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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.

SCOTT JONES, in his official capacity as
Sheriff of the County of Sacramento,
California,

Defendant.

No. 2:08-cv-00394-TLN-AC

ORDER

This matter is before the court on Plaintiffs' Motion for a Preliminary Injunction. (ECF No. 78.) Defendant has filed an opposition to the motion, (ECF No. 86), and Plaintiffs a reply, (ECF No. 87). 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. 89). 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 Sacramento County Jail to
3 distribute their magazine to the inmates, and Sacramento 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 Sacramento County Jail and an injunction enjoining the
6 Sacramento County Sheriff from prohibiting the distribution of the magazine. (ECF No. 1.)

7 After the case was remanded from the Ninth Circuit,¹ Plaintiffs and Defendant engaged in
8 settlement discussions, and Defendant told Plaintiffs the Sacramento Main Jail would accept
9 copies of *Crime, Justice & America* magazine. (Decl. Amanda L. McDermott, Ex. 4, Decl. John
10 A. Lavra ¶¶ 4–10, ECF No. 86-1.) Plaintiffs, however, point to evidence which, they argue,
11 establishes that the magazines are not in fact being distributed to inmates at the Sacramento
12 County Jail. Specifically, Plaintiff Ray Hrdlicka declares he usually expects “to receive letters
13 from inmates immediately as well as receive confirmation from advertisers of inmate collect
14 calls”; however, after the initial mailing, no letters or confirmations from advertisers were
15 received for nearly eight weeks. (Decl. Hrdlicka ¶¶ 48–52, ECF No. 80.) Moreover, Plaintiff
16 Hrdlicka sent letters to 130 inmates who were in Sacramento County Jail at the time and to whom
17 the magazine had been directly mailed. (*Id.* ¶ 58.) Plaintiff received “47 declarations from
18 inmates who each declared that they did not receive the magazine that was sent to them.” (*Id.*
19 ¶ 59.) Defendant counters with a declaration from the mailroom deputy at Sacramento County
20 Jail, who declares that he “always delivered the publication and allowed the receiving inmate to
21 decide whether to keep it or throw it away.” (Decl. McDermott, Ex. 1, Decl. Alfonso Ceja ¶ 11,
22 ECF No. 86-1.)

23 Believing that *Crime, Justice & America* magazine was not being distributed to inmates,
24 Plaintiffs now move for a preliminary injunction.

25 STANDARD

26 Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear
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28 ¹ The factual background of this case is set forth in greater detail in the Ninth Circuit’s opinion, *Hrdlicka v. Reniff*, 631 F.3d 1044 (9th Cir. 2011).

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

9 Further, the Ninth Circuit has held that the “sliding scale test for preliminary injunctions
10 remains viable after the Supreme Court’s decision in *Winter*.” *Alliance for the Wild Rockies*, 632
11 F.3d 1127, 1134 (9th Cir. 2011). Under this test, the plaintiff must “make a showing on all four
12 prongs” of the *Winter* test to obtain an injunction; however, if a plaintiff establishes a “balance of
13 hardships tip sharply in the plaintiff’s favor” and “serious questions going to the merits,” a
14 preliminary injunction may issue on a lesser showing of irreparable injury and that the injunction
15 is in the public interest, so long as the court considers all four factors. *Id.* at 1135 (citing *Miller v.*
16 *Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc)). However, the court need not reach the
17 other prongs if the plaintiff cannot as a threshold matter demonstrate at least a “fair chance of
18 success on the merits.” *Pimental v. Dreyfus*, 670 F.3d 1096, 1111 (9th Cir. 2012) (quoting
19 *Guzman v. Shewry*, 552 F.3d 941, 948 (9th Cir. 2008)).

20 ANALYSIS

21 Plaintiffs seek an order compelling Defendant, Sheriff of Sacramento County, to
22 “distribute *Crime, Justice & America* to inmates at Sacramento County Jail as mailed in and
23 addressed to individual inmates.” (ECF No. 87-1, at 2:8–10.) As such, Plaintiffs request a
24 mandatory preliminary injunction. “When a mandatory preliminary injunction is requested, the
25 district court should deny such relief unless the facts and law clearly favor the moving party.”
26 *Stanley v. Univ. of S. Cal.*, 13 F.3d 1313, 1320 (9th Cir. 1994); accord *Park Vill. Apartment*
27 *Tenants Ass’n v. Mortimer Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011), cert. denied, 132
28 S. Ct. 756 (“[A] mandatory injunction is particularly disfavored. In general, mandatory

1 injunctions are not granted unless extreme or very serious damage will result[,] and are not issued
2 in doubtful cases.”). Moreover, a district court should also weigh a party’s delay in seeking a
3 preliminary injunction in balancing the equities as part of the analysis to decide whether a
4 preliminary injunction should issue. *W. Watersheds Project v. Salazar*, 692 F.3d 921, 923 (9th
5 Cir. 2012) (“The District Court also properly exercised its discretion in weighing Appellant’s
6 delay in seeking a preliminary injunction . . . among the equitable factors.”).

7 Here, Plaintiffs waited to file a motion for a preliminary injunction until after five years of
8 litigation had elapsed. Moreover, the Ninth Circuit has previously held in this case there exist
9 genuine disputes of material fact whether the Sacramento County Jail had legitimate penological
10 concerns that distributing *Crime, Justice & America* magazine would “adversely affect prison
11 security,” *Hrdlicka v. Reniff*, 631 F.3d 1044, 1052 (9th Cir. 2011), since inmates may be more
12 likely to use unsolicited, unrequested periodicals to clog toilets and windows. *See Prison Legal*
13 *News v. Cook*, 238 F.3d 1145, 1150 (9th Cir. 2001) (“The only question is whether prison
14 administrators reasonably could have thought the regulation would advance legitimate
15 penological interests.”). Although Plaintiffs are correct that the standards on summary judgment
16 and for a preliminary injunction “are . . . different,” (Pls.’ Reply to Opp’n of Mot. for Prelim. Inj.
17 10:6–7, ECF No. 87), after review of Plaintiffs’ motion and attached supporting evidence, the
18 Court finds that Plaintiff has not demonstrated that “the facts and law clearly favor” its position
19 such that Plaintiffs have established a likelihood of success on the merits. *Stanley*, 13 F.3d at
20 1320; *see also Pimental*, 670 F.3d at 1111 (holding a court need not reach the other prongs of the
21 *Winter* test if the plaintiff cannot as a threshold matter demonstrate at least a “fair chance of
22 success on the merits”). Moreover, granting Plaintiffs the “extraordinary remedy” they seek,
23 *Winter*, 555 U.S. at 20—an order mandating that the Sacramento County Jail distribute their
24 publication—seems particularly problematic here since the jail officials themselves declare they
25 are already distributing the magazine and will continue to do so until a final determination on the
26 merits. *Cf. Ragsdale v. Turnock*, 841 F.2d 1358, 1365 (7th Cir. 1988) (“[C]essation of the
27 allegedly illegal conduct by government officials has been treated with more solicitude by the
28 courts than similar action by private parties.”). Considering the foregoing together with

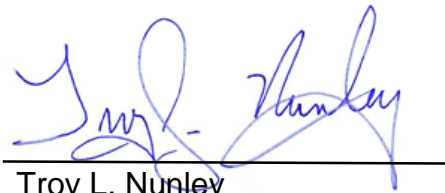
1 Plaintiff's delay in seeking a preliminary injunction—more than five years since this litigation
2 began—Plaintiffs have not “satisfied . . . the heightened standard [the Ninth Circuit] ha[s]
3 adopted with respect to mandatory injunctions.” *Park Vill. Apartment Tenants Ass’n*, 636 F.3d at
4 1161.

5 **CONCLUSION**

6 Based on the foregoing, Plaintiffs’ motion for a preliminary injunction (ECF No. 78) is
7 DENIED.

8 IT IS SO ORDERED

9 Dated: December 9, 2013

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12 Troy L. Nunley
13 United States District Judge
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