

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SA CV 21-01483-DOC-JDEx

Date: September 17, 2021

Title: MARY’S KITCHEN ET AL. V. CITY OF ORANGE

PRESENT:

THE HONORABLE DAVID O. CARTER, JUDGE

Karlen Dubon
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR
PLAINTIFF:
None Present

ATTORNEYS PRESENT FOR
DEFENDANT:
None Present

**PROCEEDINGS (IN CHAMBERS): ORDER GRANTING EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER [7, 8]**

Before the Court is Plaintiffs’ Ex Parte Application for a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“Application” or “App.”) (Dkts. 7, 8). The Court has reviewed the Application and all supporting documentation filed by Plaintiffs, as well as the Opposition and supporting documentation filed by Defendant City of Orange (“Defendant” or “City”). The Court now grants the requested relief and sets a further hearing on an order to show cause why a preliminary injunction should not issue.

I. Background

A. Facts

Plaintiff Mary’s Kitchen is the sole homeless service provider for adults without minor children in Defendant City of Orange. App. at 1. Plaintiff has operated in the City for nearly thirty-six years, starting in 1986. Plaintiff Exhibit 8 (Dkt. 7-2 at 110).¹ Plaintiff

¹ Plaintiffs includes two “Exhibit 9”s in their Application. The Court will refer to the first Exhibit 9, included on pages 109-12 of Dkt. 7-2, as “Exhibit 8.”

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first entered into a license agreement to use City property for Mary’s Kitchen in 1993, and the City has since renewed the agreement on several occasions. App. at 14.

The number of patrons served has grown from approximately 65 a day in 2004 to approximately 200 a day in 2019. Plaintiff Exhibit 8. The City has celebrated the work of Mary’s Kitchen on its website, as has the County of Orange in reports submitted to the U.S. Department of Housing and Urban Development to receive federal funding. Plaintiff Exhibits 13-1, 13-2, 13-3 (Dkt. 7-2); Plaintiff Exhibit 1-1 (Dkt. 7-2).

In June 2019, the License Agreement between the City and Mary’s Kitchen was extended for five years. Plaintiff Exhibit 8. In the extension agreement, the City offered the following rationale for renewing its contract with Plaintiff:

The program is well organized and efficiently run. Everyone seems to know their role and the volunteers are very dedicated to the program. For the amount of persons served and the small facilities they have overall, the facility is impressively neat and clean. It appears that patrons know the routines of the day, and are for the most part behaved and orderly, and very appreciative of the services. All of the space currently allocated to MK is well utilized and needed in order to offer the current array of services on site.

Id. at 1-2. The City also noted that while “loitering outside of the premises continues to be an ongoing challenge,” Mary’s Kitchen “works closely with the police department to best manage [its] public area” and that both Mary’s Kitchen and the City have installed additional security cameras to bolster their surveillance of the area. *Id.* at 2-3.

With the onset of the COVID-19 pandemic in early 2020, Mary’s Kitchen initially closed the majority of its interior space and limited its services to food and mail pick-up, use of bathrooms, and emergency needs. Complaint (“Compl.”) ¶ 10 (Dkt. 1). During this time, the City experienced record rates of death in its homeless population. *Id.* ¶ 16.

In September 2020, while Mary’s Kitchen was providing limited services due to the pandemic, Defendant sent Plaintiff a Preliminary Notice of Violation of the Licensing Agreement. Plaintiff Exhibit 5 (Dkt. 7-1). In the notice, the City alleged legal violations including lodging on private property, causing traffic congestion, damage to city property, trespassing, and drug and alcohol use. *Id.* Additionally, Defendant expressed concerns over “patrons loitering outside of Mary’s Kitchen . . . throughout the evening,” and asked that Plaintiff discontinue providing services to such patrons. *Id.* Defendant also requested that Plaintiff hire non-volunteer staff, including for security. *Id.*

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As the death toll for unhoused persons rose, Mary’s Kitchen reopened its doors in December 2020 following CDC guidelines. App. at 6. Upon reopening, Plaintiff hired a private security company to “improve [its] partnership with the City.” *Id.* at 10. From January to June 2021, the City made 80 arrests near Mary’s Kitchen, including for public drinking, trespass, drug possession, low-level violations of the municipal code, and outstanding warrants not involving ongoing crimes. Compl. ¶ 20.

Around April 2021, Plaintiff met with City officials and made a request to expand its services in Orange. App. at 6. Plaintiff sought to become a ‘Navigation Center’ with the authority to assist people experiencing homelessness procure housing. *Id.* Without responding to Plaintiff’s request, on June 18, 2021, the City Manager issued a termination of lease notice for Mary’s Kitchen. App. at 6; Defendant Exhibit 3 (Dkt. 10-5).

The City issued its notice “[p]ursuant to Section 15[,] Termination” of the License Agreement. *Id.* at 75. The License Agreement permitted Plaintiff to utilize the City’s property for its business at no charge to Plaintiff. Defendant Exhibit 1 (Dkt. 10-4). In exchange, the License Agreement required reasonable measures by Plaintiff to keep the property safe and clean and to ensure that its patrons are not engaging in illegal activity. *Id.* at 2. Section 15 of the License Agreement stated that the City could terminate the License “at any time” with thirty days written notice and could resume use of the Premises “at any time, whenever, in the interests of City’s service to the public, it shall appear necessary or desirable to do so.” *Id.* at 5-6.

In its termination notice, the City stated that Mary’s Kitchen “only serves to enable homelessness and can no longer be supported by the City.” Defendant Exhibit 3. The City noted that a “change in clientele over the last few years” had made the site “an attractive nuisance, with an increase in crime and calls for service from the Orange Police Department.” *Id.* The City also explained that the recent approval of an affordable housing project immediately adjacent to the site “renders Mary’s Kitchen incompatible with this new use.” *Id.* The City offered no pre-termination hearing, no public review, and no opportunity to appeal. *See* App. at 7. In the notice, Defendant mandated that Plaintiff “remove any and all property” belonging to Mary’s Kitchen by September 18, 2021. Defendant Exhibit 3 at 19.

B. Procedural History

Plaintiffs filed their Complaint on September 9, 2021. Compl. Plaintiffs filed the instant Application on September 15, 2021. On September 16, 2021, Defendant filed its Opposition (“Opp’n”) (Dkt. 10).

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II. Legal Standard

The standards for issuing a temporary restraining order (“TRO”) and a preliminary injunction are “substantially identical.” *Stuhlbarg Int’l Sales Co. v. John D. Brushy & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an “extraordinary remedy.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A plaintiff seeking preliminary injunctive relief “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.” *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009). Alternatively, “serious questions going to the merits and a hardship balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011) (internal quotation omitted). A “serious question” is one on which the movant “has a fair chance of success on the merits.” *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1421 (9th Cir. 1984).

III. Discussion

Plaintiffs seek a temporary restraining order to enjoin the City from terminating Mary’s Kitchen’s License Agreement on Saturday, September 18, 2021. App. at 2. Plaintiffs allege that the City issued the termination notice without authority; that Mary’s Kitchen was not given sufficient pre-deprivation due process; and that closing Mary’s Kitchen will lead directly to significant harm to the hundreds of people it serves. *Id.* Plaintiffs have demonstrated that a temporary restraining order is appropriate.

A. Likelihood of Success on the Merits

First, Plaintiffs have demonstrated a likelihood of success on the merits for their procedural due process claim. Plaintiffs argue that Mary’s Kitchen was denied procedural due process before the City terminated its lease based on its property interest in its license to operate. App. at 13. Due process is required when the government seeks to terminate a public benefit conferred by a government entity. *Portman v. Cnty. of Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993).

Plaintiff’s current license to operate creates a constitutionally protected property interest. See *Kerley Indus., Inc. v. Pima Cnty.*, 785 F.2d 1444, 1446 (9th Cir. 1986) (“Having granted appellant a permit to operate its plant, the county could not take it away arbitrarily, for improper reasons, or without appropriate procedural safeguards.” (citing *Board of Regents v. Roth*, 408 U.S. 564, 569-72 (1972))). Plaintiffs have a property

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interest where conduct and representations from the other party have led to “mutually explicit understandings that support [their] claim of entitlement.” *Perry v. Sindermann*, 408 U.S. 593, 602 (1972). Here, the City renewed Plaintiff’s license multiple times over three decades and frequently praised Mary’s Kitchen in public documents. In addition, a property interest exists where a plaintiff invests substantial resources in a licensed property. *See, e.g., FlightCar, Inc. v. City of Millbrae*, No. 13-cv-5802-SBA, 2014 WL 2753879 at *5 (N.D. Cal. June 16, 2014). Plaintiff has invested substantial resources in its current location over several decades, including physical infrastructure that cannot be moved. App. at 14. Such investment bolsters Plaintiff’s vested property interest and entitles it to pre-deprivation due process.

“The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (internal citation omitted). In this instance, Mary’s Kitchen was issued a termination of lease notice which provided no opportunity for a pre-termination hearing. Defendant Exhibit 3 at 19. Because Plaintiffs have demonstrated a likelihood of success on the merits of their procedural due process claim, the Court does not reach the likelihood of success on Plaintiffs’ remaining claims.

B. Irreparable Harm

Second, Plaintiffs have established that they are likely to suffer irreparable harm in the absence of preliminary relief. Without a TRO, Mary’s Kitchen will be shut down on September 18, 2021 after thirty-six years of offering services to individuals impacted by homelessness. The organization will lose its physical location and tens of thousands of dollars of infrastructure investments. In addition, the individual Plaintiffs allege that they rely on Mary’s Kitchen for food, daily hygiene, and medical services. *See* Compl. ¶¶ 63, 66, 69, 70, 73, 75. Without Mary’s Kitchen, the individual Plaintiffs will likely suffer substantial hardship to obtain these services. These dangers are compounded as the COVID-19 pandemic continues.

Defendant argues that the harm from closing Mary’s Kitchen would be de minimis in light of “the City offer[ing] the same and more services that the clientele can take advantage of.” Opp’n at 26. However, the Court is not certain that said resources currently exist and would in fact offset the harm that would arise from closing Mary’s Kitchen. Plaintiffs allege that the shelters of the Orange County North Service Planning Area (“North SPA”)—the same shelters that Defendant alleges are sufficient to replace Mary’s Kitchen—regularly transport unhoused individuals to and from Mary’s Kitchen to receive critical services that the North SPA shelters cannot provide. *See* Opp’n at 8; Compl. ¶ 15. Further, Defendant alleges that it has “160 beds” currently available and a

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future project to build 64 housing units. Opp'n at 9-10. However, Plaintiff currently serves "approximately 300" homeless people in Orange. App. at 21. Taking Defendant's numbers as true, the existing resources in the City may not extend to covering the current clients of Mary's Kitchen.

In light of these facts, Plaintiffs have established a likelihood of irreparable harm absent preliminary relief.

C. Balance of Equities

Third, the balance of equities tips in Plaintiffs' favor. As noted above, the harm of closure to Plaintiffs is substantial and irreparable. In contrast, the harm to the City of delaying termination of the license is minor. Given the decades-long partnership between the City and Mary's Kitchen, temporarily pausing the termination to provide both parties an opportunity to develop the factual record is not a substantial hardship for Defendant. As such, the equities weigh in favor of the Plaintiff.

D. Public Interest

Finally, a temporary restraining order here would be in the public interest. "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal citation omitted). Beyond the individual Plaintiffs, there are over 300 unhoused members of the public who would be harmed by the closure of Mary's Kitchen. App. at 21. Additionally, closing Mary's Kitchen would further strain already burdened City services by spreading unhoused individuals throughout the City and County, making delivery of targeted services more challenging.

As such, the Court GRANTS Plaintiffs' Application for a temporary restraining order. In this case, the cost to the City in the event it is wrongfully enjoined are minimal, and Plaintiffs are a non-profit organization and several currently unhoused indigent individuals. The Court waives the requirement of any bond that acts as security in this case. *See Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999).

IV. Disposition

Accordingly, the Court ORDERS as follows:

The employees and agents of the City of Orange are enjoined from taking any actions to terminate the lease of Mary's Kitchen, including but not limited to obstructing Plaintiff's access to the property or preventing Plaintiff's provision of food, hygiene, and

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medical services, until such time as this matter can be further litigated in the hearing on the preliminary injunction.

The hearing on this Order to Show Cause Why a Preliminary Injunction Should Not Issue is set before this Court **on Thursday, September 30, 2021, at 9:00 a.m.** Plaintiff must file any additional supporting papers by September 23, 2021. Defendant shall file any opposition papers by September 27, 2021. The TRO shall remain in effect until the Court rules on the preliminary injunction.

The Court GRANTS Plaintiffs' 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.

The Clerk shall serve this minute order on the parties.

MINUTES FORM 11
CIVIL-GEN

Initials of Deputy Clerk: kdu