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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD MARK HANSEN, S.H, a
minor,

Plaintiff,

v.

COUNTY OF SAN DIEGO; SAN
DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY; SAN
DIEGO POLICE DEPARTMENT; and
DOES 1–100,

Defendants.

Case No.: 18-cv-0689-JAH-MDD

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

INTRODUCTION

Pending before the Court is a Motion for Preliminary Injunction filed by Plaintiff Richard Mark Hansen (“Plaintiff”), proceeding pro se, and on behalf of S.H., a minor. [Doc. No. 24]. After a careful review of the pleadings filed by all parties, and for the reasons set forth below, Plaintiff’s Motion for Preliminary Injunction is **DENIED**.

BACKGROUND

On April 6, 2018, Hansen, proceeding pro se, and on behalf of his minor child S.H., (“Plaintiffs”) brought this lawsuit against the County of San Diego and the San Diego Police Department alleging assault, false imprisonment, and 42 U.S.C. § 1983 civil rights

1 violations. See Doc. No. 1. Plaintiff filed an initial motion for preliminary injunction on
2 April 13, 2017, which was denied by this Court. See Doc. Nos. 4, 19. On June 7, 2018
3 Plaintiff filed this operative Motion for Preliminary Injunction, which was taken under
4 submission by this Court without oral argument. See Doc. Nos. 24, 31. Additionally, both
5 Defendants in this case, SDPD and County of San Diego, have filed motions to dismiss.
6 See Doc. Nos. 10, 20, 25.

7 In his Motion for Preliminary Injunction, Plaintiff asserts that he has not seen S.H.–
8 or S.H.’s mother, Tasha Ann Perry (“Perry”), not charged herein–since March 13, 2018,
9 and their whereabouts remain unknown. See Doc. No. 24–1. According to Plaintiff, on
10 March 15, 2018, Perry’s attorney, representing her in the on-going state court custody
11 battle with Plaintiff, requested to be relieved as counsel, citing “an erosion of the attorney-
12 client relationship” and indicating that she has lost contact with Perry.¹ Id. at pg. 9. On
13 March 26, 2018, a superior court judge denied Plaintiff’s request to issue an order to show
14 cause against Perry for contempt of court and violation of visitation rights. Id. On April 3,
15 2018 a superior court judge denied Plaintiff’s ex parte request asking the court to locate
16 and serve Perry with an order to show cause. Id. at pgs. 16–17. While the court did find
17 that “Ms. Perry ha[d] not complied with court orders and removed the child from her
18 school,” the court denied the request concluding “the DA’s office [would] do its own
19 investigation.” Id. On April 13, 2018, Plaintiff filed another ex parte application requesting
20 a court order directing the District Attorney’s office to locate and serve Perry. Id. at pgs.
21 19–20. The superior court judge granted this application and requested “the DA’s Child
22 Abduction unit locate and serve Ms. Tasha Perry.” Id. Plaintiff asserts that the District
23 Attorney’s child abduction unit has not complied with this “order.” On June 12, 2018, Perry
24 again failed to appear for a hearing before the superior court judge, and a bench warrant
25 was issued for her arrest. See Doc. No. 29, pgs. 8–11.

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28 ¹ Superior Court of California for the County of San Diego case number D527285, Richard Hansen v. Tasha Perry.

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2 **LEGAL STANDARD**

3 Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Court may grant
4 preliminary injunctive relief or temporary restraining orders in order to prevent “immediate
5 and irreparable injury.” Fed.R.Civ.P. 65(b). A preliminary injunction is an extraordinary
6 and drastic remedy, never awarded as of right. Munaf v. Geren, 553 U.S. 674, 689-90
7 (2008) (citations omitted). This equitable relief is within the discretion of the Court after
8 balancing various factors. Benda v. Grand Lodge of the Int’l Assoc. of Machinists &
9 Aerospace Workers, 584 F.2d 308, 314 (9th Cir.1978). “A plaintiff seeking a preliminary
10 injunction must establish that: (1) he is likely to succeed on the merits, (2) is likely to suffer
11 irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in his
12 favor, and (4) that an injunction is in the public interest.” Winter v. Natural Res. Def.
13 Council, 555 U.S. 7, 20 (2008). The Ninth Circuit Court of Appeals has determined that its
14 “serious questions” sliding scale test, which permits one element to offset a weaker one, is
15 still viable after the four-part element test provided in Winter. See Alliance for the Wild
16 Rockies v. Cottrell, 632 F.3d 1127, 1134 -35 (9th Cir. 2011). Therefore, a preliminary
17 injunction may issue if the plaintiff demonstrates serious questions going to the merits and
18 that the balance of hardships tip sharply in his favor, “so long as the plaintiff also shows
19 that there is a likelihood of irreparable injury and that the injunction is in the public
20 interest.” Id. at 1135.

21 **DISCUSSION**

22 Plaintiff’s Motion seeks an order directing SDPD “to locate and find S.H., or in the
23 alternative, an order empowering the United States Marshalls”² with authority to do so, and
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26 ² Plaintiff’s request that the United States Marshals be utilized to find S.H. stems from a conversation he
27 had with Deputy Marshal Ryan Bengert who informed him that “Congress has mandated the U.S.
28 Marshals to start performing locate and removal services when it comes to felony child taking.” See Doc.
No. 24–1, pg. 11. Deputy Marshal Bengert told Plaintiff that he needed a Federal Court to issue an order
of removal which will empower the U.S. Marshals to find S.H. Id.

1 an order enforcing the superior court judge’s order which requested the San Diego County
2 District Attorney’s office investigate the alleged abduction of his daughter. See Doc. No.
3 24–1. Both SDPD and County of San Diego oppose Plaintiff’s Motion arguing that: (1)
4 Plaintiff fails to show the “likelihood of success on the merits” of his underlying claims,
5 and (2) an injunction is improper when there is no connection between the proffered injury
6 and the conduct alleged in the complaint. See Doc. Nos. 26, 27.³ These arguments will be
7 addressed in turn below.

8 **i. Likelihood of success on the merits**

9 “The first factor under Winter is the most important—likely success on the merits.”
10 Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015) (citation omitted). Courts treat
11 likelihood of success as a “threshold inquiry,” disregarding the other factors when a
12 plaintiff fails to show a likelihood of success on the merits. Id. Plaintiff contends that he
13 need only show that there are “serious questions” going to the merits of the case in order
14 to obtain preliminary injunctive relief, so long as the “balance of hardships . . . tips sharply
15 towards” it. All. for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134–35 (9th Cir. 2011).
16 Plaintiff asserts that serious questions exist in this case, “namely, the location of S.H,” and
17 further argues that the “likelihood on the merit of the preliminary injunction” is a given.
18 Doc. No. 24–1, pg. 13.

19 It is clear that Plaintiff remains confused as to what “likelihood of success on the
20 merits” means for purposes of a preliminary injunction. As SDPD correctly articulates,
21 “[t]he relevant inquiry is not whether Plaintiffs can demonstrate serious questions going to
22 the merits of this preliminary injunction motion,” rather it “is whether Plaintiffs can
23 demonstrate serious questions going to the merits of the underlying lawsuit.” Doc. No. 27,
24 pg. 4. In denying Plaintiff’s previous request for injunctive relief, this Court held that “a
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27 ³ In addition, SDPD argues that Plaintiff’s request for the United States Marshal’s Service to assist in
28 finding a non-party is improper. See Doc. No. 27, pg. 5. The County of San Diego additionally contends
that Plaintiff’s service was improper, and regardless, Plaintiff’s Motion is so vague that it fails to provide
the County a fair opportunity to put forth a valid opposition. See Doc. No. 26, pgs. 3–6.

1 preliminary injunction may be denied on the sole ground that the plaintiff failed to raise
2 even ‘serious questions’ going to the merits.” See Doc. No. 19 (citing Vanguard Outdoor,
3 LLC v. City of Los Angeles, 648 F.3d 737 (9th Cir. 2011)). Here, similarly to his first
4 motion for preliminary injunction, Plaintiff does not address the merits of the underlying
5 case whatsoever, and as such, fails to establish that even “serious questions” exist. In
6 addition, both Defendants discuss this deficiency in their oppositions, yet Plaintiff fails to
7 address these arguments in his reply briefs. See Doc. Nos. 26, 27, 29, 30.

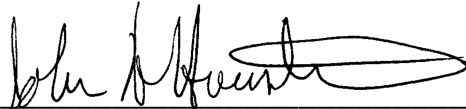
8 Moreover, as both Defendants argue, Plaintiff’s Motion for Preliminary Injunction
9 requests relief entirely unrelated to the underlying claim. See Doc. Nos. 26, 27. The Ninth
10 Circuit has formally adopted the rule enunciated in Devose v. Herrington, 42 F.3d 470 (8th
11 Cir.1994), which requires a sufficient nexus between the claims raised in a motion for
12 injunctive relief and the claims set forth in the underlying complaint itself. See Pac.
13 Radiation Oncology, LLC v. Queen's Med. Ctr., 810 F.3d 631, 636 (9th Cir. 2015). “The
14 relationship between the preliminary injunction and the underlying complaint is
15 sufficiently strong where the preliminary injunction would grant relief of the same
16 character as that which may be granted finally”. Id. (citing De Beers Consol. Mines v.
17 United States, 325 U.S. 212, 220, 65 S.Ct. 1130, 89 L.Ed. 1566 (1945)). Here, Plaintiff is
18 requesting this Court enforce an order of a superior court judge in an effort to locate his
19 daughter. Notwithstanding potential abstention concerns, this is wholly unrelated to the
20 relief sought in the complaint. Absent a sufficient relationship or nexus, this Court lacks
21 authority to grant such relief. See Pac. Radiation Oncology, 810 F.3d at 636.⁴

22 Accordingly, Plaintiff’s Motion for Preliminary Injunction [Doc. No. 24] is
23 **DENIED without prejudice.** Plaintiff shall request leave of court in order to file any future
24 preliminary injunction motions.

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27 ⁴ Because these deficiencies end the inquiry altogether, the Court need not address the remaining
28 arguments proffered by either Defendant. See Ass’n des Eleveurs de Canards et d'Oies du Quebec v.
Harris, 729 F.3d 937, 944 (9th Cir.2013).

IT IS SO ORDERED.

DATED: July 26, 2018



JOHN A. HOUSTON
United States District Judge

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