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1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF CALIFORNIA 10 No. 2:16-cv-02584 KJM KJN 11 JOSEPH CUVIELLO, **ORDER** 12 Plaintiff, 13 v. 14 CITY OF VALLEJO, et al., 15 Defendants. 16 On October 31, 2016, plaintiff filed a complaint for injunctive relief, declaratory 17 18 19 Quintana, and City of Vallejo Police Officer M. Cutnick. Compl. ¶ 1, ECF No. 1. In his complaint, plaintiff alleged defendants violated his First Amendment right to free speech by 20 unreasonably prohibiting him from using a bullhorn as part of his demonstration at Six Flags 21 22 23 24

relief and damages against defendants City of Vallejo, City of Vallejo City Attorney Claudia Discovery Kingdom in Vallejo. *Id.* Plaintiff brought this action under 42 U.S.C. § 1983, as well as the First and Fourteenth Amendments to the United States Constitution. Id. On March 17, 2017, plaintiff filed a motion for a preliminary injunction asking the court to enjoin the enforcement of Vallejo Municipal Code Chapter 8.56 Section 8.56.10, which authorized law enforcement to prohibit the use of a bullhorn. Mot. for Prelim. Inj., ECF No. 15, at 1–2. As authorized by Local Rule 72-302(c)(21), this case was referred to the assigned magistrate judge. On April 28, 2017, the magistrate judge recommended plaintiff's motion for preliminary

injunction be denied and this court adopted those recommendations on September 1, 2017. Findings and Recommendations, ECF No. 24; Order, ECF No. 41.

On September 25, 2017, plaintiff appealed this court's order adopting the findings and recommendations and denying plaintiff's motion for a preliminary injunction. Notice of Interlocutory Appeal, ECF No. 42. On December 10, 2019, a Ninth Circuit panel majority reversed this court's decision and remanded for further proceedings. *Cuviello v. City of Vallejo*, 944 F.3d 816 (9th Cir. 2019). The Circuit found the court abused its discretion with respect to its analysis of the four factors necessary to grant a preliminary injunction. *Cuviello*, 944 F.3d at 821. First, the Ninth Circuit found plaintiff would have a likelihood of success on the merits of his argument that the City of Vallejo's revised ordinance requiring a permit before using his bullhorn is an unconstitutional prior restraint on free speech. *Id.* at 826–31. Specifically, the Ninth Circuit found that the ordinance, even in its revised form, burdened more speech than necessary and is not narrowly tailored to a government interest. *Id.* at 828–31; *see also* Vallejo, Cal., Municipal Code § 8.56.030. Second, the panel found the threat of enforcement of the ordinance chills plaintiff's exercise of free speech and constitutes irreparable harm. *Cuviello*, 944 F.3d at 831–34. Finally, the panel found the balance of equities tip in plaintiff's favor and halting enforcement of the law is in the public interest. *Id.* at 834.

Based on the reasons set forth in the Ninth Circuit's decision, the court VACATES its order at ECF No. 41 and GRANTS plaintiff's motion for a preliminary injunction. Defendant City of Vallejo is hereby ENJOINED from enforcing Municipal Code Chapter 8.56.030's permit requirement, *see id.* at 825 & n.4 (finding gravamen of plaintiff's First Amendment complaint about state's permit requirement unaffected by recent amendments to Chapter 8.56).

Under Local Rule 72-302(c)(21), this matter is REFERRED back to the assigned magistrate judge for further pretrial proceedings

IT IS SO ORDERED.

DATED: January 14, 2020.

CHIEF UNITED STATES DISTRICT JUDGE