Wordlogic Corpo	ration v. Glaser et al	Doc	10
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7	UNITED STATES	DISTRICT COURT	
8	8 DISTRICT OF NEVADA		
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10	WORDLOGIC CORPORATION, a Nevada corporation,) Case No.: 2:10-cv-01408-RLH-PAL	
11	Plaintiff,	ORDER	
12	VS.	(Second Motion for Temporary Restraining Order—#9)	
13	DOUGLAS A. GLASER, as an individual;)	
14	APHENOS CAPITAL, INC., a Florida corporation; and ADVEDEA, INC., a Florida		
15	corporation,		
16	Defendants.		
17	Before the Court is Plaintiff Wordlogic Corporation's <i>ex parte</i> Second Motion for		
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19	Temporary Restraining Order ("TRO") (#9), filed September 1, 2010.		
20	BACKGROUND		
21	This dispute arises from an alleged breach of contract. Plaintiff alleges the		
22	following facts. Plaintiff's business involves research, development, and licensing of software		
23	tools for enabling data entry on personal computing devices. (Dkt. #1, Compl.) Defendant		
24	Douglas Glaser is a Florida resident who owns two Florida corporations, Aphenos Capital, Inc.		
25	and Advidea, Inc. In April 2010, Plaintiff and Glaser signed two consulting agreements. Under		
26	the agreements, Glaser was to provide Plaintiff	with consulting services that included: building	
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(Rev. 8/82)		Dockete Justin	

and developing a website and advertisements, writing and producing television infomercials to sell Plaintiff's products, and other business development services. Plaintiff would then compensate Glaser with shares of its common stock. Defendants allegedly failed to produce infomercial content, book certain infomercial air time, or relinquish control of Plaintiff's website. Plaintiff also alleges that Defendants misappropriated funds for their own personal use and retained stock certificates that Plaintiff's transfer agent erroneously issued.

On August 19, 2010, Plaintiff filed suit against Defendants in this Court alleging: (1) breach of contract, (2) conversion, (3) fraud, (4) breach of implied covenant of good faith and fair dealing, and (5) misappropriation. In addition, Plaintiff filed an *ex parte* TRO motion (Dkt. #2) and a Motion for Preliminary Injunction (Dkt. #3), which is still pending. The Court denied Plaintiff's TRO motion because Plaintiff failed to demonstrate a likelihood of success on the merits. (Dkt. #8, Order, Aug. 23, 2010.)

On September 1, Plaintiff filed a second *ex parte* TRO motion (Dkt. #9) with newly obtained evidence that purportedly demonstrates a likelihood of success. The new evidence includes emails between Plaintiff's corporate president, Frank Evanshen, and Glaser, invoices from recent sales on Plaintiff's website, and a declaration from Plaintiff's employee, Roy Spectorman. For the reasons discussed below, the Court denies Plaintiff's motion.

DISCUSSION

I. TRO Requirements

Under Rule 65(b) of the Federal Rules of Civil Procedure, parties seeking a TRO must establish: (1) a likelihood of success on the merits, (2) a likelihood of irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008). Applying *Winter*, the Ninth Circuit has since held that, to the extent previous cases suggested a lesser standard, "they are no longer controlling, or even viable." *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009). Thus, a party must satisfy each of these four requirements.

2 that Plaintiff has a likelihood of irreparable harm simply because Defendants allegedly have 3 4 5 6 7 8 9

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II.

motion is Plaintiff's second request for ex parte relief, and a motion for preliminary injunction is still pending. The standard for obtaining ex parte relief under Rule 65 is very stringent. Reno Air Racing Ass'n v. McCord, 452 F.3d 1126, 1130 (9th Cir. 2006). The Court will only issue an ex parte TRO where it appears there would be an irreparable injury before the responding party can be heard. Fed. R. Civ. P. 65(b)(1)(A). In reality, a TRO is a temporary preliminary injunction

issued for a limited period of time until the time when the opposing party has an opportunity to be heard. Rule 65's stringent restrictions "reflect the fact that our entire jurisprudence runs counter to

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control of Plaintiff's website and stock certificates. If Plaintiff succeeds on its claims, Defendants could receive monetary compensation or declaratory relief, and this weighs heavily against Plaintiff's claim of irreparable harm. L.A. Mem'l Coliseum Comm'n v. Nat'l Football League, 634 F.2d 1197, 1202 (9th Cir. 1980) (quoting Sampson v. Murray, 415 U.S. 61, 90 (1974) ("Mere injuries, however substantial, in terms of money, time and energy necessarily expended . . . are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.")) Second, the Court can do no more than infer that Defendants are liable for the alleged misconduct from Plaintiff's new evidence. The emails Plaintiff submits may show a dispute between the parties, but they do not show more than the possibility of misconduct. Thus, Plaintiff has not shown a likelihood of success. Because Plaintiff has not shown a likelihood of success or irreparable harm, the Court need not address the balance of equities or public interest. Accordingly, the Court denies Plaintiff's Motion. Ex Parte Injunctive Relief

While the Court has denied Plaintiff's TRO motion, the Court notes that this

Plaintiff has not satisfied the TRO requirements. First, the Court cannot conclude

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the notion of court action taken before reasonable notice and an opportunity to be heard has been

1	granted both sides of a dispute." Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck	
2	Drivers, 415 U.S. 423, 438–39 (1974).	
3	The central issue for an ex parte TRO motion is whether something needs to be	
4	done immediately, before a hearing can be held. Because Plaintiff failed to demonstrate a	
5	likelihood of irreparable harm, the Court cannot grant immediate injunctive relief. Although	
6	Plaintiff submitted new evidence in support of its second motion, these exhibits do not satisfy the	
7	stringent standards for ex parte injunctive relief. Defendants are entitled to reasonable notice and	
8	an opportunity to be heard. The Court therefore will consider Plaintiff's motion for preliminary	
9	injunction once Plaintiff files proof of service and Defendants are given an opportunity to respond.	
0	CONCLUSION	
1	Accordingly, and for good cause appearing,	
2	IT IS HEREBY ORDERED that Plaintiff's Second Motion for Temporary	
3	Restraining Order (#9) is DENIED.	
4	Dated: September 7, 2010.	
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6	ROGER L. HUNT	
7	Chief United States District Judge	
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