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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 BRUCE BOYER, individually and on) Case No. CV 12-04005 GAF
15 behalf of SONS OF LIBERTY LA, an) (FFMx)
16 unincorporated association,)
17 Plaintiff,) REPLY MEMORANDUM IN
18 vs.) SUPPORT OF DEFENDANT'S
19) MOTION TO DISMISS
20 CITY OF LOS ANGELES,) PURSUANT TO FEDERAL RULE
21 Defendant.) OF CIVIL PROCEDURE 12(b)(6)
22)
23) Date: August 27, 2012
24) Time: 9:30 a.m.
25) Ctrm: 740
) Honorable Gary Allen Feess
)
)
)

26 TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL
27 OF RECORD:

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1 Defendant, CITY OF LOS ANGELES submits the following Reply
 2 Memorandum to the Opposition to the Motion to Dismiss of Plaintiffs Bruce
 3 Boyer, individually and on behalf of Sons of Liberty, an unincorporated
 4 association.

5 I.

6 **PLAINTIFFS' OPPOSITION SHOULD BE DISREGARDED BECAUSE IT WAS**
 7 **UNTIMELY UNDER LOCAL RULE 7-9.**

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 9 Local Rule 7-9 of the United States District Court, Central District of
 10 California States:

11 "Each opposing party shall, not later than ten (10) days after service of the
 12 motion in the instance of a new trial motion and not later than twenty-one (21)
 13 days before the date designated for the hearing of the motion in all other
 14 instances, serve upon all other parties and file with the Clerk either (a) the
 15 evidence upon which the opposing party will rely in opposition to the motion and
 16 a brief but complete memorandum which shall contain a statement of all the
 17 reasons in opposition thereto and the points and authorities upon which the
 18 opposing party will rely, or (b) a written statement that that party will not oppose
 19 the motion. Evidence presented in all opposing papers shall comply with the
 20 requirements of L.R. 7-6, 7-7 and 7-8."

21 Plaintiff Memorandum of Points and Authorities in Opposition to Motion to
 22 Dismiss [Fed.R.Civ.P. 12(b)(6)] ("Opposition") was served on August 9, 2012.
 23 The designated date for the hearing of defendant's Motion to Dismiss Plaintiff's
 24 Complaint Pursuant to Federal Rule of Civil Procedure 12(b)(6) ("Motion") is
 25 August 27, 2012. Thus, the Opposition was filed three days beyond the filing

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1 deadline of August 6, 2012, which is twenty-one (21) days before August 27,
2 2012.¹

3 II.

4 THE UNTIMELY FILING OF THE OPPOSITION MAY BE DEEMED
5 CONSENT TO THE GRANTING OF THE MOTION TO DISMISS.

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7 Local Rule 7-12 of the United States District Court, Central District of
8 California states:

9 "The Court may decline to consider any memorandum or other document not
10 filed within the deadline set by other or local rule. The failure to file any required
11 document, or the failure to file it within the deadline, may be deemed consent to
12 the granting or denial of the motion."

13 C.D. Cal. Loc. R. 7-12

14 Plaintiffs' failure to file their Opposition within the deadline of August 6,
15 2012 may be deemed consent to the granting of the Motion. The City
16 respectfully urges the Court to deem it such, and grant Defendant's Motion to
17 Dismiss Pursuant to Rule 12(b)(6).

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27 ¹ The hearing date of August 27, 2012 is not reflected on the title page of the Opposition, as required by Local
28 Rule 11-3.8 which provides in pertinent part: "On the first page of all documents:... Immediately below the docket
number shall appear a concise description of the nature of the document (e.g., notice of motion, memorandum in
support or opposition). Immediately below the description shall appear the time and date of the hearing on the
matter to which the document is addressed." (Emphasis added.)

1 III.

2 THE OPPOSITION DOES NOT CHALLENGE THE NON-PUBLIC FORUM
3 NATURE OF THE GUN BUYBACK SITES OR THE REASONABLENESS
4 OF THE CITY'S SAFETY-RELATED RESTRICTIONS ON ACCESS.
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6 Should the Court reach the merits of Plaintiffs' argument, it fails on
7 substantive grounds as well. Not only do Plaintiffs fail to present "evidence upon
8 which the opposing party will rely in opposition to the motion..." as also required
9 by L.R. 7-9, their points and authorities fall far short of establishing that the
10 Complaint states a claim upon which relief can be granted.

11 Plaintiffs state in the Opposition: "At the heart of this case is the existence
12 and extent of the plaintiffs' right to speak and to be heard on issues of significant
13 public importance and controversy: gun control, public safety, and the scope and
14 implementation of the rights surrounding firearms that are guaranteed by the
15 Second Amendment to the Constitution." (Docket No. 15, Opposition at 8; 19-
16 23.) The City has never questioned Plaintiffs' right to speak on such issues. The
17 First Amendment, however, does not require that Plaintiffs be granted access to
18 gun buyback sites in order to express their views. The Court has already found
19 that the gun buyback locations used for the May 12, 2012 event are non-public
20 forums subject to reasonable, viewpoint-neutral restrictions. (Docket No. 11,
21 Order Re: Ex Parte Application for Temporary Restraining Order ("TRO Order")
22 at 6.) Plaintiffs have proffered no evidence that the locations are, in fact, public
23 forums or that future gun buyback events will take place in public forums.
24 Moreover, the Opposition fails to acknowledge, much less challenge, the City's
25 abundant safety-related reasons for restricting access to these secured locations,
26 as explained by LAPD Detective Richard Tompkins. (Docket No. 10-1,
27 Declaration of Richard Tompkins "Tompkins Decl.") ¶¶8, 9, 10.)

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1 The Opposition underscores the insufficiency of facts in support of
 2 Plaintiffs' Complaint. Both assert broad unfettered "rights" to free expression
 3 under the First Amendment without presenting facts that support relief under the
 4 controlling forum analysis. For instance, nowhere in the Complaint or Opposition
 5 does the Plaintiff show that the "principal purpose" of the locations has ever
 6 been the "free exchange of ideas." *International Society for Krishna*
 7 *Consciousness, Inc. v. Lee*, 505 U.S. 672, 694 (1992). The City, on the other
 8 hand, has not only shown that the gun buyback locations were all non-public
 9 forums, it has also presented evidence that LAPD will permit Plaintiffs to
 10 "exercise their First Amendment rights on the public sidewalks or other public
 11 areas immediately adjacent to the gun buyback locations." (TRO Order at 7.)
 12 Simply stated, Plaintiffs' opposition to the instant Motion is based on conclusory
 13 legal allegations, not facts which would warrant denial of the Motion.

14 IV.

15 THE OPPOSITION FAILS TO PRESENT ANY EVIDENCE THAT 16 THE CITY HAS PREVENTED OR WILL PREVENT PLAINTIFFS 17 FROM ENGAGING IN EXPRESSIVE ACTIVITY IN PUBLIC AREAS 18 ADJACENT TO GUN BUY BACK LOCATIONS 19

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 21 The Opposition suggests that "an actually controversy" exists between the
 22 City and Plaintiffs stemming from the parties not seeing "eye to eye" on policy
 23 issues surrounding firearms. (Opposition at 8; 16-24.) Plaintiffs further suggest
 24 that this controversy of supposedly Constitutional dimension has not been
 25 resolved and assert that "the City's refusal to provide *any* opportunity under *any*
 26 conditions for plaintiffs to speak at the time and place in which that speech is
 27 more pertinent" requires this Court's intervention. (Opposition at 9; 19-20 and
 28 10; 2-10. Emphasis in original.) These suggestions and assertions are plainly

1 belied by the evidence already presented by the City in this case. This evidence
2 shows that the City has “[left] open ample alternative channels for
3 communication,” notwithstanding the non-public forum nature of the gun buyback
4 locations. *United States v. Kokinda* 497 U.S. 720, 738 (1990). As already noted
5 by the Court in the TRO Order, these alternative channels will enable Plaintiffs to
6 express themselves verbally, by holding or wearing signs, by wearing expressive
7 clothing, and by handing out written literature to those waiting in line at gun
8 buyback locations, provided they do not violate any state or local laws.
9 (Tompkins Decl. ¶11.)

10 If plaintiffs had been prevented from expressing themselves on the
11 sidewalks or in other public areas adjacent to gun buyback sites on May 12,
12 2012, the Court would undoubtedly have been so advised in the Opposition and
13 evidence to that effect would have been presented by Plaintiffs. The Opposition
14 is bereft of any such contentions or evidence. If, at some point in the future,
15 Plaintiffs believe that the City has reneged on its assurance to allow them to
16 express themselves in the areas immediately adjacent to gun buyback
17 locations—which may occur at different sites than the May 12, 2012 gun buyback
18 event—they are certainly free to again seek judicial relief. At this point, however,
19 it appears that Defendants’ claims also fail on ripeness grounds. “A case is not
20 ripe for adjudication if it rests upon ‘contingent future events that may not occur
21 as anticipated, or indeed may not occur at all. *Texas v. United States*, 523 U.S.
22 296, 300 (1998), quoting *Thomas v. Union Carbide Agrig. Prods. Co.*, 473 U.S.
23 568, 580-81 (1985). Unless and until such future event occurs, however, the City
24 contends that the controversy underlying the instant Complaint has already been
25 resolved in accordance with First Amendment jurisprudence, and Plaintiffs has
26 failed to state a basis for relief at the present time.

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V.

CONCLUSION

Based on the foregoing, Defendant City of Los Angeles submits that Plaintiffs have failed to state a claim upon which relief can be granted, and respectfully requests that the Motion to Dismiss Pursuant to Rule 12(b)(6) be granted without leave to amend.

DATE: August 13, 2012 Respectfully submitted,

CARMEN A. TRUTANICH, City Attorney
HEATHER AUBRY, Deputy City Attorney

By: /s/ Heather Aubry
HEATHER AUBRY, Deputy City Attorney

Attorneys for Defendant, CITY OF LOS ANGELES