright fraud. See Id.

9 **DISCUSSION**

10 **1. Legal Standard**

11 The purpose of a temporary restraining order (“TRO”) is to preserve the status quo  
12 before a preliminary injunction hearing may be held; its provisional remedial nature is  
13 designed merely to prevent irreparable loss of rights prior to judgment. See Granny Goose  
14 Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers, 415 U.S. 423, 439 (1974) (noting  
15 that a TRO is restricted to its “underlying purpose of preserving the status quo and  
16 preventing irreparable harm just so long as is necessary to hold a hearing, and no longer”).  
17 As such, an applicant for a TRO is required to demonstrate “immediate and irreparable  
18 injury, loss or damage.” Fed. R. Civ. P. 65(b); see also Caribbean Marine Serv. Co., Inc.  
19 v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

20 The standard for issuing a TRO is similar to the standard for issuing a preliminary  
21 injunction. Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co., 887 F. Supp. 1320,  
22 1323 (N.D. Cal. 1995). The Ninth Circuit recognizes two tests for demonstrating  
23 preliminary injunctive relief: the traditional test or an alternative sliding scale test. Cassim  
24 v. Bowen, 824 F.2d 791, 795 (9th Cir. 1987). Under the traditional test, a party must show:  
25 “1) a strong likelihood of success on the merits, 2) the possibility of irreparable injury to  
26 plaintiff if preliminary relief is not granted, 3) a balance of hardships favoring the plaintiff,  
27 and 4) advancement of the public interest (in certain cases).” Save Our Sonoran, Inc. v.  
28 Flowers, 408 F.3d 1113, 1120 (9th Cir. 2005). Where a party demonstrates that a public

1 interest is involved, a “district court must also examine whether the public interest favors  
2 the plaintiff.” Fund for Animals, Inc. v. Lujan, 962 F.2d 1391, 1400 (9th Cir. 1992).

3 Alternatively, a party seeking injunctive relief under Fed.R.Civ.P. 65 must show  
4 either (1) a combination of likelihood of success on the merits and the possibility of  
5 irreparable harm, or (2) that serious questions going to the merits are raised and the balance  
6 of hardships tips sharply in favor of the moving party. Immigrant Assistance Project of the  
7 L.A. County of Fed’n of Labor v. INS, 306 F.3d 842, 873 (9th Cir. 2002); Sun  
8 Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1119 (9th Cir. 1999); Roe v.  
9 Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998). ““These two formulations represent two  
10 points on a sliding scale in which the required degree of irreparable harm increases as the  
11 probability of success decreases.”” Roe, 134 F.3d at 1402 (quoting United States v. Nutri-  
12 cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992); accord Sun Microsystems, 188 F.3d at  
13 1119). “Thus, ‘the greater the relative hardship to the moving party, the less probability of  
14 success must be shown.’” Sun Microsystems, 188 F.3d at 1119 (quoting Nat’l Ctr. for  
15 Immigrants Rights v. INS, 743 F.2d 1365, 1369 (9th Cir. 1984)).

16 The Ninth Circuit makes clear that a showing of immediate irreparable harm is  
17 essential for prevailing on a TRO. See Caribbean Marine, 844 F.2d at 674. “Speculative  
18 injury does not constitute irreparable injury sufficient to warrant granting a preliminary  
19 injunction.” Id. Moreover, “a plaintiff seeking an injunction against a local or state  
20 government must present facts showing a threat of immediate, irreparable harm before a  
21 federal court will intervene.” Midgett v. Tri-County Met. Transp. Dist., 254 F.3d 846, 851  
22 (9th Cir. 2001). Thus, a plaintiff must show the presence of an “immediate threatened  
23 injury as a prerequisite to preliminary injunctive relief.” Id., citing Los Angeles Memorial  
24 Coliseum Commission v. National Football League, 634 F.2d 1197, 1201 (9th Cir. 1980).

### 25 ANALYSIS

26 Plaintiffs’ contend that they will suffer irreparable harm if the Court denies their  
27 request for a TRO. See Doc. No. 66. Plaintiffs argue Defendants’ patently false and  
28 misleading representations hinder potential class member’s ability to make an informed

1 choice, thus harming the integrity of the class action lawsuit. Id. Additionally, Plaintiffs’  
2 contend Defendants’ actions irreparably harm Plaintiffs’ ability to conduct a thorough  
3 investigation when Defendants direct their employees and other potential class members  
4 to provide false information regarding their pay, hours and other working conditions. Id.  
5 In support of their contention, Plaintiff cite to the declaration of Omari Bobo. [Doc. No.  
6 63–3]. In his declaration, Mr. Bobo stated he met with a man named Ken Griffin. Id. Mr.  
7 Griffin asked Mr. Bobo to sign a declaration in exchange for a settlement check. Id. Mr.  
8 Bobo read the declaration he was asked to sign, and informed Mr. Griffin that the  
9 declaration was false. Id. According to Mr. Bobo, he was told by Mr. Griffin that he would  
10 not receive his check unless he signed the declaration. Id. Finally, Plaintiffs’ argue  
11 irreparable harm will continue unless stopped by Court order, as Defendants’ counsel  
12 refuses to cease communications with potential class members. See Doc. No. 66–2, ¶ 5.

13 Pre-certification communication between defendants and potential plaintiffs is  
14 generally permitted. Parks v. Eastwood Ins. Servs., Inc., 235 F. Supp. 2d 1082, 1084 (C.D.  
15 Cal. 2002) (citing Weight Watchers of Philadelphia, Inc. v. Weight Watchers Int’l, Inc.,  
16 455 F.2d 770, 773 (2nd Cir.1972)). It is critical, however, that potential plaintiffs “receive  
17 accurate and impartial information regarding the status, purposes and effects of the class  
18 action.” Kleiner v. First Nat. Bank of Atlanta, 751 F.2d 1193, 1202 (11th Cir. 1985). The  
19 Court finds there is a high probability of irreparable harm, if as alleged here, potential  
20 plaintiffs are being urged by Defendants to sign declarations which they know to be false.  
21 Since Plaintiffs have demonstrated the possibility of immediate and irreparable injury, it  
22 need not demonstrate a strong likelihood of success on the merits to prevail here. See Sun  
23 Microsystems, 188 F.3d at 1119. However, based on this Court’s review of the pleadings  
24 presented, Plaintiffs have shown some likelihood of success on the merits of their claim.  
25 Also, this Court has considered the hardships placed on Defendants’ by granting this TRO,  
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1 and finds any hardship marginal in contrast to the irreparable harm that could befall  
2 potential class members.<sup>1</sup>

3 Accordingly, **IT IS HEREBY ORDERED** that:

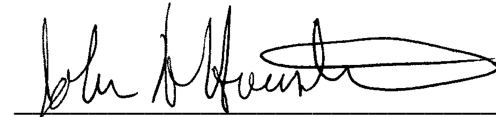
- 4 1. Plaintiff's Motion for Temporary Restraining Order is **GRANTED**.
- 5 2. FMM Enterprises, Inc.; GTPD Enterprises, Inc.; Cynthia Walsh;  
6 Ryan McAweeney; and Neil Billock, and their counsel, are  
7 prevented from engaging in any unsolicited communications  
8 regarding this action with any potential class members, unless pre-  
9 approved by the Court.
- 10 3. This temporary restraining order is entered on **January 18, 2018**  
11 and will **expire on January 31, 2018 at 5:00 p.m.**, unless otherwise  
12 ordered by this Court.
- 13 4. This Order shall be binding upon the parties to this action, their  
14 agents, employees, and assigns, and all other persons or entities who  
15 receive actual notice of this Order by personal service or otherwise.
- 16 5. A hearing on Plaintiffs' Motion for Preliminary Injunction [Doc.  
17 No. 63] is set for **January 31, 2018 at 3:30 p.m., before this**  
18 **Court**.
- 19 6. The previous hearing date of February 12, 2018 is **VACATED**.
- 20 7. Defendants shall file a response to Plaintiffs' Motion for Preliminary  
21 Injunction [Doc. No. 63] **no later than January 23, 2018**, and  
22 Plaintiffs' may file a reply **no later than January 26, 2018**.

23 **IT IS SO ORDERED.**

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27 <sup>1</sup> The Court has received and acknowledges Defendants' Notice of Intent to Oppose Plaintiffs' TRO.  
28 [Doc. No. 67]. This Court is of the mind, however, that any delay could pose a serious risk of irreparable harm to Plaintiffs. The Court has rescheduled the Motion for Preliminary Injunction to an earlier date to allow Defendants' an opportunity to be heard on the matter.

1 DATED: January 18, 2018



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3 JOHN A. HOUSTON  
4 United States District Judge  
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