UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Daniel D’Agostino v. Circle K Stores Incorporated, et al.

D’Agostino · No. CV-26-01225-PHX-JAT · Decided April 7, 2026

SUMMARY

The United States District Court for the District of Arizona denied without prejudice Plaintiff Daniel D’Agostino’s ex parte motion for an emergency temporary restraining order and asset-preservation order against Mobivity Holdings Corporation. The court held that Plaintiff failed to demonstrate immediate and irreparable harm and failed to describe efforts to provide notice as required by Federal Rule of Civil Procedure 65(b)(1).

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	James A. Teilborg
JURISDICTION	United States District Court for the District of Arizona
DECIDED	April 7, 2026
DOCKET	CV-26-01225-PHX-JAT
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff sought an ex parte emergency temporary restraining order and asset-preservation order against Mobivity Holdings Corporation after the clerk entered default against Mobivity. The court denied the motion without prejudice.
STANDARD OF REVIEW	To obtain a temporary restraining order, the movant must establish likelihood of success on the merits, likely irreparable harm absent immediate relief, a favorable balance of equities, and consistency with the public interest. For an ex parte TRO, the movant must additionally show that immediate and irreparable harm will occur before the adverse party can be heard and must certify in writing the efforts made to give notice and why notice should not be required.
PRECEDENTIAL VALUE	Unknown; unpublished district court order
PARTIES	Daniel D’Agostino v. Circle K Stores Incorporated, Mobivity Holdings Corporation

TOPICS

injunctions | civil procedure | asset protection | consumer protection

PRACTICE AREAS

civil procedure | injunctive relief | Telephone Consumer Protection Act | asset preservation

QUESTIONS PRESENTED

1. Whether Plaintiff satisfied Federal Rule of Civil Procedure 65(b)(1)(A) by showing that immediate and irreparable harm would occur before Mobivity could be heard.
2. Whether Plaintiff satisfied Federal Rule of Civil Procedure 65(b)(1)(B) by certifying in writing the efforts made to give notice and the reasons notice should not be required.
3. Whether an ex parte temporary restraining order should issue to prevent Mobivity from distributing or transferring assets before judgment.

HOLDINGS

1. Ex parte TRO relief was unavailable because Plaintiff failed to show that immediate and irreparable injury would occur before Mobivity could be heard; his alleged future dissipation of assets was speculative.
2. Plaintiff failed to satisfy Rule 65(b)(1)(B) because his motion did not identify any efforts made to give Mobivity notice or explain why notice should not be required.
3. The motion for an emergency temporary restraining order was denied without prejudice.

KEY QUOTATIONS

> *"A TRO preserves the status quo pending a hearing on a preliminary injunction motion in order to avoid irreparable harm in the interim."* (at 2)

> *"Plaintiff fails to demonstrate he will suffer "immediate and irreparable injury, loss, or damage" to excuse Rule 65(a)(1)'s notice requirement because Plaintiff's claimed harm is entirely speculative."* (at 5)

FACTUAL BACKGROUND

Plaintiff alleged that Defendants sent him approximately 350 unsolicited marketing text messages between September 1, 2023, and February 5, 2026, and sought $1,779,000 in statutory damages. After Mobivity failed to respond and default was entered, Plaintiff alleged that Mobivity had sold substantially all of its operating assets and retained approximately $6.6 million in cash. Plaintiff theorized that Mobivity might distribute the cash to shareholders before judgment and sought to prevent dissipation of the assets.

PROCEDURAL HISTORY

D'Agostino filed a complaint alleging violations of the Telephone Consumer Protection Act and Arizona law and served Circle K and Mobivity. After Mobivity failed to respond, the clerk entered default under Federal Rule of Civil Procedure 55(a). Plaintiff then moved ex parte for a temporary restraining order based on his allegation that Mobivity might distribute proceeds from the sale of substantially all its operating assets before judgment.

The court denied the motion without prejudice because Plaintiff failed to satisfy the requirements for ex parte relief under Rule 65(b)(1).

DISPOSITION

other

CASES CITED

- Arizona Recovery Housing Ass’n v. Arizona Department of Health Services, No. CV-20-00893-PHX-JAT, 2020 WL 8996590, at *1 (D. Ariz. May 14, 2020)
- Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008)
- Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131, 1134-35 (9th Cir. 2011)
- Environmental Council of Sacramento v. Slater, 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000)
- Ruditser v. Dukina, CV-22-02142-PHX-DLR, 2023 WL 2140480, at *2-*3 (D. Ariz. Feb. 21, 2023)
- Reno Air Racing Ass’n, Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006)
- Granny Goose Foods, Inc. v. Teamsters, 415 U.S. 423, 438-39 (1974)
- American Can Co. v. Mansukhani, 742 F.2d 314, 322 (7th Cir. 1984)
- Fullybright v. Amazon.com Inc., C25-1458-KKE, 2025 WL 3208776, at *1 (W.D. Wash. Oct. 3, 2025)
- Walls-Bey v. Perlow, CV-25-04315-PHX-MTL, 2025 WL 3671822, at *1 (D. Ariz. Nov. 20, 2025)