UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:20-cv-05497-SVW-ADS	Date	6/25/2020
Title	*Miura Corporation, et al v. Muntu Davis*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE	
Paul M. Cruz		N/A
Deputy Clerk		Court Reporter / Recorder
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
N/A		N/A

Proceedings: ORDER DENYING PLAINTIFFS' EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER [5]

I. Introduction

Plaintiffs Miura Corporation d/b/a Sasabune Beverly Hills ("Plaintiff Sasabune") and Nargiza Lutz ("Plaintiff Lutz) filed an *ex parte* Application for a Temporary Restraining Order ("TRO") on June 20, 2020. For the reasons articulated below, Plaintiffs' application is DENIED.

II. Factual and Procedural Background

Plaintiffs filed both this lawsuit and their *ex parte* application for a TRO on Saturday June 20, 2020. Dkt. 1; Dkt. 5. Plaintiffs filed this lawsuit against Defendant Muntu Davis ("Davis" or "the County") in his official capacity, as Health Officer for the County of Los Angeles' Department of Health. Dkt. 1 at 4. Plaintiff Sasabune is a corporation operating a sushi restaurant located in Beverly Hills, and Plaintiff Lutz is an individual residing in Los Angeles County. *Id.* at 4.

Plaintiffs' lawsuit arises from an Order ("the Order" or "the County's Order") issued by Defendant Davis in conjunction with the County of Los Angeles' ("the County") phased reopening plan created in response to the ongoing COVID-19 health crisis. *See* Centers for Disease Control and Prevention, "Cases in the U.S." June 23, 2020 https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html. Plaintiffs allege two causes of action, under the First and Fourth Amendments. *Id.* at 9–11. Plaintiffs argue that the provision in the Order that took effect on June 18, 2020 and

Initials of Preparer : PMC

instructed places of worship, office worksites, restaurants, and other types of businesses and organizations to collect contact information from visitors and participants during the course of their activities constitute an unconstitutional warrantless search regime (in violation of the Fourth Amendment) and infringe upon Plaintiff Lutz' freedom of association (in violation of the First Amendment). *See* Dkt. 1-1 (County's Revised Order).

The relevant portions of the County's Order can be easily summarized. They instruct businesses affected by the Order to collect "contact information," in some cases defined to include names, phone numbers, and email addresses from visitors, participants, and patrons, as are relevant for the type of business or activity in question. *See* Dkt. 1 at 6–7 (collecting relevant language from the Order). Violation or failure to comply with the Order is "a crime punishable by fine, imprisonment, or both." Dkt. 1-1 at 1; *see also* Cal. Health & Safety Code § 120295. The Order also specifically references the County's plans to utilize "contact tracing," which seeks to isolate confirmed cases of COVID-19 and "trace" those individuals who have been in contact with those confirmed cases in order to quarantine them effectively. *Id.* at 8. Both parties agree that the contact information recordkeeping requirements in the Order are directly linked to the County's efforts to conduct effective contact tracing in order to combat further COVID-19 outbreaks, although they disagree on the constitutionality of those efforts. *See* Dkt. 5-1 at 11 ("There is no contact tracing exception to the Fourth Amendment."); Dkt. 16 at 6 ("The record-keeping requirements of the Order will allow the County to conduct effective contact tracing, when necessary.")

Plaintiffs filed their TRO on Saturday June 20, 2020, Dkt. 5, and the County filed an Opposition on June 23, 2020. Dkt. 16.

III. Legal Standard

The purpose of a temporary restraining order is to preserve the status quo and prevent irreparable harm until a hearing may be held on the propriety of a preliminary injunction. *See Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006). The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *Lockheed Missile & Space Co. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); *see Stuhlbarg Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2011).

Initials of Preparer PMC

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) ("*Winter*"). The Ninth Circuit employs the "serious questions" test, which states "'serious questions going to the merits' and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). "A preliminary injunction is an 'extraordinary and drastic remedy.' It should never be awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 690 (2008) (citation omitted). The propriety of a temporary restraining order, in particular, hinges on a significant threat of irreparable injury, *Simula, Inc. Autoliv, Inc.*, 175 F.3d 716, 725 (9th Cir. 1999), that must be imminent in nature. *Caribbean Marine Serv. Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988).

IV. Analysis

a. *Application of Jacobson v. Massachusetts to Plaintiff's claims given the current public health emergency caused by COVID-19.*

In addressing suits filed seeking injunctive relief against local government action in response to the COVID-19 crisis, district courts, appellate courts, and the Supreme Court have found the holding of *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) relevant. *See Prof'l Beauty Fed'n of California v. Newsom*, No. 2:20-CV-04275-RGK-AS, 2020 WL 3056126, at *5 (C.D. Cal. June 8, 2020); *Gish v. Newsom*, No. 2:20-CV-755-JGB-KKX, 2020 WL 1979970, at *4 (C.D. Cal. Apr. 23, 2020); *In re Abbott*, 956 F.3d 696, 704 (5th Cir. 2020); *Elim Romanian Pentecostal Church v. Pritzker*, 2020 WL 3249062, at *5 (7th Cir. June 16, 2020); *S. Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613 (2020) (Roberts, CJ., concurring in denial of application for injunctive relief).

In *Jacobson*, the Supreme Court considered the constitutionality of Massachusetts' compulsory vaccination law, which was enacted during a smallpox epidemic. 197 U.S. at 12–13. The plaintiff in the case, a minister, refused to be vaccinated and was fined $5, and brought a Constitutional challenge to the law. The Supreme Court rejected this argument on appeal, stating that "the court would usurp the

functions of another branch of government if it adjudged, as matter of law, that the mode adopted under the sanction of the state, to protect the people at large was arbitrary, and not justified by the necessities of the case." *Id.* at 28.

The Court then described the scope of judicial authority to review emergency measures such as the vaccination mandate narrowly, explaining that "[i]f there is any such power in the judiciary to review legislative action in respect of a matter affecting the general welfare, it can *only* be when...a statute purporting to have been enacted to protect the public health...*has no real or substantial relation to those objects*, or is, beyond all question, *a plain, palpable invasion of rights secured by the fundamental law*[.]" *Id.* at 31 (emphasis added). Accordingly, this Court concludes that unless (1) the measure has no real or substantial relation to public health, or (2) the measure is "beyond all question, a plain, palpable invasion of rights secured by the fundamental law," the Court should apply an especially strong presumption of constitutionality to the County's Order. *Id.*; *see also Prof'l Beauty Fed'n,* 2020 WL 3056126, at *5 (applying a similar test under *Jacobson*).

The Court finds, given the evidence before it, that the County's Order satisfies both prongs of this requirement. First, the measures Plaintiffs seek an injunction against clearly have a "substantial relation" to the COVID-19 crisis, as Plaintiffs acknowledge in their motion and could not seriously dispute. Additionally, for the reasons stated below in this Court's analysis of the *Winter* factors applicable here, the portions of the County's Order related to gathering contact information and potential disclosure to the County to assist in contact tracing efforts do not constitute "a plain, palpable invasion of rights secured by the fundamental law." *Jacobson*, 197 U.S. at 31. The Court therefore finds that at this juncture, and in light of the current public health crisis related to COVID-19, *Jacobson* requires the Court to apply an especially strong presumption of constitutionality to the County's Order.

b. *Application of the Winter Factors*

A temporary restraining order is "an extraordinary remedy that may only be awarded upon a clear showing the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Under *Winter*, a plaintiff "must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) a preliminary injunction is in the public interest." *Sierra Forest Legacy v. Rey*, 577 F.3d 1015, 1021 (9th Cir. 2009) (applying *Winter*, 555 U.S. at 29).

Initials of Preparer : PMC

1. Likelihood of Success on the Merits

The Ninth Circuit considers the likelihood of success on the merits "the most important *Winter* factor; if a movant fails to meet this threshold inquiry, the court need not consider the other factors." *Disney Enterprises, Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal quotation marks omitted). However, even if likelihood of success is not established, "[a] preliminary injunction may also be appropriate if a movant raises 'serious questions going to the merits' and the 'balance of hardships . . . tips sharply towards' it, as long as the second and third *Winter* factors are satisfied." *Id.* (quoting *Cottrell*, 632 F.3d at 1134–35).

i. First Amendment Claim

Plaintiff Lutz argues the Order will violate her First Amendment rights by forcing her to disclose her patronage of restaurants[1] complying with the County's Order. "[I]n the First Amendment context, the moving party bears the initial burden of making a colorable claim that its First Amendment rights have been infringed . . . at which point the burden shifts to the government to justify the restriction." *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1115–16 (9th Cir. 2011). As presented by Plaintiff Lutz, it is not clear that the contested action, collecting contact information from businesses such as bars and restaurants, implicates the First Amendment at all. "If the government's actions do not implicate speech protected by the First Amendment, we need go no further." *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184, 1194 (9th Cir. 2018) (internal quotation mark omitted). Plaintiff does not and cannot reasonably argue that dining at a restaurant constitutes speech or expressive conduct as contemplated by the First Amendment, and a restriction on "nonspeech, nonexpressive conduct . . . does not implicate the

[1] Plaintiff summarily lists other ways Lutz might "go[] about her business within the County," beyond restaurant patronage, including "traveling to religious and political organizations, to her doctor, her lawyer, and so forth." Dkt. 5 at 13. Although disclosure of associations with political and religious organizations might raise different concerns, Plaintiff provides no detail as to how the Order would apply to these organization, nor does she describe how these businesses would be compelled to disclose her information to the government. Plaintiff presents no evidence or argument of how the disclosure requirement for contract tracing would extend beyond commercial organizations, such as bars, restaurants, and other commercial space. Accordingly, the Court cannot grant the TRO on such a minimalistic showing. *See California Bankers Ass'n v. Shultz*, 416 U.S. 21, 56 (1974) ("in the absence of a concrete fact situation in which competing associational and governmental interests can be weighed, [the Court] is simply not in a position to determine whether an effort to compel disclosure of such records would or would not be barred").

First Amendment" and receives rational basis scrutiny. *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 685 (9th Cir. 2019). However, Lutz also argues that mandating third-party restaurants to collect her "contact information,"[2] which may potentially be disclosed to the County, unconstitutionally burdens her First Amendment Right of Association.

Plaintiff Lutz argues that the disclosure of her business patronage burdens her First Amendment Right of Association because "implicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others in pursuit of a wide variety of political, social, *economic*, educational, religious, and cultural ends." *Roberts v. Jaycees*, 468 U.S. 609, 622 (1984) (emphasis added). However, *Roberts* dealt specifically with the state of Minnesota's attempt to force women to be admitted into a private civic organization that was exclusively male. *Id.* at 621. The Court noted that gender segregation in an otherwise-open-club was impermissible because it perpetuated "barriers to economic advancement and political and social integration that have historically plagued certain disadvantaged groups, including women." *Id.* at 626. In concurrence, Justice O'Connor distinguished expressive political associations from routine commercial activity, noting "there is only minimal constitutional protection of the freedom of commercial association." *Id.* at 634 (O'Connor, J., concurring in part). Justice O'Connor reasoned that "[t]he First Amendment is offended by direct state control of the membership of a private organization engaged exclusively in protected expressive activity, but no First Amendment interest stands in the way of a State's rational regulation of economic transactions by or within a commercial association." *Id.* at 638 (O'Connor, J., concurring in part). Here, Plaintiffs patronage of local businesses, and the accompanying identifying information she may be required to disclose, is purely commercial, and therefore does not raise First Amendment concerns.

Plaintiff's compelled disclosure argument is similarly unavailing. The Supreme Court has "repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 64, 96 (1976). But Plaintiff fails to show that disclosing her contract information to a business will place any burden on her associational rights. Plaintiff relies on *N.A.A.C.P. v. Alabama,* 357 U.S. 449, 460–62 (1958) and *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 546 (1963) to show that disclosure of identifying

[2] The Order does not define "Contact Information" in any precise way. Plaintiff does not raise a vagueness challenge here, but the issue may require clarification at the preliminary injunction stage.

information to the government creates a burden under the First Amendment. In *N.A.A.C.P.* and *Gibson*, the Supreme Court concluded that government investigation of a political advocacy group's membership list required strict scrutiny. However, Plaintiff's patronage at a restaurant is a far cry from the political membership list examined in either *N.A.A.C.P.* or *Gibson*. Similarly inapposite is Plaintiff's reliance on *Americans for Prosperity Foundation v. Becerra*, 919 F. 3d 1177, 1179 (9th Cir. 2019), where the Ninth Circuit held that "[c]ompelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as more direct restrictions on speech." Again, *Americans for Prosperity* related specifically to organizations engaged in clearly protected political activity, not basic commercial transactions. Unlike the case discussed above, the patronage of local businesses does not involve any political activity. Accordingly, Plaintiff Lutz has failed to raise a serious question that her First Amendment rights are burdened by the Order, and she is unlikely to be successful on the merits of her claim.

ii. Fourth Amendment

Both Plaintiffs argue that the Ordinance violates their rights under the Fourth Amendment. Plaintiff Sasabune argues that under *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015), to the extent that the County's Order requires Plaintiff Sasabune to turn over contact information provided by patrons of the restaurant, it is facially invalid under the Fourth Amendment because it does not expressly require precompliance review of such a demand for information from affected businesses and organizations in the County. Dkt. 5 at 11. Plaintiff Lutz argues only that she "has a privacy interest in her data as it is collected across the County." *Id.* at 11.

Plaintiff Lutz' claim is not cognizable under the Fourth Amendment, because she has no reasonable expectation of privacy with regard to information that she may (prospectively) disclose to businesses operating under the County's Order. Her contact information, once provided to any of the entities subject to the County's Order, constitutes business records of those businesses, no longer subject to her privacy interest. *See Patel v. City of Los Angeles*, 738 F.3d 1058, 1062 ("To be sure, the *guests* lack any privacy interest of their own in the hotel's records."); *see also United States v. Cormier*, 220 F.3d 1103, 1108 (9th Cir. 2000) ("a person does not possess a reasonable expectation of privacy in an item in which he has no possessory or ownership interest").

Initials of Preparer PMC

If, as Plaintiff Lutz declares, she "do[es] not desire or consent to the collection of [her] private information," she is under no obligation to do so because the County's Order only requires businesses to seek disclosure of contact information from individuals and places no direct requirements on individuals. *See generally* Dkt. 1-1, Appendix D, F, I, J, N, R, S (instructing various types of businesses to collect contact information to assist in contact tracing). Plaintiff Lutz therefore lacks a continuing Fourth Amendment-protected privacy interest in any contact information that she voluntarily discloses to a business or organization covered by the Order.

With regard to Plaintiff Sasabune[3], the County argues in response that (1) the Order does not expressly mandate maintaining information or compel businesses to turn over such records, and (2) in the event that a business did not voluntarily consent to turn over contact information, the County would seek an administrative warrant in order to gain access to this information. Dkt. 16 at 12–14, 17.[4]

Focusing narrowly on the provision relevant to Plaintiff Sasabune as a restaurant, Appendix I states in relevant part that:

> On-site dining made by reservation or customers notified to call in advance to confirm seating/serving capacity, where possible. Contact information for each party is collected either at time of reservation booking or on site to allow for contact tracing should this be required.

Dkt. 1-1, Appendix I at 4. The Court finds that the language of the County's Order is reasonably susceptible to the interpretation that the County would potentially seek disclosure of these records to

[3] Both parties address the language of the County's Order in its entirety, including sections regarding places of worship, office worksites, entertainment productions, and other types of businesses. Plaintiff Sasabune is a sushi restaurant. *See* Dkt. 5-7 at 2. Because only Appendix I of the County's Order governs restaurants, and there is no indication in the record that Plaintiff Sasabune is subject to any of the other referenced portions of the Order, the Court's Fourth Amendment analysis will solely focus on the provisions contained in Appendix I.

[4] Although the City's Opposition brief directly raises the administrative warrant argument with regard to Plaintiff Sasabune, the body of the Opposition only raises this point with regard to Plaintiff Lutz' First Amendment claims. The Court concludes that this was likely an oversight (because *Patel* is highly relevant to this claim and calls for such precompliance review before an administrative search), and incorporates this argument in its analysis.

Initials of Preparer PMC

assist in contract tracing efforts related to COVID-19 (the County's brief also acknowledges this), and will presume for the following analysis that the County intends to seek disclosure of such contact information when it deems it necessary to assist in contact tracing efforts by public health officials.

Because this disclosure requirement is clearly not related to any criminal investigative purpose, any such government effort pursuant to the Order is properly analyzed under the Fourth Amendment's "administrative search" exception to the warrant requirement for government searches and seizures. *See Patel*, 576 U.S. 409, 420. In *Patel*, the Supreme Court held that Section 41.49(3)(a) of the Los Angeles Municipal Code, which required hotel operators to make hotel guest records available to any officer of the Los Angeles Police Department on demand (and punished failure to do so with fines and imprisonment), was facially invalid because it did not satisfy the administrative search exception to the Fourth Amendment. *Patel*, 576 U.S. at 419–421. In particular, the Supreme Court held that "absent consent, exigent circumstances, or the like, in order for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker." *Id.*

Unlike in *Patel*, the County here specifically argues that "[i]n the unlikely event that a business refused to provide its records to County health officials, they could seek an administrative warrant." Dkt. 16 at 17. The County then cites to Cal. Civ. Proc. Code §§ 1822.50 *et seq.*, which articulates the process for issuing an administrative warrant under California law that would clearly satisfy the "precompliance review before a neutral decisionmaker" requirement articulated by *Patel*. 576 U.S. at 420.

The language of the Order is relatively vague and does not clearly state procedures for seeking disclosure of contact information, in the event that the County attempts to utilize contact tracing in response to a COVID-19 outbreak. Dkt. 1-1, Appendix I at 4. But unlike in *Patel*, where the City of Los Angeles did not even attempt to argue that the disputed municipal code section "affords hotel operators any opportunity" for precompliance review, the County argues here that it will in practice provide for such an opportunity.[5] *Compare Patel*, 576 U.S. at 421 *with* Dkt. 16 at 3, 17.

[5] The Court notes that the County uses the phrases "can seek" and "could seek" in its briefing related to obtaining an administrative warrant before seeking contact information from a business owner who declines to provide it voluntarily. *See* Dkt. 16 at 3, 17. While this language is unclear, the Court (accepting the teaching of *Jacobson*) will presume at this juncture

Although the language of the Order is vague regarding this process, the Court finds a low probability of success on the merits here, given that Plaintiffs are raising a facial challenge to the Order's constitutionality on this basis, which requires the Court to find that the Order be "unconstitutional in all of its applications." *Patel*, 576 U.S. at 418 (citing *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008). The Court cannot find a substantial likelihood of success on the merits based on the arguments Plaintiff Sasabune has made on this claim, because there is no current evidence that the County will unconstitutionally apply the terms of the Order in practice. In connection with the preliminary injunction briefing the Court outlines below, Plaintiffs may present additional evidence that in application, the City's Order will result in unconstitutional administrative searches without precompliance review by a neutral decisionmaker, or that the plain language of the Order cannot be reasonably be interpreted in a constitutional manner.

2. Likelihood of Irreparable Harm

Although the Court cannot conclude that Plaintiffs are likely to be successful on either of their constitutional claims, the Court must still analyze the remaining *Winter* factors to determine if a TRO is appropriate. *See Doe v. Harris*, 772 F.3d 563, 582 (9th Cir. 2014) ("Even where a plaintiff has demonstrated a likelihood of success on the merits of a First Amendment claim, it must also demonstrate that he is likely to suffer irreparable injury in the absence of a preliminary injunction, and that the balance of equities and the public interest tip in his favor.") (internal quotation marks omitted).

In considering a preliminary injunction, the deprivation of First Amendment rights "even for minimal periods of time, unquestionably constitute[s] irreparable injury." *Elrod v. Burns*, 427 U.S. 373 (1976); *see also Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012) (adopting the proposition); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (adopting *Elrod* in the Fourth Amendment context). However, since Plaintiffs have failed to show such a constitutional injury is likely, they may not rest on that presumptive showing of harm. Plaintiffs also allege they may suffer harm in the form of potential loss of business customers and the "charges and fines" that may be imposed by the County. Dkt. 5 at 13. This is a monetary harm compensable by money damages, which is not considered irreparable for the purposes of a TRO. *Inv'rs v. Bank of Am.*, NA, 585 F. App'x 742 (9th Cir. 2014) (describing the difference between irreparable harm and that which can be "adequately remedied

that the County will follow that procedure whenever a business declines to voluntarily disclose contact information.

Initials of Preparer : PMC

through money damages."). The Order also provides that a resident may face criminal penalties, but Plaintiffs have not shown any reasonable possibility of criminal enforcement. Indeed, Plaintiffs only address the potential of criminal penalties in the most cursory of terms, arguing: "[t]he County has made it clear that violations of the Order are punishable by criminal and civil penalties. These sanctions can be very significant as charges and fines can be stacked on a per day and per violation basis." Dkt. 5 at 13. **Plaintiff does not argue that criminal penalties are likely.** The Supreme Court's "frequently reiterated standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury *is likely* in the absence of an injunction." *Winter*, 555 U.S. at 22 (emphasis in original). The mere possibility of criminal penalties, however remote, is insufficient to imply likely irreparable harm. *Id.* Accordingly, Plaintiffs have failed to show any likelihood of irreparable harm.

3. **Balance of the Equities**

In considering a TRO, the "the district court must balance the harms to both sides . . . ." *VidAngel, Inc.*, 869 F.3d at 867. Even if Plaintiffs were to be successful on their constitutional claims, proving likelihood of success alone does not tip the balance of equities. *Gresham v. Picker*, 705 Fed. App'x. 554 (9th Cir. 2017). As discussed above, Plaintiffs have failed to demonstrate that they will suffer any irreparable harm by enforcement of the Order. In contrast, the County has made an ample showing that its efforts to combat COVID-19 could be inhibited by a TRO. *See* Dkt. 16 at 2–6. Examining the evidence presented on this record, the Court finds that the balance of the equities tips sharply in favor of the County.

4. Public Interest

"Finally, the court must 'pay particular regard for the public consequences in employing the extraordinary remedy of injunction.'" *VidAngel.*, 869 F.3d at 867 (citing *Winter*, 555 U.S. at 24). Here, the public interest weighs strongly in favor of the County. Generally, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres*, 695 F.3d at 1002 (internal quotation marks omitted). But Plaintiff has failed to show their constitutional rights are likely to be violated by the Order. Conversely, if the County's efforts are judicially thwarted, the damage to the public could extend far beyond these individual Plaintiffs. The public interest is therefore overwhelming served by denying the TRO.

Initials of Preparer : PMC

c. Balancing the *Winter* factors

Considering all of the *Winter* factors in concert, the Court finds that a TRO is not warranted in this instance. Plaintiffs have failed to show a likelihood of success on their constitutional claims, and the remaining *Winter* factors all weigh in favor of the County. Even if Plaintiffs' constitutional claims were likely to succeed, Plaintiffs have still failed the Ninth Circuit's "serious question" test because they have not shown "that there is a likelihood of irreparable injury and that the injunction is in the public interest." *Cottrell,* 632 F.3d at 1135. Further, the Court must consider that this Order comes in response to the ongoing COVID-19 crisis, as discussed *supra* Part IV.a with regard to *Jacobson*, where the County's "latitude" to address the public health crisis "'must be especially broad.'" *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613 (quoting *Marshall v. United States*, 414 U.S. 417, 427 (1974)). Taking all of these factors into account, the Court concludes Plaintiffs have not met their burden in justifying the "extraordinary relief" of a TRO. *Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009). The application for a TRO is therefore DENIED.

V. Conclusion

The Court DENIES the application for a TRO. The Court sets a briefing schedule for a preliminary injunction hearing in this lawsuit on the following schedule: Plaintiff's motion is due July 13th, Defendant's Opposition brief is due July 23rd, Plaintiff's Reply brief is due July 27th, at which time the Court will take the motion under submission.

Initials of Preparer : PMC