

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HARBOR MISSIONARY CHURCH)	CASE NO. CV 14-3730-R
CORPORATION,)	
)	ORDER GRANTING PLAINTIFF’S EX
Plaintiff,)	PARTE APPLICATION FOR A
)	TEMPORARY RESTRAINING ORDER
v.)	
)	
CITY OF SAN BUENAVENTURA, et al.,)	
)	
Defendants.)	

Before the Court is Harbor Missionary Church Corporation’s (“Harbor”) “Ex Parte Application for a Temporary Restraining Order” (“Motion”), which was filed on May 27, 2014. Defendants, the City of San Buenaventura along with several of its officials (collectively “Ventura”), filed an opposition on May 28, 2014. Harbor filed a reply on May 29, 2014.

I. Background

The dispute that forms the basis of this lawsuit is over Harbor’s “Operation Embrace” program (“Homeless Program”), in which homeless individuals “gather at the church for fellowship and meals and are able to take a hot shower, do their laundry, and receive new clothes.” Gallucci Declaration in Support of Motion for Preliminary Injunction ¶ 5. Harbor’s pastor, Sam Galucci, represents that “[a]ll of these services are interspersed with worship songs, prayers, and

1 scripture study.” *Id.* ¶ 6.

2 In December 2012 Ventura notified Harbor that it would need a conditional use permit in
3 order to continue with the Homeless Program. Gallucci Declaration in Support of Motion for
4 Preliminary Injunction ¶ 4. The Homeless Program had been active since 2008 and operated from
5 “approximately” 8:30 a.m. to 2:00 p.m. on Monday through Thursday and from 8:30 a.m. to 11:30
6 a.m. on Fridays. *Id.* ¶ 4; Lambert Declaration in Support of Opposition ¶ 5. Harbor applied for the
7 conditional use permit but that application was denied by the city planning commission on
8 November 13, 2013. Lambert Declaration in Support of Opposition ¶ 14. Harbor’s appeal to the
9 Ventura City Council ended in a tie vote on May 12, 2014, which had the effect of affirming the
10 planning commission decision. *Id.* ¶¶ 15, 20. Harbor suspended the Homeless Program on May 15,
11 2014, representing that it did so in order to avoid any civil or criminal penalties. Galucci
12 Declaration in Support of Motion for Temporary Restraining Order ¶¶ 3, 4. On May 15, 2014
13 Ventura police and code enforcement officers searched Harbor’s church and asked Galucci if the
14 Homeless Program had been closed. *Id.* ¶ 5.

15 By this Motion Harbor seeks an order restraining and enjoining “Defendants from
16 enforcing any land use regulation against the church in a matter that prohibits, interferes with, or
17 abridges the continued use of its property at 3100 Preble Avenue for its homeless ministry, until a
18 preliminary injunction hearing can be held and decided.” Motion p. 19. The hearing on Harbor’s
19 motion for a preliminary injunction is scheduled for June 16, 2014. Harbor has asked Ventura if it
20 would be amenable to Harbor continuing to operate the Homeless Program until the preliminary
21 injunction hearing. Ventura has not unambiguously responded to Harbor’s inquiry. Motion, Ex. 9.

22 II. Analysis

23 The purpose of a temporary restraining order (“TRO”) is to “preserve the status quo and
24 prevent irreparable harm before a preliminary injunction hearing may be held.” *Jones v. H.S.B.C.*
25 (*USA*), 844 F.Supp.2d 1099, 1100 (S.D. Cal. 2012). Ventura argues that the requested TRO would
26 alter, not maintain, the status quo. The status quo refers to “the last uncontested status which
27 preceded the pending controversy.” *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199, 1210 (9th
28 Cir. 2000). In this case the situation did not become truly contested until after Ventura rejected

1 Harbor's application for a conditional use permit. Before that rejection Harbor had been operating
2 its Homeless Project and Ventura was not moving to shut the program down. Granting the
3 requested TRO would restore the status quo that existed before this situation became contested.

4 Harbor's alteration of that status quo by shutting down the Homeless Project on May 14,
5 2014 in the face of imminent enforcement action from Ventura does not change this conclusion. If
6 Harbor had continued to operate the Homeless Project after the May 14, 2014 city council decision
7 it would have exposed itself to the risk of enforcement action from Ventura. The visit from
8 Ventura officials to Harbor's church on May 15, 2014 confirms this. While granting the TRO
9 would alter the situation as it existed at the time this Motion was filed, it would restore the "status
10 quo" as that term is defined in *GoTo.com*, 202 F.3d at 1210. This conclusion is supported by the
11 fact that when parties seek preliminary equitable relief, determining what constitutes the "status
12 quo" is subject to general principles, not "hard and fast rules, to be rigidly applied to every case
13 regardless of its peculiar facts." *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 809 (9th
14 Cir. 1963).

15 The standard for a TRO and a preliminary injunction are the same. *Frontline Med. Assoc.,*
16 *Inc. v. Coventry Healthcare Workers Comp., Inc.*, 620 F.Supp.2d 1109, 1110 (C.D. Cal. 2009). A
17 plaintiff seeking a TRO must establish that "he is likely to succeed on the merits, that he is likely
18 to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in
19 his favor, and that an injunction is in the public interest." *Winter v. Natural Resources Defense*
20 *Council, Inc.*, 555 U.S. 7, 20 (2008).

21 Harbor has established all of these factors.

22 *A. Likelihood of Success on the Merits*

23 Harbor's substantive claim is based upon Title 42 U.S.C. § 2000cc(a)(1), which provides
24 that:

25 No government shall impose or implement a land use regulation in a manner that
26 imposes a substantial burden on the religious exercise of a person, including a
27 religious assembly or institution, unless the government demonstrates that
28 imposition of the burden on that person, assembly, or institution--(A) is in
furtherance of a compelling governmental interest; and (B) is the least restrictive
means of furthering that compelling governmental interest.

1 Title 42 U.S.C. § 2000cc(a)(1).

2 This statute is known as the Religious Land Use and Institutionalized Persons Act
3 (“RLUIPA”). “For a land use regulation to impose a substantial burden, it must be oppressive to a
4 significantly great extent.” *Int’l Church of Foursquare Gospel v. City of San Leandro*, 673 F.3d
5 1059, 1067 (9th Cir. 2011). “A substantial burden exists where the governmental authority puts
6 substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *Id.*

7 Here, Harbor has shown that it is likely to succeed in showing that Ventura imposed a
8 substantial burden on its religious exercise. Ventura has made it so Harbor can no longer operate
9 its Homeless Program, and that program is a significant part of Harbor’s religious expression.

10 Once it is determined that a government actor is imposing a substantial burden on a
11 religious exercise, the burden shifts to that actor to show that the “restrictions are narrowly tailored
12 to accomplish a compelling government interest.” *Id.* Harbor is likely to succeed on the merits of
13 this inquiry as well.

14 Ventura has a compelling government interest in seeking to further public safety. *Schenck*
15 *v. Pro-Choice Network of Western New York*, 519 U.S. 357, 376 (1997). However, Ventura has
16 not, at this point, shown that its actions with respect to Harbor are “narrowly tailored to
17 accomplish” that interest. *San Leandro*, 673 F.3d at 1067. The evidence is conflicting regarding
18 the parties’ efforts to reach an acceptable compromise whereby Harbor can continue its Homeless
19 Program and Ventura can be satisfied that its interest in maintaining safe neighborhoods is
20 furthered. Ventura submits evidence of general public safety problems in the neighborhood but the
21 extent to which the Homeless Program is responsible for those problems is not entirely clear.

22 *B. Irreparable Harm*

23 “RLUIPA enforces First Amendment freedoms” and a plaintiff alleging a violation of
24 RLUIPA satisfies the irreparable injury requirement. *Opulent Life Church v. City of Holly Springs,*
25 *Miss.*, 697 F.3d 279, 295 (5th Cir. 2012); *see also Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th
26 Cir. 2012) (“It is well established that the deprivation of constitutional rights unquestionably
27 constitutes irreparable injury.”). Absent a TRO, Harbor faces the real and imminent threat of
28 Ventura instituting enforcement proceedings if Harbor attempts to re-start the Homeless Program.

1 These enforcement proceedings would burden what arguably constitutes Harbor’s right to exercise
2 its religion under the RLUIPA and the First Amendment, as Harbor contends that inviting the
3 homeless into the church is an integral part of its religious beliefs. *Hobbie v. Unemployment*
4 *Appeals Com’n of Florida*, 480 U.S. 136, 144 n.9 (1987) (stating that “courts may not inquire into
5 the truth, validity, or reasonableness of a claimant’s religious beliefs”).

6 Ventura contends that there is no threat of imminent harm because Harbor “cannot
7 establish that without a TRO, there is an imminent danger that [Ventura] will take enforcement
8 action to shut down Harbor’s homeless services.” Opp’n p. 18. Harbor has presented evidence that
9 Ventura employees visited the church on May 15, 2014 to make sure it was no longer operating
10 the Homeless Program. Galucci Declaration in Support of Motion for Temporary Restraining
11 Order ¶ 5. Ventura has thus shown that it will take enforcement action to ensure Harbor is not
12 continuing the Homeless Program.

13 Ventura also argues that there is no threat of imminent harm because Ventura has informed
14 Harbor it will not commence enforcement proceedings until this Court rules on the motion for a
15 preliminary injunction. This argument is unavailing as Ventura’s representations are vague as to
16 what it would do if Harbor reopened the Homeless Program.

17 Ventura also argues that there is no threat of imminent harm because if Harbor restarted its
18 program Ventura’s enforcement proceedings would be somewhat prolonged and would not result
19 in the city immediately shutting down the Homeless Program. Regardless of their pace or nature,
20 enforcement proceedings would still constitute a burden on Harbor’s activities even if those
21 proceedings did not result in an immediate forced closing of the program. It is not productive for
22 Ventura to suggest that Harbor can violate Ventura’s ordinances because the punishment for such
23 a violation would be slow in materializing. Also, as discussed above, Ventura has already shown
24 that it is willing to take an aggressive approach to enforcing its rules by its action of sending its
25 employees to inspect the church.

26 Harbor faces a real threat of imminent harm if the TRO is not granted because in the
27 absence of a TRO it will not be able to exercise its religious beliefs without Ventura instituting
28 enforcement proceedings against it.

1 *C. Public Interest*

2 While the public has an interest in safe neighborhoods, it is also “always in the public
3 interest to prevent the violation of a party’s constitutional rights.” *Melendres*, 695 F.3d at 1002.
4 The public interest weighs slightly in favor of granting the Motion.

5 *D. Balance of Equities*

6 If the Motion is granted Ventura asserts that some its citizens will have to contend with
7 what Ventura has characterized as the undesirable secondary effects of Harbor’s Homeless
8 Program. If the Motion is not granted Harbor will not be able to operate its Homeless Program
9 without facing the imminent threat of legal proceedings brought by Ventura. The homeless
10 individuals who benefit from the program will also be adversely affected if the Motion is not
11 granted because they will not be able to enjoy the benefits of the Homeless Program. On this
12 limited factual record the balance of equities tips slightly in favor of Harbor.

13 *E. A Bond is not Warranted*

14 Ventura asserts that if the request for a TRO is granted Harbor should be required to post a
15 bond in order to cover costs for a security firm Ventura “will be required to provide for the
16 security and protection of the Preble Avenue neighborhood.” Opp’n p. 23. Before its recent
17 closure, the Homeless Program had been in operation since 2008 and there is no evidence Ventura
18 has previously hired an outside security firm for the neighborhood. The Ventura Police
19 Department appears to be completely capable of providing security and protection for the
20 neighborhood. The request for a bond is denied.

21 */////*

22 */////*

23 */////*

24 */////*

25 */////*

26 */////*

27 */////*

28 */////*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. Conclusion

Defendants are enjoined and restrained from enforcing any regulation that will prohibit Harbor from operating its Homeless Program. Harbor must comply with its previous promises to Ventura regarding the operation of the Homeless Program. *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978, 981 (9th Cir. 2006).

IT IS HEREBY ORDERED that the Motion is granted as stated herein.

Dated: May 30, 2014.



MANUEL L. REAL
UNITED STATES DISTRICT JUDGE