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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

PETERS' BAKERY,

Defendant.

Case No. [13-cv-04507-BLF](#)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

[Re: ECF 132, 136]

On July 2, 2015, Plaintiff Equal Employment Opportunity Commission ("EEOC") filed an ex parte application for temporary restraining order ("TRO") and order to show cause re preliminary injunction, seeking to enjoin Defendant Peters' Bakery from terminating, disciplining, threatening, or harassing charging party Marcela Ramirez. On the same date, the Court issued an order granting the TRO in part and enjoining Defendant from terminating Ms. Ramirez pending a hearing on the motion for preliminary injunction, which was scheduled for July 17, 2015. The Court has considered the briefing, the oral argument presented at the hearing, and the applicable law. For the reasons discussed below, the preliminary injunction is GRANTED IN PART.

I. BACKGROUND

The EEOC commenced this Title VII action on September 30, 2013, alleging that Defendant had subjected Ms. Ramirez to harassment and discrimination based upon her race/national origin, and had retaliated against her after she engaged in the protected activity of filing a charge with the EEOC. The claims are based upon the acts of Defendant's majority owner, Charles Peters, who allegedly subjected Ms. Ramirez to comments such as, "Mexicans like you would rather lie than tell the truth," and "I never trusted your kind of people." Compl. ¶ 8, ECF 1.

Mr. Peters fired Ms. Ramirez in August 2011. Pet. to Confirm Arbitration Award, ECF 1

1 in Case No. 13-cv-00568-JST. Following a union arbitration concerning the termination, the
2 arbitrator ordered Defendant to reinstate Ms. Ramirez with back pay. *Id.* Exh. B. However, Mr.
3 Peters refused to do so until Ms. Ramirez’s union filed suit to enforce the arbitration award. *Id.* ¶¶
4 7-8; *see also* Compl. ¶ 13. The EEOC claims that Mr. Peters has continued to harass and retaliate
5 against Ms. Ramirez following her reinstatement, prompting the filing of this action. Compl. ¶ 13.

6 On June 30, 2015, Ms. Ramirez was called into Mr. Peters’ office, at which point he told
7 her that she was being fired effective Friday, July 3, 2015. Ramirez Decl. ¶¶ 1-4, ECF 134. When
8 asked for a reason, Mr. Peters stated, “You know why. I don’t have to give you a fucking reason.
9 I don’t like you. You’re done.” *Id.* ¶ 4. Ms. Ramirez then left the office, told the acting
10 supervisor, Sabrena Righetti, what had occurred, and asked Ms. Righetti to accompany her back
11 into the office. *Id.* ¶ 7. Ms. Righetti did so, and asked Mr. Peters why he was firing Ms. Ramirez,
12 to which he responded, “My sanity, before I fucking lose it and kill someone.” *Id.* ¶ 8.

13 Ms. Ramirez called her union representative, Tony Alexander, who arrived at the bakery
14 shortly thereafter. *Id.* ¶ 10. Mr. Alexander spoke to Mr. Peters, who stated that, “I’m firing her
15 for my mental health reasons; for my sanity. I’m gonna lose my fucking sanity. I’m gonna kill
16 someone.” Alexander Decl. ¶ 5, ECF 133. Mr. Peters also said that Ms. Ramirez is a liar, that she
17 had lied about him being Portuguese, that Ms. Ramirez was the reason he was taking medication,
18 and that Ms. Ramirez had cost him a lot of lawyers. *Id.* ¶ 7.

19 Counsel for the EEOC attempted to work the issue out informally with Defendant’s
20 counsel, but when that appeared to be impossible, the EEOC filed an application for TRO and
21 order to show cause re preliminary injunction on July 2, 2015. On the same day, the Court issued
22 an order granting the application for TRO in part and enjoining Defendant from terminating Ms.
23 Ramirez pending a hearing on the motion for preliminary injunction.

24 Defendant filed a brief in opposition to the motion on July 8, 2015. *See* Def.’s Opp., ECF
25 140. Defendant presented a declaration of Mr. Peters wherein Mr. Peters states that Ms. Ramirez
26 “has made it so uncomfortable for [him] at the bakery, that [he is] afraid to go there when she is
27 working.” Peters Decl. ¶ 7, ECF 140-1. Mr. Peters elaborates by stating that “Ms. Ramirez either
28 ignores [him] completely or is openly hostile toward[s him], refuses to engage [him] in

1 conversation, excludes [him] from conversations, and gives [him] the impression that [he is] not
2 welcome in [his] own business” and that such behavior causes him to “suffer immeasurable stress”
3 so that he fears he will suffer another stroke. *Id.* Due to these circumstances, Mr. Peters felt he
4 only had two options: to fire Ms. Ramirez or close the bakery completely. *Id.* Mr. Peters
5 indicated in his declaration that he chose the former option, and “gave notice to Ms. Ramirez that
6 she was being terminated and her last day of employment would be July 3, 2015.” *Id.* at ¶ 8.

7 The EEOC filed a reply brief on July 13, 2015 and submitted evidence regarding the work
8 schedules of both Ms. Ramirez and Mr. Peters. *See* Ramirez Second Decl. ECF 142. Ms.
9 Ramirez works Monday through Saturday from 6:15 a.m. to 2:45 p.m. with either Monday or
10 Tuesday off. *Id.* at ¶ 1. Mr. Peters generally comes into the bakery before Ms. Ramirez’s shift
11 begins and stays until 9:00 a.m. at the latest. *Id.* at ¶ 2.

12 **II. LEGAL STANDARD**

13 A preliminary injunction is a matter of equitable discretion and is “an extraordinary
14 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.”
15 *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). A plaintiff seeking
16 preliminary injunctive relief must establish “[1] that he is likely to succeed on the merits, [2] that
17 he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of
18 equities tips in his favor, and [4] that an injunction is in the public interest.” *Id.* at 20.

19 Alternatively, an injunction could issue where “the likelihood of success is such that serious
20 questions going to the merits were raised and the balance of hardships tips sharply in plaintiff’s
21 favor,” provided that the plaintiff can also demonstrate the other two *Winter* factors. *Alliance for*
22 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011) (citation and internal
23 quotation marks omitted). Under either standard, the plaintiff bears the burden of making a clear
24 showing on these elements and on entitlement to this extraordinary remedy. *Earth Island Inst. v.*
25 *Carlton*, 626 F.3d 462, 469 (9th Cir. 2010).

26 **III. DISCUSSION**

27 The substantive standard for issuing a temporary restraining order is identical to the
28 standard for issuing a preliminary injunction. *See Stuhlberg Int’l Sales Co., Inc. v. John D. Brush*

1 & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001); *Lockheed Missile & Space Co. v. Hughes Aircraft*,
2 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). The Court determined that the EEOC was entitled to
3 injunctive relief under this standard when the Court issued the TRO. However, Defendant had not
4 yet had an opportunity to submit argument or evidence at that time. Accordingly, the Court must
5 consider the relevant factors again in light of the new evidence presented by Defendant in its
6 opposition and by the EEOC in its reply.

7 As an initial matter, the Court addresses Defendant’s argument that the EEOC is seeking a
8 mandatory injunction *reinstating* Ms. Ramirez and thus that the EEOC has a heavier burden than
9 if it were merely seeking to preserve the status quo. Defendant’s argument is not supported by the
10 evidence, which establishes that Ms. Ramirez was notified on June 30, 2015 that she would be
11 terminated as of the end of her shift on July 3, 2015. Mr. Peters made this clear in his declaration,
12 in which he stated that he: “gave notice to Ms. Ramirez that she was being terminated and her last
13 day of employment would be July 3, 2015.” Peters Decl. ¶ 7, ECF 140-1. The TRO enjoining
14 Ms. Ramirez’s termination issued on July 2, 2015, the day before what would have been her last
15 date of employment absent the TRO. Thus the issue is not whether Ms. Ramirez may be
16 reinstated, but whether her employment status should be preserved pending resolution of this
17 litigation.

18 The Court notes that the EEOC would be entitled to relief on this record even if it were
19 requesting reinstatement. In *Garcia v. Lawn*, 805 F.2d 1400, 1405 (9th Cir. 1986), the Ninth
20 Circuit had to decide whether the plaintiff’s application for a preliminary injunction to enjoin his
21 transfer to Detroit was rendered moot by his termination from employment while the application
22 was pending. Deciding that the Court possessed the power to reinstate the plaintiff to his former
23 position, the Ninth Circuit reasoned that “after a defendant has been notified of the pendency of a
24 suit seeking an injunction against him . . . he acts at his peril and subject to the power of the court
25 to restore the status.” *Id.* at 1403 (internal quotation marks and citation omitted). The Ninth
26 Circuit further indicated that “courts of equity have broad discretion in shaping remedies.” *Id.*
27 Therefore, the Court would have broad authority to grant preliminary injunctive relief reinstating
28 Ms. Ramirez, especially considering that reinstatement is a form of relief provided for by Title

1 VII. *See* 42 U.S.C. § 2000e-5(g)(1).

2 Turning to the *Winter* factors, the Court reviews anew the entire record submitted.
3 Considering that evidence, as discussed below, the Court concludes that the equities favor granting
4 the requested preliminary injunction.

5 **A. Threatened Termination**

6 With respect to the first of the *Winter* factors, likelihood of success on the merits, the Court
7 finds here, consistent with the ruling on the TRO, the EEOC has submitted evidence that Mr.
8 Peters previously terminated Ms. Ramirez without cause; refused to comply with an arbitrator's
9 order to reinstate her; used language on June 30, 2015 that gives rise to an inference of improper
10 motive; and gave no legitimate business reason for terminating Ms. Ramirez. After considering
11 Defendant's recent actions, including Mr. Peters' firing of Ms. Ramirez along with his direct
12 reference to the cost of lawyers caused by Ms. Ramirez's litigation against him (showing a
13 renewed retaliatory motive), and the record as a whole, the Court concludes that the EEOC is
14 likely to succeed on its Title VII claims.

15 The Court is further persuaded that the EEOC has satisfied the second *Winter* factor,
16 likelihood of irreparable harm absent injunctive relief. Ms. Ramirez states in her declaration that
17 if she loses her job at the bakery, she and her husband will not have enough money to pay their
18 home mortgage and keep their children in private Catholic school. Ramirez Decl. ¶ 18. Ms.
19 Ramirez and her family also will lose the healthcare benefits that she receives as an employee of
20 the bakery. *Id.* ¶ 19. Ms. Ramirez did not graduate from high school. *Id.* ¶ 20. She has worked at
21 Peters' Bakery for more than fourteen years, has established positive relationships with her
22 coworkers and customers, and is a union member with seniority. *Id.* Such evidence shows that
23 Ms. Ramirez will likely suffer irreparable harm absent injunctive relief. Furthermore, permitting
24 Ms. Ramirez to be terminated under such circumstances may well have a chilling effect on other
25 employees who might wish to file charges with the EEOC, and thus could interfere with the
26 EEOC's mission. *See Garcia*, 805 F.2d at 1405 (holding that the defendant's transfer of the
27 plaintiff from his job post in Los Angeles to Detroit after the plaintiff's efforts to assert his Title
28 VII rights was retaliatory activity, and that such activity can constitute irreparable harm due to its

1 chilling effect on others seeking to vindicate their Title VII rights). Based on this evidence, the
2 Court finds that the charging party, Ms. Ramirez, and the EEOC are likely to suffer irreparable
3 harm absent injunctive relief. Defendant has not submitted any evidence that would persuade the
4 Court to reach a different conclusion.

5 With respect to the third and fourth *Winter* factors, the balance of the equities and whether
6 an injunction is in the public interest, the Court concludes that the equities tip in favor of the
7 EEOC, which is acting in the public's interest by attempting to vindicate rights guaranteed by
8 Title VII. Defendant suggests in its opposition that the equities favor denying injunctive relief
9 because Ms. Ramirez's presence is so stressful to Mr. Peters that her continued employment will
10 impair his mental and physical health. Def.'s Opp. 6-7, ECF 140. The Court is sensitive to Mr.
11 Peters' health issues, as it would be to the health issues of any litigant. However, Mr. Peters is the
12 boss – his hours at the bakery are wholly within his own control. Ms. Ramirez, as an employee of
13 the bakery, has no control over her work hours that may overlap with Mr. Peters'. While altering
14 his hours so as to avoid Ms. Ramirez might inconvenience Mr. Peters, any such inconvenience is
15 far outweighed by the irreparable harm that would be imposed upon Ms. Ramirez if she were
16 fired. Moreover, every litigation imposes stress on its participants. Taken to its logical
17 conclusion, Defendant's argument would mean that any time an employee sues an employer under
18 Title VII, the employer may fire the employee to avoid being stressed by the employee's presence
19 in the workplace. Clearly, such a result would not be in the public interest.

20 At the hearing, Defendant's counsel questioned why Ms. Ramirez wants to keep working
21 at the bakery given the conflict between herself and Mr. Peters. Counsel suggested that the best
22 course for all involved would be to permit Defendant to terminate Ms. Ramirez and that any harm
23 caused by termination would be compensated by money damages in the event that the EEOC
24 prevails on this lawsuit. Counsel's suggestion glosses over the realities of Ms. Ramirez's
25 situation. Ms. Ramirez's declaration makes clear that she needs this job in order to pay her
26 mortgage and keep her kids in school. While Mr. Peters' presence at the bakery may cause Ms.
27 Ramirez stress, few people have the luxury to simply leave a job when there is conflict with the
28 boss. Ms. Ramirez did not graduate from high school. She has worked at Peters' Bakery for more

1 than fourteen years. She is a union member with seniority. The bakery provides her family with
2 healthcare. The Court has no difficulty understanding why Ms. Ramirez wishes to keep her job
3 and why the EEOC has intervened on her behalf to prevent Defendant from terminating her.

4 Finally, the Court must address Defendant’s suggestion that Mr. Peters may close the
5 bakery if he cannot terminate Ms. Ramirez. First, the Court looks with extreme disfavor upon
6 what appears to be an attempt to influence the Court’s decision by means of a threat to put a
7 number of people out of work if the requested relief is granted. Second, the Court advises
8 Defendant and its counsel to review the law on retaliatory actions in violation of Title VII. *See*
9 *Ray v. Henderson*, 217 F.3d 1234, 1237 (9th Cir. 2000) (holding that the defendant’s decision to
10 eliminate employee meetings, eliminate its flexible starting time policy, institute a “lockdown” of
11 the workplace, and cut the plaintiff’s salary constituted a retaliatory adverse action following the
12 plaintiff’s attempt to assert his Title VII rights).

13 **B. Discipline and Harassment**

14 Although the EEOC sought a TRO to enjoin both termination and discipline/harassment,
15 the Court issued a TRO only as to the threatened termination. At the hearing on the motion for
16 preliminary injunction, the EEOC’s counsel reiterated the request for injunctive relief as to
17 discipline and harassment. Having reviewed the record, the Court concludes that the evidence
18 regarding harm to Ms. Ramirez and to the EEOC relates to the effects of termination rather than
19 the effects of discipline or harassment. Moreover, such an injunction would be hopelessly vague
20 to the point of threatening Defendant’s due process rights. Thus, the Court limits injunctive relief
21 to an order precluding Ms. Ramirez’s termination.

22 **IV. ORDER**

23 Plaintiff’s application for preliminary injunction is GRANTED IN PART. Defendant is
24 hereby ENJOINED from terminating Ms. Ramirez’s employment pending resolution of this
25 lawsuit or until further order of the Court.

26
27 Dated: July 22, 2015


BETH LABSON FREEMAN
United States District Judge