

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

Nicholas A. Garcia v. Cello Partnership, d/b/a Verizon Wireless

Garcia · No. 2:26-cv-00149-JAW · Decided March 23, 2026

SUMMARY

The United States District Court for the District of Maine dismissed without prejudice Nicholas Garcia’s ex parte motion for a temporary restraining order against Cello Partnership, doing business as Verizon Wireless. The court held that Garcia failed to satisfy Federal Rule of Civil Procedure 65(b)(1) because he did not certify efforts to provide notice and did not clearly demonstrate irreparable harm before Verizon could be heard.

CASE DETAILS

COURT	United States District Court for the District of Maine
WRITING FOR THE COURT	John A. Woodcock, Jr.
JURISDICTION	United States District Court for the District of Maine
DECIDED	March 23, 2026
DOCKET	2:26-cv-00149-JAW
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff, proceeding pro se, filed an emergency ex parte motion for a temporary restraining order and motion for a preliminary injunction in a newly filed action alleging breach of contract, fraud and deceit, and violations of Maine statutory law. The court considered the temporary restraining order request before service of the complaint and summons on defendant.
STANDARD OF REVIEW	Federal Rule of Civil Procedure 65(b)(1) governs issuance of an ex parte temporary restraining order. The movant must strictly comply with the rule's notice-certification and clear-showing-of-immediate-and-irreparable-harm requirements.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status unknown
PARTIES	Nicholas A. Garcia v. Cello Partnership, d/b/a Verizon Wireless

TOPICS

- injunctions
- civil procedure
- breach of contract
- consumer protection
- military law

PRACTICE AREAS

civil procedure

injunctive relief

contracts

consumer protection

military law

QUESTIONS PRESENTED

1. Whether Garcia satisfied Federal Rule of Civil Procedure 65(b)(1)(B) by certifying his efforts to give Verizon notice of the ex parte temporary restraining order motion and the reasons notice should not be required.
2. Whether Garcia clearly showed under Federal Rule of Civil Procedure 65(b)(1)(A) that immediate and irreparable injury would occur before Verizon could be heard.
3. Whether the court should issue emergency injunctive relief requiring restoration of Garcia's service, prohibiting similar conduct toward other servicemembers, and imposing mandatory complaint procedures.

HOLDINGS

1. A movant seeking an ex parte temporary restraining order must certify in writing the efforts made to give notice and the reasons notice should not be required. Garcia's failure to provide that certification independently warranted dismissal of the motion without prejudice.
2. An ex parte TRO requires a clear showing that immediate and irreparable injury will occur before the opposing party can be heard. Garcia did not make that showing because he could obtain unlimited data service through an available alternative plan and seek monetary compensation for the additional cost.
3. Garcia was not entitled at this stage to an injunction prohibiting Verizon's alleged conduct toward other servicemembers or requiring procedures for third-party complaints because he had not shown a basis to assert third parties' rights and had not satisfied the requirements for a class action.

KEY QUOTATIONS

“Compliance with Rule 65(b)(1) is strictly required for a TRO to issue ex parte, because the Rule provides minimum due process for enjoining a party without notice.” (Discussion, section II)

“Accordingly, the Court DISMISSES without prejudice Nicholas Garcia’s Emergency Motion for Temporary Restraining Order and Motion for Preliminary Injunction but only to the extent the motion seeks an emergency temporary restraining order (ECF No. 4).” (Conclusion, section III)

FACTUAL BACKGROUND

Nicholas Garcia, an active-duty servicemember deployed overseas, purchased an international wireless plan from Verizon after allegedly being assured that it provided unlimited data without restriction. After deployment, Garcia alleges that Verizon throttled his data service and required him to purchase daily data boosts to obtain unlimited service, despite his lack of access to Wi-Fi, alternative carriers, or shipments. He characterized his mobile phone as mission-critical life-safety equipment because it was needed for missile warnings and other emergency communications.

PROCEDURAL HISTORY

Garcia filed the complaint and emergency motion on March 20, 2026. The court denied or dismissed the requested temporary restraining order without prejudice because the motion did not satisfy Federal Rule of Civil Procedure 65(b)(1), while expressly declining to address the merits of the underlying complaint or the separate preliminary-injunction request.

DISPOSITION

dismissed

CASES CITED

- *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 438-439 (1974)
- *Carey v. Town of Rumford*, No. 2:25-cv-00356-SDN, 2025 U.S. Dist. LEXIS 134066, at *1-2 (D. Me. July 15, 2025)
- *Chesler v. Chesler*, No. 25-cv-00100-LM-TSM, 2025 U.S. Dist. LEXIS 46587, at *3 (D.N.H. Mar. 13, 2025)
- *Pagán-González v. United States*, 544 F. Supp. 3d 217, 218 (D.P.R. 2021)
- *Frank v. PHH Mortgage Servs.*, No. 11-cv-66-PB, 2011 U.S. Dist. LEXIS 30384, at *4-5 (D.N.H. Feb. 15, 2011)
- *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996)
- *Playboy Enterprises, Inc. v. Public Service Commission*, 906 F.2d 25, 36-37 (1st Cir. 1990)
- *Doe v. University of Maine System*, No. 1:19-cv-415 (D. Me. 2019)
- *Artisan & Truckers Casualty Co. v. BRT Aerospace Manufacturing, LLC*, No. 2:15-cv-82 (D. Me. 2016)