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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KATE SCOTT; JAMES BABINSKI,)	CV 17-07329 RSWL (FFMx)
)	
Plaintiffs,)	
)	Order re: Application
v.)	for Temporary
)	Restraining Order and
CITY COUNCIL FOR THE CITY)	Order To Show Cause re
OF SANTA MONICA; DOES, 1)	Preliminary Injunction
through 10, inclusive,)	[6]
)	
Defendants.)	

I. INTRODUCTION

Currently before the Court is Plaintiffs Kate Scott and James Babinski's ("Plaintiffs") *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause re Preliminary Injunction [6] ("Application"). Specifically, Plaintiffs seek to enjoin Defendant City Council for the City of Santa Monica ("Defendant") from taking any action to shorten the runway of the Santa Monica Municipal Airport (the "Airport"). *Ex Parte* Appl. ("Appl.") 1:21-26, ECF No. 6-1. The Court, having reviewed all papers and arguments submitted pertaining to this Application, **NOW**

1 **FINDS AND RULES AS FOLLOWS:** the Court **GRANTS**
2 Plaintiffs' Application [6].

3 **II. DISCUSSION**

4 **A. Legal Standard**

5 1. *Ex Parte* Application

6 *Ex parte* applications are for extraordinary relief.
7 For *ex parte* relief to be granted, "the evidence must
8 show that the moving party's cause will be irreparably
9 prejudiced if the underlying motion is heard according
10 to regular noticed motion procedures." *Mission Power*
11 *Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 492
12 (C.D. Cal. 1995). The moving party also must be
13 without fault in creating the crisis that requires *ex*
14 *parte* relief, or that excusable neglect caused the
15 crisis. *Id.*

16 Pursuant to Local Rule 7-19.1, "[i]t shall be the
17 duty of the attorney so applying (a) to make
18 reasonable, good faith efforts orally to advise counsel
19 for all other parties, if known, of the date and
20 substance of the proposed *ex parte* application and
21 (b) to advise the Court in writing and under oath of
22 efforts to contact other counsel and whether any other
23 counsel, after such advice, opposes the application."

24 2. Temporary Restraining Order

25 Injunctive relief is an "extraordinary remedy."
26 *Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7,
27 22 (2008). "Temporary restraining orders are governed
28 by the same standard applicable to preliminary

1 injunctions.” Niu v. United States, 821 F. Supp. 2d
2 1165, 1167 (C.D. Cal. 2011) (citation omitted); see Fed.
3 R. Civ. P. 65. A plaintiff seeking a temporary
4 restraining order “must establish that he is likely to
5 succeed on the merits, that he is likely to suffer
6 irreparable harm in the absence of preliminary relief,
7 that the balance of equities tips in his favor, and
8 that an injunction is in the public interest.” Winter,
9 555 U.S. at 20.

10 **B. Analysis**

11 1. *Ex Parte* Application

12 Because Defendant plans to begin construction on
13 October 9, 2017, Plaintiffs’ cause will be irreparably
14 prejudiced if the Court heard the matter on regularly
15 scheduled motion procedures. See Appl., Ex. A.
16 Plaintiffs were not at fault in creating this crisis
17 because the City of Santa Monica sent out an email on
18 September 22, 2017, notifying recipients that
19 construction would begin October 9, 2017. Decl. of R.
20 Christopher Harshman (“Harshman Decl.”) ¶ 10, Ex. A,
21 ECF No. 6-1.

22 Plaintiffs complied with Local Rule 7-19.1(a) by
23 providing written notice of and a voicemail regarding
24 this Application. Harshman Decl. ¶ 14. Additionally,
25 Plaintiffs satisfied Local Rule 7-19.1(b) through
26 counsel’s assertion that Joanna Simon, an attorney with
27 Morrison Foerster, intends to oppose this Application
28 on Defendant’s behalf. *Id.* Based on the foregoing, ex

1 parte relief is proper.

2 2. Temporary Restraining Order

3 Plaintiffs successfully establish all of the
4 required elements to grant their Application and enjoin
5 Defendant from shortening the Airport runway.

6 a. *Success on the Merits*

7 Under California Public Utilities Code section
8 21664.5, an amended airport permit is required for
9 every airport expansion, including "acquisition of
10 runway protection zones" and "realignment of an
11 existing runway." While the department may provide
12 regulatory exemptions, it may not exempt the
13 requirement for public hearings pertaining to
14 environmental considerations.¹ Cal. Pub. Util.
15 § 21664.5(a). In *Trancas Property Owners Association*
16 *v. City of Malibu*, 41 Cal. Rptr. 3d 200, 210 (Ct. App.
17 2006), the court explained that California Public
18 Utilities Code "[s]ection 54956.9's implied allowance
19 for adoption of settlements in closed
20 session . . . cannot be construed to empower a city
21 council to take or agree to take, as part of a non-
22 publicly ratified litigation settlement, action that by
23 substantive law may not be taken without a public
24 hearing and opportunity for the public to be heard."

25 _____

26 ¹ "Environmental considerations include but are not limited
27 to noise, air pollution, and the burden upon the surrounding area
28 caused by the airport or airport expansion, including but not
limited to, surface traffic and expense." Cal. Pub. Util. Code
§ 21666(e).

1 Public hearings are to be conducted in accordance
2 with California Government Code section 11500 *et seq.*
3 Cal. Pub. Util. Code § 21669.6. Under California
4 Government Code section 11501, California Government
5 Code section 11400 *et seq.*'s requirements apply to
6 Defendant's operation of the Airport.

7 Here, Defendant entered into a settlement agreement
8 (the "Settlement Agreement"), wherein it purportedly
9 acquires runway protection zones and realigns an
10 existing runway at the Airport. ECF No. 6-6 at 19, 22-
11 23; Harshman Decl. ¶ 12. To approve this Settlement
12 Agreement, Defendant held a closed session, preventing
13 public comment on the matter. See Verified Am. Pet.
14 ("Pet."), Exs. D, E, ECF No. 6-4.

15 Thus, Plaintiffs will likely prevail at trial on
16 the merits of their claim that Defendant failed to
17 comply with the foregoing substantive law mandating a
18 public hearing for environmental considerations arising
19 from the terms of the Settlement Agreement.²

20 b. *Irreparable Harm*

21 Plaintiffs argue that the proposed realignment will
22 force planes to fly approximately 100 feet lower in
23

24 ² Plaintiffs also argue a public hearing was
25 required for the Airport's nightly closures and ten-day
26 closure in December. Appl. 8:7-8. However, the
27 pertinent statute reads that "upon the request of an
28 affected or interested person, the department *may*
conduct a public hearing." Cal. Pub. Util. Code
§ 21605 (emphasis added). Thus, Plaintiffs are not
likely to prevail on the merits of this ground.

1 altitude, causing increased noise at the departure end
2 of the runway near adjacent neighborhoods. Harshman
3 Decl. ¶¶ 3-5. Plaintiff Kate Scott is a resident of
4 the Sunset Park neighborhood just west of the Airport.
5 Pet. ¶ 4.

6 Additionally, Plaintiffs contend flight at lower
7 altitude over densely populated areas increases the
8 risk to pilots, such as by eliminating the ability to
9 turn back to land on the departure runway in the event
10 of engine or other mechanical failure. Harshman Decl.
11 ¶ 6. Plaintiff James Babinski regularly operates
12 aircraft at the Airport and enrolls in instrument
13 flying lessons at the Airport. Pet. ¶ 5.

14 These harms are irreparable because money damages
15 are inadequate for this kind of noise and danger. See
16 Amoco Prod. Co. v. Vill. of Gambell, AK, 480 U.S. 531,
17 545 (1987) ("Environmental injury, by its nature, can
18 seldom be adequately remedied by money damages."). In
19 addition, these harms are imminent as construction,
20 which is currently scheduled for October 9, 2017,
21 immediately will prevent planes from utilizing the
22 runway in its current state and taking off at the
23 corresponding altitude.

24 c. *Balance of Equities and Public Interest*

25 Plaintiffs request to maintain the status quo at
26 the Airport. See Planned Parenthood of Greater Tex.
27 Surgical Health Servs. v. Abbott, 134 S. Ct. 506, 509
28 (2013) (balance of harms tipped in applicants' favor

1 where injunction harmed defendant by delaying change to
2 longstanding status quo for few months, but without
3 injunction, applicants' harm would be permanent).
4 Defendant failed to file an opposition and delineate
5 its potential harms from injunctive relief, leaving the
6 Court to speculate as to its harms. Assuming the harms
7 are monetary losses from delayed construction,³ "it
8 appears that many of these costs may be self-inflicted"
9 due to Defendant's rush to begin shortening the runway.
10 Davis v. Mineta, 302 F.3d 1104, 1116 (10th Cir. 2002),
11 *abrogated on other grounds by Winter*, 555 U.S. at 22.
12 Thus, the balance of equities tips in Plaintiffs'
13 favor. Finally, the public has a strong interest in
14 ensuring Defendant abides by California's public
15 hearings requirements so that their interests are
16 fairly considered.

17 As such, Plaintiffs have established all of the
18 elements for temporary restraining orders.

19 III. CONCLUSION

20 Accordingly, Plaintiffs' Application is **GRANTED**.
21 Defendant and its employees, agents, and all persons

22
23 ³ Defendant apparently will spend \$3.52 million to
24 complete construction by December 31, 2017. Appl., Ex.
25 C. This injunction will delay construction by two
26 weeks (pursuant to Federal Rule of Civil Procedure 65's
27 time limit), but Plaintiffs are private individuals
28 obtaining an injunction against a governmental entity.
Therefore, they need only post a minimal bond. See
Friends of the Earth, Inc. v. Brinegar, 518 F.2d 322,
323 (9th Cir. 1975) (finding \$1,000 bond to be
reasonable).

1 acting with them or on their behalf are hereby **ORDERED**
2 not to take any action to shorten the runway of the
3 Airport beginning immediately.

4 Defendant also is **ORDERED** to show cause as to why
5 it should not be restrained and enjoined in the same
6 manner pending trial of this action. Defendant must
7 file its response, if any, no later than October 13,
8 2017 at 4:00 p.m. Plaintiffs must file any reply no
9 later than October 18, 2017 at 4:00 p.m., at which
10 point this Court will take the matter under submission.

11 Plaintiffs shall serve a copy of this Order on
12 Defendant no later than October 9, 2017. Additionally,
13 Plaintiffs are **ORDERED** to post a \$5,000.00 bond or cash
14 in that amount by October 9, 2017 at 4:00 p.m.

15 **IT IS SO ORDERED.**

16 DATED: October 8, 2017

/s/ RONALD S.W. LEW

17 **HONORABLE RONALD S.W. LEW**

18 Senior U.S. District Judge
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