

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 20-5859-DMG (Ex)** Date June 30, 2020

Title ***Joseph Kishore, et al. v. Gavin Newsom, et al.*** Page 1 of 2

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

KANE TIEN
Deputy Clerk

NOT REPORTED
Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS—ORDER DENYING WITHOUT PREJUDICE
PLAINTIFFS’ APPLICATION FOR TEMPORARY RESTRAINING
ORDER [4]**

On June 30, 2020, Plaintiffs Joseph Kishore and Norissa Santa Cruz filed a Complaint and Application for Temporary Restraining Order (“TRO Application”) against Defendants Gavin Newsom and Alex Padilla in their official capacities as the Governor of California and Secretary of State of California, respectively. Plaintiffs wish to enjoin California from enforcing its requirement that “independent candidates for president and vice president” of the United States “gather and submit nearly 200,000 physical signatures between April 24, 2020 and August 7, 2020” in order to appear on the 2020 general election ballot. Compl. at ¶ 1 [Doc. # 1].

Federal Rule of Civil Procedure 65 states that, subject to rare exceptions,¹ “[t]he court may issue a preliminary injunction only on notice to the adverse party.” Fed. R. Civ. P. 65(a)(1). The Rule also states that a temporary restraining order “binds only the [parties] who receive actual notice of it.” Fed. R. Civ. P. 65(d)(2). Here, Plaintiffs have sued California state officials in their official capacity, which is tantamount to suing the state itself. *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989) (“[A] suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official’s office. As such, it is no different from a suit against the State itself.”) (internal citations omitted). California requires that, in such cases, “[s]ervice of summons . . . shall be made on the Attorney General.” Cal. Gov’t Code § 955.4(a).

Plaintiffs’ counsel submitted a declaration along with the TRO Application in which he describes giving notice to Defendants as follows:

Pursuant to Federal Rule of Civil Procedure 65, I gave notice on Monday, June 29, 2020 of this application by phone and email to Raj Bathla, Sr. Legal

¹ See Fed. R. Civ. P. 65(b)(1).

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Analyst, California Secretary of State (Elections Division), rbathla@sos.ca.gov, 916-695-1597. Mr. Bathla courteously agreed to accept service for both defendants by email. Electronic copies of all documents filed through CM/ECF will be transmitted to that address until an attorney enters an appearance for Defendants.

Seabaugh Decl. at ¶ 2 [Doc. # 4-9]. Whether or not Mr. Bathla is willing to accept service of process on behalf of Governor Newsom and Secretary Padilla, it does not appear that he is authorized to do so. *See* Cal. Gov't Code § 955.4(a). Since, under normal circumstances, the Court may not issue a TRO without notice to Defendants, and Plaintiffs have not demonstrated that a notice-free TRO is appropriate here, *see* Fed. R. Civ. P. 65(b)(1), the Court cannot consider Plaintiffs' TRO Application in its current state.

The Court therefore **DENIES** Plaintiffs' TRO Application, without prejudice to Plaintiffs refiling it along with a showing that they have effected proper service on Defendants. *See Segovia v. Wilmington Fin., a Div. of AIG Fed. Savings Bank*, 2015 WL 12697083, at *1 (C.D. Cal. Apr. 28, 2015) (“[P]laintiff’s application for a Temporary Restraining Order is DENIED without prejudice to its renewal with the appropriate showing that proper service of process has been made upon defendants, or that issuance of the TRO is proper without notice pursuant to the strict requirements of Federal Rule of Procedure 65(b)(1).”); *Naderski v. Wells Fargo Bank, N.A.*, 2011 WL 1627161, at *1 (C.D. Cal. Apr. 25, 2011) (“[T]he Court denied plaintiff’s ex parte application for a TRO without prejudice, subject to being renewed upon showing that plaintiff effectuated proper of service of process on defendants.”). Along with their renewed TRO Application, Plaintiffs must submit proof of proper service and a declaration that they have informed Defendants of the Court’s requirement that parties opposing *ex parte* applications must respond within 24 hours of receiving proper service. *See* Initial Standing Order at 10 [Doc. # 8]. Unless otherwise ordered, Defendants must then file their Opposition within one court day of receiving proper service.

IT IS SO ORDERED.