

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Danielle Victor v. Southwest Wine & Spirits, LLC, et al.

No. 2:23-cv-00690-MEMF (PDx), Document 23 · No. 2:23-cv-00690-MEMF (PDx) · Decided March 10, 2023

SUMMARY

The United States District Court for the Central District of California denied Danielle Victor’s motion for a temporary restraining order and emergency motion for immediate relief. The court held that Victor failed to satisfy the notice and irreparable-injury requirements under Federal Rule of Civil Procedure 65 and sought primarily monetary remedies available through ordinary litigation. The court also noted that Victor was proceeding pro se and provided information about available self-represented litigant resources.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Maame Ewusi-Mensah Frimpong
JURISDICTION	United States District Court for the Central District of California
DECIDED	March 10, 2023
DOCKET	2:23-cv-00690-MEMF (PDx)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for a temporary restraining order and filed an emergency motion and request for immediate relief. The district court denied both motions.
STANDARD OF REVIEW	A temporary restraining order is governed by the same general standards as a preliminary injunction. The movant must show a likelihood of success on the merits, likely irreparable harm absent relief, that the balance of equities favors an injunction, and that an injunction is in the public interest. A TRO without notice additionally requires specific facts in an affidavit or verified complaint clearly showing immediate and irreparable injury before the adverse party can be heard, together with the required certification regarding notice.
PRECEDENTIAL VALUE	unpublished
PARTIES	Danielle Victor v. Southwest Wine & Spirits, LLC, et al.

TOPICS

injunctions

civil procedure

remedies

employment law

racial discrimination

PRACTICE AREAS

civil procedure

employment law

civil rights

remedies

QUESTIONS PRESENTED

1. Whether Victor satisfied the requirements for issuance of a temporary restraining order without notice under Federal Rule of Civil Procedure 65(b).
2. Whether Victor demonstrated imminent irreparable harm sufficient to support temporary or preliminary injunctive relief.
3. Whether the monetary damages and other relief requested were appropriate for adjudication through a temporary restraining order.

HOLDINGS

1. A TRO may issue without notice only when the movant satisfies Federal Rule of Civil Procedure 65(b), including a clear showing through specific facts in an affidavit or verified complaint that immediate and irreparable injury will occur before the adverse party can be heard, along with the required notice certification. Victor failed to make that showing.
2. Victor was not entitled to injunctive relief because she failed to demonstrate likely imminent irreparable harm.
3. Victor's requests for millions of dollars in damages and related relief were not the type of irreparable relief appropriate for a TRO because monetary damages were available through the ordinary course of litigation.

KEY QUOTATIONS

“Injunctive relief, whether temporary or permanent, is an “extraordinary remedy, never awarded as of right.”” (2)

“Past exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.” (3)

“The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.” (4)

FACTUAL BACKGROUND

Victor, proceeding pro se, filed a complaint asserting numerous claims arising largely from alleged conduct during her employment, including wage violations, discrimination, harassment, retaliation, assault, and related torts. She alleged that she was wrongfully terminated on June 14, 2019, and sought damages exceeding three million dollars, declarations, injunctive relief, and other remedies. Victor had not served the defendants and did

not clearly allege an imminent, continuing threat of injury; much of the alleged harm occurred during her former employment.

PROCEDURAL HISTORY

Victor filed the action on January 27, 2023, asserting numerous employment, wage, discrimination, tort, and other claims against approximately forty defendants. She filed a TRO motion the same day and later affirmed that she had not served the defendants. The district court denied the TRO and emergency motion because she failed to satisfy the requirements for relief without notice and failed to show imminent irreparable harm or the inadequacy of monetary remedies.

DISPOSITION

other

CASES CITED

- Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda County, 415 U.S. 423, 438-39 (1974)
- Reno Air Racing Ass'n v. McCord, 452 F.3d 1126, 1130-31 (9th Cir. 2006)
- New Motor Vehicle Board of California v. Orrin W. Fox Co., 434 U.S. 1345, 1347 n.2 (1977)
- Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20, 24 (2008)
- American Trucking Associations, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009)
- City of Los Angeles v. Lyons, 461 U.S. 95, 95-96 (1983)
- eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006)
- Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982)
- Arizona Dream Act Coalition v. Brewer, 757 F.3d 1053, 1068 (9th Cir. 2014)
- Sampson v. Murray, 415 U.S. 61, 90, 92 n.68 (1974)

OPINION

Danielle Victor v. Southwest Wine and Spirits, LLC

PER CURIAM.

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UNITED STATES DISTRICT COURT

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CENTRAL DISTRICT OF CALIFORNIA

8 9 Case No.: 2:23-cv-00690-MEMF (PDx)

DANIELLE VICTOR,

10 Plaintiff, ORDER DENYING PLAINTIFF’S MOTION

FOR TEMPORARY RESTRAINING

v. ORDERS AND EMERGENCY MOTION

12 AND REQUEST FOR IMMEDIATE RELIEF

[ECF NOS. 4, 9]

13 SOUTHWEST WINE & SPIRITS, LLC, et al. 14 Defendants. 15 16 17 18 Before the Court is the Motion for Temporary Restraining Orders, ECF No. 9 (“TRO 19 Motion” or “TRO Mot.”), as well as the Emergency Motion and Request for Immediate Relief, ECF

20 No. 4 (“Emergency Motion”), filed by Plaintiff Danielle Victor. For the reasons stated herein, the

21 Court DENIES the TRO Motion and the Emergency Motion. 22 23 24 25 26 27 / / / 28 / / / 1 Case 2:23-cv-00690-MEMF-PD Document 23 Filed 03/10/23 Page 2 of 6 Page ID #:811 1 I.

Factual Background 2 On January 27, 2023, Plaintiff Danielle Victor (“Victor”), appearing pro se, filed this case in 3 the Central District of California against forty defendants alleging forty-five different claims, 4 ranging from wage and employment disputes, defamation, assault, sexual battery and harassment, 5 racial discrimination, fraud, perjury, and negligence. See generally ECF No. 1 (“Complaint” or 6 “Compl.”). 7 That same day, Victor also filed the instant TRO Motion. In the TRO Motion, Victor refers 8 the Court to her prior Emergency Motion. Mot. at 3. The Emergency Motion seeks judgment on all 9 Victor’s claims and requests multiple forms of relief, including monetary damages, as well as 10 declarations that Defendants violated various provisions of state law, an injunction preventing 11 Defendants from further violations of such laws, and removal of the individual Defendant lawyers 12 from the California State Bar. Emergency Motion at 49–117. The instant action is one of several 13 cases alleging similar facts.

14 II. Applicable Law 15 The underlying purpose of a temporary restraining order (“TRO”) is to preserve the status 16 quo and prevent irreparable harm before a preliminary injunction hearing may be held. *Granny 17 Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 18 U.S. 423, 439 (1974); see also *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1130–31 (9th 19 Cir.2006). Requests for temporary restraining orders are governed by the same general standards that 20 govern the issuance of a preliminary injunction. See *New Motor Vehicle Bd. of California v. Orrin 21 W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977) 22 Injunctive relief, whether temporary or permanent, is an “extraordinary remedy, never 23 awarded as of right.” *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 24 (2008). “A plaintiff 24 seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is 25 likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips 26 in his favor, and that an injunction is in the public interest.” *Am. Trucking Ass’ns, Inc. v. City of Los 27 Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20). 28 /

// 2 Case 2:23-cv-00690-MEMF-PD Document 23 Filed 03/10/23 Page 3 of 6 Page ID #:812 1 III. Discussion 2 Before the Court reaches the merits of Victor’s TRO Motion and Emergency Motion, it must 3 determine whether (1) Victor complied with the necessary procedure to file a TRO, and

(2) the 4 requested relief is equitable in nature. 5 A. Lack of Notice 6 Although a preliminary injunction cannot be granted without notice, a TRO may be granted 7 without notice to the adverse party under limited circumstances. FED. R. CIV. P. 65(a)–(b). Under

8 Rule 65(b), a court may issue a TRO without notice to the adverse party if: “(1) specific facts in an

9 affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage 10 will result to the movant before the adverse party can be heard in opposition; and (2) the movant’s 11 attorney certifies in writing any efforts made to give notice and the reasons why it should not be 12 required.” FED. R. CIV. P. 65(b)(l). 13 Here, Victor fails to satisfy the notice requirement. On February 8, 2023, Victor affirmed that 14 “she has not served the Defendants, each of them, pursuant to Federal Rule 65(a).” ECF No. 18 15 (“Notice of Non-Service to All Named Defendants”). As such, Victor must present either an 16 affidavit or a verified complaint clearly showing that immediate and irreparable injury, loss, or 17 damage will result despite the Defendants’ lack of notice. FED. R. CIV. P. 65(b)(l). 18 While Victor does provide a verified complaint, see generally Compl., she does not clearly 19 show that immediate and irreparable injury, loss, or damage is imminent. As the Supreme Court 20 notes, “[p]ast exposure to illegal conduct does not in itself show a present case or controversy 21 regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.” City of 22 Los Angeles v. Lyons, 461 U.S. 95, 95–96 (1983). Here, many of the injuries Victor alleges occurred 23 in the past and are unaccompanied by continuing and present threats. See Compl. ¶ 51 (“Ms. Victor 24 is informed and believes that the Defendants have sexually assaulted, sexually battered, abused, 25 harassed, discriminated against, and retaliated against multiple victims, such as Ms. Victor.”); ¶ 211 26 (“The Defendants and their co-conspirators had doctored fraudulent paperwork in [Victor’s] 27 employee file.”); ¶ 1087 (“Defendants failed to take all, or any reasonable steps necessary to prevent 28 a work environment free of discrimination and harassment.”). Indeed, many of Victor’s causes of 3 Case 2:23-cv-00690-MEMF-PD Document 23 Filed 03/10/23 Page 4 of 6 Page ID #:813 1 action arise from events that allegedly took place during her employment with Defendants Wally’s 2 Auction House, LLC and Southwest Wine & Spirits, LLC. See Emergency Motion at 12 (“Ms. 3 Victor, during her employment, was subjected to extreme racism, battery, assault, sexual harassment, 4 discrimination, unpaid wages, retaliation, amongst other things.”); see generally Compl. (alleging 5 several causes of action for Defendants’ failure to pay wages). However, Victor alleges that she was 6 wrongfully terminated on June 14, 2019. Mot. at 12. Thus, as alleged, there is no risk of immediate 7 or irreparable injury because Victor no longer works for or with the Defendants. 8 Absent allegations that go to a continuing and present risk of injury or loss, Victor cannot 9 prevail on her TRO Motion without providing Defendants notice. See *Granny Goose Foods, Inc.*, 10 415 U.S. at 438-39 (“The stringent restrictions imposed by [Rule 65] on the availability of ex parte 11 temporary restraining orders reflect the fact that our entire jurisprudence runs counter to the notion 12 of court action taken before reasonable notice and an opportunity to

be heard has been granted both sides of a dispute.”). Accordingly, Victor’s TRO Motion is DENIED. The Emergency Motion is DENIED for the same reasons.¹ B. Improper Request for Relief A plaintiff seeking a TRO must demonstrate “that remedies available at law, such as monetary damages, are inadequate to compensate for th[eir] injury.” *eBay Inc. v. MercExchange*, 18 L.L.C., 547 U.S. 388, 391 (2006). The Supreme Court has repeatedly held that “the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). “Irreparable harm is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages.” *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). In the employment context, discharge and its associated consequences do not ordinarily constitute irreparable harm, no matter how “severely they may affect a particular individual.” This Court construes the Emergency Motion as also seeking a TRO. To the extent that the Emergency Motion is more properly construed as seeking a preliminary injunction, it fails for lack of notice. As discussed, a preliminary injunction cannot be granted without notice, and Victor has affirmed that she has not provided notice. Notice of Non-Service to All Named Defendants. Case 2:23-cv-00690-MEMF-PD Document 23 Filed 03/10/23 Page 5 of 6 Page ID #:814 1 *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974). This is because “[m]ere injuries, however 2 substantial, in terms of money, time and energy . . . are not enough. The possibility that adequate 3 compensatory or other corrective relief will be available at a later date, in the ordinary course of 4 litigation, weighs heavily against a claim of irreparable harm.” *Id.* at 90 (footnote and internal 5 quotation marks omitted). 6 Here, the remedies Victor seeks are inappropriate for decision on a TRO. Specifically, Victor 7 requests over three million dollars in damages for a variety of alleged wage and labor discrimination 8 violations. See Emergency Motion at 49–58. As the Supreme Court notes, damages for alleged 9 violations in the employment context are available to Victor in the ordinary course of litigation. 10 *Sampson*, 415 U.S. at 90. They are not, however, the type of irreparable damages necessary to 11 warrant the “extraordinary remedy” of a TRO. *Winter*, 555 U.S. at 24. Put differently, Victor is not 12 foreclosed from pursuing her claims against Defendants. Rather, Victor fails to demonstrate to the 13 Court why the damages she seeks would be unavailable or insufficient were the TRO was denied. As 14 such, her TRO Motion is DENIED. The Emergency Motion is DENIED for the same reasons.²

15 RESOURCES FOR SELF-REPRESENTED PARTIES

16 Although Victor is proceeding pro se, i.e., without legal representation, she nonetheless is 17 required to comply with Court orders, the Local Rules, and the Federal Rules of Civil Procedure. See 18 C.D. Cal. L.R. 83-2.2.3. The Local Rules are available on the Court’s website, 19 [http://www.cacd.uscourts.gov/court-procedures/ local-rules](http://www.cacd.uscourts.gov/court-procedures/local-rules). 20 The Court cannot provide legal advice to any party, including pro se litigants, i.e., parties 21 who are not represented by a lawyer. There is a free “Pro Se Clinic” that can provide information 22 and guidance about many aspects

of civil litigation in this Court. 23 • Public Counsel runs a free Federal Pro Se Clinic where pro se litigants can get 24 information and guidance. The Clinic is located at the Roybal Federal Building and 25 Courthouse, 255 East Temple Street, Los Angeles, CA 90012 (note that the clinic may 26 27 2 As discussed above, the Emergency Motion is properly construed as seeking a TRO or a preliminary 28 injunction. The same requirements for relief would apply, and Victor has failed to meet them. 5 Case 2:23-cv-00690-MEMF-PD Document 23 Filed 03/10/23 Page 6 of 6 Page ID #:815 1 not be open for in-person appointments during the pandemic). Pro se litigants must call 2 or submit an on-line application to request services as follows: on-line applications can 3 be submitted at <http://prose.cacd.uscourts.gov/los-angeles>, or call (213) 385-2977, ext. 4 270. 5 • Public Counsel also has extensive resources for pro se litigants at its website located at 6 <https://publiccounsel.org/services/federal-court/>. 7 • The Court is also informed that the LA Law Library, located across the street from the 8 First Street Courthouse at 301 W. First Street, Los Angeles, CA 90012, also has extensive 9 resources for pro se litigants. The LA Law Library can be reached via email at 10 reference@lalawlibrary.org, or via telephone at (213) 785-2513.

11 CONCLUSION

12 For the reasons stated above, the Court DENIES Victor's Motion for a TRO and her 13 Emergency Motion. 14 IT IS SO ORDERED. 15 16 Dated: March 10, 2023

17 MAAME EWUSI-MENSAH FRIMPONG

18 United States District Judge 19 20 21 22 23 24 25 26 27 28 6