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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANTHONY ABUZEIDE, Special
Administrator for the Estate of Jack Berry
Dane,

Plaintiff,

v.

OPENROAD AUTO GROUP, INC., a
Washington corporation d/b/a BELLEVUE
LAMBORGHINI ROLLS-ROYCE
BENTLEY,

Defendant.

Case No. C17-583 RSM

ORDER GRANTING SECOND MOTION
FOR TEMPORARY RESTRAINING
ORDER

This matter comes before the Court on Plaintiff’s Second Motion for Temporary Restraining Order (“TRO”). Dkt #8. On April 14, 2017, Plaintiff Anthony Abuzeide, Special Administrator for the Estate of Jack Berry Dane (“The Estate”) filed this action and its First TRO Motion. That same day, the Court denied the Motion, determining that it lacked a certificate of service and otherwise failed to argue for issuance without notice. Dkt. #6. The Estate swiftly filed a declaration of attorney Michael E. McAleenan containing the missing evidence of service on Defendant Openroad Auto Group, Inc. (“Openroad”). Dkt. #7. Later that same day, The Estate filed the instant Second TRO Motion and all of the original supporting declarations, including the previously missing declaration of attorney Michael E. McAleenan. Dkts. #8-11. This newly filed declaration of Mr. McAleenan provides evidence

1 of service of the first TRO, but not evidence of service of the Second TRO Motion. *See* Dkt.
2 #11. Confusingly, the instant Second TRO Motion is identical to the First TRO Motion, with
3 an identical caption. *See* Dkts. #2 and #8.

4 On April 18, 2017, The Estate filed an unsigned “Declaration of Service” purporting to
5 show that Defendant Openroad was served with the Second TRO Motion, as well as the Court’s
6 April 14, 2017, Order denying the original TRO Motion. Dkt. #12. This document indicates
7 that Openroad was served with these documents on April 17, 2017, at 2:34 PM. *Id.* Openroad
8 has failed to respond to this Motion or contact the Court in any fashion.

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10 The Court will first address whether the Estate has adequately satisfied TRO procedure.
11 “Motions for temporary restraining orders without notice to and an opportunity to be heard by
12 the adverse party are disfavored and will rarely be granted.” LCR 65(b)(1). “The Court may
13 issue a temporary restraining order without written or oral notice to the adverse party or its
14 attorney only if specific facts in an affidavit or a verified complaint clearly show that
15 immediate and irreparable injury, loss, or damage will result to the movant before the adverse
16 party can be heard in opposition; and the movant’s attorney certifies in writing any efforts
17 made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1).
18 Unless these requirements are satisfied, “the moving party must serve all motion papers on the
19 opposing party before or contemporaneously with the filing of the motion *and include a*
20 *certificate of service with the motion.*” LCR 65(b)(1) (emphasis added). “Unless the Court
21 orders otherwise, the adverse party must (1) file a notice indicating whether it plans to oppose
22 the motion within twenty-four hours after service of the motion, and (2) file its response, if any,
23 within forty-eight hours after the motion is served.” LCR 65(b)(5).
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1 The Estate’s actions place the Court in a difficult position. On the one hand, it appears
2 the Estate has again failed to satisfy the above procedural requirements. The Estate has not
3 provided a certificate of service showing service of the *second* TRO Motion before or
4 contemporaneously with the filing of the second TRO Motion. Instead, the record shows
5 Openroad was not served with a copy of the Second TRO until three days after the Second
6 TRO was filed. To make matters worse, the April 18, 2017, “Declaration of Service” is
7 unsigned. *See* Dkt. #12. Even if this Declaration were signed, the Court believes Openroad
8 could be confused by receiving service of an Order of this Court denying the Estate’s First
9 TRO and a copy of the Second TRO captioned identically to the First TRO.
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11 On the other hand, taking into consideration everything the Estate has filed on the
12 docket, it seems clear that Openroad has been adequately notified of this action, that at least
13 one TRO has been filed, and that the Court anticipated the immediate filing of a second TRO.
14 Despite all of this, Openroad has failed to make an appearance or otherwise communicate with
15 the Court. The Court is troubled by Openroad’s silence given the nature of the Estate’s Motion.
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18 The Estate has essentially provided notice of this TRO to Openroad and justice requires
19 consideration of the requested TRO relief now, even though Openroad has not made an
20 appearance. However, the Court will not grant the Estate’s request for expedited discovery at
21 this time given Openroad’s current absence.
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23 Shifting gears to the substance of the TRO request, the Court briefly sets forth the facts
24 as presented by the Estate. Plaintiff alleges that Taylor Henley, a 21 year old acquaintance of
25 the 64 year old Decedent, stole Decedent’s title to “a rare and collectible 2015 Porsche 918
26 Spyder worth in excess of \$1,500,000.00.” Dkt. #8 at 2; *See also* Dkt. #9-1 at 5-11 (police
27 report). This Porsche was apparently of a limited production with “only 918 vehicles sold.” *Id.*
28

1 The Porsche was purchased by Decedent in 2014 and bears the Vehicle Identification (“VIN”)
2 Number WPOCA2A13FS800236. Dkt. #9-1 at 2. Ms. Henley allegedly forged Decedent’s
3 signature on the title to transfer the Porsche to herself, then transferred the Porsche to Silver
4 Arrow Performance Cars, Ltd. in Arizona while Decedent was in Europe at the end of 2016.
5 *Id.*; *see also* Dkt. #9-1 at 15. On January 3, 2017, Decedent filed a police report alleging that
6 Ms. Henley stole, among other things, the title documents to the Porsche and subsequently the
7 Porsche itself. Dkt. #9-1 at 5-11. On February 6, 2017, Decedent died in his San Francisco,
8 California home. Dkt. #9-1 at 29. The Porsche is now advertised for sale at Defendant
9 Openroad’s Bellevue, Washington showroom. *See* Dkt. #11-1 at 9-11. The Estate has
10 attempted to contact Openroad to request they refrain from selling the Porsche; Openroad has
11 not responded. The Estate filed the instant suit for replevin and injunctive relief. Dkt. #1.
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14 In order to succeed on a motion for temporary restraining order, the moving party must
15 show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to the
16 moving party in the absence of preliminary relief; (3) that a balance of equities tips in the favor
17 of the moving party; and (4) that an injunction is in the public interest. *Winter v. Natural Res.*
18 *Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008). The Ninth Circuit
19 employs a “sliding scale” approach, according to which these elements are balanced, “so that a
20 stronger showing of one element may offset a weaker showing of another.” *Alliance for the*
21 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).
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24 As to the first factor, the Estate cites to California and Washington State law supporting
25 the position that Ms. Henley as a thief could not pass good title so that “even a good faith
26 purchaser for value, assuming the Defendants occupy such a position, cannot acquire valid title
27 from Henley or those taking through her.” Dkt. #8 at 10-12 (citing, *inter alia*, *Suburban*
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1 *Motors, Inc. v. State Farm Ut. Auto. Ins. Co.*, 218 Cal. App. 3d 1354 (Cal. App. 3d Dist. 1990);
2 RCW 62A.2-403; RCW 10.79.050; *Heinrich v. Titus-Will Sales, Inc.*, 73 Wn. App. 147, 868
3 P.2d 169 (1994) (internal quotation marks omitted). Washington law also supports return of
4 the Porsche to the Estate as the proper remedy. The Estate next argues it will suffer irreparable
5 harm in the absence of this TRO because “a sale pending resolution of this case may place the
6 Porsche outside the Estate’s reach” given that the Porsche has already crossed state lines several
7 times, and because the Porsche at issue was part of a limited production and is “unique and
8 irreplaceable.” Dkt. #8 at 13. The Estate argues that the balance of equities is in its favor
9 because the Estate is the victim of theft and because “Defendant merely risks a momentary
10 delay of profit.” *Id.* at 14. The Estate notes that the Porsche is apparently still appreciating in
11 value. The Estate argues that a momentary hold on this Porsche will not affect Openroad’s sale
12 of other vehicles. For the last factor, the Estate argues that “injunctive relief here furthers the
13 public interest by ensuring and safeguarding the victim’s right to recover his property,” and by
14 protecting prospective buyers of this Porsche from purchasing a stolen vehicle and becoming
15 subject to a lawsuit. *Id.* at 15.

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19 The Court finds the Estate has sufficiently demonstrated a likelihood of success on the
20 merits given its arguments and substantial supporting documentation. This conclusion has little
21 bearing on the eventual outcome of this case, given the absence of argument or evidence
22 presented by Defendant Openroad. The Estate’s argument for irreparable harm is on shakier
23 ground. It is difficult to see how a car can be “unique” and one of 918 identical copies.
24 However, the Court finds that the Estate’s ability to obtain relief under applicable replevin law
25 could be lost if the Porsche in question is sold. Turning to the last two factors, the Court is
26 convinced that Openroad will suffer little if any harm by the granting of this requested relief.
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1 Taken together, the stronger showing of factors one, three, and four outweigh the weak
2 showing as to irreparable harm. *See Alliance, supra*. The Court will thus grant the TRO and
3 set a preliminary injunction hearing.

4 Having considered Plaintiff's Motion, the declarations and exhibits attached thereto,
5 and the remainder of the record, the Court hereby finds and ORDERS that:
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7 (1) Plaintiff's Second Motion for Temporary Restraining Order (Dkt. #8) is GRANTED
8 IN PART.

9 (2) Defendant Openroad is RESTRAINED from selling, transferring, or assigning
10 ownership or title of the Porsche 918 Spyder with VIN WPOCA2A13FS800236
11 until **fourteen (14) days from the date of this Order**, unless otherwise ordered by
12 the Court.
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14 (3) Plaintiff's request for expedited discovery is DENIED at this time.

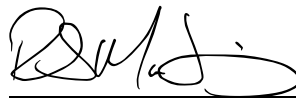
15 (4) A Preliminary Injunction Hearing is set for **10:00am on Thursday, April 27, 2017**,
16 before the Honorable Ricardo S. Martinez, where the Court will hear oral argument.
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18 (5) The matter of bond shall be reserved until the Preliminary Injunction Hearing.

19 (6) Any supplemental briefing from either party must be filed no later than noon on
20 Wednesday, April 26, 2017, and may not exceed twelve (12) pages.

21 (7) Plaintiff must certify with the Court no later than noon on Thursday, April 20, 2017,
22 that it has served this Order on Defendant.
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24 DATED this 19th day of April 2017.

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27 RICARDO S. MARTINEZ
28 CHIEF UNITED STATES DISTRICT JUDGE