


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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HireAHelper, LLC, a California
Limited Liability Company

Plaintiff,

v.

Move Lift, LLC, a Texas Limited
Liability Company; Simple Moving
Labor, LLC, a Texas Limited Liability
Company

Defendants.

CASE NO. 17cv0711-WQH-JMA

ORDER

HAYES, Judge:

The matter before the Court is the Ex Parte Application for Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Issue (ECF No. 2) filed by Plaintiff Hire A Helper LLC (“Plaintiff”).

I. Allegations of the Complaint (ECF No. 1)

On April 7, 2017, Plaintiff initiated this action by filing the Complaint (ECF No. 1). Plaintiff alleges that Defendants Move Lift, LLC and Simple Moving Labor, LLC (“Defendants”) have published material on Defendants’ website that infringes on Plaintiff’s copyright. *Id.* at ¶ 23-24. Plaintiff alleges that it has not “authorized [Defendants] to reproduce or copy anything including without limitation [Plaintiff’s] copyrighted text and layout in [Defendants’] website.” *Id.* at ¶ 25.

Plaintiff alleges that its “executives began pursuing Budget Truck Rentals, LLC (‘Budget’) for [Plaintiff] to enter into a contract in which Budget would refer its

1 customers to [Plaintiff's] online marketplace. The Potential Budget Contract is
2 projected to generate many millions of dollars of additional revenue and profits for
3 [Plaintiff]." *Id.* at ¶ 16. Plaintiff alleges that "[o]n or about January 11, 2017, after
4 nearly seven years attempting to secure the Potential Budget Contract, on January 11,
5 2017, Budget's representative ... called [Plaintiff's] Head of Sales & Marketing, Ryan
6 Charles, requesting that he travel to Budget's office in New Jersey to present
7 [Plaintiff's] bid for the Potential Budget Contract. [Plaintiff's] bid was presented for
8 the Potential Budget Contract in person to Budget in Parsippany, New Jersey on March
9 6, 2017." *Id.* at ¶ 17. "On information and belief, [Defendant] MoveLift met with
10 Budget between March 10, 2017, and April 1, 2017, to present MoveLift's bid for the
11 Potential Budget Contract based in part on MoveLift's website that included material
12 wrongfully copied from and infringing upon [Plaintiff's] copyright in [Plaintiff's]
13 website." *Id.* at ¶ 18. Plaintiff alleges that "Budget is currently considering either
14 [Plaintiff's] bid or MoveLift's bid for the Potential Budget Contract." *Id.* at ¶ 19.

15 Plaintiff alleges that "[f]urther irreparable harm to [Plaintiff] is imminent as a
16 result of [Defendants'] conduct, and [Plaintiff] is without an adequate remedy at law.
17 [Plaintiff] is entitled to emergency, temporary, preliminary and permanent injunctive
18 relief restraining [Defendants], their officers, directors, agents, employees,
19 representatives and all persons acting in concert with them from engaging in further
20 such acts of copyright infringement." *Id.* at ¶ 26. Plaintiff includes two claims for
21 relief in the Complaint: (1) copyright infringement; and (2) unfair competition. *Id.* at
22 ¶¶ 20-34. Plaintiff's prayer for relief includes a request for a temporary restraining
23 order, preliminary and permanent injunction against Defendants, "actual damages plus
24 [Defendants'] profits gained as a consequence of [Defendants'] infringement of
25 [Plaintiff's] copyright in an amount to be prove at trial[,] statutory damages, punitive
26 damages, prejudgment interest on all amounts owed, and for fees. *Id.* at 7.

27 **II. Ex Parte Application for Temporary Restraining Order and Order to Show**
28 **Cause Why Preliminary Injunction Should Not Issue (ECF No. 2)**

1 Concurrent with the Complaint, Plaintiff filed the Ex Parte Application for
2 Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction
3 Should Not Issue (ECF No. 2). Plaintiff contends that

4 Defendants are misusing material copied from [Plaintiff] within the last
5 six weeks to unfairly interfere and compete with [Plaintiff] for a contract
6 with Budget that [Plaintiff] has been pursuing for seven years. Budget's
7 award of the contract is now under active consideration. An emergency
8 temporary restraining order is urgently needed to prevent the irreparable
9 harm that result if Budget were to award the contract to Defendants based
10 on Defendants' copyright infringements of [Plaintiff's] material
11 developed over 11 years at a cost of hundreds of thousands of dollars.

12 (ECF No. 2 at 2). Plaintiff requests that the Court enter "a temporary restraining order
13 and a preliminary injunction prohibiting Defendants from publishing in any way the
14 content contained in HireAHelper's website at www.hireahelper.com and barring
15 [Defendants] from negotiating for or entering into any contracts with Budget." (ECF
16 No. 2-1 at 3). Plaintiff contends that

17 The Potential Budget Contract would represent a substantial part of
18 [Plaintiff's] revenue and would enable [Plaintiff] to obtain other new
19 accounts and business relationships. If [Defendants] are permitted to
20 market themselves with their current websites to enter into contracts it
21 would not have obtained otherwise by relying upon the major investment
22 made by [Plaintiff]. [Plaintiff] will never know of the accounts and
23 business relationships that it has lost due to [Defendants'] copyright
24 infringement. Proof of the amount of the loss would be extraordinarily
25 difficult or impossible. Such loss cannot be compensated by money
26 damages and is irreparable in nature.

27 *Id.* at 5.

28 **III. Analysis**

A. Temporary Restraining Order

Federal Rule of Civil Procedure 65(b)(1) states that

The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

1 Fed. R. Civ. P. 65(b)(1). The Supreme Court has stated that, “[t]he stringent
2 restrictions imposed by . . . Rule 65 on the availability of ex parte temporary restraining
3 orders reflect the fact that our entire jurisprudence runs counter to the notion of court
4 action taken before reasonable notice and an opportunity to be heard has been granted
5 both sides of a dispute.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S.
6 423, 438-39 (1974). “Consistent with this overriding concern, courts have recognized
7 very few circumstances justifying the issuance of an ex parte TRO.” *Reno Air Racing*
8 *Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006).

9 In this case, Plaintiff has attached a declaration to its Ex Parte Application for
10 Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction
11 Should Not Issue stating that Plaintiff’s counsel sent an email to Defendants containing
12 a copy of the Application. (ECF No. 2-3). The Court finds that Plaintiff has satisfied
13 the notice requirement of Rule 65(b)(1)(B).

14 However, Plaintiff has not set forth “specific facts” that “clearly show that
15 immediate and irreparable injury, loss, or damage will result to [Plaintiff] before
16 [Defendants] can be heard in opposition[.]” Fed. R. Civ. P. 65(b)(1)(A). Plaintiff has
17 failed to set forth specific facts as to why it is necessary for this Court to issue the
18 requested injunctive relief “before reasonable notice and an opportunity to be heard has
19 been granted [to] both sides of [this] dispute.” *Granny Goose*, 415 U.S. at 439. *See*
20 *also Zakar v. CHL Mortg. Pass Through Trust*, No. 11CV457 JLS (WVG), 2011 WL
21 915293, at *2 (S.D. Cal. Mar. 8, 2011) (Sammartino, J.) (“Plaintiffs failed to set forth
22 specific facts in an affidavit or a verified complaint clearly showing that immediate and
23 irreparable loss would result before the Defendants could be heard in opposition.”).
24 Because Plaintiff has failed to meet the requirement set forth in Rule 65(b)(1)(A),
25 Plaintiff’s application for a Temporary Restraining Order is DENIED.

26 **B. Preliminary Injunction**

27 Plaintiff’s application also includes a request for a preliminary injunction. *See*
28 ECF No. 2-1 at 3. Rule 65(a) states that “The court may issue a preliminary injunction

1 only on notice to the adverse party.” Fed. R. Civ. P. 65(a)(1-2). Accordingly, for
2 Plaintiff to have its request for a preliminary injunction set for a hearing before this
3 Court, Plaintiff must serve Defendants with all documents filed in this action to date,
4 including the Complaint (ECF No. 1), the Temporary Restraining Order and Order to
5 Show Cause Why Preliminary Injunction Should Not Issue (ECF No. 2), and this
6 Order. Plaintiff must file proof of service in the record of this case no later than
7 Monday, April 10, 2017.

8 If Plaintiff timely files proof of service in the record of this case, Plaintiff’s
9 request for a Preliminary Injunction will be set for a hearing on Monday, April 24,
10 2017, at 4:00 PM in Courtroom 14B. Any opposition by Defendants must be filed in
11 the record of this case no later than Monday, April 17, 2017. Any reply by Plaintiff
12 must be filed in the record of this case no later than Wednesday, April 19, 2017.

13 DATE:

4/7/17



WILLIAM Q. HAYES
United States District Judge