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an unincorporated association

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRUCE BOYER, individually and on behalf of SONS OF LIBERTY LA, an unincorporated association,)	Case No.: CV12-04005 GAF (FFMx)
)	
Plaintiffs,)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN OPPOSITION TO
vs.)	MOTION TO DISMISS [Fed.R.Civ.P.
)	12(b)(6)]
CITY OF LOS ANGELES,)	
)	
Defendant.)	
)	
)	
)	

Plaintiffs BRUCE BOYER, individually and on behalf of SONS OF
LIBERTY LA, an unincorporated association, submit the following points and
authorities in opposition to the motion of the defendant CITY OF LOS
ANGELES to dismiss this action for failure to state a claim on which relief can be
granted under Federal Rules of Civil Procedure, Rule 12(b)(6):

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1 *Summary of the Pleading*

2 The plaintiffs in this action seek the Court's assistance in obtaining the
3 opportunity to exercise their rights of free speech, expression and assembly under
4 the First Amendment of the Constitution without threat of arrest or other chilling
5 impositions by the City of Los Angeles. The case arises from an ongoing
6 difference of opinion between the City and the plaintiffs concerning the wisdom,
7 propriety and legality of the City's annual Gun Buy Back events. The plaintiffs
8 do not seek by this action to interfere with or to halt the City's Gun Buy Back
9 program; they seek only the opportunity to be present, to convey to others their
10 opposition to and criticism of the Buy Backs, and to offer alternatives to those
11 who wish to dispose of firearms at those events. In prior years, the City has
12 arrested or threatened to arrest plaintiffs' representatives merely for their being
13 present at Gun Buy Back sites and attempting to speak with or otherwise
14 communicate to others present.

15 The most recent Gun Buy Back event was conducted on May 12, 2012. In
16 the days preceding that event, plaintiff applied to this Court for a temporary
17 restraining order. The Court denied that application on May 11, 2012. See Order,
18 Docket #11. The City of Los Angeles now seeks to dismiss the action altogether
19 on the ground that the Complaint does not state an actionable claim as between
20 the parties. For the reasons set forth below, the City's motion should either be
21 denied in its entirety or, if granted, be granted subject to the right of plaintiff to
22 amend the Complaint.

23 The Complaint seeks declaratory and injunctive relief, and does not purport
24 to state a claim for money damages (other than a potential future claim for
25

1 attorneys' fees if plaintiff prevails on the merits). The central allegations of the
2 Complaint are as follows:

3 Plaintiff Bruce Boyer is a resident of the County of Los Angeles and brings
4 this action in his own capacity and as representative of the unincorporated
5 advocacy group "Sons of Liberty LA." Complaint, ¶2. Sons of Liberty LA seeks
6 to advance individual liberty and Constitutional rights, with a particular focus on
7 the rights preserved by the First, Second and Fourth Amendments. *Id.*

8 Since at least 2009, the City of Los Angeles has sponsored and conducted a
9 series of "Gun Buy Back" events. Complaint, ¶4. At these Gun Buy Backs,
10 members of the public are invited to come to a designated location at a designated
11 date and time for the purpose of turning over possession and ownership of
12 firearms. In exchange for the surrender of these weapons, the City presents the
13 participants with "gift cards" in a stated sum usable for purchases at area
14 merchants. *Id.* Those presenting firearms to the City can and do do so
15 anonymously, "no questions asked." The City does not inquire how or where the
16 weapon came into the participants' possession, whether they are the weapons'
17 legal owners, whether the legal owner has granted permission to relinquish the
18 gun, whether there is any illegality in the past history of the firearm, and so on.
19 After the firearms have been collected, the Los Angeles Police Department—
20 which has overall responsibility for running the event—makes only enough
21 inquiry in to the weapon's provenance to determine whether it has been reported
22 lost or stolen. Those firearms that are not to be returned to their true owners are to
23 be destroyed, although plaintiffs believe that some of the collected firearms are
24 not treated in that fashion. *Id.*

1 The members of Sons of Liberty LA do not hold a favorable view of the
2 Gun Buy Back process. In particular, they consider gun buy backs to be an
3 unwise procedure as a matter of policy, and one that provides mere “window
4 dressing” without actually contributing to greater public safety. They also
5 question the legality of many aspects of the gun buy back process. Complaint, ¶5.
6 Beginning in 2010, Sons of Liberty LA has attempted to engage in political
7 speech activity at and in the vicinity of Gun Buy Back events, only to be met with
8 threats of force and possible arrest by the City’s representatives. Complaint, ¶6.
9 Members of Sons of Liberty LA, including plaintiff Boyer, have gone to the
10 locations at which Gun Buy Back events are being conducted and, by means of
11 signs, flyers, slogans on t-shirts and, where possible, direct conversation with
12 other attendees, have attempted to communicate their criticisms of the City’s
13 policies and to offer information whereby those who might otherwise surrender a
14 gun to the City for a mere \$100 gift card might instead be directed to a fully
15 licensed firearms dealer willing to purchase the same firearms for a potentially
16 substantially larger amount. “The City has consistently and persistently taken
17 measures to prevent the attendance, assembly, and speech activities of plaintiffs,
18 by methods including refusal of access to the event and its vicinity, and the direct
19 threat of unauthorized arrest by officers of the Los Angeles Police Department.”
20 *Id.* The actions of the City in precluding or interfering with plaintiffs’ presence
21 and speech activities in the area of Gun Buy Back events is a matter of City
22 policy, as reflected by the public statement of the Vice President of the Los
23 Angeles Police Commission that steps should be taken to “insure they are not
24 present” at Gun Buy Back events. Complaint, ¶7.

1 Although the 2012 Gun Buy Back event has now come and gone, there is
 2 no cause to believe that the City will not continue to hold such events annually.
 3 When those events occur, plaintiff and Sons of Liberty will again wish to
 4 participate, comment, and communicate their views concerning those events, free
 5 from interference by the City and its officers. There therefore remains an
 6 ongoing, actual dispute between plaintiffs and the City over the extent of
 7 plaintiff's rights, the permissible means of exercising them, and particularly the
 8 manner in which those rights can be exercised without the chilling impact of a
 9 threat of arrest. See Complaint ¶¶8-9.

10 These issues are framed by the Complaint with sufficient completeness and
 11 clarity to permit this case to proceed on its merits. The City's motion to dismiss
 12 should be denied.

13 **Legal Argument**

14 ***I. The Allegations of the Complaint are Sufficient to Establish*** 15 ***the Existence of an Actual Controversy Over the Exercise of*** 16 ***Constitutional Rights, Warranting Declaratory Relief,*** 17 ***Injunctive Relief, or Both***

18 The standards applicable to reviewing a motion to dismiss pursuant to
 19 Fed.R.Civ.P. 12(b)(6) were summarized as follows in *Baggett v. Hewlett-Packard*
 20 *Co.*, 582 F.Supp.2d 1261 (C.D.Cal. 2007):

21 A complaint must be dismissed when a plaintiff's allegations
 22 fail to state a claim upon which relief can be granted. Fed.R.Civ.P.
 23 12(b)(6). Federal Rule of Civil Procedure 8(a)(2) requires only 'a
 24 short and plain statement of the claim showing that the pleader is
 25

1 entitled to relief.’ Fed.R.Civ.P. 8(a)(2). ‘[O]rdinary pleading rules
2 are not meant to impose a great burden upon a plaintiff.’ *Dura*
3 *Pharms., Inc. v. Broudo*, 544 U.S. 336, 347, 125 S.Ct. 1627, 161
4 L.Ed.2d 577 (2005). ‘Specific facts are not necessary; the statement
5 need only “give the defendant fair notice of what the . . . claim is and
6 the grounds upon which it rests.’ *Erickson v. Pardus*, 551 U.S. 89,
7 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007) (per curiam)
8 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955,
9 1964, 167 L.Ed.2d 929 (2007)).

10 The Court must accept as true all factual allegations in the
11 complaint and must draw all reasonable inferences from those
12 allegations, construing the complaint in the light most favorable to
13 the plaintiff. *Westlands Water Dist. v. Firebaugh Canal*, 10 F.3d
14 667, 670 (9th Cir. 1993). Dismissal without leave to amend is
15 appropriate only when the Court is satisfied that the deficiencies of
16 the complaint could not possibly be cured by amendment. *Jackson*
17 *v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003) [and additional citations].
18 *Id.*, 582 F.Supp.2d at p. 1265. Similarly:

19 Rule 12(b) (6) permits dismissal of a claim either where that
20 claim lacks a cognizable legal theory, or where insufficient facts are
21 alleged to support the claim's theory. See *Balistreri v. Pacifica*
22 *Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). While a claim does
23 not need detailed factual allegations to survive a motion to dismiss, a
24 party's obligation to provide the grounds of its entitlement to relief
25 requires ‘more than labels and conclusions’ or a ‘formulaic recitation

1 of the elements of a cause of action.’ [Citation.] Rather, to survive a
2 motion to dismiss pursuant to Rule 12(b)(6), factual allegations must
3 be sufficient, when taken as true, to raise a right to relief above the
4 speculative level, on the assumption that all the allegations in the
5 complaint are true, even if doubtful in fact. [Citation.] A complaint
6 may proceed even though proof seems improbable or recovery is
7 very remote and unlikely. *Id.*

8 *Multimedia Patent Trust v. Microsoft Corp.*, 525 F.Supp.2d 1200, 1212 (S.D. Cal.
9 2007).

10 Here, the relief sought is declaratory relief or injunctive relief, as the Court
11 eventually determines to be appropriate. To establish an entitlement to such relief
12 for pleading purposes, a plaintiff need only describe the existence of a genuine
13 legal dispute over a matter within the jurisdiction of the Court.

14 ‘Proceedings under the Declaratory Judgment Act are
15 governed by the same pleading standards that are applied in other
16 federal civil actions.’ [Citation.] The plaintiff must allege a
17 ‘justiciable controversy’ in order to state a claim for declaratory
18 relief. ... *Maryland Gas. Co. v. Pacific Coal & Oil Co.*, 312 U.S.
19 270, 61 S.Ct. 510 (1941)); *Aetna Life Ins. Co. v. Haworth*, 300 U.S.
20 227, 57 S.Ct. 461 (1937); *Tennessee Coal, Iron & R. Co. v. Muscoda*
21 *Local No. 123, etc.*, 137 F.2d 176 (5th Cir. 1943) *aff’d* 321 U.S. 590
22 (1944). The complaint must disclose ‘a legal right, relation, status, or
23 interest claimed by plaintiff over which a dispute with the defendant
24 has arisen.’ ... *Paper Carriers Union No. 450 v. Pulitzer Pub. Co.*,
25 309 F.2d 716 (8th Cir. 1962)); see also *Aralac, Inc. v. Hat Corp. of*

1 *America*, 166 F.2d 286 (3rd Cir. 1948). The Declaratory Judgment
2 Act is a procedural statute providing an additional remedy in which
3 the federal courts already have jurisdiction, and should be given a
4 liberal interpretation. *Tennessee Coal, Iron & R. Co. v. Muscoda*
5 *Local No. 123*, supra, 137 F.2d at 179.

6 *Heimann v. National Elevator Industry Pension Fund* 187 F.3d 493, 510-511 (5th
7 Cir. 1999). The Declaratory Judgment statute, 28 U.S.C. § 2201, provides in
8 relevant part:

9 (a) In a case of actual controversy within its jurisdiction,
10 ... any court of the United States, upon the filing of an appropriate
11 pleading, may declare the rights and other legal relations of any
12 interested party seeking such declaration, whether or not further
13 relief is or could be sought. Any such declaration shall have the force
14 and effect of a final judgment or decree and shall be reviewable as
15 such.

16 The complaint in a declaratory judgment action must therefore allege facts
17 showing existence of an “actual controversy” and that the controversy bears upon
18 a matter within the court’s subject matter jurisdiction.

19 At the heart of this case is the existence and extent of the plaintiffs’ right to
20 speak and to be heard on issues of significant public importance and controversy:
21 gun control, public safety, and the scope and implementation of the rights
22 surrounding firearms that are guaranteed by the Second Amendment to the
23 Constitution. The plaintiffs and the City of Los Angeles do not see eye to eye on
24 these issues. In particular, the City has adopted a policy of encouraging the
25 voluntary relinquishment of firearms in exchange for gift cards at its annual gun

1 Buy Back events, a policy with which the plaintiffs disagree citing questions
2 concerning its wisdom as public policy and the legality of the City's chosen
3 procedures. For the past several years, plaintiffs have attempted to attend Gun
4 Buy Back events in order to *express* their disagreement with the City's policies.
5 The plaintiffs have not sought to prevent or to interfere with the orderly, safe
6 conduct of the events. Rather, plaintiffs have sought merely the opportunity to
7 *speak to* and *communicate with* those members of the public who attend the Gun
8 Buy Back events, the opportunity to express plaintiff's disagreement and the
9 opportunity to provide any willing listeners among the public attendees with
10 information concerning alternatives to the Gun Buy Back program. The plaintiffs'
11 efforts have been met by the City with threats of arrest and similarly blunt and
12 chilling action. Plaintiff Bruce Boyer other members of Sons of Liberty LA have
13 been threatened repeatedly with arrest simply for being present and for seeking to
14 communicate with others at Gun Buy Back events.

15 The core dispute in this case is thus the scope of the plaintiffs' rights under
16 the First Amendment to the Constitution. This is a federal question squarely
17 within the Court's jurisdiction pursuant to 28 U.S.C. §1331 and 28 U.S.C.
18 §1343(a)(3).

19 The City makes no claim in its motion that the controversy between it and
20 the plaintiffs either does not exist or has been resolved. The past actions of the
21 City targeting the plaintiffs have been driven by an intent to silence them. At least
22 one City official is on record disdainfully referring to Sons of Liberty LA as
23 "solicitors" and requesting that action be taken for the specific purpose of seeing
24 to it that they are "not present." The City's hostility toward plaintiffs is
25 specifically triggered by the plaintiffs' substantive disagreement with the City's

1 policies. The City's purpose is to eliminate that agreement by doing what is
2 necessary to prevent plaintiffs' view point from being heard. The City's actions,
3 and the City's refusal to provide *any* opportunity under *any* conditions for
4 plaintiffs to speak at the time and place in which that speech is more pertinent is a
5 plain restriction on the rights of freedom of speech and expression under the First
6 Amendment. This controversy is ripe for review and determination in this Court,
7 and facts sufficient to invoke that relief, and possibly additional relief by
8 injunction, are framed in the complaint. This motion to dismiss can and should be
9 denied.

10
11 DATED: August 9, 2012

Respectfully submitted,

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13
14

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16 individually and on behalf of SONS OF
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