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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GARY CROCKER, et al.,
Plaintiffs,
v.
STATE OF CALIFORNIA,
DEPARTMENT OF REHABILITATION,
Defendant.

No. 2:14-cv-01944-MCE-DAD

MEMORANDUM AND ORDER

On August 20, 2014, Plaintiffs Gary Crocker and Thomas Evans (collectively “Plaintiffs”) filed this action alleging that Defendant State of California, Department of Rehabilitation (“Defendant”) is seeking to unlawfully terminate their operating agreements in violation of the Randolph-Sheppard Act, 20 U.S.C. § 107-107f (the “R-S Act”) and the California Business Enterprise Program for the Blind law, California Welfare and Institutions Code sections 19625-19641 (the “BEP” statute). See Compl., ECF No. 5. Presently before the Court is Plaintiffs’ Motion for a Temporary Restraining Order. Mot., Aug. 20, 2014, ECF No. 2.¹ For the following reasons, Plaintiffs’ Motion is DENIED without prejudice.

¹ Plaintiffs also seek a Preliminary Injunction through the same filing. Mot., Aug. 20, 2014, ECF No. 2. Because oral argument would not be of material assistance, the Court resolves this matter on Plaintiffs’ brief. E.D. Cal. Local R. 230(g). Defendant has not yet appeared or filed a response to the Motion.

BACKGROUND²

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3 Plaintiffs are licensed blind vendors pursuant to the R-S Act, operating vending
4 facilities located in the California. According to Plaintiffs, the BEP mandates that the
5 state give priority to blind individuals when determining who shall operate vending
6 facilities on state property. When a blind vendor is assigned to operate a particular
7 vending facility, the blind vendor enters into an operating agreement which sets forth the
8 terms and conditions for the operation of the facility.

9 Plaintiffs allege that they entered into operating agreements with Defendant that
10 did not require them to pay utilities. However, each Plaintiff thereafter received a Notice
11 of Intent to Terminate their operating agreement for failure to pay such fees. Moreover,
12 the termination notice received by Plaintiff Evans charged him for utilities for months that
13 his vending facility was closed and did not credit him for amounts that he had paid
14 directly to Caltrans at the direction of Defendant. Nonetheless, Evans alleges that he
15 subsequently submitted all amounts due prior to the deadline in the Termination Notice.
16 Plaintiff Crocker similarly avers that, despite not owing the amount charged, he paid all
17 amounts due in full prior to the deadline set forth in the Termination Notice.

18 Plaintiffs initiated agency proceedings seeking full evidentiary hearings pursuant
19 to 34 C.F.R. § 395.13 and Cal. Welf. & Inst. Code § 19635.³ According to Plaintiffs, the
20 R-S Act's dispute resolution mechanism is the only avenue open to licensees to resolve
21 their complaints against state licensing agencies. The only exception to that
22 requirement is when blind licensees seek injunctive relief pending a full resolution of the
23 dispute. Plaintiffs fear that Defendant will terminate their operating agreements after the
24 full evidentiary hearing, should the decision be adverse to Plaintiffs, despite Plaintiffs'
25 right to have the decision reviewed by an arbitration panel convened by the Secretary of

26 ² Unless otherwise indicated, the facts are taken, often verbatim, from Plaintiffs' Memorandum in
27 Support of Plaintiffs' Motion (ECF No. 3), as well as their Complaint (ECF No. 5).

28 ³ Plaintiffs' Complaint and Motion make clear that administrative proceedings are ongoing. See
generally ECF Nos. 2, 5.

1 Education. Termination of Plaintiffs' operating agreements would result in ejection from
2 the vending facilities they currently operate. Each Plaintiff has stated that he would be
3 unable to find other employment that would compensate him at the level he earns at his
4 respective vending facility. Plaintiffs assert that they are entitled to a temporary
5 restraining order and a preliminary injunction restraining Defendant from terminating their
6 operating agreements.

8 STANDARD

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10 The purpose of a temporary restraining order is to preserve the status quo
11 pending the complete briefing and thorough consideration contemplated by full
12 proceedings pursuant to a preliminary injunction. See Granny Goose Foods, Inc. v.
13 Teamsters, 415 U.S. 423, 438-39 (1974) (temporary restraining orders "should be
14 restricted to serving their underlying purpose of preserving the status quo and preventing
15 irreparable harm just so long as is necessary to hold a hearing, and no longer"); see also
16 Reno Air Racing Ass'n., Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006); Dunn v.
17 Cate, No. CIV 08-873-NVW, 2010 WL 1558562, at *1 (E.D. Cal. April 19, 2010).

18 Issuance of a temporary restraining order, as a form of preliminary injunctive
19 relief, is an extraordinary remedy, and Plaintiffs have the burden of proving the propriety
20 of such a remedy. See Mazurek v. Armstrong, 520 U.S. 968, 972 (1997). In general,
21 the showing required for a temporary restraining order and a preliminary injunction are
22 the same. Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F.3d 832, 839
23 n.7 (9th Cir. 2001).

24 The party requesting preliminary injunctive relief must show that "he is likely to
25 succeed on the merits, that he is likely to suffer irreparable harm in the absence of
26 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
27 the public interest." Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008);
28 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting Winter). The

1 propriety of a TRO hinges on a significant threat of irreparable injury that must be
2 imminent in nature. Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th
3 Cir. 1988).

4 Alternatively, under the so-called sliding scale approach, as long as the Plaintiffs
5 demonstrate the requisite likelihood of irreparable harm and show that an injunction is in
6 the public interest, a preliminary injunction can still issue so long as serious questions
7 going to the merits are raised and the balance of hardships tips sharply in Plaintiffs'
8 favor. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-36 (9th Cir. 2011)
9 (concluding that the "serious questions" version of the sliding scale test for preliminary
10 injunctions remains viable after Winter).

11 12 ANALYSIS

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14 Plaintiffs' Motion for a Temporary Restraining Order fails both procedurally and
15 substantively. First, Plaintiffs' Motion is deficient as filed. Second, and most importantly,
16 Plaintiffs fail to establish that they face imminent irreparable harm warranting the
17 requested extraordinary relief.

18 "Plaintiffs bear the burden of showing that, among other things, they are likely to
19 suffer irreparable injury and the injury must be imminent in nature." Caribbean Marine,
20 844 F.2d at 674. Reflecting this requirement, Local Rule 231(c), which governs the filing
21 of motions for TROs in this district, requires that parties seeking such relief provide,
22 among others, the following documents to the Court: "(1) a complaint; (2) a motion for
23 temporary restraining order; (3) a brief on all relevant legal issues presented by the
24 motion; (4) an affidavit in support of the existence of an irreparable injury; (5) an affidavit
25 detailing the notice or efforts to effect notice to the affected parties or counsel or showing
26 good cause why notice should not be given, . . . and (7) a proposed order." E.D. Cal.
27 Local R. 230(c). Here, although Plaintiffs reference declarations purportedly signed by
28 Plaintiffs, none were submitted to the Court with their Complaint or with their Motion.

1 The failure to comply with this local rule is particularly glaring as Plaintiffs submitted no
2 evidence in support of their allegations of irreparable harm. Given that a TRO is
3 considered to be an extraordinary remedy and Plaintiffs have the burden of establishing
4 its propriety, Plaintiffs' failure to submit any support for their Motion results in its denial.⁴

5 However, even had Plaintiffs submitted Plaintiffs' purported Declarations, Plaintiffs
6 fail to meet their burden in demonstrating that they face imminent, irreparable harm. The
7 harm that Plaintiffs allegedly face is entirely speculative, at best. For instance, "Plaintiffs
8 fear that [Defendant] will terminate their operating agreements, after the full evidentiary
9 hearing required by 34 C.F.R. § 395.13, should the decision be adverse to Plaintiffs."
10 Mot., ECF No. 3 at 10 (emphasis added). Plaintiffs also argue that they "will suffer
11 irreparable harm due to the lack of other employment opportunities available to them
12 and the uncertainty in the law with respect to the award of damages in this case." Id. at
13 20.

14 Although Plaintiffs allege that "[u]nlike the typical employment case, it is not
15 obvious that Plaintiffs will be able to obtain damages if they ultimately succeed in this
16 case," they fail to adequately support this contention.⁵ Mot., ECF No. 3 at 19. In fact,
17 Plaintiffs provide no reason why a legal remedy, namely monetary damages, would be
18 inadequate for the termination of their operating agreements and the resulting loss of
19 revenue. Plaintiffs cite the loss of substantial income, attorneys' fees, and court costs as
20 examples of potential harm, yet these are all examples of harm where monetary
21 remedies are generally found to be adequate. As to Plaintiffs' contention that they also
22 fear the loss of the opportunity to conduct an administrative review and loss of
23 meaningful judicial review, these harms are entirely speculative at best – particularly
24 where Plaintiffs acknowledge that an administrative review is ongoing. Speculative

25 ⁴ Plaintiffs also failed to submit a proposed order and the Temporary Restraining Order Checklist.
26 Plaintiffs are cautioned that in the future, they must scrupulously observe the requirements of the Federal
27 Rules of Civil Procedure as well as this Court's Local Rules and Temporary Restraining Order Procedures
28 prior to filing requests for extraordinary relief.

⁵ Moreover, Plaintiffs bear the burden of demonstrating the threat of irreparable harm to a degree
beyond being "not obvious."

1 injury does not constitute irreparable harm. See Caribbean Marine, 844 F.2d at 674;
2 Goldie's Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472 (9th Cir.1984). Because
3 Plaintiffs allege only a speculative injury, Plaintiffs' Motion for a Temporary Restraining
4 Order (ECF No. 2) is DENIED without prejudice to refile as a properly noticed Motion
5 for a Preliminary Injunction in accordance with the Federal Rules of Civil Procedure and
6 this Court's Local Rules.⁶

7 IT IS SO ORDERED.

8 Dated: August 21, 2014

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12 MORRISON C. ENGLAND, JR., CHIEF JUDGE
13 UNITED STATES DISTRICT COURT
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24 ⁶ Finally, the Court notes that were Plaintiffs facing real, imminent harm, it is unlikely that they
25 would have waited approximately two weeks from the receipt of an email on August 6, 2014, which
26 Plaintiffs assert caused them to fear that Defendant would revive its allegedly unlawful efforts and another
27 week after notifying opposing counsel of their intent to file the instant Motion. See ECF No. 2 at 3; ECF
28 No. 5 at 5. A "long delay before seeking a preliminary injunction implies a lack of urgency and irreparable
harm." Oakland Tribune, Inc. v. Chronicle Pub. Co., 762 F.2d 1374, 1377 (9th Cir. 1985). Stated another
way, the Court is of the view that the two-week delay between Plaintiffs' renewed fear of "imminent" harm
and the filing of this Motion tends to contradict Plaintiffs' claims of irreparable injury. See, e.g., Occupy
Sacramento v. City of Sacramento, 2:11-CV-02873-MCE, 2011 WL 5374748 (E.D. Cal. Nov. 4, 2011)
(denying application for TRO for twenty-five day delay). This delay further undermines Plaintiffs'
assertions.