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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**

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10 ANIMAL PROTECTION AND RESCUE  
LEAGUE,

11 Plaintiff,

12 v.

13 CITY OF SAN DIEGO; and  
14 CALIFORNIA COASTAL  
COMMISSION,

15 Defendants.  
16

Case No.: 16cv1077-MMA (AGS)

**ORDER DENYING MOTION FOR  
TEMPORARY RESTRAINING  
ORDER;**

[Doc. No. 15]

**AND DENYING REQUEST FOR  
JUDICIAL NOTICE**

[Doc. No. 16]

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18 On December 14, 2016, Plaintiff Animal Protection and Rescue League  
19 (“Plaintiff”) filed a motion for a temporary restraining order (“TRO”) requesting the  
20 Court order Defendant City of San Diego to close Children’s Pool Beach in La Jolla,  
21 California, on December 15, 2016. Doc. No. 15. Plaintiff also filed a request for judicial  
22 notice in connection with such motion. Doc. No. 16. For the reasons set forth below, the  
23 Court **DENIES** Plaintiff’s motion for a TRO without prejudice, and **DENIES AS**  
24 **MOOT** Plaintiff’s request for judicial notice.

25 **LEGAL STANDARD**

26 A temporary restraining order (“TRO”) may be granted upon a showing “that  
27 immediate and irreparable injury, loss, or damage will result to the movant before the  
28 adverse party can be heard in opposition.” Fed. R. Civ. P. 65(b)(1)(A). The purpose of

1 such an order, as a form of preliminary injunctive relief, is to preserve the status quo and  
2 prevent irreparable harm “just so long as is necessary to hold a hearing, and no longer.”  
3 *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 439 (1974). A  
4 request for a TRO is evaluated by the same factors that generally apply to a preliminary  
5 injunction. *See Stuhlberg Int’l. Sales Co. v. John D. Brushy & Co.*, 240 F.3d 832, 839  
6 n.7 (9th Cir. 2001). However, a TRO is an “extraordinary remedy” and is “never granted  
7 as of right,” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Instead, the  
8 moving party bears the burden of demonstrating that “he is likely to succeed on the  
9 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
10 the balance of equities tips in his favor, and that an injunction is in the public interest.”  
11 *Id.* at 20. Although a plaintiff must satisfy all four of the requirements set forth in  
12 *Winter*, this Circuit employs a sliding scale whereby “the elements of the preliminary  
13 injunction test are balanced, so that a stronger showing of one element may offset a  
14 weaker showing of another.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127,  
15 1131 (9th Cir. 2011). Accordingly, if the moving party can demonstrate the requisite  
16 likelihood of irreparable harm and show that an injunction is in the public interest, a  
17 preliminary injunction may issue so long as there are serious questions going to the  
18 merits and the balance of hardships tips sharply in the moving party’s favor. *Id.*

### 19 DISCUSSION

20 Plaintiff claims that Defendant City of San Diego will not close the rookery<sup>1</sup> at  
21 Children’s Pool Beach on December 15, 2016, the first day of pupping season, in conflict  
22 with a local ordinance requiring the City of San Diego to do so. *See* Doc. No. 15 at 2.  
23 Pupping season spans annually from December 15 through May 15. *See id.* In May  
24 2016, a Superior Court Judge issued a ruling prohibiting closure of the rookery on  
25 December 15, 2016. Doc. No. 15-1 at 3. Therefore, Plaintiff requests the Court “issue a  
26 temporary restraining order to require the City [of San Diego] to follow its own ordinance  
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28 <sup>1</sup> A rookery is a beach where marine mammals give birth and nurse their young.

1 rather than a state court order that directly conflicts with federal law, until this matter can  
2 be heard on notice.” *Id.*

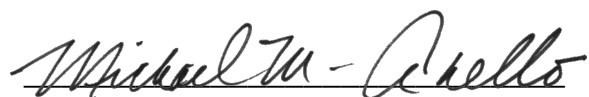
3 Based on a thorough reading of Plaintiff’s motion, Plaintiff has not shown a  
4 likelihood of success on the merits of its claim or raised serious questions going to the  
5 merits. An injunction is a remedy, not a cause of action itself. Thus, injunctive relief is  
6 only available upon a finding of liability, or in the case of temporary injunctive relief, a  
7 showing of a likelihood of success on a claim. *See* 19 Fed. Proc., L. Ed. § 47:1; *Wells*  
8 *Fargo Bank, N.A. v. Barber*, 85 F. Supp. 3d 1308, 1313 (M.D. Fla. 2015). Moreover, to  
9 the extent Plaintiff is asking the Court to issue an order requiring Defendant City of San  
10 Diego to close Children’s Pool Beach, Plaintiff’s request is premature. It is possible that  
11 Defendant City of San Diego will close the rookery in accordance with the ordinance in a  
12 timely manner.

13 **CONCLUSION**

14 The pending motion for a TRO does not establish that Plaintiff is entitled to  
15 injunctive relief. For the reasons set forth above, the Court **DENIES** Plaintiff’s motion  
16 for a TRO without prejudice. If Plaintiff were to reapply for a TRO, the Court requests  
17 Plaintiff demonstrate that serious questions going to the merits are raised and the balance  
18 of hardships tips sharply in favor of the moving party, as outlined above. Additionally,  
19 the Court requests Plaintiff submit a proposed order granting the motion for a TRO in  
20 compliance with Federal Rule of Civil Procedure 65(d). Accordingly, the Court  
21 **DENIES AS MOOT** Plaintiff’s request for judicial notice.

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23 **IT IS SO ORDERED.**

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25 Dated: December 15, 2016

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27 HON. MICHAEL M. ANELLO  
28 United States District Judge