

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 21-524-DMG (ASx)** Date January 22, 2021

Title **California Grocers Association v. City of Long Beach** Page 1 of 2

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

KANE TIEN

Deputy Clerk

NOT REPORTED

Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

**Proceedings: IN CHAMBERS—ORDER DENYING PLAINTIFF’S EX PARTE
APPLICATION FOR A TEMPORARY RESTRAINING ORDER [18]**

On January 20, 2021, Plaintiff California Grocers Association filed a Complaint against Defendant City of Long Beach. [Doc. # 2.] Plaintiff asserts five claims for declaratory and injunctive relief regarding the legality and constitutionality of the City’s recent “Premium Pay for Grocery Workers Ordinance,” codified in Chapter 5.91 in the Long Beach Municipal Code.

On January 21, 2021, Plaintiff filed an *Ex Parte* Application for (1) a temporary restraining order (“TRO”) enjoining enforcement of the Ordinance and (2) for an order to show cause (“OSC”) why a preliminary injunction should not issue. [Doc. # 18.] On January 22, 2021, Defendant filed an Opposition. [Doc. # 20.] For the reasons discussed below, the Court **DENIES** Plaintiff’s TRO Application to the extent it seeks relief on an *ex parte* basis and sets a briefing and hearing schedule regarding Plaintiff’s request for issuance of a preliminary injunction.

In order to obtain relief on an *ex parte* basis, a party must show, *inter alia*, that “the moving party’s cause will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures.” *Mission Power Eng’g Co. v. Cont’l Cas. Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). Relatedly, a party seeking a TRO must show it is likely to suffer *imminent* irreparable harm in the absence of injunctive relief, in addition to showing that it is likely to succeed on the merits, the balance of equities tips in its favor, and an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Niu v. United States*, 821 F. Supp. 2d 1164, 1167 (C.D. Cal. 2011) (noting that TROs are governed by the same standard applicable to preliminary injunctions).

Plaintiff, which brings this action on behalf of its members operating grocery stores in the City of Long Beach, fails to establish how it will be irreparably prejudiced or harmed if the underlying request for injunctive relief is heard according to noticed motion procedures. *See Amylin Pharm., Inc. v. Eli Lilly & Co.*, 456 F. App’x 676, 679 (9th Cir. 2011) (“[A] plaintiff

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must *demonstrate* immediate threatened injury as a prerequisite to preliminary injunctive relief.” (quoting *Caribbean Marine Servs. Co., Inc v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988)). Plaintiff argues that absent “immediate compliance,” its members “face the threat of enforcement, further penalties, and attendant reputational harm and loss of goodwill as the City has effectively branded their workplaces as hazardous,” and the Ordinance will affect ongoing labor negotiations. *Ex Parte* App. at 19-20 [Doc. # 18].¹ With regard to enforcement, the Ordinance creates a private right of action for violation of the Ordinance to recover damages, penalties, and attorneys’ fees and costs. Tarantino Decl., Ex. A (Ordinance) at 11, 13 [Doc. # 18-3]. In its application, Plaintiff only speculates that any of its members’ employees will imminently bring litigation to enforce the Ordinance if its members do not comply. *See* Fong Decl. at ¶ 17 [Doc. # 18-1]; *see In re Excel Innovations, Inc.*, 502 F.3d 1086, 1098 (9th Cir. 2007) (“Speculative injury cannot be the basis for a finding of irreparable harm.”). Plaintiff also offers only conclusory assertions that failure to enjoin the Ordinance would result in reputational harm and damage to its members’ goodwill by branding those stores as hazardous workplaces. *See, e.g.*, Fong Decl. at ¶ 17 [Doc. # 18-1]. Finally, Plaintiff has not shown that, without a TRO, the Ordinance will have *irreparable* effect on one store’s ongoing negotiation of a new collective bargaining agreement. *See* Westmoreland Decl. at ¶¶ 2-3, 8-9 [Doc. # 18-2].

In light of the foregoing, **IT IS HEREBY ORDERED** that:

1. The Court **DENIES** Plaintiff’s TRO Application to the extent it seeks relief on an *ex parte* basis;
2. Defendant may file its supplemental opposition, if any, to Plaintiff’s motion for a preliminary injunction **by January 29, 2021**;
3. Plaintiff may file its reply to Defendant’s opposition **by February 5, 2021**;
4. The hearing on Plaintiff’s motion for a preliminary injunction shall be on **February 19, 2021 at 10:00 a.m.**; and
5. **IF AT ANY TIME BEFORE THE FEBRUARY 19, 2021 HEARING THE PARTIES STIPULATE TO ANY FORM OF INTERIM RELIEF, THEY SHALL IMMEDIATELY INFORM THE COURT OF THAT DEVELOPMENT.**

¹ All page references herein are to page numbers inserted by the CM/ECF system.