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Walter Chuck, and Kristin Yuille*

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

CASEY MILLER,

Plaintiff,

v.

LINCOLN COUNTY, a public body, DAVID
COLLIER, in his individual capacity, KELLY
MEININGER, in her capacity as the personal
representative of the estate of CLAIRE HALL,
WALTER CHUCK, in his individual capacity,
and KRISTIN YUILLE, in her individual
capacity,

Defendants.

Case No. 6:26-cv-00499-AA

**DEFENDANTS' SUR-REPLY RE:
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Oral Argument Requested

Pursuant to the Court's order dated May 14, 2026, Defendants Lincoln County, David Collier, Kelly Meininger, Walter Chuck and Kristin Yuille submit this Sur-Reply in opposition to Plaintiff's Motion for Preliminary Injunction. This Sur-Reply is supported by the points and

authorities below, the records and files in this case, the previously filed Declarations of Kristin Yuille (ECF No. 14) (“First Yuille Decl.”) and David Collier (ECF No. 13) (“First Collier Decl.”), and the concurrently filed Supplemental Declarations of Kristin Yuille (“Second Yuille Decl.”) and David Collier (“Second Collier Decl.”).

I. INTRODUCTION

Plaintiff failed to carry his burden of proof with his motion for preliminary injunction because he failed to submit any evidence with that motion. Plaintiff’s declaration submitted with his reply also does not establish his burden of proving he is entitled to the extraordinary remedy of a mandatory preliminary injunction which would force the County to take actions that no law requires it to take. The Court should accordingly deny his motion.

First, Plaintiff’s declaration fails to establish that he has suffered an adverse action, or that any alleged adverse action was caused by his protected activity. Plaintiff also does not dispute that he is making his request for a preliminary injunction a year and a half after he suffered the alleged adverse actions, which undermines his request and indicates a lack of irreparable harm. Finally, Plaintiff’s declaration only further emphasizes that a preliminary injunction is not in the public interest, as he acknowledges he has not taken the steps the County requested him to make amends for his prior conduct, including refusing to engage in mediation through the County human resources process. Accordingly, even if the Court considers his late declaration, it should deny his motion for a preliminary injunction.

II. ARGUMENT

Even with his untimely declaration, Plaintiff still fails to meet his burden of establishing all four elements provided in *Winter*, which are “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.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiff also fails to prove that “extreme or very serious damage will result” and that the merits of the case are not “doubtful and injury must be incapable of compensation in damages,” which is part of the required burden of proof when seeking a mandatory injunction, which is what Plaintiff seeks here. *Mendoza v. Garrett*, 358 F. Supp. 3d 1145, 1163 (D. Or. 2018) (internal quotation marks omitted).

A. Even With His Late Filed Evidence Plaintiff Has Still Failed to Prove He Has Suffered Adverse Actions.

Plaintiff has still not carried his burden of showing that he has suffered a materially adverse action and therefore has not shown he is likely to succeed on his First Amendment claim. *Boquist v. Courtney*, 32 F.4th 764, 777 (9th Cir. 2022) (a material adverse action “prevents him from enjoying the full range of rights and prerogatives that came with having been publicly elected.”).

Instead of submitting concrete evidence of actual harm, Plaintiff’s declaration is full of broad generalizations about the alleged adverse actions against him. Plaintiff claims that he has been barred from adding agenda items, has been barred from attending management meetings, and that he cannot access his office at the County. Miller Decl. ¶¶ 6, 14, 33. For example, Plaintiff ends his declaration by stating that he is seeking an injunction “to be permitted to reinstate my keycard access to the physical office for my duly elected position, put items on the Lincoln County Board of Commissioners public and executive meeting agendas for discussion, consideration, and determination, and to give me proper notice of, and permit me to attend, Lincoln County Budget Committee meetings and Lincoln County management meetings.” Miller Decl. ¶33. However, in his declaration, he only goes into specifics regarding adding agenda items and, other than this statement, does not provide any information about being barred from

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County management meetings or being barred from accessing his office. *Id.* He does not acknowledge that the County provided him with a separate office that he has refused to use (First Yuille Decl. ¶¶ 23–25) and does not acknowledge or address the fact that it is not a part of his role to attend management meetings (First Collier Decl. ¶ 4). Plaintiff has therefore not provided sufficient evidence that the County giving him a different office or not permitting him to attend management meetings are adverse actions.

While Plaintiff does provide some information regarding his claim that he has been barred from adding agenda items to County business meetings, he fails to provide sufficient evidence to carry his burden that these circumstances amount to an adverse action against him.

Plaintiff claims that “[t]here has not been a clear, consistently applied, or formally adopted process ensuring that individual commissioners can place items on the agenda for Board consideration.” Miller Decl. ¶ 5. However, Plaintiff also acknowledges that at one point there were agenda-setting meetings. *Id.* at ¶ 6. The law also informs the process of adding items to the agenda, as ORS 203.240 states that County business can only be conducted with the agreement of a majority of the Board. In any event, the process for adding items to the agenda has been communicated to Plaintiff several times. Second Yuille Decl. ¶ 2, Ex. D (informing Plaintiff that “Our agenda process has not changed. The Chair, Administrator, and Counsel participate in agenda setting. If you are making an agenda request, please advise what the request is so it can be evaluated.”); *see also* Second Yuille Decl. ¶ 3, Ex. E (informing Plaintiff that his suggested items are not “matters for a business meeting” and that the “agenda-setting process has been in place for many years, which is managed by staff.”). Plaintiff cannot cry foul when he has been informed of this process.

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Plaintiff has repeatedly failed to provide adequate information about his agenda item requests, to get another commissioner to second his agenda item requests, or to provide agenda items that are appropriate matters to discuss at County business meetings. First Yuille Decl. ¶¶ 30–39 (providing examples of the reasons why Plaintiff’s agenda items were not added to the agenda). These are the reasons why Plaintiff’s agenda items are not being added to the agenda—not because the County has barred him from adding items to the agenda in retaliation for his allegedly protected activities. This is proven by the fact that when Plaintiff actually follows the established procedure for adding items to the agenda, his items are added to the agenda. For example, Plaintiff stated that he had an agenda item entitled “Memorandum of Understanding,” but continuously failed to provide a copy of the document for review. Second Yuille Decl. ¶ 4. When he finally provided the document for review in April 2026, the agenda item was approved and placed on the May 13, 2026 meeting agenda. *Id.* Accordingly, Plaintiff has failed to establish sufficient evidence that he has suffered an adverse action and cannot meet his burden of proving that he is likely to succeed on his First Amendment claim.

Additionally, Plaintiff has failed to prove that, even if he had suffered adverse actions, retaliation for Plaintiff’s allegedly protected activity was the but-for cause of County’s alleged adverse actions. *Boquist v. Courtney*, 32 F.4th 764, 778 (9th Cir. 2022) (“[I]f the government officials would have taken the same adverse action even in the absence of their animus or retaliatory motive arising from the plaintiff’s speech, then the officials’ animus was not a but-for cause of the adverse action, and there was no violation of the plaintiff’s constitutional rights.”).

In his reply, Plaintiff argues that Defendants misrepresented the holding of *Boquist* in their response. Reply p. 2. Defendants’ counsel acknowledges that the assertion in Defendants’ response that the court in *Boquist* found no “First Amendment violation” was not correct and

apologizes to the Court and Plaintiff's counsel for the mistake. The court in *Boquist* found that the plaintiff had pled facts sufficient to state a First Amendment claim. *Boquist*, 32 F.4th at 771.

However, *Boquist* still supports Defendants' position here and the Court may rely on it to deny Plaintiff's motion. The court in *Boquist* noted that where, as here, "if the government officials would have taken the same adverse action even in the absence of their animus or retaliatory motive arising from the plaintiff's speech, then the officials' animus was not a but-for cause of the adverse action, and there was no violation of the plaintiff's constitutional rights." *Id.* at 778. In *Boquist*, the government applied security measures in response to concerns arising from the elected official's protected speech, and the court stated that "[i]f defendants are able to show that retaliation was not a but-for cause of the rule, the 12-hour notice rule would not violate Boquist's First Amendment rights because it would not constitute retaliation for his protected speech. In those circumstances, Boquist would not be entitled to declaratory relief based on a theory of illegal retaliation." *See Boquist*, 32 F.4th at 785. Though the court in *Boquist* stated that in accepting the plaintiff's allegations as true, the plaintiff had engaged in protected speech and was subject to adverse action, the court also stated that the defendants would have an opportunity to raise affirmative defenses, such as that "their actions were motivated by legitimate security concerns." *Id.* at 771–772.

In *Boquist* the court was reviewing the district court's order granting a motion to dismiss. *Boquist*, 32 F.4th at 773. It therefore accepted all facts alleged in the plaintiff's complaint and did not, unlike here, have the benefit of declarations from the defendants explaining that the County would have taken its security measures that Plaintiff contends were retaliatory regardless of motive. *Id.* at 772; Response p. 16 (citing First Yuille Decl. ¶ 43 & First Collier Decl. ¶ 6.).

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Unlike a plaintiff opposing a motion to dismiss, a motion for preliminary injunction requires “factual support beyond the allegations of the complaint [.]” *Flores v. Bennett*, 635 F. Supp. 3d 1020, 1030 (E.D. Cal. 2022), *aff’d*, No. 22-16762, 2023 WL 4946605 (9th Cir. Aug. 3, 2023) (citing *CI Games S.A. v. Destination Films*, No. 2:16-CV-05719-SVW-JC, 2016 WL 9185391, at *11 (C.D. Cal. Oct. 25, 2016)); *see also Shaterian v. Wells Fargo Bank, Nat. Ass’n*, No. C-11-920 SC, 2011 WL 2314151 at *4 (N.D. Cal. June 10, 2011) (stating that “a plaintiff may not support a motion for a preliminary injunction by merely pointing to his complaint and the facts alleged therein”). Plaintiff must establish that he is likely to succeed on the merits of his First Amendment claim, not just survive a motion to dismiss on that claim.

Here, Plaintiff is not likely to succeed on his First Amendment claim, because as the Court stated in *Boquist*, the County’s “animus was not a but-for cause of the adverse action[.]” *Boquist*, 32 F.4th at 778. Rather, the County would have been inclined to implement security measures to protect its staff and other elected officials from harassment and disruption regardless of any retaliatory motive regarding Plaintiff’s speech. First Yuille Decl. ¶¶ 41–43. Accordingly, Plaintiff fails to show that he is likely to succeed on the merit of his First Amendment claim, and therefore his preliminary injunction motion should be denied. *Cascadia Wildlands v. Thrailkill*, 49 F. Supp. 3d 774, 778 (D. Or. 2014), *aff’d*, 806 F.3d 1234 (9th Cir. 2015) (stating that a “plaintiff must satisfy all four *Winter* prongs.”).

B. Plaintiff Has Failed to Prove He Is Likely to Suffer Irreparable Harm.

As set forth in Defendants’ response to Plaintiff’s motion, Plaintiff’s delay in seeking this preliminary injunction “implies a lack of urgency and irreparable harm.” *Oakland Trib., Inc. v. Chron. Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985). Not only does Plaintiff fail to respond or even acknowledge this issue in his reply, but his statements in his declaration show that he

waited far too long before seeking the extraordinary remedy of a preliminary injunction from this Court.

For example, Plaintiff claims he has been excluded from the agenda-setting process since September 18, 2024 (Miller Decl. ¶ 6), has sent in agenda requests since July 2024 that have been disregarded (Miller Decl. ¶ 14); and has attempted public apologies to potentially rectify this dispute as early as 2025 (Miller Decl. ¶ 30). Plaintiff's argument that he is entitled to a preliminary injunction is undermined by how long Plaintiff claims he has been suffering any adverse actions at the hands of Defendants. *Oakland Trib., Inc. v. Chron. Pub. Co.*, 762 F.2d 1374, 1377 (9th Cir. 1985) ("Plaintiff's long delay before seeking a preliminary injunction implies a lack of urgency and irreparable harm.").

Plaintiff even cites the "urgency" required for obtaining a preliminary injunction in arguing that the Court should overlook his failure to submit evidence with his motion. Reply p. 10 ("Due to the urgency of obtaining a preliminary injunction at a point when there has been limited factual development, the rules of evidence do not apply strictly to preliminary injunction proceedings.") (quoting *Herb Reed Enters., LLC v. Florida Entm't Mgmt., Inc.*, 736 F.3d 1239, 1250 n.5 (9th Cir. 2013)). The Court in *Herb Reed* noted that courts may rely on inadmissible evidence to support a finding of irreparable harm. *Herb Reed*, 736 F.3d at 1250 n.5. It did not find or even remotely suggest that a district court may issue an injunction based on no evidence at all.¹

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¹ Defendants understand that Plaintiff has submitted a late declaration and that the Court gave Defendants leave to address it with this sur-reply. However, the fact that he did not submit a declaration with his motion should not be overlooked and is strongly indicative of the fact that Plaintiff has not demonstrated that he is likely to suffer irreparable harm if the Court does not issue a preliminary injunction.

The Court should deny Plaintiff's motion as his delay in seeking an injunction implies that he is unlikely to suffer irreparable harm if the Court does not issue a preliminary injunction. *Lydo Enters., Inc. v. City of Las Vegas*, 745 F.2d 1211, 1213 (9th Cir. 1984) (stating that "[a] delay in seeking a preliminary injunction is a factor to be considered in weighing the propriety of relief."); see also *Citizens of the Ebey's Rsrv. for a Healthy, Safe & Peaceful Env't v. U.S. Dep't of the Navy*, 122 F. Supp. 3d 1068, 1083–84 (W.D. Wash. 2015) (stating "Plaintiff's failure to seek a preliminary injunction in a more timely manner also weighs against a finding of irreparable harm" when Plaintiff waited 16 months to file motion).

C. Plaintiff Has Failed to Prove the Public Interest Favors a Preliminary Injunction.

As stated in Defendants' response, Plaintiff's actions greatly disrupted the County and its employees, and therefore the County took the necessary actions to prevent further disruption, such as providing Plaintiff with a separate office space and no longer allowing him to attend County management meetings. First Yuille Decl. ¶¶ 21–25, 40–43; First Collier Decl. ¶ 6. Plaintiff claims that he took steps to remedy his dispute with the County, by making apologies to individuals he offended and to the public. Miller Decl. ¶¶ 29–31. However, the County has explicitly informed Plaintiff of the steps he needs to take to atone for his conduct with the County, and he has failed to comply. Second Collier Decl. ¶ 2, Ex. 2 p. 2.

Indeed, Mr. Collier informed Plaintiff that he continued to take inappropriate actions beyond the scope of a commissioner's duties and needed to stop his disruptive behavior, and informed him of the required contents of an apology that he needed to make. *Id.* Mr. Collier also stated that he would need to review and pre-approve Plaintiff's apology. Second Collier Decl. ¶ 2–3. Plaintiff's attempted apologies failed to include the information Mr. Collier requested and

Mr. Collier did not pre-approve any such apologies. Second Collier Decl. ¶ 3. Accordingly,

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though Plaintiff claims to have tried to make it right with the County, he has deliberately failed to follow the guidelines provided for doing that. Accordingly, the public interest favors *not* providing a preliminary injunction, as Plaintiff has not taken any real responsibility for his actions and how his actions have significantly disrupted the County and its employees. Therefore, Plaintiff's motion for preliminary injunction is not in the public interest and the Court should deny it.

III. CONCLUSION

Despite filing a declaration with his reply, Plaintiff still fails to meet his burden of proof on his request for a preliminary injunction, and therefore the Court should deny Plaintiff's motion.

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