



1 In his motion for preliminary relief, plaintiff seeks “an order granting temporary  
2 restraining order, preliminary injunction, and sequestering and freezing assets of [d]efendant,<sup>1</sup>  
3 and appointing a custodial receiver to operate the businesses which are the subject of the sales  
4 contract [p]laintiff seeks to have declared void . . . .” Motion (Dkt. # 11) at 1. Having reviewed  
5 the memoranda, declarations,<sup>2</sup> and exhibits submitted by the parties,<sup>3</sup> the Court finds as follows:

6 The only undisputed facts in this case are that plaintiff Elias Ilyia executed a  
7 Durable General Power of Attorney and a Stock Purchase Agreement in favor of defendant  
8 Maroun N. El Khoury in mid-2010. Why plaintiff gave control of his personal finances and  
9 companies to defendant, whether plaintiff was competent to contract at the time, and the parties’  
10 relative abilities and intentions with regards to the companies are all hotly contested. The  
11 competing declarations provided by the parties suggest mutually-exclusive versions of events.  
12 Plaintiff portrays defendant as an opportunistic (and rather dangerous) con-artist, while  
13 defendant maintains that plaintiff was a floundering businessman in need of assistance which he  
14 gratefully, and with full knowledge, accepted. Upon a preliminary review of the record,  
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16 <sup>1</sup> Although the complaint seeks sequestration of assets belonging to the companies, plaintiff  
17 requests a preliminary injunction that would prevent defendant from utilizing his own assets. Plaintiff  
18 offers no case law in support of this request. Issuing an injunction “not to enjoin unlawful conduct, but  
19 rather to render unlawful conduct that would otherwise be permissible, in order to protect the anticipated  
20 judgment of the court,” would contravene the traditional principles of equity jurisdiction. Grupo  
21 Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 315 (1999).

22 <sup>2</sup> In reply, plaintiff provides two affidavits that go to the heart of his request for preliminary  
23 injunctive relief. Dkt. # 30 and # 31. Plaintiff offers no explanation for why this evidence could not  
24 have been presented with his motion. By withholding the evidence until after defendants filed their  
25 opposition to the motion, plaintiff deprived defendants of their opportunity to respond. In most  
26 instances, this evidence would be rejected as untimely. Nevertheless, in the interest of giving plaintiff  
every opportunity to show that preliminary relief is appropriate, the Court has considered these  
affidavits.

<sup>3</sup> This matter can be decided on the papers submitted. Plaintiff’s request for oral argument is  
DENIED.

1 defendants' version of events is better supported by admissible evidence and strikes the Court as  
2 more plausible.

3 In order to obtain preliminary injunctive relief, plaintiff must establish "that he is  
4 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
5 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the  
6 public interest." Winter v. Natural Res. Def. Council, 555 U.S. 7, 129 S. Ct. 365, 374 (2008).  
7 In addition, "serious questions going to the merits and a hardship balance that tips sharply  
8 towards the plaintiff can support issuance of an injunction, so long as the plaintiff also shows a  
9 likelihood of irreparable injury and that the injunction is in the public interest." Alliance for the  
10 Wild Rockies v. Cottrell, 622 F.3d 1045, 1053 (9th Cir. 2010) (internal quotation marks  
11 omitted).

12 The Court finds that plaintiff has not shown a likelihood of success on, or raised  
13 serious questions regarding, the validity of the underlying contracts. Although it appears that  
14 plaintiff was under a great deal of personal and professional stress in early 2010, his assertions  
15 that (a) the stress was attributable to defendant and (b) plaintiff was legally incapable of  
16 contracting are not borne out by the record. Having failed to establish his likelihood of success  
17 or the existence of serious questions, the Court will not provide relief unless and until plaintiff  
18 proves his claims.

19 For all of the foregoing reasons, plaintiff's motion for preliminary injunctive relief  
20 is DENIED. The parties are, however, expected to preserve all relevant documents and suspend  
21 routine document retention/destruction policies if necessary to achieve that goal. In re Napster,  
22 Inc. Copyright Litig., 462 F. Supp.2d 1060, 1070 (N.D. Cal. 2006); Consolidated Aluminum  
23 Corp. v. Alcoa, Inc., 244 F.R.D. 335, 342 (M.D. La. 2006).  
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Dated this 16th day of December, 2011.

Robert S. Lasnik

Robert S. Lasnik  
United States District Judge

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