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3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA

5
6 SMILEY JAMES HARRIS, et al.,
7 Plaintiffs,
8 v.
9 CITY OF CLEARLAKE, et al.,
10 Defendants.

Case No.17-cv-05126-YGR

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION**

Re: Dkt. No. 2

11 Now before the Court is *pro se* plaintiff Smiley James Harris' and plaintiff Church of the
12 Greater Faith & Redemption d.b.a. Harris Enterprises, LLC.'s motion for a preliminary injunction
13 to prevent the City of Clearlake from "unlawfully restricting the religious activities of the Church
14 of the Greater Faith and Redemption."¹ (Dkt. No. 2.) Although the motion does not specify
15 precisely the conduct to be enjoined, it appears from the Complaint, (Dkt. No. 1, Complaint), and
16 motion for preliminary injunction that plaintiff seeks to prevent defendants from obtaining a
17 warrant to eradicate several marijuana plants growing on the property of non-party Dwayne
18 Yiggins, Jr. (the "Property"). Having carefully considered the pleadings, the papers submitted on
19 this motion, and for the reasons set forth below, the Court **DENIES** the motion.²

20 **I. BACKGROUND**

21 Plaintiff Smiley Harris is the founder, administrator, and senior right reverend for the
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24 ¹ As organizations cannot be represented by non-lawyers, *In re America West Airlines*, 40
F.3d 1058, 1059 (9th Cir. 1994) (*per curiam*), the Court considers this petition only on behalf of
Mr. Smiley himself. See Section II.A herein.

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26 ² Defendants filed a request for judicial notice of City of Clearlake Ordinance No. 197-
27 2017 and the summons documents served on the City of Clearlake in this case. (Dkt. No. 7.) In
28 light of the non-opposition to either, the Court **GRANTS** the request but does not accept the truth of
any matters asserted in the documents. The Court gives such documents their proper evidentiary
weight.

1 Church of the Greater Faith & Redemption (the “Church”). (Complaint ¶¶ 7-8.) According to the
2 Complaint, the Church is a religious organization which operates under the name Harris
3 Enterprises, LLC. (*Id.* ¶ 6.) Plaintiff avers that the Church “cultivate[s] cannabis for sacrament.”
4 (*Id.* ¶ 14).

5 In March 2017, “Plaintiff entered into a contract with Dwayne L. Yiggins, Jr. so that the
6 Church could make use of Mr. Yiggins’ land for Church activities, which apparently include the
7 cultivation of cannabis. (*Id.* ¶ 23.) On July 18, 2017, Yiggins became aware of an administrative
8 citation on the Property for “ordinance violations pertaining to the restrictions placed on the
9 cultivation of Medical marijuana,” namely City Municipal Code subsections 18-9.070(a) (failure
10 to obtain a permit for personal marijuana cultivation), (b) (illegal outdoor cultivation of marijuana
11 in an areas larger than 100 square feet), (d) (lack of enclosed cultivation site), and (g) (cultivation
12 of more than six living marijuana plants). (*Id.* ¶ 25.) Harris alleges that he attempted to contact
13 defendants City Manager Greg Folsom and Code Enforcement Officer Steve Felder via telephone
14 that same day, but was informed that both were unavailable. (*Id.* ¶ 26.) The following day, Felder
15 allegedly returned the call and stated that “he intended to seek a warrant to suspend the Church’s
16 activities [*destroy its plants*] if the Church did not comply with the “*Administrative Citation,*
17 *Illegal Cultivation of Marijuana*” notice.” (*Id.* ¶ 28 (emphasis and brackets in original).) In
18 response, this lawsuit ensued on September 1, 2017.

19 **II. DISCUSSION**

20 **A. Church of the Greater Faith & Redemption**

21 Pursuant to 28 U.S.C. 1654, “parties may plead and conduct their own cases personally.”
22 However, “[c]orporations and other unincorporated associations must appear in court through an
23 attorney.” *In re America West Airlines*, 40 F.3d at 1059; *Church of the New Testament v United*
24 *States*, 783 F. 2d 771, 773 (9th Cir. 1986) (finding that plaintiff Church was an “unincorporated
25 association which must appear though an attorney”); *Lattanzio v. COMTA*, 481F.3d137, 139-40
26 (2d Cir. 2007) (applying rule to Limited Liability Corporations). Similarly, Civil Local Rule 3-
27 9(b) provides that a “corporation, unincorporated association, partnership, or other such entity may
28 appear only through a member of the bar of this court.”

1 Here, the Church of The Greater Faith & Redemption is a trade name for Harris
2 Enterprises LLC, a Limited Liability Corporation. Smiley Harris, who is not a licensed attorney
3 and acting *pro se*, purports to represent the Church in this matter. This is improper under Ninth
4 Circuit case law and the local rules of this district. For this reason, the motion is **DENIED** as to the
5 Church.

6 **B. Claims of Smiley Harris**

7 A preliminary injunction is an extraordinary remedy, which should be granted only in
8 limited circumstances and where the merits of the case plainly favor one party over the other.
9 *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The Court assess four factors when
10 considering motions for a preliminary injunction, namely whether: (1) the moving party has
11 demonstrated that it is likely to succeed on the merits; (2) the moving party will suffer irreparable
12 injury if the relief is denied; (3) the balance of the hardships favor the moving party; and (4) the
13 public interest favors granting relief. *See Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124
14 (9th Cir. 2014) (citing *Winter*, 555 U.S. at 20). The plaintiff must make a threshold showing of
15 likelihood of success on the merits and irreparable harm, but a stronger showing on one element
16 may offset a weaker showing on another. *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127,
17 1131–33 (9th Cir. 2011). The Court addresses each.

18 **1. Likelihood of Success on the Merits**

19 The burden of showing a likelihood of success on the merits is “placed on the party
20 seeking to demonstrate entitlement to the extraordinary remedy of a preliminary injunction at an
21 early stage of the litigation, before the defendant has had the opportunity to undertake extensive
22 discovery or develop its defenses.” *Perfect 10, Inc. v. Amazon.com, Inc.*, 487 F.3d 701, 714
23 *opinion amended on reh’g*, 508 F.3d 1146 (9th Cir. 2007). The Court finds that Harris has not
24 satisfied this burden.

25 Harris alleges four causes of action for religious discrimination against the City of
26 Clearlake, Greg Folsom, Steve Felder, and an unspecified number of DOE defendants.
27 (Complaint ¶¶ 33-44.) “The Free Exercise Clause of the First Amendment, which has been made
28 applicable to the States by incorporation into the Fourteenth Amendment, provides that ‘Congress

1 shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof
2” *Employment Div., Dep't of Human Res. of Oregon v. Smith*, 494 U.S. 872, 876–77 (1990)
3 (quoting U.S. Const., Amdt. 1). Under the Free Exercise Clause, the “government may not
4 compel affirmation of religious belief, punish the expression of religious doctrines it believes to be
5 false, impose special disabilities on the basis of religious views or religious status, or lend its
6 power to one or the other side in controversies over religious authority or dogma.” *Id.* (Internal
7 citations omitted). However, the Supreme Court has “consistently held that the right of free
8 exercise does not relieve an individual of the obligation to comply with a ‘valid and neutral law of
9 general applicability.’” *Id.* at 879 (quoting *United States v. Lee*, 455 U.S. 252, 263, n.3; *see also*
10 *Minersville School Dist. Bd. of Ed. v. Gobitis*, 310 U.S. 586, 595 (collecting cases)). The only
11 “decisions in which [the Supreme Court has] held that the First Amendment bars application of a
12 neutral, generally applicable law to religiously motivated action have involved not the Free
13 Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional
14 protections, such as freedom of speech and of the press.” *Id.* at 880. (Internal citations omitted).

15 Here, Harris avers that his free exercise of religion is being violated by (i) defendants’
16 serving of an administrative citation for “ordinance violations pertaining to the restrictions placed
17 on the cultivation of Medical marijuana,” and (ii) Felder’s representation that he intends to seek a
18 warrant to suspend certain Church activities if the Church did not comply with Section 18-9.070.
19 (*Id.* ¶¶ 25, 28.) However, the Complaint fails to indicate *how* defendants’ conduct “unduly
20 burdens the free exercise of religion.” *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). Put
21 differently, Harris fails to allege how defendants’ conduct infringes on his right to use marijuana
22 in religious sacrament. For example, he does not allege that the challenged conduct prevents him
23 from using marijuana in sacrament, or that Harris has been prohibited from cultivating marijuana
24 for such use in a manner that satisfies the requirements of Section 18-9.070.

25 Further, defendants’ conduct arises from plaintiff’s failure to comply with Section 18-
26 9.070 which is a “neutral law of general applicability” that sets various permitting, enclosure and
27 spatial restrictions on the cultivation of marijuana. *See Smith*, 494 U.S. at 879. As discussed
28 above, “the right of free exercise does not relieve [Harris] of the obligation to comply with” such a

1 statute. *Id.* Therefore, the Court finds that plaintiff has not shown a likelihood of success on the
2 merits.

3 **2. Likelihood of Irreparable Injury**

4 To obtain a preliminary injunction, Harris must “demonstrate a likelihood of irreparable
5 injury,” more than a mere possibility. *Winter*, 555 U.S. at 21. To establish a likelihood of
6 irreparable harm, conclusory or speculative allegations are not sufficient. *Herb Reed*, 736 F.3d at
7 1250 (holding that pronouncements “grounded in platitudes rather than evidence” are insufficient);
8 *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (holding that
9 “[s]peculative injury does not constitute irreparable injury sufficient to warrant granting a
10 preliminary injunction” and adding that a “plaintiff must *demonstrate* immediate threatened injury
11 as a prerequisite to preliminary injunctive relief” (emphasis in original)).

12 Here, Harris has not demonstrated that absent an injunction he will suffer irreparable
13 injury. As an initial matter, most of the harm alleged in the Complaint appears to pertain to the
14 Church which is not properly represented in this matter, rather than to Smiley Harris. (*See e.g.*,
15 Complaint ¶ 28 (“Felder stated that he intended to seek a warrant to suspend the Church’s
16 activities”) Additionally, as discussed above, Harris has not shown that defendants’
17 enforcement of Section 18-9.070 will prevent Harris from using marijuana in sacrament. For
18 example, the ordinance permits Harris to cultivate six living marijuana plants subject to
19 permitting, enclosure and spatial restrictions. Harris has not shown that six plants are insufficient
20 to meet his personal religious needs, or that he cannot obtain marijuana plants to satisfy his
21 religious needs through other means. Therefore, plaintiff has not shown a likelihood of irreparable
22 harm.

23 Given that plaintiff cannot satisfy even two of the four prongs required for relief, the Court
24 need not address the remaining two. Accordingly, the motion for a preliminary injunction is
25 **DENIED.**

26 **III. CONCLUSION**

27 As discussed above, the Court **DENIES** the motion on the grounds that (i) the Church is not
28 properly represented, and Harris has not shown a likelihood of (ii) success on the merits or (iii)

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irreparable injury.

This terminates Dkt. No. 2.

IT IS SO ORDERED.

Dated: October 10, 2017


YVONNE GONZALEZ ROGERS
United States District Judge