

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED PRESCRIPTION SERVICES, INC.,

Plaintiff,

v.

CASE NO: 8:06-cv-1706-T-23TGW

ALBERTO R. GONZALES, et al.,

Defendants.

ORDER

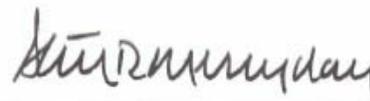
United Prescription Services, Inc. (UPSI) moves (Doc. 2) for a temporary restraining order and alleges that, absent temporary relief, UPSI will incur irreparable injury without either meaningful procedural protection or the possibility of effective redress. In particular, UPSI alleges four components of prospective injury, including the disruption of medical services to the public.

To establish entitlement to the requested relief, the plaintiffs must show (1) a substantial likelihood of success on the merits; (2) an irreparable injury to the plaintiffs in the absence of the injunction; (3) a threatened injury to the plaintiffs that exceeds any injury to the defendant caused by the injunction; and (4) the absence of a material adverse consequence to the public. Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 320 F.3d 1205, 1210 (11th Cir. 2003). The irreparable harm UPSI identifies is material, intrusive, and highly plausible. UPSI's presentation on the merits, although impossible to assess with confidence, appears to state a claim not unlikely to succeed.

UPSI's prospective injury includes both injury to the plaintiff and to the public. On the other hand, permitting a brief interlude during which UPSI seeks judicial review of the proposed action presents no plausible prospect of injury to the defendants, the public, or the bona fide interests of law enforcement. The irremediable nature of the prospective injury to UPSI balanced against the absence of injury to the defendants during a brief delay commends temporary relief. The seven months between the February, 2006, inspection and the September 13, 2006, correspondence attests graphically to the defendants' belief that a brief delay is available without adverse consequence.

Accordingly, UPSI's motion (Doc. 2) is **GRANTED** and the defendants are **ENJOINED** from enforcing against UPSI the terms of the September 13, 2006, cease and desist order, which injunction becomes effective upon UPSI's posting a good and sufficient bond of \$5,000.00. Construing UPSI's papers as including a motion (Doc. 2) for preliminary injunction, UPSI's preliminary injunction motion is set for hearing before United States Magistrate Judge Thomas G. Wilson, in Courtroom 12A, United States Courthouse, 801 N. Florida Avenue, Tampa, Florida.

ORDERED in Tampa, Florida, on September 15, 2006 at 4:59 P.M..



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE