

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Brian M. Lowenthal v. Wilshire Commercial Properties LLC, et al.

Lowenthal v. Wilshire Commercial Properties LLC · No. 2:25-cv-04547-CV-JDE · Decided July 23, 2025

SUMMARY

The United States District Court for the Central District of California accepted a magistrate judge's findings and recommendation and addressed Plaintiff's untimely amended complaint and request for emergency injunctive relief. The court denied the request for a temporary restraining order and ordered judgment dismissing the action with prejudice because the amended complaint asserted no viable basis for federal jurisdiction or claim for relief.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Cynthia Valenzuela
JURISDICTION	United States District Court for the Central District of California
DECIDED	July 23, 2025
DOCKET	2:25-cv-04547-CV-JDE
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed and accepted a magistrate judge's Report and Recommendation after Plaintiff failed to timely object. The court also considered Plaintiff's untimely Amended Complaint and Emergency Motion for Temporary Restraining Order.
STANDARD OF REVIEW	The district court reviewed the magistrate judge's Report and Recommendation under 28 U.S.C. § 636. The court applied the Winter preliminary-injunction standard to the TRO request.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Brian M. Lowenthal v. Wilshire Commercial Properties LLC, et al.

TOPICS

- declaratory judgment
- injunctions
- subject matter jurisdiction
- eviction
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court should approve and accept the magistrate judge's Report and Recommendation when Plaintiff did not timely object.
2. Whether the untimely Amended Complaint could proceed when it violated the magistrate judge's order and failed to state a viable claim or establish federal jurisdiction.
3. Whether Plaintiff was entitled to a temporary restraining order preventing a state-court unlawful-detainer action and eviction from proceeding.

HOLDINGS

1. The Amended Complaint could not proceed because it was filed in violation of the magistrate judge's order, and, even if considered, it failed to state a viable claim or establish an independent basis for federal jurisdiction.
2. The TRO Request was denied because Plaintiff had not alleged a viable claim and therefore could not show a likelihood of success on the merits.

KEY QUOTATIONS

“Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit.” (at 2)

“The Declaratory Judgment Act . . . does not provide a waiver of sovereign immunity.” (at 2)

“injunctive relief [is] an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” (at 3)

“A request for injunctive relief should be denied when based on a complaint that fails to state a claim.” (at 3)

FACTUAL BACKGROUND

Plaintiff sought declaratory relief involving the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, and Wilshire Properties. He later sought emergency injunctive relief to prevent a state-court unlawful-detainer action and eviction from proceeding. The court concluded that the amended pleading was filed contrary to the magistrate judge's order and, even if considered, did not state a viable claim or establish an independent basis for federal jurisdiction.

PROCEDURAL HISTORY

Plaintiff filed a complaint, after which the magistrate judge issued an order regarding the complaint and a Report and Recommendation. Plaintiff did not timely object to the Report. After the objection deadline, Plaintiff filed an Amended Complaint, a Motion to Reopen Dismissed Action, and a TRO Request. The court approved and accepted the Report, denied the TRO Request, and ordered judgment dismissing the action with prejudice.

DISPOSITION

dismissed

CASES CITED

- Fed. Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 475 (1993)
- Alter v. U.S. Supreme Ct., 2023 WL 4873627, at *3 (C.D. Cal. July 31, 2023)
- Countrywide Home Loans, Inc. v. Mortgage Guar. Ins. Corp., 642 F.3d 849, 853 (9th Cir. 2011)
- Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20, 22 (2008)
- Big Country Foods, Inc. v. Bd. of Educ. of the Anchorage Sch. Dist., Anchorage, 868 F.2d 1085, 1087 (9th Cir. 1989)
- Henry Schein, Inc. v. Cook, 191 F. Supp. 3d 1072, 1076 (N.D. Cal. 2016)
- Niu v. United States, 821 F. Supp. 2d 1164, 1167 (C.D. Cal. 2011)
- Smith v. Cal. Dep’t of Corr. & Rehabs., 2020 WL 1503431, at *4 (E.D. Cal. Mar. 30, 2020), adopted by 2020 WL 2126831 (E.D. Cal. May 5, 2020)
- Jaax v. United States, 2008 WL 4630559, at *2 (C.D. Cal. Oct. 17, 2008)
- Most v. Pritzker, 2020 WL 4582593, at *2 (S.D. Ill. Aug. 10, 2020)

OPINION

Brian Lowenthal v. Wilshire Commercial Properties LLC

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10 WESTERN DIVISION

11 12 BRIAN M. LOWENTHAL,) Case No. 2:25-cv-04547-CV-JDE)) 13 Plaintiff,

) ORDER ACCEPTING FINDINGS

)

14 v.) AND RECOMMENDATION OF

) UNITED STATES MAGISTRATE

15 WILSHIRE COMMERCIAL) JUDGE

16 PROPERTIES LLC, et al.,))) 17 Defendants.)) 18 19 Pursuant to 28 U.S.C. § 636, the Court has reviewed the records on file, 20 including the Complaint (Dkt. 1), the Order re Complaint issued by the 21 assigned magistrate judge (Dkt. 7, “Order re Complaint”), and the Report and 22 Recommendation of the magistrate judge (Dkt. 9, “Report”). Plaintiff did not 23 file a timely objection to the Report or seek additional time in which to do so. 24 The Report is approved and accepted. 25 After the deadline to file objections to the Report, Plaintiff filed an 26 “Amended Complaint” (Dkt. 11, “Amended Complaint”), a Motion to 27 Reopen Dismissed Action” (Dkt. 12, “Motion to Reopen”), and an Emergency 28 Motion for Temporary Restraining Order (Dkt. 13,

“TRO Request”). 1 As the case had not been closed or dismissed, the assigned magistrate 2 judge denied the Motion to Reopen as moot. Dkt. 13. 3 As to the Amended Complaint, although the magistrate judge, in the 4 Order re Complaint, provided Plaintiff an option to file an amended complaint 5 by June 11, 2025, Plaintiff did not do so. As such, the Amended Complaint 6 was filed in violation of the Order re Complaint, rendering it subject to being 7 stricken. Even were the Court to consider the substance of the Amended 8 Complaint, it cannot proceed. The Amended Complaint asserts a single claim 9 for “Declaratory Judgment” under the Declaratory Judgment Act, 28 U.S.C. 10 §§ 2201 and 2202, naming U.S. Department of Housing and Urban 11 Development (“HUD”), the U.S. Department of Veteran Affairs (the “VA”), 12 and “Wilshire Properties” as defendants. Dkt. 11 at 1-2. As to HUD and the 13 VA, “[a]bsent a waiver, sovereign immunity shields the Federal Government 14 and its agencies from suit.” Fed. Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 15 475 (1993). Further, “[t]he Declaratory Judgment Act . . . does not provide a 16 waiver of sovereign immunity.” *Alter v. U.S. Supreme Ct.*, 2023 WL 4873627, 17 at *3 (C.D. Cal. July 31, 2023). Thus, Plaintiff may not sue HUD or the VA 18 under the Declaratory Judgment Act. As to Wilshire Properties, the 19 Declaratory Judgment Act does not create an independent cause of action or 20 independently confer jurisdiction; rather, it gives district courts discretion to 21 award declaratory relief. See *Countrywide Home Loans, Inc., v. Mortgage 22 Guar. Ins. Corp.*, 642 F.3d 849, 853 (9th Cir. 2011). Federal courts must 23 “properly derive [jurisdiction] from the underlying controversy between 24 litigants.” *Id.* The Amended Complaint sets forth no viable, independent basis 25 for federal jurisdiction as to any purported controversy between Plaintiff and 26 Wilshire Properties. As such, the Amended Complaint cannot proceed. 27 Lastly, in his TRO Request, Plaintiff seeks an order preventing a state 28 court unlawful detainer action and eviction from proceeding. “[I]njunctive 1 relief [is] an extraordinary remedy that may only be awarded upon a clear 2 showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. 3 Council, Inc.*, 555 U.S. 7, 22 (2008). A preliminary injunction is appropriately 4 used to preserve a party’s rights pending resolution of the merits of the case. 5 See *Big Country Foods, Inc. v. Bd. of Educ. of the Anchorage Sch. Dist.*, 6 Anchorage, 868 F.2d 1085, 1087 (9th Cir. 1989). To obtain such relief, a 7 moving party must show: (1) a likelihood of success on the merits; (2) a 8 likelihood of irreparable harm in the absence of preliminary relief; (3) that the 9 balance of equities tips in favor of the moving party; and (4) that an injunction 10 is in the public interest. *Winter*, 555 U.S. at 20. The same standard applies to 11 both preliminary injunctions and temporary restraining orders. See *Henry 12 Schein, Inc. v. Cook*, 191 F. Supp. 3d 1072, 1076 (N.D. Cal. 2016); *Niu v. 13 United States*, 821 F. Supp. 2d 1164, 1167 (C.D. Cal. 2011). A request for 14 injunctive relief should be denied when based on a complaint that fails to state 15 a claim. See, e.g., *Smith v. Cal. Dep’t of Corr. & Rehabs.*, 2020 WL 1503431, 16 at *4 (E.D. Cal. Mar. 30, 2020) (“[W]ithout a viable complaint the court 17 cannot assess plaintiff’s likelihood of success on the merits[.]”), adopted by 18 2020 WL 2126831 (E.D. Cal. May 5, 2020); *Jaax v. United States*, 2008 WL 19 4630559, at *2 (C.D. Cal. Oct. 17, 2008) (denying ex parte motion for a TRO

20 where movant did not show “a probability of success on the merits because his 21 complaint, as
presently formulated, fails to state a claim on which relief may 22 be granted”); *Most v. Pritzker*,
2020 WL 4582593, at *2 (S.D. Ill. Aug. 10, 23 2020) (denying motion for TRO and preliminary
injunction because, “[a]s 24 Plaintiff has failed to state a viable claim for relief, he has no
reasonable 25 likelihood of success on the merits”). Here, as Plaintiff has not alleged a viable 26
claim, injunctive relief is not available. As such, the TRO Request is denied. 27 / / / 28 / / / 1
Therefore, for the foregoing reasons, IT IS HEREBY ORDERED that: 2 ||(1) the TRO Request
(Dkt. 13) is DENIED; and (2) Judgment shall be entered 3 || dismissing this action with prejudice.
4 5 6 ||Dated: _ 7/23/25 lath aA Valongusla

7 CYNTHIA VALENZUELA

3 United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28