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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICKEN O. BERJIKIAN and ENNA BERJIKIAN,)	Case No. CV 13-06301 DDP (JCGx)
)	
Plaintiffs,)	
)	ORDER DENYING PLAINTIFFS' EX
v.)	PARTE APPLICATION FOR A TEMPORARY
)	RESTRAINING ORDER
FRANCHISE TAX BOARD;)	
DEPARTMENT OF MOTOR)	
VEHICLES; BOARD OF PHARMACY,)	
)	
Defendants.)	
_____)	

Presently before the court is Plaintiffs' Ex Parte Application for a Temporary Restraining Order. Having considered Plaintiffs' application and the exhibits in support thereof, the court denies the motion.

I. Background

Plaintiffs Vicken and Enna Berjikian are listed on the California Franchise Tax Board's list of 500 largest state income tax delinquencies. (Ex Parte Application for Temporary Restraining Order ("App.") at 4-5). Plaintiffs have been delinquent since "the early 1990s," and may owe "about \$450,000." (App. at 5.) Under California Business and Professions Code Section 494.5, certain

1 state licensing entities must suspend the licenses of individuals
2 appearing on the delinquency list. Cal. Bus. & Profs. Code §
3 494.5. Plaintiff Enna Berjickian is a state-licensed pharmacist,
4 and both Plaintiffs have California driver licenses.¹

5 On May 23, 2013, the California Department of Motor Vehicles
6 sent each Plaintiff a Notice of Intent to Suspend driver license.
7 (App. Exs. A, B.) The notices state that Plaintiffs' driver
8 licenses will be suspended as of September 20, 2013. At some
9 unspecified date, Plaintiff Enna Berjickian received a "90 Day
10 Notice of Intent to Suspend License" from the California Department
11 of Consumer Affairs, informing Plaintiff that her pharmacist's
12 license will be suspended as of August 30, 2013. (App. Ex. B).²

13 On August 28, 2013, Plaintiffs filed a Complaint against the
14 state agencies alleging that Section 494.5 is preempted by federal
15 law and is unconstitutional. On August 30, 2013, Plaintiffs,
16 represented by counsel, filed the instant application for a
17 Temporary Restraining Order ("TRO"), seeking to enjoin the state
18 agencies from suspending Plaintiffs' licenses.

19 **II. Legal Standard**

20 A temporary restraining order is meant to be used only in
21 extraordinary circumstances. To establish entitlement to a TRO,
22 the requesting party must show (1) that she is likely to succeed on

23
24 ¹ Plaintiff Vicken Berjickian is a licensed attorney. Section
25 494.5 states that the State Bar of California "may" suspend a
delinquent licensee, while other entities "shall" suspend
licensees. Cal. Bus. & Profs. Code § 194.5(a)(3).

26
27 ² Though the Declaration of Enna Berjickian refers to her DMV
and Consumer affairs letters as Exhibits C and D, there are no such
28 exhibits in the record before the court. The exhibits submitted to
the court are not sequentially labeled, and skip from Exhibit B to
Exhibit F.

1 the merits, (2) that she is likely to suffer irreparable harm in
2 the absence of preliminary relief, (3) that the balance of equities
3 tips in her favor, and (4) that an injunction is in the public
4 interest. Winter v. Natural Res. Defense Counsel, 555 U.S. 7, 20
5 (2008). A TRO may be warranted where a party (1) shows a
6 combination of probable success on the merits and the possibility
7 of irreparable harm, or (2) raises serious questions and the
8 balance of hardships tips in favor of a TRO. See Arcamuzi v.
9 Continental Air Lines, Inc., 819 F.2d 935, 937 (9th Cir. 1987).
10 "These two formulations represent two points on a sliding scale in
11 which the required degree of irreparable harm increases as the
12 probability of success decreases." Id. Under both formulations,
13 however, the party must demonstrate a "fair chance of success on
14 the merits" and a "significant threat of irreparable injury."³ Id.

15 **III. Discussion**

16 As an initial matter, Plaintiffs' one-page recitation of the
17 relevant factors and conclusory assertions that each of the factors
18 is met is insufficient to satisfy their burden. Furthermore, the
19 court is particularly unpersuaded that Plaintiffs have established,
20 or could establish, a possibility of irreparable harm. In
21 analyzing this factor, courts should take into account whether a
22 movant "proceeded as quickly as it could have" in seeking a TRO.
23 See Apple, Inc. v. Samsung Electronics Co., Ltd., 678 F.3d 1314,
24 1325 (Fed. Cir. 2012) (analyzing a preliminary injunction). At the

25
26 ³ Even under the "serious interests" sliding scale test, a
27 plaintiff must satisfy the four Winter factors and demonstrate
28 "that there is a likelihood of irreparable injury and that the
injunction is in the public interest." Alliance for the Wild
Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

1 TRO stage, courts consider whether the movant would have been able
2 to file a noticed preliminary injunction motion had it acted
3 diligently. See, e.g., Occupy Sacramento v. City of Sacramento,
4 2:11-CV-02873-MCE, 2011 WL 5374748, at *4 (E.D. Cal. Nov.4, 2011)
5 (denying application for TRO for twenty-five day delay); Mammoth
6 Specialty Lodging, LLC v. We-Ka-Jassa Inv. Fund, LLC, CIVS10-0864
7 LKK/JFM, 2010 WL 1539811, at *2 (E.D. Cal. Apr. 16, 2010).; Rosal
8 v. First Fed. Bank of California, No. C 09-1276 PJH, 2009 WL
9 837570, at *2 (N.D. Cal. Mar. 26, 2009).

10 Here, Plaintiffs have been on notice of the licensing
11 authorities' intentions for at least three months. Indeed, in the
12 case of the drivers' license suspensions, Plaintiffs received
13 notice of the DMV's intent almost four months before the threatened
14 sanction, which will not take effect for another twenty one days.
15 While the Department of Consumer Affairs sanction may soon take
16 effect, Plaintiffs provide no explanation why they waited until the
17 eleventh hour to seek ex parte relief. See Mission Power Eng'g Co.
18 v. Cont'l Cas. Co., 883 F.Supp. 488, 492 (C.D. Cal. 1995).
19 Plaintiffs' undue delay undermines their assertion of pending
20 irreparable harm.

21 **IV. Conclusion**

22 For the reasons stated above, Plaintiffs' Ex Parte Application
23 for a TRO is DENIED.

24 **IT IS SO ORDERED.**

25

26 Dated: August 30, 2013

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DEAN D. PREGERSON

United States District Judge