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12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 BRUCE BOYER, individually and on behalf) Case No. CV 12-04005 GAF (FFMx)
15 of SONS OF LIBERTY LA, an)
16 unincorporated association,) CITY OF LOS ANGELES'
17) RESPONSE TO EX PARTE
18 Plaintiff,) APPLICATION FOR TEMPORARY
19) RESTRAINING ORDER AND FOR
20 vs.) ORDER TO SHOW CAUSE RE
21) PRELIMINARY INJUNCTION;
22 CITY OF LOS ANGELES,) MEMORANDUM OF POINTS AND
23) AUTHORITIES; DECLARATION OF
24 Defendants.) RICHARD TOMPKINS;
25) DECLARATION OF CARLOS DE
26) LA GUERRA; DECLARATION OF
27) DEBRA GONZALES
28)
29)

30 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL**
31 **OF RECORD:**

32 Defendant City of Los Angeles (hereinafter "City") opposes the ex parte
33 application of plaintiffs Bruce Boyer and Sons of Liberty L.A. for a temporary
34 restraining order and order to show cause re preliminary injunction.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

For several years, the City has conducted an annual gun buyback program. (Declaration of Richard Tompkins, ¶ 5.) Under the program, members of the public are invited to turn in weapons in exchange for merchant gift cards. (Tompkins Decl., ¶ 7.) The gun buyback program in Los Angeles is similar to other programs conducted throughout the country. (Tompkins Decl., ¶ 5.) Although plaintiffs suggest the buyback program is illegal, the City's gun buyback program is conducted pursuant to California Penal Code section 27850. *Id.*

Plaintiffs' assert that they fear the City will prevent them from attending and expressing their views at the gun buyback events. Plaintiffs claim that they seek to "attend the Gun Buy Back events in order to express their disagreement with the City's policies." (Pltfs. Memo. 7:23-24.) Plaintiffs further claim that they will not "prevent or to interfere with the orderly, safe conduct of the events." (Pltfs. Memo. 7:24-25.) According to plaintiffs, they merely seek the opportunity to "speak to and communicate with those members of the public who attend the Gun Buy Back events, the opportunity to express plaintiff's (sic) disagreement and the opportunity to provide any willing (sic) listeners among the public attendees with information concerning alternatives to the Gun Buy Back program." (Pltfs. Memo. 8:1-5.)

The City will not prevent plaintiffs from expressing and communicating their views in areas that have not been restricted to those persons who are turning in firearms and City personnel involved in the operation of the program. The main dispute centers on plaintiffs' demand for access to the area immediate to where the firearms are being removed from the vehicles and rendered safe by police officers. At previous buyback programs, people have turned in defective and unsafe firearms, unstable ammunition,

1 and even explosives. (Tompkins Decl., ¶ 9.) For obvious safety reasons, access to the
2 area where the firearms are being surrendered must be restricted.

3 Notwithstanding plaintiffs' contention that their First Amendment rights are
4 being infringed, it is abundantly clear from plaintiffs' website (sonsoflibertyla.com) that
5 plaintiffs' true motivation is not to protect their rights, but to interfere with the
6 operation of the program and "slow down the line to a crawl, [so that] people will leave
7 to go to the gun stores!" Plaintiffs' website solicits "roppers," "hagglers" and "blockers"
8 whose sole purpose is to cause lengthy delays in hopes of persuading program
9 participants to take their guns to gun stores associated with plaintiffs. The roppers are
10 paid "depending on the 'deal' the gun is purchased for" and plaintiffs "want to make
11 sure that every ropper gets a 'pick of the litter' gun for their work." As further evidence
12 that plaintiffs are merely seeking to redirect program participants to gun stores,
13 plaintiffs are soliciting investors to buy up to \$240,000 worth of guns to resell for
14 \$480,000-\$720,000. (sonsoflibertyla.com, De La Guerra Decl., Exhibit 1.)

15 II.

16 **PLAINTIFFS HAVE FAILED TO MAKE THE NECESSARY SHOWING** 17 **FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER** 18

19 The standard for issuance of a preliminary injunction or temporary restraining
20 order balances the plaintiffs' likelihood of success against the relative hardships to the
21 parties. Plaintiffs are required to show "either a likelihood or success on the merits and
22 the possibility of irreparable injury, or that serious questions going to the merits were
23 raised and the balance of hardships tips sharply in its favor." *Sega Enters. V. Accolade,*
24 *Inc.*, 977 F.2d 1510, 1517 (9th Cir. 1992). The two alternatives represent the "extremes
25 of a single continuum," rather than two separate tests. *Benda v. Grand Lodge of Int'l*
26 *Ass'n of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9th Cir. 1978).

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1 Because plaintiffs will be unable to demonstrate that being denied access to a
 2 secured area of a non-public forum amounts to an unreasonable regulation of speech,
 3 plaintiffs' application for a temporary restraining order and order to show cause re
 4 preliminary injunction should be denied.

6 III.

7 THE GUN BUYBACK LOCATIONS ARE NOT PUBLIC FORA

8
 9 Six locations across the City have been selected for the gun buyback events on
 10 May 12, 2012. One will be conducted on state-owned property, four will be
 11 conducted on private property and the sixth will be held at the Los Angeles Fire
 12 Department training center. (Tompkins Decl., ¶¶ 5,6.) Though the Fire Department
 13 training center is public property, use of the property is limited to City personnel and
 14 persons there for Fire Department business purposes. (De La Guerra Decl., ¶ 5.) The
 15 City has obtained the permission of the non-City-owned properties' owners to use
 16 their property for the purpose of conducting the gun buyback program. In exchange,
 17 the City has agreed to indemnify the property owners from liability flowing from the
 18 presence of City employees and invitees on the property. (Tompkins Decl., ¶ 8.)

19 "Nothing in the Constitution requires the Government freely to grant access to
 20 all who wish to exercise their right to free speech on every type of Government
 21 property without regard to the nature of the property or to the disruption that might be
 22 caused by the speaker's activities. . . . [T]he Court has adopted a forum analysis as a
 23 means of determining when the Government's interest in limiting the use of its
 24 property to its intended purpose outweighs the interest of those wishing to use the
 25 property for other purposes." *Cornelius v. NAACP Legal Defense & Educational*
 26 *Fund, Inc.*, 743 U.S. 780, 800 (1985). As the Supreme Court stated in *United States v.*
 27 *Kokinda* 497 U.S. 720, 727 (1990) , the mere physical characteristics of a property
 28 cannot dictate forum analysis. Instead, the relevant factors are whether the forum has

1 been traditionally made available for speech, whether the primary purpose of the
2 forum is for expressive activity, and finally the extent to which speech is incompatible
3 with the usual functioning of the forum. *Id.*

4 Here, none of the six locations have been traditionally made available for
5 speech nor is their primary purpose a location for expressive activity --- the premises
6 are simply being made available to the public for the purpose of exchanging firearms
7 for gift cards. Furthermore, speech is incompatible with the functioning of the gun
8 buyback locations. The City has a need to restrict access to the area where firearms
9 are being surrendered in order to ensure the safety of the citizens participating in the
10 gun buyback program and the City employees and officials staffing the event.
11 (Tompkins Decl., ¶ 9.) Additionally, the City has a substantial interest in limiting its
12 potential liability for any injuries to persons it invites onto the properties. (Tompkins
13 Decl., ¶ 8.) For these reasons, the City needs to strictly limit entry to those individuals
14 who want to participate in the program and those few others that the City has
15 determined are necessary for the successful operation of the program. Neither the
16 mere public ownership of the Fire Department property nor the City's invitation to
17 certain members of the public to enter the locations for the exclusive purpose of
18 surrendering a firearm transforms the gun buyback locations into public fora.

19 The sole purpose of the gun buyback locations is for the City to receive
20 voluntarily surrendered firearms in exchange for gift cards; thus, these locations are
21 non-public fora. Access to a non-public forum can be restricted as long as the
22 restrictions are reasonable in light of the purpose served by the forum and the
23 restrictions are viewpoint neutral. *Cornelius v. NAACP Legal Defense &*
24 *Educational Fund, Inc., supra* at 806. The City's restriction of access to the gun
25 buyback locations to only those individuals who want to participate in the program
26 activities is abundantly reasonable and is viewpoint neutral. The restricted access to
27 the gun buyback locations is not based on an individual's positive, negative or
28

1 indifferent view of the program --- it is based on whether the individual has a firearm
2 to voluntarily surrender.

3 4 IV.

5 **PLAINTIFFS HAVE SUFFICIENT ALTERNATIVE CHANNELS** 6 **OF COMMUNICATION TO REACH THEIR INTENDED AUDIENCE**

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8 Plaintiffs state that “they seek only the opportunity to be present, to convey to
9 others their opposition to and criticism of the Buy Backs, and to offer alternatives to
10 those who wish to dispose of firearms at those events.” (Pltfs. Memo. 2:6-10.)
11 Plaintiffs will have the opportunity to exercise their First Amendment rights on the
12 public sidewalks or other public areas immediately adjacent to the gun buyback
13 locations subject only to very reasonable restrictions. Plaintiffs will be able to do any
14 of the following: (1) verbally express their views, (2) carry signs or wear signs on
15 their person, (3) wear t-shirts or other clothing with slogans containing their message,
16 and (4) hand out flyers to pedestrians or persons in vehicles in line to enter the gun
17 buyback locations. (Tompkins Decl., ¶ 11; Declaration of Debra Gonzales, ¶ 4.) The
18 only limitations on plaintiffs will be that they not do any of the following: (1) enter
19 the roadway and create a traffic hazard, (2) impede the movement of vehicles in line
20 to enter the gun buyback program locations, and (3) not violate any Los Angeles
21 Municipal Code provisions or state laws such as the California Penal or Vehicle
22 Codes. *Id.* Therefore, the plaintiffs have ample opportunities to communicate their
23 message to gun buyback participants without the necessity of entering the areas
24 secured for the purpose of the exchange of firearms.

25 26 **CONCLUSION**

27 Based on the foregoing, defendant respectfully submits that plaintiffs’ have
28 failed to meet the requisite standard for the issuance of a temporary restraining order

1 or a preliminary injunction. Accordingly, defendant requests that plaintiffs'
2 application be denied.

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4 DATE: May 11, 2012

Respectfully submitted,

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6 FOR THE CITY OF LOS ANGELES

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