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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE  
SAN DIEGO ELECTRICAL  
HEALTH AND WELFARE TRUST;  
ANDY BERG AND NICHOLAS  
SEGURA, Trustees,  
  
Plaintiffs,

Case No.: 18-cv-0296-BTM-JMA

**ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING  
ORDER**

v.  
  
MARILEE VICKERS, an individual;  
STEVEN VICKERS, an individual;  
and SEAN M. FOLDENAUER, an  
individual; and the FOLDENAUER  
LAW GROUP, a California  
professional law corporation,  
  
Defendants.

On February 9, 2018, the Court heard oral arguments on Plaintiffs Board of Trustees of the San Diego Electrical Health and Welfare Trust’s (the “Healthcare Trust”), Andy Berg’s, and Nicholas Segura’s motion for a temporary restraining order (“TRO”) against Defendants Marilee and Steven Vickers, Sean M. Foldenauer, and the Foldenauer Law Group. (Mot. for TRO, ECF No. 2.) The Court **GRANTED** Plaintiffs’ motion for a TRO for the reasons set forth below.

1 **I. FACTUAL BACKGROUND**

2 The Healthcare Trust operates a health care plan under the Labor  
3 Management Relations Act of 1947 for current employees of employers that are  
4 bound to a collective bargaining agreement with the International Brotherhood of  
5 Electrical Workers Local 569. (Verified Compl., ECF No. 1, ¶ 6.) Defendant  
6 Steven Vickers is a plan participant and his wife, Marilee Vickers, is a  
7 beneficiary. (Id. ¶ 7.) As covered persons under the Healthcare Trust’s plan, the  
8 Vickers are bound by the terms of the Summary Plan Description (“SDP”). (Id. ¶  
9 8.) The Healthcare Trust has rights of subrogation and reimbursement in the  
10 event a covered person under the plan is injured by a third party. (Id. ¶ 10.) The  
11 SDP provides in relevant part:

12 **Third Party Claims**

13 If a Covered Person receives benefits from this Trust for Bodily Injuries or  
14 illnesses sustained from the acts or omissions of any third party, the Trust  
15 shall have the right to be reimbursed in the event the Covered Person  
16 recovers all or any portion of the benefits paid by the Trust by legal action,  
17 settlement, or otherwise, regardless of whether such benefits were paid by  
18 the Trust prior to or after the date of any such recovery. The Covered  
19 Person will not be entitled to receive any benefits for such expenses under  
20 this Trust unless they execute a Subrogation Agreement and agrees in  
21 writing to the following conditions:

22 **Reimbursement to Trust**

23 To authorize reimbursement to the Trust to the extent of all benefits  
24 paid by this Trust as a result of such injuries immediately upon  
25 obtaining any monetary recovery from any party or organization  
26 whether by action at law, settlement or otherwise by virtue of  
27 executing a Subrogation Agreement, with the understanding that any  
28 and all monies recovered from any third party are to be deposited in  
an exclusive bank to be established in joint name including the Trust,  
or into a representing attorney’s client trust account. No monies shall  
be withdrawn from such account without express written  
acknowledgment and authorization from this Plan’s Administrator or  
legal representative. Any payment received by the participant or the  
participant’s eligible Dependents is subject to a constructive trust.

1 Any third-party payment received by the participant or the  
2 participant's eligible Dependents must be used first to provide  
3 restitution to this Plan to the full extent of the benefits paid or payable  
4 under this Plan.

(Id. ¶¶ 10–11.)

5 To obtain coverage for treatments of injuries caused by third parties, covered  
6 persons must sign a subrogation-reimbursement agreement. (Id. ¶ 11.)

7 On or about May 3, 2014, Marilee Vickers suffered injuries from consuming  
8 food that was served and prepared by third parties. (Id. ¶ 9.) The Vickers filed a  
9 personal injury action in the California Superior Court of San Diego against  
10 various third parties alleged to have caused or contributed to the Vickers' injuries.  
11 (Id. ¶ 12.) The Vickers retained Mr. Foldenauer and the Foldenauer Law group  
12 to serve as their counsel. (Id.)

13 Despite the Healthcare Trust's numerous attempts, the Vickers failed to sign  
14 the subrogation agreement as required by the SDP. (Id. ¶ 13.) The Healthcare  
15 Trust nevertheless paid \$149,890.64 for Marilee Vickers' medical costs. (Id. ¶  
16 14.) After continued failed attempts at obtaining a signed subrogation  
17 agreement, counsel for the Healthcare Trust discovered that the Vickers had  
18 settled their claims with the third parties for \$500,000. (Id. ¶¶ 15–18.) The  
19 Healthcare Trust alleges that the Vickers and Mr. Foldenauer intentionally failed  
20 to inform it that any settlement had been reached in an attempt to evade or  
21 undermine its right to subrogation and reimbursement for the full amount of  
22 medical benefits paid. (Id. ¶ 20.) The Vickers, through Mr. Foldenauer,  
23 subsequently stated that they would not sign the subrogation agreement. (Id. ¶  
24 23.)

25 On January 26, 2018, the Healthcare Trust sought to intervene in the state  
26 court action. (Id. ¶ 25.) The Judge set a hearing for February 23, 2018 and  
27 asked Mr. Foldenauer to hold the disputed amount in trust pending resolution of  
28 the pending motion to intervene and Mr. Foldenauer agreed. (Id. ¶ 26.) Since

1 then, the Healthcare Trust has withdrawn its application for intervention in the  
2 state court action and has initiated this action against the Vickers, Mr.  
3 Foldenauer, and the Foldenauer Law Group. (Id. ¶ 27.) The Healthcare Trust  
4 now moves this Court for a TRO fearing that the Vickers may attempt to dissipate  
5 the settlement proceeds in an effort to preclude the Healthcare Trust from  
6 enforcing its right to reimbursement.

## 7 **II. DISCUSSION**

8 A plaintiff seeking a preliminary injunction or TRO must establish that (1) he is  
9 likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the  
10 absence of preliminary relief; (3) the balance of equities tips in his favor; and (4)  
11 an injunction is in the public interest. *Winter v. Natural Resources Defense*  
12 *Council*, 555 U.S. 7, 20 (2008). Alternatively, “serious questions going to the  
13 merits and a balance of hardships can support issuance of a preliminary  
14 injunction, so long as the plaintiff also shows that there is a likelihood of  
15 irreparable injury and that the injunction is in the public interest.” *Alliance for the*  
16 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (internal quotation  
17 marks omitted).

18 First, the Court finds that Plaintiffs have at the very least shown serious  
19 questions going to the merits of this case. The Employment Retirement Income  
20 Security Act (“ERISA”), § 502(a)(3) permits a fiduciary to bring an action to: “(A)  
21 enjoin any act or practice which violates any provision of [an ERISA plan], or (B)  
22 to obtain other appropriate equitable relief (i) to redress such violations or (ii) to  
23 enforce any provisions of [the terms of the ERISA plan].” 29 U.S.C. § 1132(a)(3);  
24 *Sereboff v. Mid Atl. Med. Servs.*, 547 U.S. 356, 361 (2006). Here, Plaintiffs seek  
25 equitable relief to enforce the plan’s terms, specifically the third party claims and  
26 reimbursement provisions. Plaintiffs seek reimbursement from “specifically  
27 identifiable funds that [are] in the possession and control of the [Defendants].”  
28 *Sereboff*, 547 U.S. at 362–63. Though the Vickers have refused to sign the

1 subrogation agreement, they are still bound by the terms of the SDP.

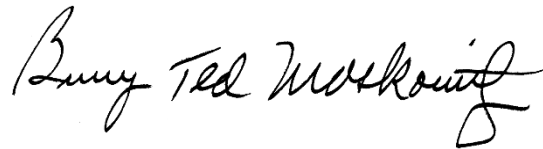
2 Second, absent a TRO, Plaintiffs risk suffering irreparable harm. If Mr.  
3 Foldenauer disburses the settlement proceeds to the Vickers, the Healthcare Trust  
4 is at risk of losing its remedies under ERISA, as “an equitable lien cannot ‘be  
5 enforced against general assets when the specifically identified property has been  
6 dissipated.’” *Or. Teamster Emp’rs Trust v. Hillsboro Garbage Disposal, Inc.*, 800  
7 F.3d 1151, 1159 (9th Cir. 2015) (quoting *Bilyeu v. Morgan Stanley Long Term*  
8 *Disability Plan*, 683 F.3d 1083, 1095 (9th Cir. 2012). Third, the balance of equities  
9 is in Plaintiffs’ favor, as a TRO simply preserves the status quo while the merits of  
10 the case are litigated. Lastly, it is within the public’s interest to grant Plaintiffs a  
11 TRO order and uphold a fiduciary’s subrogation and reimbursement rights under  
12 ERISA.

### 13 III. CONCLUSION

14 For the reasons discussed above, the Court **GRANTED** Plaintiffs’ motion for a  
15 TRO.

16  
17 **IT IS SO ORDERED.**

18 Dated: February 12, 2018



19  
20 Barry Ted Moskowitz, Chief Judge  
21 United States District Court  
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