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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 TIMOTHY MAPP,

12 Plaintiff,

13 v.

14 ERNESSITA SANTOS and
15 COUNTY OF SAN DIEGO,

16 Defendants.

Case No.: 17cv2220-WQH-MDD

ORDER

17 HAYES, Judge:

18 The matter before the Court is the Motion for Emergency Restraining Order and/or
19 Preliminary Injunction filed by Plaintiff Timothy Mapp. (ECF No. 24).

20 **I. BACKGROUND**

21 On February 8, 2018, Plaintiff filed an Amended Complaint, the operative pleading
22 in this action, against Ernessita Santos and the County of San Diego. Plaintiff brings a
23 cause of action pursuant to 42 U.S.C. § 1983 for violations of his due process rights.
24 Plaintiff alleges that Defendant Santos, a case worker for the Department of Child Support
25 Services (“DCSS”), “made a false report of non-payment to the Department of Motor
26 Vehicles” and as a result “Plaintiff’s professional license was suspended effective 18 May
27 2017.” (ECF No. 14 at 3). Plaintiff alleges that this resulted in a loss of employment. *Id.*
28 at 6. Plaintiff seeks damages and an injunction preventing Defendants “from suspending

1 Plaintiff's professional license without court order first." Id. at 7. Defendants have filed a
2 motion to dismiss the Complaint for lack of subject matter jurisdiction and for failure to
3 state a claim. (ECF No. 17). The motion remains pending.

4 On April 23, 2018, Plaintiff filed a Motion for Emergency Restraining Order and/or
5 Preliminary Injunction. (ECF No. 24). Plaintiff moves the Court for a temporary
6 restraining order and/or preliminary injunction "enjoining defendant SAN DIEGO
7 COUNTY, and all persons acting on its behalf, from SUSPENDING THE DRIVERS
8 LICENSE OF TIMOTHY MAPP (PURSUANT TO FAMILY CODE 17520, pending
9 entry by the Court of a final judgment in this action." Id. at 1. Plaintiff asserts that the
10 Child Support Agency received payment on March 5, 2018. Plaintiff asserts that a DCSS
11 case worker made a false report of non-payment on March 20, 2018 and that another case
12 worker informed Plaintiff that his suspensions will continue until he agrees to increase
13 payment. Plaintiff asserts that the Child Support Agency received an additional payment
14 by wage assignment on April 12, 2018. Id. at 7. Plaintiff asserts that his driver's license
15 was suspended and that Plaintiff was "taken off his job, effective 19 April 2018." Id.
16 Plaintiff asserts that his "suspended license was released by court order on 20 April 2018."
17 Id. Plaintiff attaches an "Ex Parte Application and Order – Family Law" from the Superior
18 Court of California for the County of San Diego in which the court granted the release of
19 Plaintiff's license. Id. at 20.

20 Plaintiff contends that he will suffer irreparable injury unless an injunction issues
21 because his employment will be terminated if his license is suspended. Id. at 2–3. Plaintiff
22 contends that "[t]here is a substantial likelihood that Plaintiff will establish at trial that the
23 DEFENDANTS HAVE VIOLATED HIS RIGHTS UNDER AMENDMENT 5 OF THE
24 U.S. CONSTITUTION." Id. at 3. Plaintiff states that he "is providing defendant's counsel
25 copies of this motion, the proposed TRO, the memorandum in support of this motion, and
26 declarations and exhibits in support thereof." Id. at 2.

27 II. DISCUSSION

28 Federal Rule of Civil Procedure 65(b)(1) provides that

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

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

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

8 Fed. R. Civ. P. 65(b)(1). In this case, Plaintiff asserts that he has provided Defendants with
9 notice of this motion. (ECF No. 24 at 2). Further, Plaintiff has not demonstrated that
10 "immediate and irreparable injury" will result if the Court does not issue a temporary
11 restraining order "before the adverse party can be heard in opposition." Fed. R. Civ. P.
12 65(b)(1)(A). Plaintiff asserts that the state court granted an ex parte application to release
13 his suspended driver's license on April 20, 2018. (ECF No. 24 at 7, 20). Plaintiff has
14 failed to comply with the requirements set forth in Rule 65(b)(1)(A-B). The application
15 for a temporary restraining order is denied.

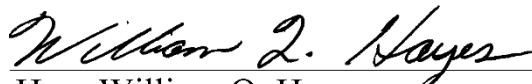
16 Rule 65(a) provides that "The Court may issue a preliminary injunction only on
17 notice to the adverse party." Fed. R. Civ. P. 65(a)(1). Plaintiff's motion for a preliminary
18 injunction remains pending. Defendants shall file any opposition to the motion for a
19 preliminary injunction on or before May 7, 2018. Plaintiff shall file any reply on or before
20 May 14, 2018. The Court will rule thereafter.

21 III. CONCLUSION

22 IT IS HEREBY ORDERED that the motion for an emergency restraining order (ECF
23 No. 24) is DENIED.

24 IT IS FURTHER ORDERED that Defendants shall file any opposition to the motion
25 for a preliminary injunction on or before May 7, 2018. Plaintiff shall file any reply on or
26 before May 14, 2018. The motion for a preliminary injunction remains pending. (ECF
27 No. 24).

28 Dated: April 23, 2018


Hon. William Q. Hayes
United States District Court