UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

Paul Harris,

Plaintiff,

v.

City of Murrieta,

Defendant.

ED16CV01561VAP (DTBx)

ORDER GRANTING APPLICATION FOR TEMPORARY RESTRAINING ORDER AND SETTING HEARING RE: PRELIMINARY INJUNCTION

On July 18, 2016, Plaintiff Paul Harris ("Plaintiff") filed his Ex Parte Application for Temporary Restraining Order ("TRO") and Order to Show Cause Regarding Preliminary Injunction ("Application"). (Doc. 10-1.) Defendant City of Murrieta ("Defendant") opposed the Application on July 20, 2016 (Doc. 14), and Plaintiff replied on July 21, 2016 (Doc. 15).

After consideration of the papers filed in support of, and in opposition, to the Application, the Court GRANTS the Application and ORDERS Defendant to show cause why issuance of a preliminary injunction is not appropriate in this case. A hearing regarding the preliminary injunction is set for August 15, 2016, at 9 a.m.[1] Any additional briefing by the Defendant is to be filed not later than August 1, 2016, and any responsive briefing by Plaintiff is to be filed no later than August 8, 2016.

[1] Under Federal Rule of Civil Procedure 65(b)(2), a temporary restraining order issued "without notice" shall be effective no longer than 14 days, and in other cases, no longer than 28 days. Fed. R. Civ. P. 65(b)(2). As Plaintiff gave Defendant notice of the Application and Defendant opposed the Application, the 14-day limit for orders issued without notice does not apply here. See id. As the Court sets its hearing within 28 days of issuing this Order, the Court is in compliance with the requirements of Rule 65(b)(2). See id.

I. BACKGROUND

A. Allegations in the Complaint

Plaintiff is required to register as a sex offender pursuant to Section 290 of the California Penal Code due to a 2013 criminal conviction involving a child and is currently serving a term of parole supervised by the California Department of Corrections and Rehabilitation ("CDCR"). (See Complaint (Doc. 1) ¶¶ 4, 24.)

In 2016, Plaintiff suffered a severe blood infection and was hospitalized in an intensive care unit for approximately 40 days while living in Nevada. (Id. ¶ 25.) Due to his poor health, Plaintiff cannot work and requires live-in medical assistance. (Id.) Plaintiff's sister, who resides in Murrieta, California, agreed to provide him with financial and medical support. (Id.) Plaintiff requested the CDCR approve his relocation from Nevada to Murrieta, California, and the CDCR granted his request. (Id.) In reliance on this approval, Plaintiff spent all his available funds to relocate to Murrieta. (Id.)

On July 8, 2016, Plaintiff visited the Murrieta Police Department and attempted to register as a sex offender pursuant to California Penal Code Section 290. (Id. ¶ 26.) Defendant informed him he could not reside with his sister because her residence was within 2,000 feet of a high school, in violation of the Murrieta Sex Offender Residency Ordinance ("Murrieta Residency Restrictions" or "Restrictions").[2] (Id.) Defendant further informed him he should vacate his sister's residence immediately and that Defendant would enforce the Restrictions against him on or before July 22, 2016. (Id.)

Plaintiff brings suit challenging the constitutionality of the Restrictions. Among other things, the Restrictions provide that "[n]o sex offender shall reside within two thousand (2,000) feet of the nearest property line of any prohibited location." Ordinance § 9.25.040. A "sex offender" under the statute is "any person for whom registration is required pursuant to Section 290 of the California Penal Code and for whom registration is required as a result of a conviction involving a

[2] The Restrictions are codified in Title 9, Chapter 9.25 of the Murrieta Municipal Code. (Complaint ¶ 8.)

child, regardless of whether that person is on parole or probation." Id. § 9.25.030. A "prohibited location" includes a "child day care center, park, or school and any location where residency is prohibited by California Penal Code section 3003.5." Id.

Plaintiff claims the Restrictions are unconstitutional under (1) the Due Process and Equal Protection Clauses of the Fourteenth Amendment (Complaint ¶¶ 42-44); (2) the Ex Post Facto Clause (Id. ¶¶ 45-50); and (3) the Void-for-Vagueness Doctrine under the Due Process Clause of the Fourteenth Amendment (Id. ¶¶ 51-52). Plaintiff seeks a declaration of his rights vis-à-vis the Restrictions. (Id. ¶¶ 53-55.)

B. Procedural History

Plaintiff filed his Complaint on July 17, 2016. (Doc. 1.) On July 18, 2016, Plaintiff applied to this Court for a temporary restraining order against Defendant's enforcement of the Restrictions. (Doc. 10.)

II. 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 TRO is identical to the standard for issuing a preliminary injunction. Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). "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 the 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). In this Circuit, a plaintiff may obtain a preliminary injunction upon a lesser showing of the merits if the balance of hardships tips "sharply" in his favor, and he has satisfied the other two Winter requirements. See Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011); Leigh v. Salazar, No. 3:10-CV-0417-LRH-VPC, 2010 WL 3199945, at *2 (D. Nev. Aug. 12, 2010). "A preliminary injunction is an extraordinary and drastic remedy . . . ; it is never awarded as of right." Munaf v. Green, 553 U.S. 674, 689-90 (2007) (citations omitted).

III. DISCUSSION

At the outset, the Court must determine on which of his claims Plaintiff seeks a temporary restraining order. Plaintiff's primary claim is that the Restrictions are "substantively indistinguishable" from those the California Supreme Court found unconstitutional under the Fourteenth Amendment in In re Taylor, 60 Cal. 4th 1019 (2015). (See Application at 14.) The Taylor court considered the constitutionality of California Penal Code Section 3003.5(b), which makes it "'unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2[,]000 feet of any public or private school, or park where children regularly gather.'" Taylor, 60 Cal. 4th at 1023 (quoting Cal. Penal Code § 3003.5(b)). The court held the CDCR's "blanket enforcement" of Section 3003.5(b) -- as-applied to sex offenders on parole in San Diego County -- violated their "right to be free of official action that is unreasonable, arbitrary, and oppressive" under the Due Process Clause of the Fourteenth Amendment. Id. at 1038, 1042 (citations omitted) (internal quotation marks omitted). As Plaintiff bases his Application largely on Taylor, the Court also limits its TRO analysis to Plaintiff's as-applied challenges to the Restrictions under the Fourteenth Amendment (See Complaint ¶¶ 42-44).

Plaintiff claims he has met each of the four Winter requirements, such that the Court should issue a TRO against Defendant's enforcement of the Restrictions. (See generally Application.) The Court addresses each requirement, in turn, below.

A. Likelihood of Success on the Merits

In finding Section 3003.5(b) unconstitutional, the Taylor court found significant the following: (1) the statute "effectively barred [sex offender parolees] from access to approximately 97 percent of the existing rental property that would otherwise be available to them" in San Diego County; (2) "blanket enforcement of section 3003.5(b) in San Diego County ha[d] led to greatly increased homelessness among registered sex offenders on parole in the county;" and (3) the increased homelessness, in turn, "hampered the surveillance and supervision of such parolees, thereby thwarting the legitimate governmental objective behind the registration statute (§ 290) to which the residency restrictions attach[ed]; that of protecting the public from sex offenders." 60 Cal. 4th at 1039-42. On these bases, the court found

the CDCR's enforcement of section 3003.5(b) could not even survive rational basis review. See id. at 1038.

Here, Plaintiff submitted a map of Murrieta that Defendant produced in discovery purporting to illustrate the effect of the Restrictions on housing available in the City. (Restricted Areas Map (Doc. 10-3).) Sex offenders under the Restrictions are not permitted to reside in most of the City, according to the Map. (See id.) In the areas that would be available to Plaintiff, much is zoned off for commercial use, or consists of housing Plaintiff could not afford. (See Application at 10; Compare Restricted Areas Map with Murrieta Zoning Map (Doc. 10-3).) Defendant submitted 20 profiles of multi-family residential properties, currently advertised as available for rent in Murrieta. (See Doc. 10-5.) As Plaintiff notes, however, only one of those properties falls outside of the restricted areas. (See Application at 10-11.)

Plaintiff also cited to a report published by the California Sex Offender Management Board ("CSOMB") in September 2011. CSOMB, Homelessness Among California's Registered Sex Offenders ("CSOMB Report") (Sept. 2011), http://www.casomb.org/docs/Residence_Paper_Final.pdf. As "[r]esidence restrictions lead to homelessness," and "criminal recidivism [is associated] with an unstable lifestyle that includes housing instability . . . along with accompanied unemployment," the CSOMB concluded "residence restrictions are likely to have the unintended effect of increasing the likelihood of sexual re-offense." Id. at 14, 20, 26. Although Plaintiff has not submitted evidence demonstrating the Restrictions have led to an increase in homelessness among registered sex offenders in Murrieta, he claims they will render him homeless and destitute if the Court does not grant his Application. (See Declaration of Paul Harris ("Harris Declaration") (Doc. 10-7) ¶ 10.)

As in Taylor, Plaintiff (1) submitted evidence the Restrictions prohibit him from residing in most of Murrieta; (2) showed he was subject to a "blanket enforcement" of the Restrictions "without consideration of [his] individual case;" and (3) relied on a report which concluded residency restrictions may contribute to recidivism. See 60 Cal. 4th at 1035, 1039-42. Although he has not produced as much evidence as the plaintiffs did in Taylor to support a finding the Restrictions are

irrational, his allegations and the study he cites have raised "serious questions going to the merits" of his Due Process claims under the Fourteenth Amendment. See Alliance, 632 F.3d at 1135. Hence, the Court may grant his Application if he establishes the equities tip "sharply" in his favor and fulfills the other two Winter requirements. See id.

Defendant contends Plaintiff's reliance on Taylor is misplaced because (1) the holding there was limited to the facts concerning San Diego County (Opp'n at 11), and (2) the Restrictions are distinguishable from Section 3003.5(b) because they are "narrowly tailor[ed]" to "sex offenders whose victim was a child or a juvenile" (Id. at 4). Defendant fails entirely to counter the evidence Plaintiff submitted that is specific to Murrieta -- it does not, for example, deny the Restrictions prohibit Plaintiff from living in most areas in Murrieta. It also fails to address where Plaintiff might find compliant housing in the City. With respect to its second contention, Defendant misunderstands the nature of the Taylor decision. The Taylor court was more concerned with *how* the CDCR applied Section 3003.5(b) to the parolees than with *what* the restrictions prohibited. See 60 Cal. 4th at 1042 (prohibiting "blanket enforcement" of Section 3003.5(b) against registered sex offenders). As Plaintiff also challenges Defendant's "blanket enforcement" of the Restrictions, Taylor applies here and raises serious questions as to the merits of Plaintiff's Fourteenth Amendment claims.

B. Irreparable Injury

A temporary restraining order may not issue "merely because it is possible that there will be an irreparable injury to the plaintiff; it must be likely that there will be." See American Trucking Ass'ns, Inc. v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (citations omitted). "The Ninth Circuit has held that 'an alleged constitutional infringement will often alone constitute irreparable harm.'" Lavan v. City of Los Angeles, No. CV 11-2874 PSG (AJWx), 2011 WL 1533070, at *5 (C.D. Cal. Apr. 22, 2011) (quoting Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity, 950 F.2d 1401, 1412 (9th Cir. 1991)).

Here, Plaintiff has shown a likelihood of proving a past constitutional violation, and there is a potential this violation will continue, as Defendant has informed Plaintiff that his "failure to [relocate] *will result* in administrative penalties

and *will progress* to misdemeanor prosecution." (Notice of Violation (Doc. 10-11) at 1 (emphasis added).) What is more, Plaintiff states he has "no alternative place to stay and insufficient means of support" if he is "forced to move from [his] sister's house." (Harris Declaration ¶ 10.) As he "cannot afford to house or care for himself" (Id.), enforcement of the Restrictions against him would likely result in his homelessness, and hence, irreparable injury. See Mitchell v. U.S. Dep't of Hous. and Urban Dev., 569 F. Supp. 701, 705 (N.D. Cal. 1983) (finding irreparable harm where forcing the plaintiff to move could result in her homelessness).

Defendant claims Plaintiff has not suffered irreparable injury because "[it] has not cited [Plaintiff], . . . has not issued any fines against [Plaintiff], and . . . has not taken any steps to remove him from his sister's home." (Opp'n at 11.) Defendant also contends Plaintiff will "at worst . . . be issued a citation for a monetary fine which he can appeal" if he remains in his sister's house in violation of the Restrictions. (Opp'n at 2; Declaration of Danny Martin ("Martin Declaration) (Doc. 14-2) ¶ 5.) The Notice of Violation Defendant provided Plaintiff and Defendant's Memorandum regarding the Restrictions (Doc. 14-3) suggest otherwise. The Notice states Plaintiff will incur "incremental penalties for non-compliance[] [--] $100, $200, and $500, per violation(s) of the same type for every day the violation is not cured" and that "failure to [relocate to another residence] . . . *will progress* to misdemeanor prosecution." (Notice of Violation at 1 (emphasis added).) Defendant's Memorandum further states the "City Attorney [may] initiate a court injunction ordering [the offender] to relocate" and may also subject the offender to "criminal prosecution." (Doc. 14-3 at 6.) Finally, as Defendant served Plaintiff with the Notice and is, in fact, requiring him to leave his sister's house, Plaintiff will suffer "immediate and irreparable injury" from Defendant's enforcement of the Restrictions, pursuant to Federal Rule of Civil Procedure 65(b)(1)(A).

Accordingly, Plaintiff has met his burden as to this requirement.

C. Balance of the Equities

"A [c]ourt considering an application for a TRO must identify the harm that a TRO might cause a defendant and weigh it against the injury to a plaintiff." Lavan, 2011 WL 1533070, at *5; see also Los Angeles Memorial Coliseum Comm'n v. Nat'l

Football League, 634 F.2d 1197, 1203 (9th Cir. 1980) (citations omitted) (internal quotation marks omitted). As stated above, Plaintiff alleges he will have "no alternative place to stay and insufficient means of support" if he is forced to move from his sister's residence. (Harris Declaration ¶ 10.) He claims he will "be destitute and unable to obtain the medical care [he] require[s]," if he cannot live with his sister. (See id.) Defendant contends it has a strong interest in "protect[ing] the children in [Murrieta]" from Plaintiff (Opp'n at 13), whom the CDCR has categorized as a "high risk sex offender" (Martin Declaration ¶ 3).[3] As stated above, however, the CSOMB has concluded that residency restrictions such as those at issue in this case "are likely to have the unintended effect of increasing the likelihood of sexual re-offense" due to the "destabilizing effect residence restrictions have on offenders." CSOMB Report at 26. In this sense, allowing Plaintiff to remain in his sister's house may actually further Defendant's legitimate interest in protecting children. Furthermore, Defendant fails entirely to address the CSOMB Report Plaintiff cited in his Application and whether the findings there were unfounded. (See Opp'n at 12-13.) As it appears only Plaintiff will suffer irreparable harm in the form of homelessness if the Court does not issue the TRO, the Court finds the balance of hardships tips "sharply" in favor of Plaintiff. See Alliance, 632 F.3d at 1135.

D. Public Interest

The "public interest is served by issuance of a TRO in that [Defendant] will still be able to *lawfully* [enforce the Restrictions against sex offender parolees]," see Lavan, 2011 WL 1533070, at *6, so long as it does not amount to a "blanket

[3] Plaintiff submits evidence indicating he is a "low-risk" offender. Dr. Robert Hemenway, a Nevada licensed Psychologist who treated Plaintiff, "recommend[ed] that [Plaintiff] be released from further required sex offender therapy" and that "he be allowed to parent his own daughter if and when she returns with her mother from Mexico." (Doc. 10-8 at 1.) Plaintiff also received a favorable assessment from Dr. Loreli Thompson, a Clinical Psychologist, who stated he is "at Low Risk to reoffend." (Doc. 10-9 at 1.) Finally, Plaintiff's Counsel, Janice Bellucci, confirmed with Plaintiff's CDCR parole officer that he is at a low risk of re-offending. (Declaration of Janice Bellucci ("Bellucci Declaration") (Doc. 15-1) ¶ 3.) Hence, the weight of all the evidence submitted in support of and in opposition to the Application indicates Plaintiff has a low risk of re-offending, despite Defendant's assertions to the contrary.

enforcement" without regard to an individual parolee's particular circumstances, see Taylor, 60 Cal. 4th at 1038. More importantly, the CSOMB Report suggests that allowing Plaintiff to reside with his sister in Murrieta may promote the public's interest in child safety, as it would provide stability to Plaintiff's life and decrease the likelihood he would re-offend. See CSOMB Report at 26. Accordingly, Plaintiff has demonstrated the TRO would be in the public interest. See Winter, 555 U.S. at 20.

E. Bond

"Although a bond is typically required upon issuance of a TRO in federal court, courts in the Ninth Circuit have dispensed with the requirement where there is little or no harm to the party enjoined and where plaintiffs are unable to afford to post such a bond." Lavan, 2011 WL 1533070, at *6 (citing Jorgensen v. Cassiday, 320 F.3d 906, 919 (9th Cir. 2003)). Here, the Court "exercises its discretion to forego the bond requirement in light of the fact that Plaintiff[] [spent all his available funds moving to Murrieta] and . . . there is no real harm to Defendant in issuing this TRO." See id.

F. TRO Language

Rule 65(d) requires that "[e]very order granting an injunction and every restraining order must . . . [1] state the reasons why it issued; [2] state its terms specifically; and [3] describe in reasonable detail--and not by referring to the complaint or other document--the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1). Hence, "the Court must clearly state the specific terms of the TRO in order to 'prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.'" Lavan, 2011 WL 1533070, at *6 (quoting Schmidr v. Lessard, 414 U.S. 473, 476 (1974)). The Court finds the following language satisfactorily complies with the requirements of Rule 65(d):

Pending a hearing on a preliminary injunction, Defendant, its agents, and employees, are hereby enjoined from enforcing or otherwise giving effect to City of Murrieta Municipal Ordinance Section 9.25.040 as to Plaintiff.

IV. CONCLUSION

For the reasons stated above, the Court GRANTS Plaintiff's Ex Parte Application for a Temporary Restraining Order and ORDERS Defendant to show cause why issuance of a preliminary injunction is not appropriate in this case. A hearing regarding the preliminary injunction is set for August 15, 2016, at 9 a.m. Any additional briefing by the Defendant is to be filed not later than August 1, 2016, and any responsive briefing by Plaintiff is to be filed no later than August 8, 2016.

IT IS SO ORDERED.

Dated: 7/21/16

Virginia A. Phillips
Chief United States District Judge