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SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DIMITRIOS KARRAS,

11 Plaintiff,

12 vs.

13 WILLIAM GORE, et al.,

14 Defendants.

CASE NO. 14CV2564 BEN (KSC)

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

[Docket No. 6]

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16 On October 27, 2014, Plaintiff Dimitrios Karras filed a Complaint against
17 Defendants San Diego County Sheriff Bill Gore and San Diego County (“the
18 Department”). (Docket No. 1.) On October 29, 2014, Plaintiff filed a request for a
19 Temporary Restraining Order and Preliminary Injunction. (Docket No 6.) The Court
20 denied Plaintiff’s request for a TRO, but set a briefing schedule and hearing date on the
21 request for a preliminary injunction. (Docket No. 9.) Having considered the parties’
22 briefing and oral argument of counsel, the Court **DENIES** Plaintiff’s request for a
23 preliminary injunction as moot.

24 **BACKGROUND¹**

25 Plaintiff alleges the Department created a Facebook fan page inviting users to
26 post comments, but had a policy and custom of deleting unfavorable comments. The
27

28 ¹The summary provided is drawn from the allegations of Plaintiff’s First Amended Complaint (“FAC”) and declarations provided by both parties.

1 Department's posted policy concerning comments on the page asks that postings
2 "remain civil, respectful and on-topic" and that "[c]omments on topics outside these
3 postings may be directed to the Sheriff's Department via <http://www.sdsheriff.net/>."

4 Plaintiff alleges that on two occasions his posted comments were removed. On
5 September 2, 2014, Plaintiff posted a comment that was removed within an hour and
6 he was banned from further posting. He does not allege the contents of that comment
7 or what Department topic it was posted under.

8 The second comment was posted on September 3, 2014 — using an alias because
9 he had been banned under his own name — and read, "Sheriff Gore: Do you plead the
10 5th about your involvement in the MURDER of an unarmed woman who was holding
11 her baby? REMEMBER RUBY RIDGE." Less than an hour later, the comment was
12 removed. Plaintiff posted this comment under the topic #Brake4Buses (an article about
13 North Carolina drivers breaking school bus traffic laws over 3,000 times). Plaintiff
14 was unsuccessful in having his comments restored or regaining his ability to post
15 comments on the site despite a phone call and a letter to the Department.

16 Plaintiff further alleges that public awareness of this litigation resulted in the
17 posting of hundreds of comments on the page that were deleted by the Department and
18 that the Department then suspended the page. The Department has confirmed that the
19 page was permanently closed. In support of its Opposition, the Department filed a
20 Declaration by San Diego County Sheriff's Department Public Affairs Officer Jan
21 Caldwell stating that "[o]n October 31, 2014, the Sheriff's Department permanently
22 closed its Facebook page to avoid the time, expense and hassle necessary to enforce the
23 Department's policies regarding comments to its Facebook page."

24 Plaintiff seeks a preliminary injunction from the Court: (1) ordering the
25 Department to restore Plaintiff's deleted posts to the page; (2) ordering the Department
26 to allow Plaintiff to post comments on the page; and (3) prohibiting the Department
27 from removing posts from the page.

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1 However, an issue may become moot when “subsequent events [make] it absolutely
2 clear that the allegedly wrongful behavior could not reasonably be expected to recur.”
3 *Id.* (quoting *Friends of the Earth v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167,
4 189 (2000)). Courts “presume that a government entity is acting in good faith when
5 it changes its policy, but when the Government asserts mootness based on such a
6 change it still must bear the heavy burden of showing that the challenged conduct
7 cannot reasonably be expected to start up again.” *Id.*

8 The Ninth Circuit has “not set forth a definitive test for determining whether a
9 voluntary cessation” through a policy change — as distinguished from a statutory or
10 ordinance change — moots a request for injunctive relief. *Id.* at 972. However, in a
11 recent decision the court compiled a list of factors that, if present, suggest “that
12 mootness is more likely[:] (1) the policy change is evidenced by language that is broad
13 in scope and unequivocal in tone; (2) the policy change fully addresses all of the
14 objectionable measures that the Government officials took against the plaintiffs in the
15 case; (3) the case in question was the catalyst for the agency’s adoption of the new
16 policy; (4) the policy has been in place for a long time when we consider mootness; and
17 (5) since the policy’s implementation the agency’s officials have not engaged in
18 conduct similar to that challenged by the plaintiff.” *Id.* at 972 (internal citations and
19 quotation marks omitted). The court also noted that mootness is less likely if the new
20 policy could be easily abandoned. *Id.* (quoting *Bell v. City of Boise*, 709 F.3d 890, 901
21 (9th Cir. 2013)).

22 As to the first factor, the Department’s “policy change is evidenced by language
23 that is broad in scope and unequivocal in tone.” The complete closure of the page is
24 a very broad response to the issues raised by Plaintiff. The declaration from the
25 Department is also unequivocal in that it has “permanently closed its Facebook page.”
26 Additionally, as to the fifth factor, the Department has kept the page closed and has not
27 engaged in any of the conduct Plaintiff challenged in this case since the page was
28 closed.

1 As to the second factor, while the permanent closure of the page does not address
2 the Department's prior conduct against Plaintiff, it does address the Department's
3 objectionable conduct going forward, the subject of injunctive relief. In *Rosebrock*, the
4 court found that "[w]ith the fence effectively closed as a forum for speech, the VA
5 cannot engage in viewpoint discrimination with regard to the speech allowed in this
6 forum." *Id.* at 973. Similarly, here the Department will not be able to engage in the
7 viewpoint discrimination alleged by deleting negative comments or restricting who can
8 post because the entire page has been closed as a forum for speech.

9 As to the third factor, this case was the catalyst for the Department's permanent
10 page closure. Rather than attempt to enforce the policy challenged in this case, the
11 Department abandon the Facebook page entirely. As in *Rosebrock*, the policy change
12 came "shortly after [Plaintiff] filed suit," four days after the initial Complaint was filed.
13 *Id.* at 974. Additionally, while the Department's declaration identifies "the time,
14 expense, and hassle necessary to enforce the Department's policies regarding
15 comments to the Facebook page" as the reason for the closure, the maintenance of the
16 page under the Department's policy only became an issue when others, in the form of
17 hundreds of postings, became aware of this litigation.

18 The only factor that does not weigh in favor of a finding of mootness is the
19 length of time the page has been closed. The page was only recently closed. However,
20 it would be the rare occasion that a request for preliminary injunctive relief could be
21 mooted by a policy change that has been in place for a long period of time. By its very
22 nature, preliminary injunctive relief is sought to restrict objectionable conduct at the
23 outset of litigation and any policy change prompted by the litigation could only be in
24 place for a short period of time, as here.

25 As in *Rosebrock*, this Court acknowledges "that there are no procedural
26 safeguards in place preventing [the Department] from changing course, a factor that
27 countenances against mootness." *Id.* However, "in light of the presumption that the
28 Government acts in good faith, [courts] have previously found the heavy burden of

1 demonstrating mootness to be satisfied in ‘policy change’ cases without even
2 discussing procedural safeguards to the ease of changing course.” *Id.* Additionally,
3 the Court finds it unlikely that the Department would commit to this Court that its
4 closure is permanent just to avoid preliminary injunctive relief and then reverse course,
5 particularly given the practical problems the Department faced in managing the page.

6 **CONCLUSION**

7 Plaintiff’s request for preliminary injunctive relief is **DENIED as moot.**

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9 **IT IS SO ORDERED.**

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11 DATED: 1/05/15

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14 Hon. Roger T. Benitez
15 United States District Judge
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