

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INTERNATIONAL SOCIETY FOR)	Case No. CV 15-01320 DDP (AGRx)
KRISHNA CONSCIOUSNESS OF)	
CALIFORNIA INC., a)	ORDER DENYING APPLICATION FOR
California nonprofit)	TEMPORARY RESTRAINING ORDER
religious corporation;)	
INTERNATIONAL SOCIETY FOR)	[Dkt. No. 10]
KRISHNA CONSCIOUSNESS OF)	
ARIZONA, an Arizona)	
nonprofit religious)	
corporation doing business)	
as BLUE STAR,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CITY OF LOS ANGELES, a)	
California Municipal)	
Corporation; CITY OF LOS)	
ANGELES DEPARTMENT OF)	
RECREATION AND PARKS, a)	
division of the City of Los)	
Angeles,)	
)	
Defendants.)	
)	

Plaintiffs International Society for Krishna Consciousness of California and International Society for Krishna Consciousness of Arizona (collectively, "ISKCON") wish to be able to proselytize, including selling T-shirts bearing their message, in the vicinity

1 of Griffith Observatory in Griffith Park. Although Defendants are
2 currently allowed to do so, park rangers have restricted their
3 activity to a "designated area" at the northeast¹ end of the
4 Observatory property. (Mem. P. & A. at 5:6-13.)

5 Plaintiffs therefore seek a temporary restraining order
6 ("TRO") preventing city officials from
7 warning, citing, arresting, prosecuting, harassing, or
8 otherwise enforcing an unwritten rule or policy that prohibits
9 the sale of religious literature, and the solicitation of
10 donations in conjunction with the distribution of religious
11 literature, as well as the sale of message-bearing T-shirts
12 and other merchandise, on the public walkways and plaza areas
13 of the Griffith Observatory.

14 (Proposed Order, attached to Application.) Plaintiffs also seek an
15 order to show cause why a preliminary injunction (presumably along
16 the same lines) should not be granted. (Proposed Order to Show
17 Cause, attached to Application.) The Court, having considered
18 Plaintiffs' submission, denies the Application for a TRO but grants
19 the request for an order to show cause.

20 A preliminary injunction is ordinarily granted on a noticed
21 motion. Fed. R. Civ. P. 65(a)(1). Only extraordinary
22 circumstances justify issuance of an injunction ex parte, without
23 giving the opposing party an opportunity to respond:

24 The court may issue a temporary restraining order without
25 written or oral notice to the adverse party or its attorney
26

27 ¹Plaintiffs allege that the designated area is at the
28 southeast corner, but aerial photos seem to show otherwise. (See,
e.g., Decl. David Liberman, Ex. N.)

1 only if (A) specific facts in an affidavit or a verified
2 complaint clearly show that immediate and irreparable injury,
3 loss, or damage will result to the movant before the adverse
4 party can be heard in opposition; and (B) the movant's
5 attorney certifies in writing any efforts made to give notice
6 and the reasons why it should not be required.

7 Fed. R. Civ. P. 65(b)(1).

8 Plaintiffs have served Defendants with a copy of the
9 Application, which may have provided city officials with at least
10 constructive notice of its existence. But the Application provides
11 no meaningful opportunity for the City to be "heard in opposition,"
12 which is the point of ordinarily requiring a properly noticed
13 motion to obtain an injunction. As the Supreme Court has noted,
14 "our entire jurisprudence runs counter to the notion of court
15 action taken before reasonable notice and an opportunity to be
16 heard has been granted both sides of a dispute." Granny Goose
17 Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70
18 of Alameda Cnty., 415 U.S. 423, 439 (1974). The use of ex parte
19 TRO's "should be restricted to serving their underlying purpose of
20 preserving the status quo and preventing irreparable harm just so
21 long as is necessary to hold a hearing, and no longer." Id. Thus,
22 the Ninth Circuit has limited the issuance of ex parte TRO's to a
23 "very few circumstances." Reno Air Racing Ass'n., Inc. v. McCord,
24 452 F.3d 1126, 1131 (9th Cir. 2006). An injunction may be issued
25 ex parte, for example, when the adverse party is unknown or cannot
26 be located. Id. Or it may be issued where "notice to the
27 defendant would render fruitless the further prosecution of the

28

1 action." Id. Neither of those limited circumstances is present
2 here.

3 The Court notes that Plaintiffs' attorney has not separately
4 certified in writing a specific set of reasons why notice (and the
5 concomitant opportunity to be heard) should not be required.²
6 Plaintiffs do argue, delving into the elements required from
7 preliminary injunctive relief generally,³ that they will suffer
8 irreparable injury. Plaintiffs cite to Elrod v. Burns⁴ and
9 Am.-Arab Anti-Discrimination Comm. v. Reno⁵ for the proposition
10 that "[t]he loss of First Amendment freedoms, for even minimal
11 periods of time, unquestionably constitutes irreparable injury."
12 But neither Am.-Arab Anti-Discrimination Comm. nor Elrod dealt with
13 a application for an ex parte TRO. Moreover, the plaintiffs in
14 both the cited cases were essentially prohibited from exercising
15 their First Amendment rights of association at all.⁶ Thus,
16 discerning the constitutional injury was relatively
17 straightforward.

18

19

20 ²Fed. R. Civ. P. 65(b)(1)(A)-(B).

21 ³"A plaintiff seeking a preliminary injunction must establish
22 that he is likely to succeed on the merits, that he is likely to
23 suffer irreparable harm in the absence of preliminary relief, that
24 the balance of equities tips in his favor, and that an injunction
25 is in the public interest." Winter v. Natural Res. Def. Council,
26 Inc., 555 U.S. 7, 20 (2008).

24 ⁴427 U.S. 347, 373 (1976) (plurality opinion).

25 ⁵70 F.3d 1045, 1058 (9th Cir. 1995) (quoting Elrod).

26 ⁶Elrod, 427 U.S. at 351 (plaintiffs were fired or faced being
27 fired "solely because they did not support and were not members of
28 the Democratic Party"); Am.-Arab Anti-Discrimination Comm., 70 F.3d
at 1052-53 (plaintiffs imprisoned and threatened with deportation
for membership in allegedly communist group).

1 In this case, by contrast, Plaintiffs are free to go right now
2 to Griffith Observatory to proselytize and sell T-shirts.⁷ The
3 sole question at issue is whether they may be confined to a
4 particular space set aside for such activities. (Mem. P. & A. at
5 17-22.) Based on the aerial photos and descriptions provided, the
6 City appears to provide a space for Plaintiffs' activities that is
7 alongside one major path of access to the Observatory the Court -
8 not the location Plaintiffs would prefer, but not one which
9 obviously deprives Plaintiffs of an audience.⁸ (See, e.g., Decl.
10 David Liberman, Ex. N (showing that the designated area is in view

11
12 ⁷Plaintiffs also allege they are hindered because their
13 "permit request has been languishing for over one year with no
14 response." (Mem. P. & A. at 17:10-11.) The problem with this
15 argument is that they present no evidence, of any kind, that the
16 City *requires* them to obtain a permit before they can begin their
17 religious/speech activities. The alleged "permit request" appears
18 to be nothing more than Plaintiffs' attorney's communication with
19 park rangers and the City Attorney's office. (Decl. David
20 Liberman, ¶¶ 3-10 and related exhibits.) Nothing about these
21 exchanges suggests that Plaintiffs were required to get a permit,
22 or that Mr. Liberman's communications with various city officials
23 actually constituted a required "permit request." The City *does*
24 appear to require persons engaged in charitable solicitation to
25 obtain an "Information Card" in accordance with city procedures.
26 Los Angeles Municipal Code § 44.09(a). However, Plaintiffs appear
27 to have no difficulty obtaining such cards. (Mem. P. & A. at 4-5.)

28 ⁸A city is entitled to confine expressive activity to certain
locations in a park, as long as it can show real reasons for doing so and
those doing the expressing can still reach their audience:

By delineating precise performance locations, the City can
assure itself and park tenants that street performers are not
blocking entrances, exits, and pathways . . . [and] reduce
territorial disputes by eliminating uncertainty over the
permissible boundaries of a given performance

The only issue, then, is whether the location restriction
leaves open ample alternative channels for communication. As
we [have] explained . . . an alternative is not ample if the
speaker is not permitted to reach the intended audience.

Berger v. City of Seattle, 569 F.3d 1029, 1049 (9th Cir. 2009)
(citations omitted) (internal quotation marks omitted).

1 of the main plaza and located at the mouth of a large road on which
2 many park patrons' cars are parked); Id., Exs. HH, JJ (showing park
3 patrons in the area).) The Court therefore cannot yet say that
4 Plaintiffs' facts "clearly show" that their First Amendment
5 interests would be immediately and irreparably harmed absent a TRO.
6 Fed. R. Civ. P. 65(b)(1).⁹

7 The Court therefore DENIES the Application for a TRO. In the
8 interest of economy, the Court will not require Plaintiffs to
9 submit a separate noticed motion, but GRANTS Plaintiffs' request
10 for an Order to Show Cause. "If the TRO is denied, the Court may
11 set the hearing on the order to show cause without regard to the
12 twenty-eight (28) days notice of motion requirement of L.R. 6-1."
13 L.R. 65-1. The Court will issue a separate Order to Show Cause in
14 this matter.

15
16 IT IS SO ORDERED.

17
18 Dated: March 6, 2015


DEAN D. PREGERSON
United States District Judge

19
20
21
22 _____
23 ⁹An additional reason the Court denies the Application is that
24 the injunction requested may be overly broad. An order granting an
25 injunction must "state its terms specifically" and "describe in
26 reasonable detail . . . the act or acts restrained or required."
27 Fed. R. Civ. P. 65(d)(1)(B)-(C). The Court cannot discern from the
28 language of Plaintiffs' proposed order whether the City could
enforce any unwritten time, place, and manner restrictions on
religious solicitation activities "on the public walkways and plaza
areas of the Griffith Observatory." The effect of the proposed
injunction appears to be substantially broader in scope than the
complained-of policy, and the Court declines to issue such an open-
ended injunction, at least without further inquiry.