Your Name

Your Address

Your city, state, zip

Your phone number

Your Name

Plaintiff in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

|  |  |
| --- | --- |
| YOUR NAME    Plaintiff,    vs.    DEFENDANT(S) WHO HAS VEHICLE; STATE OF CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, CURRENT DMV DIRECTOR IN HIS/HER CAPACITY OF DIRECTOR OF STATE OF CALIFORNIA DEPARTMENT OF MOTOR VEHICLES ONLY, and DOES 1-25,    Defendants | Case No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION; DECLARATION OF YOUR NAME; AND MEMORANDUM OF POINTS AND AUTHORITIES    Cal. Code of Civ. Proc. 526(a)    Date: Hearing Date]  Time: Hearing Time  Location: Dept. Department  Judge: Hon. Judge's Name  Date Action Filed: Date Filed    Trial Date: Not Yet Set |

To defendants Defendant(s) who has vehicle, Current DMV Director (“DMV Director”), and State of California Department of Motor Vehicles (“DMV”), and to their attorney(s) of record:

NOTICE IS HEREBY GIVEN that on Hearing Date, at Hearing Time, or as soon thereafter as the matter may be heard, in Department Department of this court, located at Address, Sacramento, Your Name will, and hereby does, move for a preliminary injunction enjoining defendants DMV and DMV Director, and any of their agents, servants, and employees, from transferring any right, title, or interest in or to the Vehicle during the pendency of this action. The motion will be made on the grounds that the plaintiff is entitled to the relief demanded, which consists of restraining the commission the act complained of for a limited period; that the commission of the act during the litigation would produce waste, or great or irreparable injury, to the Plaintiff; that the act would violate the Plaintiff’s rights, and would tend to render the judgment ineffectual; and that the restraint is necessary to prevent a multiplicity of judicial proceedings.(Cal. Code of Civil Procedure (CCP) 526(a)).

The motion will be based on this notice of motion, on the declaration(s) of Your Name, and the supporting memorandum served and filed herewith, on the records and file herein, and on such evidence as may be presented at the hearing of the motion.

Pursuant to Local Rule 1.06 (A) the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court’s website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: Date Signed

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

YOUR NAME, In Pro Per

DECLARATION OF YOUR NAME IN SUPPORT OF MOTION

FOR PRELIMINARY INJUNCTION

I, Your Name declare:

1. I am the plaintiff in this action and make this declaration in support of my motion for a preliminary injunction.

2. The facts stated in this declaration are true of my own personal knowledge, except as to any matters stated on information and belief, and as to those matters, I am informed and believe them to be true. If called as a witness in this matter, I could and would competently testify to the matters set forth below.

3. I am informed and believe, and thereon allege that defendant Current DMV Director (“DMV Director”) in his/her official capacity only, is, and was at all times herein mentioned, the Director of the California Department of Motor Vehicles, and has, and had, official authority to accomplish all of the matters herein requested of the Court.

4. I am informed and believe, and thereon allege that Defendant State of California Department of Motor Vehicles (“DMV”) is the official and duly constituted governmental entity with the exclusive authority and ability to record and effect the public record of transfers of title of motor vehicles in the State of California.

5. I am the true registered owner of a Year, Make, and Model, license plate number License Plate No., Vehicle Identification Number (VIN) VIN (“the Vehicle”). A true and correct copy of the documentary proof of ownership, such as registrationis attached as Exhibit “Ex. Letter.” and made a part of this declaration.

6. Describe how defendant obtained vehicle.

7. If the property was initially acquired lawfully from plaintiff, include the following: On or about date, plaintiff name demanded the immediate return of the above-mentioned property but defendant failed and refused, and continues to fail and refuse, to return the property to plaintiff. If the return demand or refusal was in writing, say so, and include a copy of the written demand or refusal as an exhibit .

8. Describe your efforts to get the vehicle back, and any expenses you incurred.

9. Describe what facts cause you to think the defendant may try to sell or transfer the Vehicle.

10. Add additional numbered paragraphs and exhibits if necessary.

11. Up to now, defendant Defendant(s) who has vehicle has not returned the Vehicle to me.

12. Defendant Defendant(s) who has vehicle may sell the Vehicle at any time. Unless a preliminary injunction is granted, I am informed and believe that upon presentation of specific documents, defendants DMV and DMV Director would be required to transfer the title to the Vehicle, in violation of my rights to possession and control of the Vehicle.

13. I am informed and believe that preventing the transfer of the Vehicle is a routine administrative task for DMV and DMV Director.

14. The above facts are within my personal knowledge and I am competent to testify to their truth if called as a witness.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct .

Dated: Date Signed

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature

YOUR NAME

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| --- | --- |
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|  | |  | | --- | | Exhibit A | |

MEMORANDUM OF POINTS AND AUTHORITIES

BACKGROUND

Defendant Defendant(s) who has vehicle is wrongfully refusing to return the personal property at issue in this case, a Year, Make, and Model, license plate number License Plate No., Vehicle Identification Number (VIN) VIN (“the Vehicle”), to its owner, Plaintiff. (Plaintiff Decl. ¶¶ Paragraph numbers from Declaration) Plaintiff is informed and believes that Defendant plans to sell or otherwise transfer the Vehicle to a third party. (Plaintiff Decl. ¶ Paragraph number from Declaration) Plaintiff therefore requests a preliminary injunction preventing defendants Current DMV Director (“DMV Director”) and the State of California Department of Motor Vehicles (“DMV”), which have the authority and duty to officially record such transfers, from doing so until the resolution of this case.

THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION PREVENTING

THE DMV FROM TRANSFERRING TITLE TO THE VEHICLE DURING THIS ACTION

A. Statutory Authority. Under Cal. Code of Civil Procedure (CCP) § 526(a)(1), an injunction may be granted when it appears by the complaint that the plaintiff is entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

In this case, Plaintiff’s complaint alleges that Plaintiff is entitled to possession and control of the Vehicle (Complaint, ¶ Paragraph number from Complaint); that Plaintiff is informed and believes that defendant David Defendant may attempt to sell or transfer the Vehicle at any time (Complaint, ¶ Paragraph number from Complaint); and that the DMV’s routine transfer of title would violate Plaintiff’s right to possession and control of the Vehicle (Complaint, ¶ Paragraph number from Complaint). The preliminary injunction requested in the Cause of Action against the DMV and DMV Director (Complaint, ¶¶ Paragraph numbers from Complaint) would prevent this transfer temporarily, preserving Plaintiff’s rights until this lawsuit is resolved.

An injunction is appropriate when the threatened act would produce waste, or great or irreparable injury to a party to the action (CCP § 526(a)(1)); when it would tend to render the judgment ineffectual (CCP § 526(a)(2)); or when the restraint is necessary to prevent a multiplicity of judicial proceedings (CCP § 526(a)(6)).

“Irreparable injury” includes a wrong that constitutes an overbearing assumption by one person of superiority and domination over the rights and property of others (Fretz v. Burke (1967) 247 Cal. App. 2d 741, 746, 55 Cal. Rptr. 879). In this case, defendant Defendant(s) who has vehicle’s wrongful possession of the Vehicle is an assumption of dominion over Plaintiff’s property, and transfer or sale of the Vehicle would mean that assumption could not be repaired. Enjoining defendants DMV and DMV Director from completing such a transfer is therefore warranted.

Furthermore, unless enjoined, the transfer of the Vehicle would tend to render the prayed-for judgment of possession in this case ineffectual, since Defendant Defendant(s) who has vehicle would no longer be able to return the Vehicle, and result in a multiplicity of litigation to determine Plaintiff’s rights against a third party, the buyer.

B. Preservation of Status Quo. A preliminary injunction may be granted to preserve the status quo until a final determination of the merits of the action (Continental Baking Co. v. Katz (1968) 68 Cal. 2d 512, 528, 67 Cal. Rptr. 761, 439 P.2d 889; Oiye v. Fox (2012) 211 Cal. App. 4th 1036, 1047–1060, 151 Cal. Rptr. 3d 65). In this case, the injunction would serve the status quo by preventing the Defendants from transferring the Vehicle but permitting Defendant(s) who has vehicle to retain possession until further proceedings.

C. Likelihood that Plaintiff Will Prevail and the Balance of Hardships. In exercising its discretion, the trial court must consider two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits of the case at trial, and (2) the harm to be suffered by the plaintiff if the injunction does not issue as compared to the harm to be suffered by the defendant if it does (People v. Grewal (2014) 224 Cal. App. 4th 527, 537–538, 168 Cal. Rptr. 3d 749; Take Me Home Rescue v. Luri (2012) 208 Cal. App. 4th 1342, 1350–1353, 146 Cal. Rptr. 3d 461). The Complaint and Declaration present solid ground for finding that the Plaintiff is entitled to return of the Vehicle. The granting of the injunction would be a significant benefit to the Plaintiff (preserving the right to receive the Vehicle instead of a money judgment of dubious collectability) while imposing only a minor burden on any Defendant. Preventing the transfer of the Vehicle is a routine administrative task for DMV and DMV Director. Even if the Defendant(s) who has vehicle ultimately were to prevail, the injunction would simply delay the transfer of the Vehicle.

For all of the above reasons, Plaintiff respectfully requests that the Court grant this motion for a preliminary injunction enjoining defendants DMV and DMV Director, and any of their agents, servants, and employees, from transferring any right, title, or interest in or to the Vehicle during the pendency of this action.

Respectfully submitted,

Dated: Date Signed

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature

Your Name, In Pro Per

Your Name

Your Address

Your city, state, zip

Your phone number

Your Name

Plaintiff in Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

|  |  |
| --- | --- |
| YOUR NAME    Plaintiff,    vs.    DEFENDANT(S) WHO HAS VEHICLE; STATE OF CALIFORNIA DEPARTMENT OF MOTOR VEHICLES, CURRENT DMV DIRECTOR IN HIS/HER CAPACITY OF DIRECTOR OF STATE OF CALIFORNIA DEPARTMENT OF MOTOR VEHICLES ONLY, and DOES 1-25,    Defendants | Case No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [PROPOSED] PRELIMINARY INJUNCTION    Cal. Code of Civ. Proc. 526(a)    Date: Hearing Date]  Time: Hearing Time  Location: Dept. Department  Judge: Hon. Judge's Name  Date Action Filed: Date Filed    Trial Date: Not Yet Set |

The motion of Plaintiff Your Name for a preliminary injunction preventing the State of California Department of Motor Vehicles (“DMV”) and Current DMV Director, in his/her capacity as the director of DMV only, from transferring title to the vehicle at issue in this lawsuit came on regularly for hearing on hearing date. Plaintiff Your Name appeared in pro per; defendant David Defendant appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; Defendant DMV appeared by counsel \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

On proof made to the satisfaction of the court that the motion ought to be granted:

IT IS ORDERED that during the pendency of this action the State of California Department of Motor Vehicles (DMV) and Current DMV Director, in his/her capacity as the director of DMV only, and each of them, and their officers, agents, employees, representatives, and all persons acting in concert or participating with them, are enjoined and restrained from engaging in, committing, or performing, directly or indirectly, by any means whatsoever, any of the following acts: transferring any right, title, or interest in or to the Vehicle during the pendency of this action.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge of the Superior Court