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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HOLLYWOOD CHARACTERS,)	Case No. CV 10-05848 DDP (CWx)
)	
Plaintiffs,)	ORDER DENYING PLAINTIFFS' EX
)	PARTE APPLICATION FOR A TEMPORARY
v.)	RESTRAINING ORDER
)	
CITY OF LOS ANGELES, et al.,)	[Application filed on August 31,
)	2010]
Defendants.)	
_____)	

I. BACKGROUND

Plaintiffs are various individuals who adopt the personas of, and dress as comic book movie characters such as Wolverine, Batman, Superman, Catwoman, Iron Man, the Joker, and Transformer, and perform on Hollywood Boulevard. On August 6, 2010, they filed a Complaint against the City of Los Angeles and various police officers. The Complaint alleges that Defendants violated Plaintiffs' First and Fourth Amendment rights by arresting them for "obstructing" or "loitering" on the sidewalk without probable cause in order to prevent them from performing and seeking donations.

On August 31, 2010, Plaintiffs filed an Ex Parte Application for a Temporary Restraining Order, enjoining Defendants from (1)

1 "[a]rresting or citing, or threatening to arrest or cite,
2 plaintiffs for 'obstructing' the sidewalk absent evidence that each
3 one, individually, is substantially blocking pedestrian traffic on
4 the sidewalk;" (2) "[a]rresting or citing, or threatening to arrest
5 or cite plaintiffs for 'loitering' on the sidewalk absent
6 reasonable suspicion to believe that they are remaining on the
7 sidewalk with the intent to commit an independently unlawful act;"
8 and (3) "[a]rresting or citing, or threatening to arrest or cite
9 plaintiffs for soliciting donations or contributions in exchange
10 for their performances so long as plaintiffs engage in none of the
11 conduct proscribed by LAMC § 41.59, the 'aggressive solicitation'
12 ordinance." (Pls.' Proposed Order.)

13 Plaintiffs argue that they are entitled to preliminary
14 injunctive relief because the LAPD has "two recently implemented
15 enforcement policies directed at them by defendants." (Pls.' Mem.
16 1:6-7.) "The first [policy] is a restriction to 'passive'
17 solicitation for tips from individuals who stop to take their
18 photograph with plaintiffs." (Id. 1:7-8.) "The second [policy] is
19 the threat of arrest and arrest based on claims that [Plaintiffs]
20 are in violation of Los Angeles Municipal Code ('LAMC') § 41.18(a)
21 for allegedly 'obstructing' pedestrian traffic and 'loitering' on
22 the sidewalk when tourists stop to take plaintiffs' pictures."
23 (Id. 1:9-13.) According to Plaintiffs, an injunction is required
24 because "[t]he individual plaintiffs have all been arrested once"
25 and "should not have to endure the indignities of arrest, property
26 confiscation and legal defense costs every time the LAPD falsely
27 arrests them in a concerted effort to drive them away from
28 Hollywood Boulevard." (Id. 9:3-8.)

1 Defendants oppose the Application on the grounds that although
2 "Plaintiffs' were allegedly arrested in the past" for violating the
3 Los Angeles Municipal Code, there is "no evidence of an immediate
4 risk of irreparable injury and/or any evidence of a policy or
5 practice in place by Defendants of the claimed accusations"
6 (Opp'n 1:5-11 (emphasis in original).) Essentially, Defendants
7 assert that absent evidence of a policy or practice of arresting
8 street performers, Plaintiffs' fear of future arrest is too
9 speculative to justify the issuance of a temporary restraining
10 order.

11 **II. LEGAL STANDARD**

12 In any case where a party seeks the extraordinary remedy of
13 preliminary relief by way of a temporary restraining order or a
14 preliminary injunction, the party must meet exacting criteria. The
15 legal standard for obtaining a TRO is the same as for a preliminary
16 injunction. See Lockheed Missile & Space Co. v. Hughes Aircraft
17 Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); cf. New Motor
18 Vehicle Bd. of Cal. v. Orrin W. Fox Co., 434 U.S. 1345, 1347 n.2
19 (1977). The Supreme Court recently set forth the standard for
20 assessing a motion for preliminary injunction in Winter v. Natural
21 Resources Defense Council, Inc., --- U.S. ----, 129 S. Ct. 365, 376
22 (2008). "Under Winter, plaintiffs seeking a preliminary injunction
23 must establish that (1) they are likely to succeed on the merits;
24 (2) they are likely to suffer irreparable harm in the absence of
25 preliminary relief; (3) the balance of equities tips in their
26 favor; and (4) a preliminary injunction is in the public interest."
27 Sierra Forest Legacy v. Rey, 577 F.3d 1015, 1021 (9th Cir. 2009).

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1 Furthermore, a plaintiff seeking injunctive relief must
2 establish that she has standing to do so by demonstrating that the
3 threat of injury she fears "as a result of the challenged official
4 conduct" is "both 'real and immediate,' not 'conjectural' or
5 'hypothetical.'" City of Los Angeles v. Lyons, 461 U.S. 95, 101
6 (1983). Even where a plaintiff demonstrates that her
7 constitutional rights have been violated in the past and that she
8 is entitled to damages, injunctive relief "is unavailable absent a
9 showing of irreparable injury, a requirement that cannot be met
10 where there is no showing of any real or immediate threat that the
11 plaintiffs will be wronged again." Id. at 111.

12 **III. DISCUSSION**

13 The Court concludes that Plaintiffs have not made a sufficient
14 showing that they are likely to suffer immediate, irreparable harm
15 in the absence of a temporary restraining order.

16 Although Plaintiffs have been arrested in the past, a
17 temporary restraining order may only issue if there is some
18 "realistic threat" or "danger" that a similar injury will occur in
19 the future. Id. at 106 n.7. The "mere possibility of future
20 injury" will not suffice. Gospel Missions of Am. v. City of Los
21 Angeles, 328 F.3d 548, 555 (9th Cir. 2003). Nor does "[p]ast
22 exposure to illegal conduct . . . in itself show a present case or
23 controversy regarding injunctive relief . . . if unaccompanied by
24 any continuing, present adverse effects." O'Shea v. Littleton, 414
25 U.S. 488, 495-496 (1974).

26 For example, in Lyons, 461 U.S. at 97-98, the plaintiff
27 alleged that he "was stopped by the defendant officers for a
28 traffic or vehicle code violation and that although [he] offered no

1 resistance or threat whatsoever, the officers, without provocation
2 or justification, seized Lyons and applied a 'chokehold'"
3 The District Court granted Lyons' motion for a preliminary
4 injunction barring the use of choke-holds "under circumstances
5 which do not threaten death or serious bodily injury," and the
6 Ninth Circuit affirmed. Id. at 100. After the Supreme Court
7 granted certiorari, "the Board of Police Commissioners imposed a
8 six-month moratorium on the use of the carotid-artery chokehold
9 except under circumstances where deadly force is authorized." Id.
10 The Supreme Court reversed, holding that although Lyons had
11 standing to sue for damages, the fact that he had been choked
12 before "does nothing to establish a real and immediate threat that
13 he would again be stopped for a traffic violation, or for any other
14 offense, by an officer or officers who would illegally choke him .
15 . . ." Id. at 105. The Court held that Lyons' claimed future
16 injury was too speculative because he would have had to allege that
17 (1) "he would have another encounter with police," and (2) "that
18 all police officers in Los Angeles always choke any citizen with
19 whom they happen to have an encounter" or (3) "that the City
20 ordered or authorized police officers to act in such a manner."
21 Id. at 105-06.

22 Similarly, in Rizzo v. Goode, 423 U.S. 362 (1976), a case in
23 which the plaintiffs alleged widespread unconstitutional police
24 conduct aimed at minorities, the Court held that the plaintiffs
25 lacked standing to seek an injunction. The Court noted that the
26 claimed future injury was dependent upon "what one or a small,
27 unnamed minority of policemen might do to them in the future" and
28 was therefore too speculative. In addition, it noted that

1 "plaintiff's showing at trial of a relatively few instances of
2 violations by individual police officers, without any showing of a
3 deliberate policy on behalf of the named defendants, did not
4 provide a basis for equitable relief." Lyons, 461 U.S. at 104
5 (discussing Rizzo, 423 U.S. at 604).

6 Here, Plaintiffs allege that they were arrested pursuant to an
7 "unwritten" City policy encouraging police to arrest street
8 performers who solicit donations and that they fear they will be
9 arrested pursuant to this policy in the future. However, the only
10 evidence they offer to show that such a policy exists is the fact
11 that a handful of them were arrested once while performing in early
12 June of this year. The Ninth Circuit has held that "[w]hen the
13 district court imposes a preliminary injunction on a state agency,
14 a strong factual record is necessary" because "the Supreme Court
15 requires a showing of an intentional and pervasive pattern of
16 misconduct in order to enjoin a state agency." Thomas v. County of
17 Los Angeles, 978 F.2d 504, 508 (9th Cir. 1992) (citing Rizzo, 423
18 U.S. at 375). Although "[a] state law enforcement agency may be
19 enjoined from committing constitutional violations where there is
20 proof that officers within the agency have engaged in a persistent
21 pattern of misconduct," id., Plaintiffs have not made a sufficient
22 showing of such a pattern or practice here. As in Rizzo, the
23 showing of "a relatively few instances of violations by individual
24 police officers, without any showing of a deliberate policy on
25 behalf of the named defendants, [does] not provide a basis for
26 equitable relief." Id. (discussing Rizzo, 423 U.S. at 604).

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1 **IV. CONCLUSION**

2 Absent evidence of such a pattern, practice, or policy,
3 Plaintiffs' claims that they fear being arrested in the future is
4 too speculative to support the issuance of a temporary restraining
5 order. But, this case is in its early stages. It may well be that
6 through the course of discovery, Plaintiffs will uncover further
7 evidence supporting their theory that the City has an "unwritten"
8 policy of arresting street performers for soliciting donations in
9 violation of their constitutional rights. The court therefore
10 DENIES the application, but without prejudice as to any future
11 motion for a preliminary injunction.
12 IT IS SO ORDERED.

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Dated: September 2, 2010


DEAN D. PREGERSON
United States District Judge