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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ANA WHITLOW, *et al.*,
Plaintiffs,
v.
STATE OF CALIFORNIA,
DEPARTMENT OF EDUCATION,
et al.,
Defendant.

Case No. 16-cv-1715 DMS (BGS)
**ORDER DENYING PLAINTIFFS’
EX PARTE MOTION FOR A
TEMPORARY RESTRAINING
ORDER**

This matter comes before the Court on Plaintiffs’ *ex parte* motion for a temporary restraining order (“TRO”) to prevent Defendants from proceeding with a foreclosure sale of Plaintiffs’ property.

Federal Rule of Civil Procedure 65(b)(1) allows for issuance of a TRO: without written or oral notice to the adverse party or its attorney only if:
(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
(B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1). Plaintiffs here have not served a copy of their motion on Defendants and have not claimed that they made any efforts to do so.

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I.
BACKGROUND

Plaintiffs are minors and corporations challenging the validity of California’s Senate Bill (“SB”) 277, which closes previously available personal belief exemptions (“PBEs”) to the general requirements that students seeking to enroll in California schools must be vaccinated. According to Plaintiffs, SB 277 violates their constitutional guarantee of the free exercise of religion under the First Amendment, in addition to other fundamental rights, without a compelling government interest. Additionally, they claim that even if the government shows a compelling interest, SB 277 is not narrowly tailored or the least restrictive means of achieving that interest.

Plaintiffs seek injunctive and declaratory relief from SB 277 to prohibit the enforcement of SB 277.

II.
DISCUSSION

The purpose of a temporary restraining order is to preserve the status quo before a preliminary injunction hearing may be held; its provisional remedial nature is designed merely to prevent irreparable loss of rights prior to judgment. *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974) (noting a temporary restraining order is restricted to its “underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer”). Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323 (N.D. Cal. 1995). A party seeking injunctive relief under Federal Rule of Civil Procedure 65 must show “that

1 he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
2 absence of preliminary relief, that the balance of equities tips in his favor, and that
3 an injunction is in the public interest.” *Am. Trucking Ass'ns v. City of Los Angeles*,
4 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20).

5 Here, the Court need not reach the merits of Plaintiffs’ request, as it is facially
6 and procedurally defective. In support of their motion, Plaintiffs state that “special
7 education students in year-round IEP Programs face immediate expulsion.” Upon
8 reviewing the motion, complaint, and attached affidavits, there are no allegations
9 that any child is currently enrolled in a school and has been expelled or would face
10 immediate expulsion if SB 277 is enforced. TROs are intended as a remedial
11 measure to prevent harm before an adverse party can respond to a request for
12 preliminary injunction. Here, there appears to be no harm to any plaintiff until the
13 fall semester.

14 Additionally, Plaintiffs have failed to certify any efforts to serve the TRO or
15 a preliminary injunction on Defendants. Without evidence of either frustrated
16 attempts to notify Defendants or reasons why such notice should not be required,
17 Plaintiffs have failed to comply with the plain language of Rule 65(b)(1). In
18 addition, in the absence of an immediate and irreparable injury, Plaintiffs are not
19 entitled to a temporary restraining order.

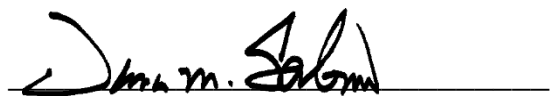
20 III.

21 CONCLUSION

22 For these reasons, Plaintiffs’ *ex parte* motion for a temporary restraining order
23 is denied.

24 **IT IS SO ORDERED.**

25 Dated: July 5, 2016



26 The Honorable Dana M. Sabraw
27 United States District Judge
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