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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CRIME, JUSTICE & AMERICA, INC., a
California Corporation; and RAY
HRDLICKA, an individual,

Plaintiffs,

v.

JERRY W. SMITH, in his official capacity
as Sheriff of the County of Butte,
California,

Defendant.

No. 2:08-cv-00343-TLN-EFB

ORDER

This matter is before the court on Plaintiffs’ Motion for a Preliminary Injunction. (ECF No. 81.) Defendant has filed an opposition to the motion, (ECF No. 89), and Plaintiffs a reply, (ECF No. 90). Finding that oral argument would not be of material assistance, *see* E.D. Cal. L.R. 230(g), the matter was submitted on the briefs, (ECF No. 92). The Court has carefully considered the arguments presented by both parties. For the reasons set forth below, Plaintiffs’ Motion for a Preliminary Injunction is DENIED.

BACKGROUND

Plaintiffs are publishers of *Crime, Justice & America* magazine, a quarterly publication with content germane to inmates awaiting trial. The magazine also includes advertisements for

1 bail bondsmen and criminal-defense attorneys, and it is usually distributed—with cooperation
2 from local jails—to inmates in custody. In this case, Plaintiffs asked Butte County Jail to
3 distribute their magazine to the inmates, and Butte County Jail officials refused. Plaintiffs
4 brought this lawsuit in February of 2008 seeking a declaratory judgment affirming their right to
5 distribute their magazine in the Butte County Jail and an injunction enjoining the Butte County
6 Sheriff from prohibiting the distribution of the magazine. (ECF No. 1.)

7 On remand from the Ninth Circuit, this Court denied Plaintiffs’ motion for entry of
8 judgment on remand, and granted in part and denied in part Plaintiffs’ motion for summary
9 judgment, holding genuine disputes of material fact precluded summary judgment on Plaintiffs’
10 First Amendment claims under 42 U.S.C. § 1983. (ECF No. 79.) The factual background of this
11 case is set out in greater detail in that order. (*See generally id.*)

12 STANDARD

13 Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear
14 showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555
15 U.S. 7, 20 (2008) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)). Under
16 Federal Rule of Civil Procedure 65, a court may issue a preliminary injunction to preserve the
17 relative positions of the parties pending a trial on the merits. *Univ. of Tex. v. Camenisch*, 451
18 U.S. 390, 395 (1981). “A plaintiff seeking a preliminary injunction must establish [1] that he is
19 likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of
20 preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in
21 the public interest.” *Winter*, 555 U.S. at 20.

22 Further, the Ninth Circuit has held that the “sliding scale test for preliminary injunctions
23 remains viable after the Supreme Court’s decision in *Winter*.” *Alliance for the Wild Rockies*, 632
24 F.3d 1127, 1134 (9th Cir. 2011). Under this test, the plaintiff must “make a showing on all four
25 prongs” of the *Winter* test to obtain an injunction; however, if a plaintiff establishes a “balance of
26 hardships tip sharply in the plaintiff’s favor” and “serious questions going to the merits,” a
27 preliminary injunction may issue on a lesser showing of irreparable injury and that the injunction
28 is in the public interest, so long as the court considers all four factors. *Id.* at 1135 (citing *Miller v.*

1 *Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc)). However, the court need not reach the
2 other prongs if the plaintiff cannot as a threshold matter demonstrate at least a “fair chance of
3 success on the merits.” *Pimental v. Dreyfus*, 670 F.3d 1096, 1111 (9th Cir. 2012) (quoting
4 *Guzman v. Shewry*, 552 F.3d 941, 948 (9th Cir. 2008)).

5 ANALYSIS

6 Plaintiffs seek an order compelling Defendant, Sheriff of Butte County, to “distribute
7 *Crime, Justice & America* to inmates at Butte County Jail as mailed in and addressed to
8 individual inmates.” (ECF No. 88, at 2:8–10.) As such, Plaintiffs request a mandatory
9 preliminary injunction. (Pls.’ Reply to Def.’s Opp’n to Mot. for Prelim. Inj. (“Reply”) 1:22, ECF
10 No. 90.) “When a mandatory preliminary injunction is requested, the district court should deny
11 such relief unless the facts and law clearly favor the moving party.” *Stanley v. Univ. of S. Cal.*,
12 13 F.3d 1313, 1320 (9th Cir. 1994); accord *Park Vill. Apartment Tenants Ass’n v. Mortimer*
13 *Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011), cert. denied, 132 S. Ct. 756 (“[A] mandatory
14 injunction is particularly disfavored. In general, mandatory injunctions are not granted unless
15 extreme or very serious damage will result[,] and are not issued in doubtful cases.”). Moreover, a
16 district court should also weigh a party’s delay in seeking a preliminary injunction in balancing
17 the equities as part of the analysis to decide whether a preliminary injunction should issue. *W.*
18 *Watersheds Project v. Salazar*, 692 F.3d 921, 923 (9th Cir. 2012) (“The District Court also
19 properly exercised its discretion in weighing Appellant’s delay in seeking a preliminary
20 injunction . . . among the equitable factors.”).

21 Here, Plaintiffs waited to file a motion for a preliminary injunction until after five years of
22 litigation had elapsed and nearly a year after Plaintiffs had filed a motion for entry of judgment on
23 remand and for summary judgment. (ECF No. 60.) Moreover, this Court has previously held
24 there exist genuine disputes of material fact whether the Butte County Jail officials had legitimate
25 penological concerns that distributing *Crime, Justice & America* magazine (which contains
26 defense lawyer and bail bondsmen ads) would run afoul of California law prohibiting solicitation
27 of inmates in jails by attorneys and bondsmen. (ECF No. 79.) Further, this Court has held there
28 exist genuine disputes of material fact whether the jail’s regulations are rationally related to a

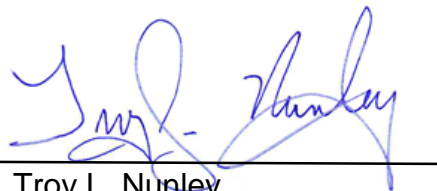
1 legitimate penological interest in prison security, since inmates may be more likely to use
2 unsolicited, unrequested periodicals to clog toilets and windows. *See Prison Legal News v. Cook*,
3 238 F.3d 1145, 1150 (9th Cir. 2001) (“The only question is whether prison administrators
4 reasonably could have thought the regulation would advance legitimate penological interests.”).
5 Although Plaintiffs are correct that the standards on summary judgment and for a preliminary
6 injunction “are not the same,” (Reply 1:9–10, ECF No. 90), after review of Plaintiffs’ motion and
7 supporting evidence attached therein, the Court finds that Plaintiffs have not demonstrated that
8 “the facts and law clearly favor” their position such that Plaintiffs have established a sufficient
9 likelihood of success on the merits to warrant mandatory injunctive relief. *Stanley*, 13 F.3d at
10 1320; *see also Pimental*, 670 F.3d at 1111 (holding a court need not reach the other prongs of the
11 *Winter* test if the plaintiff cannot as a threshold matter demonstrate at least a “fair chance of
12 success on the merits”). Moreover, when considered together with Plaintiffs’ delay in seeking a
13 preliminary injunction—more than five years since this litigation began and nearly a year after
14 Plaintiffs’ motion for summary judgment—Plaintiffs have not “satisfied . . . the heightened
15 standard [the Ninth Circuit] ha[s] adopted with respect to mandatory injunctions.” *Park Vill.*
16 *Apartment Tenants Ass’n*, 636 F.3d at 1161.

17 CONCLUSION

18 Based on the foregoing, Plaintiffs’ motion for a preliminary injunction (ECF No. 81) is
19 DENIED.

20 IT IS SO ORDERED

21 Dated: December 9, 2013

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25 Troy L. Nunley
26 United States District Judge
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