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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JESSE EUGENE TASSEY,  
Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
TRANSPORTATION (CALTRANS), et al.,  
Defendants.

Case No. 23-cv-05041-AMO

**ORDER GRANTING APPLICATION  
FOR TEMPORARY RESTRAINING  
ORDER AND APPLICATION TO  
PROCEED IN FORMA PAUPERIS;  
ORDER TO SHOW CAUSE RE  
PRELIMINARY INJUNCTION**

Re: Dkt. Nos. 1, 3

Pro se Plaintiff Jesse Eugene Tassey has filed an Ex Parte Application for a Temporary Restraining Order and Complaint for Injunctive Relief. The Court has reviewed the Application and Complaint, the incorporated Memorandum of Points and Authorities, and Defendants' Opposition. Having carefully considered the parties' papers, the relevant legal authority, and the arguments advanced by the parties during the hearing held on October 3, 2023, the Court **GRANTS** the Application for a Temporary Restraining Order.

**I. BACKGROUND**

Tassey's papers indicate that he has lived alone in a small, isolated embankment on Caltrans property for the last eight months. ECF 1 at 1, 14. He has a small camp there, with food, clean water and shelter from extreme heat.<sup>1</sup> *Id.* at 1, 6. It is the only place where his case manager, who is assisting Tassey with locating housing, can reach him. *Id.* at 1, 7. He does not have a phone, and he is afraid that leaving his camp will mean losing contact with his case

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<sup>1</sup> Tassey requests that the Court take judicial notice of the National Weather Service forecast for Novato for the current week. *See* ECF 1 at 6. Pursuant to Fed. R. Evid. 201(b), the Court grants the request. The forecast shows multiple days of 90-degree heat.

1 manager. *Id.* at 7.

2 On September 29, 2023, Defendants posted a Notice to Vacate Campsite at Tasseys’s  
3 location. *Id.* at 2, 18. The Notice states that “Every person who camps or lodges or stores  
4 property on State property without permission of the owner is guilty of a misdemeanor violation of  
5 California law.” *Id.* at 18. The Notice lists violations of California Penal Code § 647(e) and  
6 California Vehicle Code § 23112(b). Section 647(e) of the California Penal Code makes it a  
7 misdemeanor to “lodge[] in any building, structure, vehicle, or place, whether public or private,  
8 without the permission of the owner or person entitled to the possession or in control of it.” Cal.  
9 Penal Code § 647(e). Section 23112(b) of the California Vehicle Code provides that “No person  
10 shall place, deposit, or dump, or cause to be placed, deposited, or dumped, any rocks, refuse,  
11 garbage, or dirt in or upon any highway, including any portion of the right-of-way thereof, without  
12 the consent of the state or local agency having jurisdiction over the highway.” Cal. Veh. Code  
13 § 23112(b).

14 The Notice gives the following “Instructions to Occupants:”

- 15 1. ALL PERSONAL PROPERTY AND CAMP DEBRIS IS TO BE REMOVED BY  
16 THE TIME AND DATE NOTED BELOW.
- 17 2. ANY PERSONAL PROPERTY LEFT AT THIS SITE AFTER THIS TIME WILL  
18 BE CONSIDERED ABANDONED.
- 19 3. ANY PERSONAL PROPERTY NOT DISPOSED OF WILL BE STORED FOR  
20 SIXTY (60) DAYS. TO RECLAIM PROPERTY CALL: (707) 762-6641.  
21 FAILURE TO RECLAIM BY SIXTY (60) DAYS FROM REMOVAL WILL  
22 RESULT IN ITS’ DISPOSAL.
- 23 4. CONTINUED VIOLATIONS WILL RESULT IN CITATION AND/OR  
ARREST.

24 ECF 1 at 18 (capitalization in original). The “Vacate By Date” is October 1, 2023. *Id.* The  
25 “Removal Start Date” is October 2, 2023. *Id.* The “Removal End Date” is October 6, 2023. *Id.*  
26 The Notice states Community Service Assistance is available at the California Highway Patrol  
27 Marin Office and provides a contact phone number. *Id.*

28 Tasseys has no other shelter and has not been offered any other shelter. *Id.* at 11. He has a

1 knee injury and states it will take him two weeks to find a new place to camp and move his  
2 belongings.<sup>2</sup> *Id.* at 13. He asks that the Court issue a temporary restraining order so that (1) he  
3 has time to relocate and (2) is provided with storage for his belongings as required under  
4 California Civil Code § 2080. *Id.* at 15.

5 **II. LEGAL STANDARD**

6 A temporary restraining order may be granted where plaintiffs (1) are likely to succeed on  
7 the merits; (2) are likely to suffer irreparable harm in the absence of preliminary relief; (3) the  
8 balance of equities tips in their favor; and (4) an injunction is in the public interest. *Winter v.*  
9 *Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). With respect to the success on  
10 the merits and balance of harms factors, courts permit a strong showing on one factor to offset a  
11 weaker showing on the other, so long as all four factors are established. *Alliance for the Wild*  
12 *Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). “Thus, when plaintiffs establish that the  
13 balance of hardships tips sharply in their favor, there is a likelihood of irreparable injury, and the  
14 injunction is in the public interest, they need only show ‘serious questions’ on the merits.” *Where*  
15 *Do We Go Berkeley v. Cal. Dep’t of Trans.*, 32 F.4th 852, 859 (9th Cir. 2022) (citation omitted).  
16 Moreover, the Ninth Circuit has held that “‘serious questions going to the merits’ and a hardship  
17 balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the  
18 other two elements of the Winter test are also met.” *See Alliance for the Wild Rockies*, 632 F.3d at  
19 1132.

20 **III. DISCUSSION**

21 Addressing each relevant factor in turn, the Court finds that the circumstances presented  
22 warrant immediate temporary relief.

23 Tassey raises serious questions that the Defendants will violate his constitutional rights by  
24 forcing him to relocate or abandon his personal property on one business days’ notice, without  
25 other available shelter, without clarity as to which of his belongings will be discarded and which  
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28 <sup>2</sup> During the hearing, Tassey confirmed that he can relocate in two weeks and that he will do so.

1 will be stored,<sup>3</sup> and without confirmation that safeguards previously imposed by a class action  
2 settlement would protect Tasse’s property here.<sup>4</sup> See *Blain v. Cal. Dep’t of Trans.*, 616 F. Supp.  
3 3d 952, 957 (N.D. Cal. 2022) (finding “serious questions going to the merits” where planned  
4 removal of plaintiffs from encampment, “when done without sufficient warning or plans for  
5 shelter, would expose them to unjustifiable dangers they otherwise would not face.”), *order*  
6 *dissolved*, No. 3:22-CV-04178-WHO, 2022 WL 3702106 (N.D. Cal. Aug. 26, 2022); *Janosko v.*  
7 *City of Oakland*, No. 3:23-CV-00035-WHO, 2023 WL 187499, at \*3 (N.D. Cal. Jan. 13, 2023)  
8 (“Alleging that the government demolished an unhoused individual’s shelter and property  
9 essential to protection from the elements including cold and freezing temperatures, rain, and other  
10 difficult physical conditions is sufficient to state a claim for state-created danger under the  
11 Fourteenth Amendment.”) (internal quotation marks omitted).

12 Tasse has also demonstrated a likelihood of irreparable injury. Absent relief, Tasse risks  
13 losing his personal property, shelter, and access to food and clean water during a week expected to  
14 have multiple days of 90-degree weather. This satisfies the required showing. See *Blain*, 616 F.  
15 Supp. 3d at 958 (“Being exposed to safety and health threats by dint of governmental action with  
16 short notice meets the irreparable-injury element.”); *Lavan*, 693 F.3d at 1029 (“For many of us,  
17 the loss of our personal effects may pose a minor inconvenience. . . . [T]he loss can be devastating  
18 for the homeless.”). That Tasse may lose contact with the case manager who is helping him

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21 <sup>3</sup> When asked at oral argument, Defendants’ counsel could not give a definition of “personal  
22 property” as the term is used in the Notice to Vacate but did explain that certain items could be  
discarded as hazardous materials.

23 <sup>4</sup> During the hearing, the Court asked Defendants’ counsel whether certain protections imposed by  
24 a class action settlement in state litigation—*Sanchez v. California Department of Transportation*,  
No. RG16842117 (Cal. Sup. Ct. Oct. 23, 2020)—were still in effect. Counsel could not confirm.  
25 This heightens the real concerns about the risk of destruction or loss of Tasse’s personal  
26 property. Compare *Blain*, 616 F. Supp. 3d at 959 (“Between that [*Sanchez*] judicial decree and  
the several weeks of delay that the plaintiffs will have under this Order to remove their own  
27 possessions, the plaintiffs have not made a sufficient showing of the risk of an unconstitutional  
seizure.”). See also *v. City of Los Angeles*, 693 F.3d 1022, 1029 (9th Cir. 2012) (“[T]he  
28 unabandoned property of homeless persons is not beyond the reach of the protections enshrined in  
the Fourth and Fourteenth Amendments.”).

1 secure housing because he has no phone or other means of contacting that person further bolsters  
2 this finding.

3 In light of this, and given that Tassej has lived at his camp for the last eight months and  
4 seeks a TRO only for the length of time needed for him to relocate, the balance of hardships tips  
5 sharply in his favor. *See Blain*, 616 F. Supp. 3d at 958 (“The balance of equities sharply tilts in  
6 the plaintiffs’ favor for a period long enough to give them adequate notice of the action, time to  
7 make alternative plans, and time for the relevant governmental entities to help locate shelter (as  
8 they have committed to trying).”).

9 The Court also finds that the public interest weighs in favor of granting Tassej’s  
10 application, as doing so provides a “a stopgap to prevent a particular violation of constitutional  
11 rights that results from the combination of lack of notice and failure to provide alternative shelter.”  
12 *See id.* at 654; *Janosko*, 2023 WL 187499, at \*4 (“[A] short, defined delay in the planned evictions  
13 is in the public interest.”). Given the temporary nature of the relief granted, the Court emphasizes  
14 that Tassej must honor the representations he made during the hearing, that is, that he could move  
15 in the coming weeks and would do so. Defendants dispute that any representative has granted  
16 Tassej two weeks to do so, *see* ECF 10, and so, the Court issues this Order to safeguard Tassej’s  
17 constitutional rights and to allow him that limited time.

18 **IV. CONCLUSION**

19 For the reasons set forth above, the Court **GRANTS** Plaintiff’s Application for Temporary  
20 Restraining Order and **ORDERS** as follows:

21 **TEMPORARY RESTRAINING ORDER**

22 This TRO applies to the named defendants; their officers, agents, servants, employees, and  
23 attorneys; and persons who are in active concert or participation with the foregoing individuals  
24 and entities. These individuals and entities are hereby **RESTRAINED** from proceeding with  
25 planned removal of persons, personal possessions, and structures from Plaintiff’s camp.

26 **APPLICATION TO PROCEED IN FORMA PAUPERIS**

- 27 1. The Court **GRANTS** Plaintiff’s application to proceed forma pauperis. ECF 3.  
28 2. The Clerk is **ORDERED** to issue Summons.

