

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BENJAMIN PAVONE,
Plaintiff,

v.

GEORGE CARDONA, Chief Trial
Counsel, Office of the Chief Trial
Counsel of the State Bar of
California; LEAH WILSON,
Executive Director of the State Bar
of California; ANDREW VASICEK,
Senior Attorney, Office of Chief Trial
Counsel,
Defendants.

Case No.: 3:21-cv-1743-BTM-BLM

**ORDER DENYING PLAINTIFF'S
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER**

**[ECF NOS. 3, 4, 5, 6, 7, 8, 9, 10,
11, 12]**

1 Plaintiff Benjamin Pavone has filed an Application for a Temporary
2 Restraining Order (“TRO”). (ECF Nos. 3-12.) Plaintiff is the subject of an ongoing
3 California State Bar disciplinary proceeding, in which a Notice of Disciplinary
4 Charges was filed against him on August 11, 2020. (ECF No. 7-4.) In his
5 Application for a TRO, Plaintiff argues that “this Court should assume jurisdiction
6 over this matter and temporarily enjoin the pending State Bar proceedings to
7 review [various] serious constitutional defects [of the California State Bar
8 disciplinary system].” (ECF No. 3 at 26.)

9 “The standard for issuing a temporary restraining order is identical to the
10 standard for issuing a preliminary injunction.” *Lockheed Missile & Space Co., Inc.*
11 *v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); *see also*
12 *Stuhlbarg Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc.*, 240 F.3d 832,
13 839 n.7 (9th Cir. 2001) (standards for issuing a TRO are “substantially identical” to
14 those for issuing a preliminary injunction). A plaintiff seeking a preliminary
15 injunction must establish: (1) a likelihood of success on the merits; (2) a likelihood
16 that plaintiff will suffer irreparable harm in the absence of preliminary relief; (3) that
17 the balance of equities tips in his favor; and (4) that an injunction is in the public
18 interest. *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20 (2008).

19 Defendants oppose Plaintiff’s Application for a TRO, arguing that: (1) this
20 district is not the proper venue, and (2) the Court must abstain from exercising
21 jurisdiction under the *Younger* doctrine. (ECF No. 19.) The Court held a hearing
22 on November 8, 2021. (ECF No. 22.)

23 **I. Improper Venue**

24 Defendants argue that venue is improper in the Southern District of California
25 because “Plaintiff does not allege that any Defendant resides within the Southern
26 District of California,” “the State Bar’s offices are located in San Francisco and Los
27 Angeles,” and “all the events or omissions that allegedly support the TRO
28 application have occurred and are occurring outside of this district.” (ECF No. 19

1 at 12.)

2 Under 28 U.S.C. § 1391(b), “[a] civil action may be brought in”:

3 (1) a judicial district in which any defendant resides, if all defendants
4 are residents of the State in which the district is located;

5 (2) a judicial district in which a substantial part of the events or
6 omissions giving rise to the claim occurred, or a substantial part of
7 property that is the subject of the action is situated; or

8 (3) if there is no district in which an action may otherwise be brought
9 as provided in this section, any judicial district in which any defendant
10 is subject to the court's personal jurisdiction with respect to such action.

11 28 U.S.C. § 1391(b). Further, “a natural person . . . shall be deemed to reside in
12 the judicial district in which that person is domiciled.” 28 U.S.C. § 1391(c)(1).

13 Plaintiff has named individuals George Cardona, Leah Wilson, and Andrew
14 Vasicek as defendants in this case. (ECF No. 1 at 10.) Plaintiff alleges that “[a]s
15 defendants do business throughout the state and conduct substantial activity by
16 hailing attorneys located all over the state into their preferred forums in Los
17 Angeles and San Francisco, this is a proper venue pursuant to 28 U.S.C. §
18 1391(b).” (*Id.* at 11.) Plaintiff failed to address Defendants’ venue challenge in his
19 reply brief. (See ECF No. 21.) Plaintiff does not allege that any of the named
20 Defendants reside in the Southern District of California. Plaintiff also does not
21 allege that any part of his California State Bar disciplinary proceedings have
22 occurred or are occurring within this District. Plaintiff has not met his burden to
23 show that venue is proper in this District. See *Synoptek, LLC v. Synaptek Corp.*,
24 326 F. Supp. 3d 976, 986 (C.D. Cal. 2017) (“Once venue is challenged, the plaintiff
25 bears the burden of showing that venue is proper.”) (citing *Piedmont Label Co. v.*
26 *Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979)); *Lucero v. Ramirez*,
27 2021 WL 1529932, at *8 (S.D. Cal. Apr. 16, 2021) (“Plaintiff has not satisfied his
28 burden to demonstrate that venue is proper in this district” because “[a]ll of
Plaintiff’s claims arise out of Defendants’ conduct in connection with his disciplinary

1 proceedings before the State Bar Court. The FAC does not allege that the State
2 Bar Court was located in San Diego, or that any of the Defendants were in San
3 Diego when the alleged wrongdoing occurred, and Plaintiff does not argue
4 otherwise in his opposition.”).

5 **II. Younger Abstention**

6 Even if Plaintiff had met his burden to establish that venue is proper in this
7 District, the Court holds that it must abstain from exercising jurisdiction over this
8 matter under the *Younger* doctrine.

9 “*Younger* and its progeny generally direct federal courts to abstain from
10 granting injunctive or declaratory relief that would interfere with pending state
11 judicial proceedings. Absent extraordinary circumstances, abstention in favor of
12 state judicial proceedings is required if the state proceedings (1) are ongoing, (2)
13 implicate important state interests, and (3) provide the plaintiff an adequate
14 opportunity to litigate federal claims.” *Hirsh v. Justs. of Supreme Ct. of State of*
15 *Cal.*, 67 F.3d 708, 712 (9th Cir. 1995) (internal citations and quotations omitted)
16 (citing *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423
17 (1982)). The Ninth Circuit has already held that ongoing California State Bar
18 disciplinary proceedings satisfy the three *Middlesex* prongs for purposes of
19 *Younger* abstention. See *Canatella v. California*, 404 F.3d 1106, 1110-11 (9th Cir.
20 2005) (“California's attorney discipline proceedings are judicial in character for
21 purposes of *Younger* abstention,” “implicate important state interests,” and
22 “provide [a defendant] with an adequate opportunity to litigate his federal
23 constitutional claims”).

24 //
25 //
26 //
27 //
28 //

1 With respect to the extraordinary circumstances exception to *Younger*
2 abstention, Plaintiff points to “the exceptional nature of [his] system-wide criticism
3 of the California discipline system¹,” as well as the implication of free speech rights
4 in his case.² (See ECF No. 3 at 34.) The Court finds that Plaintiff has not
5 established extraordinary circumstances to warrant an exception to *Younger*
6 abstention. See *Hirsh*, 67 F.3d at 713-15 (arguments that the California State Bar
7 justices and State Bar court judges were biased and that the California State Bar
8 disciplinary system’s structure was unconstitutional did not qualify as exceptions
9 to abstention); *Canatella*, 404 F.3d at 1112 (“the extraordinary circumstances
10 exception d[id] not apply” where the plaintiff argued that “the California Supreme
11 Court ha[d] an inherent conflict of interest in considering constitutional challenges
12 to state bar disciplinary proceedings” and that “the state bar statutes [were]
13 patently unconstitutional”).

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21

22 _____

23 ¹ Plaintiff’s system-wide criticism of the California State Bar disciplinary system includes allegations of corruption
24 related to the actions of attorney Thomas Girardi, selective prosecution of solo and small firm attorneys, deficient
25 charging standards for ethical offenses, disciplinary charges that infringe on constitutional rights, insufficient
26 pretrial procedures, unresponsiveness to pretrial challenges, the imposition of impermissible costs related to
27 disciplinary proceedings, and rulings by the State Bar courts that are not sufficiently substantive. (See ECF No.
28 3.)

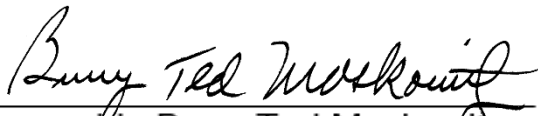
² Plaintiff cannot rely on *Dombrowski v. Pfister*, 380 U.S. 479 (1965) to create a general exception to *Younger*
abstention for free speech related cases. See *Andersen v. United States*, 298 F.3d 804, 810 (9th Cir. 2002)
(characterizing *Younger* as “limiting [*Dombrowski*] to its facts and abstaining despite an underlying First
Amendment claim”).

1 **III. Conclusion**

2 Because Plaintiff has not met his burden to establish that venue is proper in
3 this District, and because the Court must abstain from exercising jurisdiction over
4 this case under the *Younger* doctrine³, Plaintiff's Application for a TRO is **DENIED**.

5
6 **IT IS SO ORDERED.**

7
8 Dated: November 19, 2021

9 
10 Honorable Barry Ted Moskowitz
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28 ³ Because the Court denies Plaintiff's TRO application on the basis of venue and *Younger* abstention, it does not address the individual TRO factors.