

1 cHONORABLE RONALD B. LEIGHTON

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 CAROL LORRAINE TUCKER,

CASE NO. C20-5537RBL

10 Plaintiff,

ORDER

v.

11 UNITED STATES POSTAL SERVICE,

12 Defendant.

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14 THIS MATTER is before the Court on pro se Plaintiff Tucker's "Emergency Filing"
15 [Dkt. # 9] which the Court will construe as a Motion for a Temporary Restraining Order.

16 Tucker claims the Ocean Shores Post Office is not handling her mail and packages in the
17 manner she desires and that they agreed to do so differently¹. She asserts a Section 504
18 Rehabilitation Act claim, seeking to force the USPS to deliver large packages to her door. The
19 Court granted her Motion to proceed *in forma pauperis* [Dkt. # 5]. She filed her Complaint [Dkt.
20 # 7] and received a Summons [Dkt. # 8] from the Clerk's office but there is no indication that
21 Tucker has attempted to serve the Defendant USPS, or that it has been served with a copy of the
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23 ¹ Tucker complains about Amazon's delivery locations, but such deliveries which are often made
24 by carriers other than the USPS.

1 summons and complaint under Fed. R. Civ. P. 4. USPS has recently appeared and opposed
2 Tucker's motion.

3 Tucker seeks an Order requiring the Ocean Shores USPS to do following:

4 1. Immediately cease and desist from refusing to deliver mail, or returning mail as
5 Undeliverable, to my post office box whether addressed to my street address or
post office box;

6 2. That all parcels, whether addressed to my street address or post office box be
7 delivered to a parcel locker per 2019 agreement;

8 3. That parcels too large for a parcel locker, whether addressed to my street
address or post office box be delivered to my front door;

9 4. That Ocean Shores Post Office immediately cease and desist from further acts
10 of retaliation against me;

11 5. That since USPS Seattle Regional Office repeatedly refuses to discipline or
12 remove the postmaster, carrier, and box clerks who have perpetrated said acts of
retaliation against me, that this esteemed Court order the United States Postal
Inspection Service immediately investigate and monitor said employees[.]

13 [Dkt. # 9]

14 The purpose of a TRO is “preserving the status quo and preventing irreparable harm just
15 so long as is necessary to hold a hearing [on the preliminary injunction application], and no
16 longer.” *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S.
17 423 (1974); *see also Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1130–31 (9th Cir. 2006).

18 For a court to grant a preliminary injunction, the plaintiff “must establish that he is likely to
19 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
20 relief, that the balance of equities tips in his favor, and that an injunction is in the public
21 interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The last two factors
22 merge if the government is a party. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th
23 Cir. 2014). When considering whether to grant this “extraordinary remedy, . . . courts must
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1 balance the competing claims of injury and consider the effect of granting or withholding the
2 requested relief, paying particular regard to the public consequences.” *Winter*, 555 U.S. at 24.

3 The Ninth Circuit continues to apply one manifestation of the “sliding scale” approach to
4 injunctions in which “a stronger showing of irreparable harm to plaintiff might offset a lesser
5 showing of likelihood of success on the merits.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d
6 1127, 1131 (9th Cir. 2011). “In other words, ‘serious questions going to the merits’ and a
7 hardship balance that tips sharply toward the plaintiff can support issuance of an injunction,
8 assuming the other two elements of the *Winter* test are also met.” *Id.* at 1131-32. However, an
9 injunction cannot issue even when there is a strong likelihood of success on the merits if there is
10 just a mere possibility of irreparable harm. *Id.* at 1131 (explaining the holding in *Winter*, 555
11 U.S. at 22).

12 Tucker has not met any of the prerequisites for a Temporary Restraining Order. While
13 her Section 504 Accommodation claim is plausible, she has not yet established that she is likely
14 to succeed on the merits of that claim. Tucker has supplemented her Motion four times since it
15 was filed. [Dkt. #s 10-13]. These supplements include photographs of a damaged package and
16 testy email exchanges with USPS personnel. In one, the USPS acknowledges her needs and
17 plainly offers to accommodate them in a way that is not as far-reaching as her demands here, but
18 does allow her to timely receive the packages at the place she desires. [Dkt. # 11-1 at 2]. Tucker
19 has not established any likelihood she will prevail on her claims that the USPS is refusing to
20 reasonably accommodate her needs, that she is being retaliated against, or that this Court can or
21 should refer this matter for investigation.

22 Nor can Tucker demonstrate that she is likely to suffer irreparable harm in the absence of
23 injunctive relief. The frequency of the conflicts over delivery locations for parcels of various
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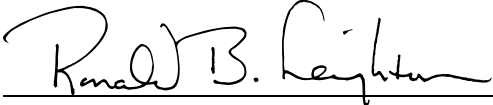
1 sizes and addresses is not clear, but Tucker’s supplement also includes her email telling the
2 USPS that she is going to switch to UPS as a carrier, instead. She can also presumably use one of
3 Amazon’s other carriers for the medical supplies she orders there. Tucker has not established that
4 she will be irreparably harmed if the USPS is not ordered to do things she lists in her motion.

5 Tucker does not address the balance of the equities, but it is not apparent from the record
6 that they tip in her favor. And she has not and cannot establish that an injunction like the one she
7 seeks is in the public interest.

8 Tucker’s Motion for a Temporary Restraining Order is DENIED.

9 IT IS SO ORDERED.

10 Dated this 11th day of August, 2020.

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12 Ronald B. Leighton
13 United States District Judge

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