NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KRISHNA LUNCH OF SOUTHERN CALIFORNIA, INC., a California nonprofit religious corporation,

Plaintiff-Appellant,

v.

MICHAEL J. BECK, Administrative Vice Chancellor,

Defendant-Appellee,

and

MONROE GORDEN, Jr., Vice Chancellor of Student Affairs; et al.,

Defendants.

No. 23-55072

D.C. No. 2:22-cv-08265-DSF-PLA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued and Submitted September 15, 2023
Pasadena, California

Before: SCHROEDER, FRIEDLAND, and MILLER, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Krishna Lunch, a nonprofit religious organization, appeals the district court's denial of its motion for a preliminary injunction. It had asked the court to require the University of California, Los Angeles ("UCLA") to allow Krishna Lunch to promote Krishna consciousness by serving vegetarian lunches and speaking to students on the campus without being subject to the four-day-per-quarter restriction and $500 daily fee associated with the use of Bruin Plaza. We review the denial of a motion for a preliminary injunction for abuse of discretion, *American Beverage Association v. City & County of San Francisco*, 916 F.3d 749, 754 (9th Cir. 2019) (en banc), and we affirm.

Even assuming that Krishna Lunch could persuade us to overlook its failure to raise in its opening brief a challenge to the district court's conclusion that the conduct here is not expressive, and even assuming that the conduct is expressive, Krishna Lunch still did not establish that it is likely to succeed on the merits of its First Amendment challenge, or that there are serious questions going to the merits. *See Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008); *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011). The parties agree that the relevant forum here is Bruin Plaza. The level of protection accorded to speech on government property depends on the nature of the forum—whether it is a traditional public forum, designated public forum, or nonpublic forum (which includes the category of "limited public fora"). *See Ariz. Life Coal. Inc. v. Stanton*,

515 F.3d 956, 968-69 (9th Cir. 2008); *Seattle Mideast Awareness Campaign v. King Cnty.*, 781 F.3d 489, 496 n.2 (9th Cir. 2015).

Krishna Lunch has not demonstrated any likelihood of establishing that Bruin Plaza is a traditional public forum. *See ACLU of Nevada v. City of Las Vegas*, 333 F.3d 1092, 1100-01 (9th Cir. 2003) (looking at (1) the "actual use and purposes of the property," (2) "the area's physical characteristics," and (3) the "traditional or historic use of both the property in question and other similar properties" to determine whether a site is a traditional public forum). Although Bruin Plaza may superficially resemble traditionally recognized public fora like town squares, Krishna Lunch presents no evidence that Bruin Plaza is either freely accessible to the public or designed to serve the public at large. UCLA restricts access by non-university-affiliates after midnight, and Krishna Lunch has not pointed to any evidence suggesting that outside speakers use Bruin Plaza without a permit. UCLA has explained that it restricts external groups' use of the Plaza to prioritize use by student groups and the campus community. Moreover, the Plaza's location in the center of campus separates it from surrounding public fora, and its distinctive features (*e.g.*, the presence of a statue of UCLA's mascot and the unique design of the Plaza's pavement) seem to indicate to the public that they have reached "some special type of enclave." *United States v. Grace*, 461 U.S. 171, 180 (1983). Krishna Lunch also does not point to any historic use of the

Plaza as a traditional public forum or any case holding that university quads are traditionally public fora for non-university-affiliates.

Further, Krishna Lunch has not shown any likelihood of establishing that Bruin Plaza is a designated public forum. To determine whether the government has created a public forum by intentionally opening a nontraditional forum for public discourse, courts look to "the terms of any policy . . . adopted to govern access to the forum," the implementation of that policy, and "the nature of the government property at issue" based on whether it is "designed for and dedicated to expressive activities." *Seattle Mideast*, 781 F.3d at 496-97 (last passage quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 802–03 (1985)). Use of Bruin Plaza by the public for expressive activities of the nature desired by Krishna Lunch requires advance permission and the payment of a fee. Such policies are inconsistent with governmental intent to open its property to "indiscriminate use by . . . the general public," as would be suggestive of a designated public forum. *See, e.g.*, *id.* at 497 (quoting *Hills v. Scottsdale Unified Sch. Dist. No. 48*, 329 F.3d 1044, 1050 (9th Cir. 2003)); *Faith Ctr. Church Evangelistic Ministries v. Glover*, 480 F.3d 891, 909 (9th Cir. 2007), *abrogated on other grounds by Winter*, 555 U.S. at 22. And Krishna Lunch has not contended that UCLA's policies are unenforced or inconsistently applied. Finally, although Bruin Plaza may in some ways be conducive to free expression, and although

UCLA promotes free speech on its grounds generally, UCLA has not dedicated the Plaza to expressive activity. To the contrary, it has imposed restrictions to closely monitor the space and ensure it serves the student body. The district court therefore did not err in concluding that UCLA intended to grant only "selective access" and that Bruin Plaza is likely a limited public forum. *Seattle Mideast*, 781 F.3d at 497.

The four-day-per-quarter reservation and $500-per-day fee are likely constitutional restrictions on speech in limited public fora. *See id.* at 499,501 (holding that restrictions must be "'reasonable in light of the purpose served by the forum[,]' . . . based on a standard that is definite and objective[,]" and viewpoint neutral (quoting *Cornelius*, 473 U.S. at 806)). Both restrictions promote orderly management of limited space to prioritize use by members of the university community. The restrictions are clear-cut, involving no subjectivity or discretion. And nothing in the record suggests they discriminate based on viewpoint.

Because Krishna Lunch has not shown a likelihood that UCLA's restrictions on its use of Bruin Plaza violate the First Amendment or even a serious question as to the restrictions' constitutionality, we hold that the district court did not abuse its discretion in denying the preliminary injunction.

AFFIRMED.