

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

**Kurt Hipp, et al. v. The City of Vallejo**

Hipp · No. 2:25-cv-01806-DJC-SCR · Decided July 24, 2025

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OPINION

(PS) Hipp v. The City of Vallejo

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 KURT HIPPI, et al., No. 2:25-cv-01806-DJC-SCR 12 Plaintiffs, 13 v. ORDER 14

THE CITY OF VALLEJO,

15 Defendant. 16

17 18 The City of Vallejo has been engaged in efforts to remove encampments of 19 unhoused individuals near the Vallejo City Hall. The Court previously issued a 20 Temporary Restraining Order enjoining the City from removing the four Plaintiffs from 21 their temporary residences in this area on the basis that the City had not provided 22 reasonable accommodations for Plaintiffs’ disabilities or communicated with Plaintiffs 23 about possible accommodations for their disabilities. Plaintiffs seek a preliminary 24 injunction that would continue to enjoin the City from removing them from their 25 present location. 26 As the Supreme Court has recognized, many believe that “homelessness may 27 be the defining public health and safety crisis in the western United States today.” City 28 of Grants Pass, Or. v. Johnson, 603 U.S. 520, 528 (2024) (cleaned up). The Court 1 further observed that California is home to half of the nation’s unhoused population, 2 id., and the City of Vallejo seems to be no exception to this crisis. Plaintiffs, 3 understandably, have attempted to create some sort of shelter while searching (in 4 vain) for housing. While the Supreme Court has concluded that jurisdictions such as 5 the City of Vallejo may, consistent with the Eighth Amendment to the United States 6 Constitution, enforce anti-camping ordinances such as the ones at issue in this case, it 7 is incumbent on those entities to fully comply with all other constitutional, statutory, 8 and regulatory obligations. It was the City’s apparent failure to comply with its 9 obligations under the Americans with Disabilities Act (“ADA”) that led the Court to 10 issue a Temporary Restraining Order. However, that was only a provisional remedy to 11 prevent Plaintiffs’ removal until the Court could hear further argument as to whether a 12 preliminary injunction was warranted. In the period since the Temporary Restraining 13 Order was issued, it appears that the City has met its obligations to provide 14 reasonable accommodations to Plaintiffs. 15 The Court is sympathetic to the plight presented by

Plaintiffs, who appear to be 16 sincere in their desire to find housing, and whose disabilities make their lack of 17 housing all the more intolerable. But the power of this Court is limited. The primary 18 law Plaintiffs employ to challenge the City's actions – the Americans with Disabilities 19 Act – simply does not contemplate the creation of new housing or the indefinite 20 nullification of the City's anti-camping ordinance. Finding that the Plaintiffs are 21 unlikely to succeed under that law and the constitutional challenges presented in the 22 Complaint, the Court has no choice but to deny Plaintiff's Request for a Preliminary 23 Injunction (ECF No. 5).

#### 24 BACKGROUND

25 Plaintiffs are four unhoused individuals currently residing in temporary housing 26 locations near the Vallejo City Hall. Plaintiffs face disabilities that multiply the 27 challenges of their unstable housing situations. Plaintiff Kurt Hipp must manage his 28 HIV-positive status, a seizure disorder, and a learning disability. Plaintiff Corletta Tate 1 has two children, including Plaintiff M.T., who is autistic, susceptible to overstimulating 2 environments, and only able to walk on the balls of his feet. Plaintiff Deshawnda 3 Watson has been diagnosed with PTSD and anxiety resulting from mental and 4 physical abuse she previously suffered. Plaintiffs filed suit seeking to prevent the City 5 of Vallejo from enacting plans to remove them from their current housing locations. 6 The Court issued a Temporary Restraining Order as it appeared the City had failed to 7 communicate with Plaintiffs or offer them reasonable accommodations for their 8 disabilities. 9 In the time since that order, the City conducted its encampment removal efforts 10 in the area near the Vallejo City Hall. Due to the Court's prior order, Plaintiffs were 11 permitted to remain in their locations and were not removed. (Opp'n (ECF No. 13) at 12 5.) The City submitted an Opposition to Plaintiffs' Motion for Preliminary Injunction on

13 July 7, 2025. (See *id.*) Therein, the City stated that as accommodations the City would 14 permit Plaintiffs to remain in their current locations until July 25, 2025, the City would 15 provide at least 90 days of storage (with the possibility for additional storage time), 16 and the City could also give Plaintiffs transport to housing, through their IHART 17 program, should they successfully secure housing. (*Id.* at 5, 10) In their Reply, 18 Plaintiffs reiterated a desire to remain in their present location until they obtain 19 permanent housing. (See Reply (ECF No. 22).) At oral argument, Counsel for the City 20 again stated their willingness to provide the above accommodations. When directly 21 asked by the Court if there were other accommodations Plaintiffs needed, the only 22 accommodations Plaintiffs identified were to remain where they were or to receive 23 hotel vouchers. At the conclusion of the hearing, the Court ordered the Temporary 24 Restraining Order extended through July 25, 2025, at which time it would expire. On

25 July 24, 2025, the day before the Temporary Restraining Order was set to expire,

26 Plaintiffs filed a supplemental brief. (Suppl. Br. (ECF No. 25).) 27 //// 28 ////

#### 1 LEGAL STANDARD

2 "A preliminary injunction is an extraordinary remedy never awarded as of right." 3 *Winter v.*

NRDC, Inc., 555 U.S. 7, 24 (2008) (citation omitted). “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 equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20. A preliminary injunction may only be awarded “upon a clear showing” of evidence that supports each relevant preliminary injunction factor. *Id.* at 22. “This ‘clear showing’ requires factual support beyond the allegations of the complaint, but the evidence need not strictly comply with the Federal Rules of Evidence.” *CI Games S.A. v. Destination Films*, No. 2:16-cv-05719-SVW-JC, 2016 WL 9185391, at \*11 (C.D. Cal.

12 Oct. 25, 2016).

Alternatively, in the Ninth Circuit, “‘serious questions going to the merits’ and a hardship balance that tips sharply towards the plaintiff can support issuance of an injunction, so long as the plaintiff also shows a likelihood of irreparable injury and that the injunction is in the public interest.” *Alliance for the Wild Rockies v. Cottrell*, 622 F.3d 1045, 1053 (9th Cir. 2010). Serious questions are those “which cannot be resolved one way or the other at the hearing on the injunction.” *Bernhardt v. Los Angeles County*, 339 F.3d 920, 926 (9th Cir. 2003) (citation omitted).

## DISCUSSION

Plaintiffs have not successfully shown a likelihood of success on the merits. The Court previously granted a Temporary Restraining Order because, at that time, the City had apparently not communicated with Plaintiffs or actually provided Plaintiffs with any reasonable accommodations. This is no longer the case. Considering each of Plaintiffs’ claims, it no longer appears that they are likely to succeed on the merits of those claims or that Plaintiffs have raised serious questions going to the merits of those claims. I. ADA Title II Plaintiffs’ first and primary claim is that the City has failed to provide reasonable accommodations for Plaintiffs’ disabilities. Title II of the ADA requires that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. 7 § 12132. While this requires the City to make “reasonable modifications” to its policies, practices, and procedures to avoid discrimination on the basis of disability, it does not mandate that the City make modifications that would “fundamentally alter the nature of the service, program, or activity.” *McGary v. City of Portland*, 386 F.3d 1125, 1266 (9th Cir. 2004). Title II also does not require that Plaintiffs create “new” programs in order to provide accommodations. *Townsend v. Quasim*, 328 F.3d 511, 518 (9th Cir. 2003) (“It is clear from the language of Title II and the integration regulation that public entities are not required to create new programs that provide heretofore unprovided services to assist disabled persons.”) Here, the “program” in question is the implementation of Administrative Rule 7.10, which is the City’s program for enforcement of its

unlawful camping ordinance, 18 cleanup of temporary shelters, and storage of unattended property. Naturally, this is 19 not a program that “benefits” Plaintiffs in any traditional sense. Nevertheless, as a 20 program implemented by the City, Title II still requires the City of Vallejo to take 21 Plaintiffs’ disabilities into account in how the City enforces its municipal code. Put 22 another way, “compliance with municipal code enforcement can constitute a benefit 23 of the services, programs, or activities of a public entity under Title II.” *McGary v. City 24 of Portland*, 386 F.3d 1259, 1269 (9th Cir. 2004). Thus, the City must make reasonable 25 modifications to its policies, practices, and procedures in implementing Rule 7.10 26 such that Plaintiffs are not subject to discrimination on the basis of their disability. 27 The City has now identified several accommodations that it can provide 28 Plaintiffs. In addition to the added time before removal that Plaintiffs have already 1 been permitted by virtue of the Court’s Temporary Restraining Order, the City offered 2 a further extension until July 25, 2025. The City also offered to store Plaintiffs’ 3 belongings for at least 90 days and to provide transport to housing should Plaintiffs 4 succeed in their quest to secure a more permanent living situation. 5 In their Reply brief, Plaintiffs did not identify any additional accommodations 6 besides being permitted to remain in their present location until they secure housing. 7 At oral argument, the Court specifically inquired if there were other accommodations 8 they were requesting. Plaintiffs only requested that they be permitted to remain 9 where they are or be provided with hotel vouchers until they could secure housing. In 10 either case, this likely represents a modification that would fundamentally alter the 11 implementation of Rule 7.10. 12 As noted, section Rule 7.10 is an administrative rule enacted to enforce 13 unlawful camping ordinances and remove temporary shelters. Permitting Plaintiffs to 14 stay in their present location until they obtain housing seemingly undermines the 15 fundamental purpose of the program. Plaintiffs’ declarations detail ongoing, 16 sometimes years-long, struggles with homelessness and lengthy searches for housing. 17 (See ECF No. 1-2 at 7–8 ¶ 5, 18 ¶ 4.) This is not Plaintiffs’ failing. From the record 18 available to the Court, it appears that Plaintiffs are all in serious need of permanent 19 housing and genuinely desire such housing. Indeed, at the hearing, the undersigned 20 was honored to speak to each of the Plaintiffs directly, and it was clear they have spent 21 considerable time and effort trying to locate housing, with no success. If these 22 Plaintiffs, who face serious disabilities, are unable to find housing, it is abundantly 23 clear that it is the system itself that has failed, not Plaintiffs. However, this also means 24 that permitting Plaintiffs to remain in their present locations would be an indefinite 25 delay in the enactment of Rule 7.10 and the removal of the encampment. This would 26 not be a modification to the City’s program, but what effectively is its nullification as it 27 relates to Plaintiffs for the foreseeable future. As such, it is a modification that would 28 fundamentally alter the “program,” that is, the enforcement of Rule 7.10. 1 Similarly, for the City to provide Plaintiffs with housing at hotels, the City would 2 need to create additional programs. The ADA does not require the creation of “new 3 programs that provide heretofore unprovided services to assist disabled persons.” 4 *Where Do We Go Berkeley v. Cal. Dep’t of Transp.*, 32 F.4th 852, 862 (9th

Cir. 2022) 5 (internal citations and quotations omitted). While this is a very understandable 6 request, under the law this is unlikely to be a “reasonable accommodation” as that 7 term is understood in the context of the ADA. 8 In Plaintiffs’ Supplemental Brief, filed the day before the Temporary Restraining 9 Order was set to expire, Plaintiffs suggest that their ADA claims do not only concern 10 the encampment removal actions. (Suppl. Br. at 4.) Plaintiffs then suggest that they 11 require accommodations as it relates to access to the Navigation Center. (Id. at 5–6.) 12 However, the present action and Plaintiffs’ original motion clearly concern Plaintiffs’ 13 removal from their temporary housing locations and the implementation of Rule 7.10. 14 (See ECF No. 1.) Whether Plaintiffs have been provided reasonable accommodations 15 as it relates to their ability to access temporary and transitional housing locations is 16 outside the scope of this action and the present Motion. 17 Also in the Supplemental Briefing, Plaintiffs suggest that they would accept 18 housing at “the Broadway Project” which Plaintiffs state is set to open on August 18, 19 2025. (Suppl. Br. at 7.) The suggestion that this represents a possible 20 accommodation the City can provide appears to be based on speculation. According 21 to the Plaintiffs, the Broadway Project is not yet open, and it is unclear that Plaintiffs 22 are eligible for admission to the Broadway Project. While the Court hopes that this 23 will ultimately present a solution for Plaintiffs’ lack of housing, it is not sufficiently 24 concrete to reasonably require the City to provide it as an accommodation, and in any 25 event the possibility of future housing is only tangentially related to the City’s 26 enforcement of Rule 7.10. Plaintiffs have thus not met their burden to establish that 27 28 1 this is a reasonable accommodation that was denied or not provided.<sup>1</sup> *Mayfield v. City of Mesa*, 131 F.4th 1100, 1110 (9th Cir. 2025). 3 In short, the City has now offered accommodations to Plaintiffs, and Plaintiffs 4 have not identified any further reasonable accommodations that the City could 5 provide but that it has not yet considered or provided. Id. (“A plaintiff asserting a 6 reasonable-accommodation claim under Title II bears the initial burden of producing 7 evidence of the existence of a reasonable accommodation that was denied or not 8 provided.” (cleaned up)). As such, the Court cannot find at this stage that Plaintiffs will 9 likely be able to show that the City has violated Title II of the ADA by failing to provide 10 Plaintiffs with reasonable accommodations, or that there exist serious questions going 11 to the merits.<sup>2</sup> Accordingly, Plaintiffs do not have a likelihood of success on the merits 12 of this claim. 13 II. State-Created Danger Doctrine 14 Plaintiffs also have not established a likelihood of success on their claim under 15 the state-created danger doctrine. The state-created danger doctrine arises from the 16 due process clause of the Fourteenth Amendment. To state a claim under this 17 doctrine, Plaintiffs must establish three elements. Plaintiffs must show “[1] that the 18 [state actors’] affirmative actions created or exposed [them] to an actual, particularized 19 danger that [they] would not otherwise have faced . . . [2] that the injury [they] suffered 20 was foreseeable . . . [3] that the [state actors] were deliberately indifferent to the 21 known danger.” *Martinez v. City of Clovis*, 943 F.3d 1260, 1271 (9th Cir. 2019). 22 23 24 1 The Court strongly encourages the City to contemplate all possible avenues to assist Plaintiffs in securing housing whether at the

Navigation Center, the Broadway Project, or elsewhere. 25 2 At oral argument, Anthony Prince, General Counsel for the California Homeless Union appearing as an 26 amicus, argued that the ADA requires that any determination that an accommodation created an undue burden or a fundamental alteration to the program must be made by the head of the public agency and 27 be accompanied by a written statement of the reasons for reaching that conclusion. This is a procedural requirement that is easily rectified by the City. As such, it does not alter the Court's analysis 28 as to Plaintiffs' likelihood of success. 1 Notably, the first element requires that Plaintiffs identify an "actual, 2 particularized danger" that was created by a state actor's affirmative actions. Plaintiffs 3 do not identify such a particularized danger here. Plaintiff Hipp noted a variety of 4 benefits to his current location: the proximity of clinics and other resources, the 5 presence of security nearby, the fact that people know where to find him, and the 6 calming presence of the waterfront. (ECF No. 1-2 at 3 ¶¶ 11–13.) Plaintiff Tate 7 discussed the importance of access to the library for her autistic son, Plaintiff M.T., and 8 the adjacency of local facilities. (Id. at 10–11 ¶¶ 15–19.) Plaintiff Watson noted many 9 of the same benefits as the other Plaintiffs, as well as how her location assists in 10 managing her PTSD. (Id. at 20 ¶ 7.) 11 The Court understands that the advantages provided by their current location 12 are significant given Plaintiffs' disabilities. Similarly, the Court understands that 13 without the ability to remain in their current location, Plaintiffs will likely face 14 challenges and hazards. Those challenges and hazards, however, are inherent in 15 being unhoused, which is why the homelessness crisis creates such a public health 16 emergency. The state-created danger doctrine is not properly applied where, as 17 here, the dangers in question are generalized dangers inherent to homelessness that 18 are not created by the actions of a state actor. See *Cobine v. City of Eureka*, 250 F.

19 Supp. 3d 423, 433 (N.D. Cal. 2017); see also *Koontz v. Town of Fairfax*, No. 25-cv-20 01311-RFL, 2025 WL 1766046, \*6-7 (N.D. Cal. 2025); *Coalition on Homelessness v. 21 City and County of San Francisco*, 758 F. Supp. 3d 1102, 1130 (N.D. Cal. 2024). 22 Rather, where courts have applied the state-created danger doctrine to attempts to 23 remove unhoused individuals, they generally rely on more concrete dangers, such as 24 present dangerous weather conditions, that can be considered actual and 25 particularized. See *Sacramento Homeless Union v. County of Sacramento*, 617 F.

26 Supp. 3d 1179, 1193 (E.D. Cal. 2022) (finding a likelihood of success for claim under 27 the state-created danger doctrine where the county was seeking to "sweep" 28 encampments during extreme heat). That is not the case here. In their supplemental 1 brief, Plaintiffs argue that the dangers they face are "not generalizable to 2 homelessness; they are distinct dangers that are specific to each individual plaintiff[.]" 3 (Suppl. Br. at 4.) But the dangers identified by Plaintiffs, while not universal 4 experiences for all who are homeless, are still generalized, persistent risks created by 5 Plaintiffs' disabilities and lack of housing. They are not the sort of discrete, identifiable 6 dangers created by state actors that warrant the invocation of the state-created 7 danger doctrine. 8 As Plaintiffs have not identified an actual and particularized danger that was 9

created by a state actor or that Plaintiffs were exposed to by the actions of a state actor, Plaintiffs have not established a likelihood of success on the merits, even under a serious questions analysis, on their state-created danger cause of action. III. Other Due Process Claims Separately from their state-created danger doctrine claim, Plaintiffs also allege a violation of their substantive and procedural due process rights predicated on the City's implementation of Rule 7.10. In this claim Plaintiffs mainly reference language from Rule 7.10's "Policy" section in which states in part that the City's intent is "to promote a balanced approach to addressing potential negative impacts of encampments" and that the Rule aims to "[e]numerate a continuum of response options, emphasizing proportionality of response in relation to totality of circumstances or impacts present at an encampment." (Mot. at 18–19; Flor Decl. (ECF No. 14), Ex. B at 1.)

To state a due process claim, Plaintiffs must establish that a state actor deprived them of a constitutionally protected interest. *Shanks v. Dressel*, 540 F.3d 1082, 1087, 1090 (9th Cir. 2008). Plaintiffs have not established that they have been deprived of any such interest by the actions of a state actor. Rather, the quoted language in Rule 7.10 is merely precatory, and does not create any protected interest under the Due Process Clause. Cf. *Livadas v. Bradshaw*, 512 U.S. 107, 132 (1994) (noting that a "particular statutory provision . . . may be so manifestly precatory that it could not fairly be read to impose a binding obligation on a governmental unit." (quoting *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 27 (1981))). In their Reply, Plaintiffs reference an interest in family integrity that is violated by criminal liability for Plaintiff Tate. (Reply at 13–14.) But there is no indication that Plaintiff Tate presently faces criminal charges or that the encampment removal proceedings at issue involve criminal prosecution of those removed. Plaintiffs do not have a likelihood of success on their substantive and procedural due process claims due to their failure to identify a protected interest violated by the City's encampment removal.<sup>3</sup>

## 9 CONCLUSION

As Plaintiffs have not established a likelihood of success on any of their claims, the Court does not need to address the remaining Winter factors.<sup>4</sup> See *Aargon Agency, Inc. v. O'Laughlin*, 70 F.4th 1224, 1240 (9th Cir. 2023). The Court will deny Plaintiffs' Motion based on the failure to establish a likelihood of success on the merits or serious questions going to the merits. Accordingly, and for the foregoing reasons, IT IS HEREBY ORDERED that Plaintiffs' Motion for Preliminary Injunction (ECF No. 5) is DENIED. The Temporary Restraining Order shall expire, as previously ordered, on July 25, 2025. However, under Administrative Rule 7.10 the City of Vallejo must provide at least 72-hours' notice. In their Supplemental Brief, Plaintiffs allege that Defendants violated Plaintiff Watson's procedural due process rights and this Court's Temporary Restraining Order when it discarded Plaintiff Watson's belongings during the encampment removal proceedings. While the Court understands that the loss of this property might seriously affect Plaintiff Watson, the Court does not address these

issues here. 21 The question presently before the Court is whether preliminary injunctive relief enjoining the City from 22 removing Plaintiffs is warranted. Preliminary injunctive relief based on the disposal of Plaintiffs' personal property is not warranted as this is both a past harm and a harm for which economic damages 23 are the appropriate remedy. See *Rent-A-Center, Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) ("[E]conomic injury alone does not support a finding of irreparable harm, 24 because such injury can be remedied by a damage award." (internal citation omitted)). Similarly, if there was a violation of the Court's prior order, some remedy might be warranted. But that is an issue 25 that must be addressed separately and does not alter the outcome of this Order. 26 4 The Court notes that, as pro se individuals, Plaintiffs' claims are subject to the screening requirements of 28 U.S.C. § 1915(e)(2)(B). Pursuant to the Local Rules, pre-trial proceedings in this matter are 27 referred to the assigned Magistrate Judge. See Local Rule 302(c)(21). Through this Order, the Court takes no position on the result of that screening order, and nothing in this Order should be read to 28 suggest a particular result. 1 | notice in writing to Plaintiffs before seeking to remove Plaintiffs' encampments. This 2 | matter is referred to the assigned Magistrate Judge for all further pretrial 3 | proceedings. 4 5 IT IS SO ORDERED. é| Dated: \_July 24, 2025 "Daal A Hon. Daniel alabretta / UNITED STATES DISTRICT JUDGE

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