

FILED

SEP 15 2020

FRESNO COUNTY SUPERIOR COURT

By _____ DEPT. 501

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO
CENTRAL DIVISION

COUNTY OF FRESNO through JEAN)	Case No. 20CECG02447
M. ROSSEAU in his official)	
capacity as Emergency Services)	
Director and County)	RULING ON PLAINTIFF'S
Administrative Officer,)	APPLICATION FOR ISSUANCE
)	OF A PRELIMINARY INJUNCTION
Plaintiff,)	
)	
v.)	
)	
IMMANUEL SCHOOLS, a California)	
non-profit corporation, and)	
RYAN WOOD, Chief Executive)	
Officer of Immanuel Schools,)	
and DOES 1-50,)	
)	
Defendants.)	

The parties are in agreement that we are in the midst of a public health crisis, defendants conceding that "COVID-19 is a deadly global pandemic that has altered the course of history." What the parties disagree on is the lawfulness and propriety of certain government orders which have the effect of prohibiting in-person class instruction at Immanuel Schools. Defendants contend that the governments' orders are not authorized,

1 unconstitutionally interfere with contractual rights, and violate
2 the equal protection clause of the State's Constitution.

3 Promptly in response to defendants' admitted defiance of
4 orders to cease in-person class instruction, on August 20, 2020,
5 the County of Fresno ("the County") filed a Verified Complaint for
6 Injunctive Relief for Violation of Statewide Public Health Officer
7 Order and Local Health Order and for Public Nuisance. On August
8 24, 2020, the County filed an Ex Parte Application for a Temporary
9 Restraining Order and Order to Show Cause re Preliminary
10 Injunction for Violation of Statewide Public Health Officer Order
11 and Local Health Order and for Public Nuisance. On August 25,
12 2020, defendants Immanuel Schools and Ryan Wood (together
13 "defendants") filed extensive pleadings in opposition to the ex
14 parte application.

15 The County's ex parte application came before the court for
16 hearing on August 25, 2020. Citing California Rules of Court, rule
17 3.1202(c), the court denied the ex parte application stating that
18 the County had failed to make a sufficient affirmative showing of
19 urgency for the matter to be heard on an ex parte basis.¹ Finding
20 no established urgency, the court issued an Order to defendants
21 commanding them to show cause, if there is any, why they and
22 persons associated with them should not be enjoined and restrained
23 during the pendency of this action from operating their school for

24
25 ¹ Various court rules govern ex parte proceedings, which are designed to afford
26 relief on an essentially emergency basis. "A court will not grant ex parte
27 relief 'in any but the plainest and most certain cases.'" (*People ex rel.*
28 *Allstate Ins. Co. v. Suh* (2019) 37 Cal.App.5th 253, 257.) Entry of any type of
injunctive relief has been described as a delicate judicial power, to be
exercised with great caution. (*Ancora-Citronelle Corp. v. Green* (1974) 41
Cal.App.3d 146, 148.) "This is doubly true when granting relief on an expedited
basis using an ex parte request for a temporary restraining order rather than a
properly noticed preliminary injunction." (*Newsom v. Superior Court (Gallagher)*
(2020) 51 Cal.App.5th 1093, 1097.)
20CECG02447-DTT (005)

1 in-person instruction in violation of State Health Officer and
2 County Health Officer Orders.

3 Consistent with a scheduling order, on September 1 and 8,
4 2020, the parties timely filed assorted pleadings in connection
5 with the Order to Show Cause hearing. In violation of that same
6 scheduling order, the parties filed additional late pleadings. The
7 court has read and considered all of the recently filed pleadings
8 as well as all of the pleadings previously filed in connection
9 with the ex parte application.² The court takes judicial notice of
10 assorted pleadings as requested by the County. The Order to Show
11 Cause hearing came before the court on September 15, 2020.
12 Appearances were stated on the record.

13 I

14 **THE BURDEN OF PROOF**

15 Although the Order to Show Cause directs defendants to show
16 cause, if there is any, why a preliminary injunction should not
17 issue, the burden is ultimately on the County to show all elements
18 necessary to support issuance of a preliminary injunction.

19 (*O'Connell v. Superior Court (Valenzuela)* (2006) 141 Cal.App.4th
20 1452, 1481.)

21 II

22 **STANDARD FOR DETERMINING WHETHER TO**
23 **GRANT OR DENY A PRELIMINARY INJUNCTION**

24 "A superior court must evaluate two interrelated factors when
25 ruling on a request for a preliminary injunction: (1) the

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27 ² Contrary to defendants' assertions, the court may accept new evidence in the
28 County's pleadings submitted in reply to defendants' response to the Order to
Show Cause. Defendants have been given an opportunity to respond to any new
evidence as the court has considered defendants' late filing. (*Alliant Ins.
Servs., Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1307-1308.)

1 likelihood that the plaintiff will prevail on the merits at trial
2 and (2) the interim harm that the plaintiff would be likely to
3 sustain if the injunction were denied as compared to the harm the
4 defendant would be likely to suffer if the preliminary injunction
5 were issued." (*Smith v. Adventist Health System/West* (2010) 182
6 Cal.App.4th 729, 749; see *Brown v. Pacifica Found. Inc.* (2019) 34
7 Cal.App.5th 915, 925.)

8 The court's determination must be guided by a "mix" of the
9 potential-merit and interim-harm factors; the greater the County's
10 showing on one, the less must be shown on the other to support an
11 injunction. (*Butt v. State of California* (1992) 4 Cal.4th 668,
12 678; *King v. Meese* (1987) 43 Cal.3d 1217, 1226-1227 - court has
13 discretion to issue preliminary injunction where plaintiff
14 demonstrates high likelihood of success on the merits even if
15 plaintiff is unable to show balance of harm tips in its favor; *SB*
16 *Liberty, LLC v. Isla Verde Ass'n, Inc.* (2013) 217 Cal.App.4th 272,
17 280.) This court may not issue a preliminary injunction,
18 regardless of the amount of interim harm, "unless there is some
19 possibility" that the County will ultimately prevail on the merits
20 of its claims. (*Jamison v. Department of Transp.* (2016) 4
21 Cal.App.5th 356, 362, quoting *Butt v. State of California*, supra,
22 4 Cal.4th at p. 678; *Ass'n of Orange County Sheriffs v. County of*
23 *Orange* (2013) 217 Cal.App.4th 29, 49.)

24 III

25 LIKELIHOOD OF SUCCESS ON THE MERITS

26 A preliminary injunction must not issue unless it is
27 "reasonably probable that the moving party will prevail on the
28 merits." (*San Francisco Newspaper Printing Co., Inc. v. Superior*

1 Court (Miller) (1985) 170 Cal.App.3d 438, 442; *Costa Mesa City*
2 *Employees' Ass'n v. City of Costa Mesa* (2012) 209 Cal.App.4th 298,
3 309 - no injunction may issue unless there is at least "some
4 possibility" of success.)

5 A comprehensive statutory scheme exists authorizing the State
6 of California and the County to impose measures to protect the
7 public from infectious diseases and other health threats during
8 declared emergencies and such measures must be complied with.
9 (See, e.g., Gov. Code § 8634; Health & Saf. Code §§ 101040,
10 120175, 120220, 120295 and 131082; Title 17, Cal. Code of
11 Regulations § 2501(a).) The government has broad power in a public
12 health emergency to take steps needed to stop the spread of a
13 communicable disease. (*Jacobsen v. Massachusetts* (1905) 197 U.S.
14 11, 26, 25 S.Ct. 358 - compelling interest in public health
15 allowed forced smallpox vaccinations.) In *Jacobsen*, the United
16 States Supreme Court held: "Upon the principle of self-defense, of
17 paramount necessity, a community has the right to protect itself
18 against an epidemic of disease which threatens the safety of its
19 members." (*Id.* at p. 27.) The Court further held that "under the
20 pressure of great dangers," constitutional rights may be
21 reasonably restricted "as the safety of the general public may
22 demand." (*Ibid.*)

23 Based on the materials before it, the court determines that
24 it is reasonably probable that the County will prevail on the
25 merits in this case.

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1 IV

2 BALANCING INTERIM HARM

3 While the mere possibility of harm to the County is
4 insufficient to justify a preliminary injunction, the County is
5 not required to wait until it has suffered actual harm before it
6 applies for an injunction, but may seek injunctive relief against
7 threats. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1292; accord
8 *City of Torrance v. Transitional Living Centers for Los Angeles,*
9 *Inc.* (1982) 30 Cal.3d 516, 526 - injunctive relief is available
10 where the injury sought to be avoided is "actual or threatened.")

11 In their original Opposition, defendants argued that "the
12 County would not suffer irreparable harm" should an injunction be
13 denied. The evidence is to the contrary. The evidence presented
14 by the County amply supports a finding that the County and its
15 residents are under the threat of irreparable harm should
16 defendants be allowed to conduct in-person classroom instruction
17 while the County and its residents are in the throes of the COVID-
18 19 pandemic.

19 Based on the materials before it, the court determines that
20 the interim harm the County would be likely to sustain if the
21 injunction were denied is monumental in comparison to the harm
22 defendants would likely suffer if the preliminary injunction were
23 issued.

24 V

25 CONCLUSION

26 United States Supreme Court Chief Justice John Roberts has
27 observed in a recent consequential concurring opinion that "[t]he
28 precise question of when restrictions on particular social

1 activities should be lifted during the pandemic is a dynamic and
2 fact-intensive matter subject to reasonable disagreement. Our
3 Constitution principally entrusts '[t]he safety and the health of
4 the people' to the politically accountable officials of the States
5 'to guard and protect.' When those officials 'undertake[] to act
6 in areas fraught with medical and scientific uncertainties,' their
7 latitude 'must be especially broad.'" (*South Bay United*
8 *Pentacostal Church v. Newsom* (2020) 590 U.S. ___, 140 S.Ct. 1613,
9 1613-1614, quoting *Jacobson v. Massachusetts* (1905) 197 U.S. 5,
10 38, and citing *Marshall v. United States* (1974) 414 U.S. 417,
11 427.)

12 The court grants the County's application for a Preliminary
13 Injunction as follows:

14 **Immanuel Schools and Ryan Wood, as well as their**
15 **respective officers, employees, agents,**
16 **representatives, members, volunteers and all persons**
17 **acting under, in concert with, or for them must**
18 **immediately cease and desist from conducting,**
19 **participating in or attending in-person class**
20 **instruction at the Immanuel Schools property located**
21 **at 1128 South Reed Avenue, Reedley, California, 93654.**

22 The County is directed to promptly prepare and circulate for
23 approval as to form a proposed order consistent with the
24 foregoing. The proposed order must be submitted directly to
25 Department 501 no later than 3:00 p.m. on Wednesday, September 16,
26 2020. (Cal. Rules of Court, rule 3.1150(f).)

27 This ruling is not an adjudication of the ultimate rights in
28 the controversy. It merely represents this court's discretionary
29 decision whether defendants should be restrained from exercising

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1 claimed rights pending trial. (*Cohen v. Board of Supervisors*
2 (1985) 40 Cal.3d 277, 286.)

3 IT IS SO ORDERED.

4 DATED this 15th day of September, 2020.



D. TYLER TARPE
JUDGE OF THE SUPERIOR COURT

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