

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 Peter Lee,
5 Plaintiff

6 v.

7 Native Games America, LLC; Native Games
8 Entertainment International Limited; Jeff
9 Martinez; Mark Anthony Strom,
10 Defendants

2:16-cv-02665-JAD-NJK

**Order Denying Motion for Temporary
Restraining Order and Setting Motion for
Preliminary Injunction for Hearing on an
Expedited Briefing Schedule**

[ECF No. 4]

11 Patrick Lee sues defendants (“NGA”) for defaulting on a loan agreement. Lee loaned
12 NGA over half a million dollars, and NGA pledged its various tangible and intellectual-property
13 assets as collateral for the loan. Lee alleges that NGA has not made a single payment on this
14 loan, and he seeks to collect against NGA’s collateral. Lee now moves on an emergency basis
15 for both a temporary restraining order and a preliminary injunction against the defendants, as
16 well as appointment of a receiver. The thrust of Lee’s concern is that NGA is mismanaging its
17 company so that by the time Lee can assert his rights to NGA’s assets, there might be nothing
18 left to collect.

19 Temporary restraining orders are only for emergencies because “our entire jurisprudence
20 runs counter to the notion of court action taken before reasonable notice and an opportunity to be
21 heard . . . [has been given to] both sides of a dispute.”¹ Lee must meet a “high hurdle” to show
22 that he will be irreparably harmed if not given an injunction between now and when I can
23 conduct a proper preliminary injunction with both parties participating.²

24 I find that Lee has not met this demanding standard. Lee argues that he may be
25 irreparably harmed because NGA is making poor business decisions and effectively running its
26 business into the ground. But what Lee does not explain is why he needs emergency relief to
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28 ¹ *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423 (1974).

² *Stanchart Sec. Int’l, Inc. v. Galvador*, 2012 WL 5286952, at *1 (S.D. Cal. Oct. 24, 2012).

1 protect his ability to collect against NGA's assets. None of his evidence or allegations suggest
2 that these assets face an imminent threat in the coming weeks before a proper hearing can be
3 arranged. I thus deny Lee's motion for a temporary restraining order and set a date for a hearing
4 on Lee's motion for preliminary injunction and appointment of a receiver.

5 **Background**

6 Lee loaned NGA over half a million dollars, and NGA promised all of its assets (tangible
7 and intellectual) as collateral.³ Under the parties' loan agreement, NGA was supposed to make
8 its first payment in August 2016, but it failed to do so.⁴ After NGA refused to make further
9 payments or work out a deal, Lee asked NGA to allow him to take control of its business, but the
10 request was refused.⁵

11 NGA is a video game company. For example, NGA owns the Mega Frame Casino game,
12 a slot machine video game featured on social-media site Facebook. Lee contends that over
13 recent months, NGA has mismanaged its company resulting in losses and, potentially,
14 insolvency. He alleges that NGA purchased a company, Plaor, but then allowed the company to
15 fall into disarray so that it is now facing an eviction at its company headquarters.⁶ He also
16 alleges that NGA failed to properly manage its licensing agreements with third parties, causing
17 those parties to pull their content from NGA's games and thus making those games less
18 valuable.⁷ Finally, Lee alleges that NGA is considering selling some of its equity to a company
19 in exchange for worthless stock.⁸

22 ³ ECF No. 5-3.

23 ⁴ ECF No. 5-2 at 12.

24 ⁵ *Id.* at 13.

25 ⁶ *Id.* at 13–14.

26 ⁷ *Id.*

27 ⁸ *Id.*

1 **Discussion**

2 The legal standard for issuing a temporary restraining order and the legal standard for
3 preliminary injunctive relief are “substantially identical.”⁹ Generally, the movant must show
4 “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
5 absence of preliminary relief, that the balance of equities tips in his favor, and that [an
6 injunction] is in the public interest.”¹⁰ But when a plaintiff seeks the exceptional remedy of a
7 temporary restraining order—without the defendant being given the opportunity to be
8 heard—the plaintiff must also make a threshold showing that an injunction is needed in the short
9 interim period before a proper preliminary injunction hearing can be arranged. Lee must provide
10 “specific facts in an affidavit or a verified complaint [to] clearly show that immediate and
11 irreparable injury, loss or damage will result . . . before [NGA] can be heard in opposition.”¹¹

12 Lee makes three arguments for why he needs an immediate injunction before a
13 preliminary injunction hearing can be arranged: (1) NGA is allowing its intellectual property to
14 deteriorate, (2) NGA’s corporate status has been revoked by Nevada, (3) NGA is attempting to
15 sell equity to another company, and (4) NGA is allowing a company that it owns to be evicted
16 from its headquarters.¹² These allegations and evidence portray a company making poor
17 business decisions, but what they do not show is any imminent threat to Lee’s ability to collect
18 on NGA’s collateral—which is what matters for purposes of this emergency motion.

19 Lee argues that NGA’s mismanagement is diminishing the value of its intellectual
20 property, but he provides no specific facts suggesting that these assets are in imminent danger.
21 The only specific facts he provides are that one of NGA’s games, Mega Frame Casino, is losing
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23 ⁹ See *Stuhlberg Intern. Sales Co. v. John D. Brush and Co.*, 240 F.3d 832, 839 n.7 (9th Cir.
24 2001) (stating that the “analysis is substantially identical for the injunction and the TRO”).

25 ¹⁰ *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Natural Res.*
26 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

27 ¹¹ FED. R. CIV. PROC. 65(b)(1).

28 ¹² ECF No. 5-2 at 13.

1 licensed content because third parties are demanding that their games be removed from Mega
2 Frame’s platform.¹³ But Lee’s own exhibits show that these third parties have been threatening
3 to remove their content since at least July 2016.¹⁴ He provides no allegations or evidence
4 indicating that anything new will happen to Mega Frame in the coming weeks before a full
5 hearing on this issue.

6 Nor does Lee provide any explanation for how NGA’s corporate status with the state of
7 Nevada means that he needs an immediate injunction to protect his interest in NGA’s collateral.
8 If NGA’s corporate status mattered, then it’s too late because it is already revoked. To the extent
9 Lee suggests that the loss of its corporate status means NGA is on the verge of shutting its doors
10 and squandering its assets, again, Lee provides no specific facts indicating that NGA is doing
11 anything in the *immediate* future that would jeopardize the collateral.¹⁵

12 Lee similarly provides no explanation for how NGA selling its equity threatens his ability
13 to collect on NGA’s collateral. Lee offers no authority to suggest that the identity of NGA’s
14 shareholders could somehow implicate whether Lee can collect on NGA’s assets. Lee suggests
15 that NGA selling equity violates the parties’ loan agreement. That may be, but an imminent
16 breach of contract does not equate to imminent, irreparable harm warranting emergency relief.

17 Finally, Lee contends that a company owned by NGA (and thus one of its assets that Lee
18 may later want to collect from) faces eviction from its headquarters. But Lee again fails to
19 articulate how this might affect his ability to collect on the asset. He does not suggest, for
20 example, that if the eviction is avoided the company will retain more value. Lee appears to bring
21 up this fact as further evidence of NGA’s inability to properly manage itself. But the fact that
22 NGA might be making poor business decisions and breaching its loan agreement with Lee in the
23 process—says nothing about Lee’s need for the exceptional remedy of a TRO.

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25 ¹³ ECF No. 5-1 at 3.

26 ¹⁴ ECF No. 5-9 at 3.

27 ¹⁵ This argument is also belied by the fact that Lee admits NGA is attempting to negotiate a deal
28 to sell equity—not something that a defunct company would be doing.

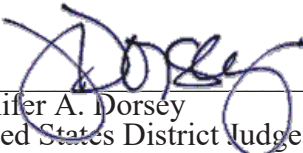
1 Lee has failed to show that he faces an *immediate* likelihood of injury without a
2 temporary restraining order. I thus deny his motion.

3 **Conclusion**

4 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Lee's
5 **motion for a temporary restraining order [ECF No. 4] is DENIED.**

6 IT IS FURTHER ORDERED that Lee's motion for preliminary injunction [ECF No. 6]
7 and motion for appointment of a receiver [ECF No. 8] will be heard on **January 27, 2017 at**
8 **10:00am**, in Courtroom 6 D at 333 Las Vegas Blvd. South, Las Vegas, Nevada 89101. NGA has
9 until **December 29, 2016**, to file a response to those motions. Lee has until **January 12, 2017**,
10 to file any reply.

11 Dated this 15th day of December, 2016:

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14 Jennifer A. Dorsey
15 United States District Judge
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