

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BESTWAY (USA), INC., et al.,

Plaintiffs,

v.

PIETRO PASQUALE-ANTONI SGROMO,  
et al.,

Defendants.

Case No. [17-cv-00205-HSG](#)

**ORDER GRANTING PRELIMINARY  
INJUNCTION**

Re: Dkt. No. 113

On September 12, 2018, Plaintiffs Bestway (USA) Inc., Bestway (Hong Kong) International Ltd., and Bestway Inflatables and Material Corporation’s (collectively “Bestway”) filed a motion for a temporary restraining order and preliminary injunction. *See* Dkt. No. 113. Bestway asked this Court to enjoin Defendant Pietro Pasquale-Antoni Sgromo (“Sgromo”) from continuing to pursue the arbitration before JAMS captioned *Sgromo, et al. v. Bestway (USA), Inc., et al.*, Reference No. 1210035345, contrary to this Court’s July 2 order. *See id.*; Dkt. No. 90. The Court granted Bestway’s motion for a temporary restraining order on September 13, 2018. *See* Dkt. No. 114. Sgromo has not responded. The Court held a show cause hearing on September 26, at which Sgromo did not appear.

For the reasons articulated below, the Court **GRANTS** Bestway’s motion for a preliminary injunction.

A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). To receive a preliminary injunction prior to a full adjudication on the merits, a plaintiff “must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his

1 favor, and [4] that an injunction is in the public interest.” *Id.* at 20. The Ninth Circuit has held  
2 that “a ‘likelihood’ of success per se is not an absolute requirement.” *Drakes Bay Oyster Co. v.*  
3 *Jewell*, 747 F.3d 1073, 1085 (9th Cir. 2014). “Rather, serious questions going to the merits and a  
4 hardship balance that tips sharply toward the plaintiff can support issuance of an injunction,  
5 assuming the other two elements of the *Winter* test are also met.” *Id.* (internal quotation marks  
6 omitted). However, under either the *Winter* test or the “serious questions” test, the court may not  
7 issue a preliminary injunction unless it finds that “a certain threshold showing is made” as to each  
8 of the four elements. *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011).

9 First, Bestway is likely to prevail on the merits of its claims that Sgromo’s motion to  
10 compel arbitration was properly denied and that the status quo should be maintained pending  
11 resolution of the appeal in the Ninth Circuit regarding that issue. This Court found that Sgromo  
12 waived his right to arbitrate by his litigation conduct because “[i]n short, Sgromo has spent more  
13 than 16 months litigating this case . . . and only now—on the eve of summary judgment—does he  
14 seek to compel arbitration.” Dkt. No. 90 at 8. In his appeal to the Ninth Circuit, Sgromo advances  
15 no new legal or factual arguments as to why he should not have been found to have waived his  
16 right to arbitration. *See* Appellant’s Informal Brief at 12–13, *Bestway (USA), Inc., et al. v. Pietro*  
17 *Sgromo, et al.*, No. 18-16228 (9th Cir. Aug. 29, 2018), ECF No. 6.

18 Second, Bestway would be likely to suffer irreparable injury absent a preliminary  
19 injunction, in the form of inconsistent or contradictory rulings from a JAMS arbitrator and the  
20 expense of irrecoverable resources. *See AT & T Mobility LLC v. Bernardi*, No. C 11-03992 CRB,  
21 2011 WL 5079549, at \*10 (N.D. Cal. Oct. 26, 2011) (“being forced to defend an improper  
22 arbitration demand requires expending human and monetary capital for which there is no adequate  
23 remedy at law”).

24 Third, the balance of equities favors Bestway because the preliminary injunction simply  
25 preserves the status quo by enforcing the Court’s prior orders that ruled in Bestway’s favor and  
26 against Sgromo. *See Morgan Stanley & Co. LLC v. Couch*, 659 F. App’x 402, 406 (9th Cir. 2016)  
27 (“If arbitration proceedings were not enjoined, [defendant’s] extended delay in asserting his  
28 arbitration right would force [plaintiff] to re-litigate claims it likely has no duty to arbitrate at all”

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1 and “no reason why preliminarily enjoining arbitration proceedings would impair [defendant’s]  
2 claims”); *Morgan Stanley & Co., LLC v. Couch*, 134 F. Supp. 3d 1215, 1233 (E.D. Cal. 2015)  
3 (“majority of federal appellate courts to address the issue have held explicitly” that a federal  
4 district court “may enjoin arbitration if necessary to enforce its orders”); *see also In re American*  
5 *Exp. Fin. Advisors Securities Litig.*, 672 F.3d 113, 141 (2d Cir. 2011) (“If the parties to this appeal  
6 have not consented to arbitrate a claim, the district court was not powerless to prevent one party  
7 from foisting upon the other an arbitration process to which the first party had no contractual  
8 right.”).

9 Finally, the requested relief is in the public interest because it conserves judicial and party  
10 resources, while enforcing this Court’s orders and preserving the Ninth Circuit’s jurisdiction to  
11 hear Sgromo’s pending appeal.


12 **TO DEFENDANT PIETRO PASQUALE-ANTONIO SGROMO (“SGROMO”):**

13 You, your officers, agents, servants, employees, and attorneys, and any other persons or  
14 corporate entities who are in active concert or participation with you **ARE HEREBY**  
15 **RESTRAINED AND ENJOINED** from:

- 16 1. Prosecuting or continuing to prosecute the arbitration before JAMS captioned  
17 *Sgromo, et al. v. Bestway (USA), Inc., et al.*, Reference No. 1210035345, until  
18 resolution of the appeal in the U.S. Court of Appeals for the Ninth Circuit  
19 captioned *Sgromo, et al. v. Bestway (USA), Inc., et al.*, Case No. 18-16228.

20  
21 **IT IS SO ORDERED.**

22 Dated: 9/27/2018

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24 HAYWOOD S. GILLIAM, JR.  
25 United States District Judge  
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