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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES FAHR, et al.,
Plaintiffs,
v.
CITY OF SAN DIEGO, et al.,
Defendants.

Case No. 21-cv-1676-BAS-BGS

ORDER:

- (1) DENYING PLAINTIFFS’ EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER (ECF No. 2); AND**

- (2) DENYING PLAINTIFFS’ EX PARTE MOTION TO SHORTEN TIME (ECF No. 5)**

Before the Court is Plaintiffs’ *ex parte* Motion for a Temporary Restraining Order or, Alternatively, Preliminary Injunction (“Motion for a TRO”) and *ex parte* application for an order shortening the time for this Court to hear that Motion (“Motion to Shorten”), both of which Plaintiffs filed on September 24, 2021. (Mot. for TRO, ECF No. 2; Mot. to Shorten, ECF No. 5.) The Court finds those Motions suitable for determination on the papers submitted and without oral argument. *See* Fed. R. Civ. P. 78(b); Civ. L.R. 7.1(d)(1). For the reasons stated below, the Court **DENIES** both Motions, without prejudice to their renewal. (ECF Nos. 2, 5.)

1 **I. BACKGROUND**

2 On September 23, 2021, Plaintiffs commenced this action against Defendants
 3 seeking to invalidate Ordinance Number O-2022-7 (Compl., Ex. A (“Ordinance”)), which
 4 Plaintiffs allege “prohibits, *inter alia*, the possession, purchase, sale, receipt, and
 5 transportation of non-serialized, unfinished firearm parts, as well as non-serialized
 6 firearms[]” covered by the Ordinance, in violation of the Second Amendment and Fifth
 7 Amendment Takings Clause (*id.* ¶ 54; *see id.* ¶¶ 129–65). The San Diego City Council
 8 passed the Ordinance on September 14, 2021 and the Mayor of San Diego signed it on
 9 September 21, 2021. (Compl. ¶¶ 55.) As Plaintiffs acknowledge, the Ordinance currently
 10 is not being enforced. (*See, e.g., id.* ¶ 59.) Rather, the Ordinance’s effective date is October
 11 23, 2021—30 days from the date on which it was signed into law. (Ordinance 9.)

12 Without first serving Defendants with the Complaint, Plaintiffs filed *ex parte* their
 13 Motion for a TRO on September 24, 2021, claiming that they would suffer immediate and
 14 irreparable harm if the Ordinance becomes effective. (ECF No. 2.)¹ Specifically, Plaintiffs
 15 James Fahr, Desiree Bergman, and Colin Rudolph, residents of San Diego, own non-
 16 serialized firearm components that they acquired before enactment of the Ordinance, with
 17 which they intend to construct “California-compliant” firearms. (Mot. TRO, Ex. 1 (“Fahr
 18 Decl.”) ¶¶ 6–10; *id.*, Ex. 2 (“Bergman Decl. ¶¶ 6–11”); *id.*, Ex. 5 (“Rudolph Decl.”) ¶¶ 6–
 19 11.) Individual Plaintiffs complain that the Ordinance prohibits them from doing so. They
 20 aver that now they “must dispossess [themselves]” of these non-serialized firearm
 21 components by the effective date of the Ordinance “or face criminal prosecution under
 22 [San Diego Municipal Code Section] 53.18(c)(1).” (Fahr Decl. ¶¶ 11–13; Bergman Decl.
 23 ¶¶ 12–13; Rudolph Decl. ¶¶ 12–13.)² Organizational Plaintiffs and Firearms Policy
 24 Coalition, Inc. and San Diego County Gun Owners PAC—both of whom allege standing
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26
 27 ¹ Plaintiffs filed *ex parte* their Motion to Shorten later that same day. (*See* ECF No. 5.)

28 ² Individual Plaintiffs further allege that the Ordinance prohibits them from “purchas[ing],
 29 acquir[ing], possess[ing], and transport[ing]” non-serialized firearm components “in the future,” as they
 30 assertedly had intended. (Fahr Decl. ¶¶ 11–13; Bergman Decl. ¶¶ 12–13; Rudolph Decl. ¶¶ 12–13.)

1 in a “representational capacity”—claim to have members residing in the City of San Diego
2 and/or San Diego County who are similarly situated to Individual Plaintiffs. (Mot. TRO,
3 Ex. 3 (“Combs Decl.”) ¶ 16; Mot. TRO, Ex. 4 (“Schwartz Decl.”) ¶ 16.)

4 II. ANALYSIS

5 Under Rule 65 of the Federal Rules of Civil Procedure, the court may issue a
6 temporary restraining order without notice to the non-moving parties only if:

7 (A) specific facts in an affidavit or a verified complaint clearly show that
8 immediate and irreparable injury, loss, or damage will result to the movant
9 before the adverse party can be heard in opposition; and

10 (B) the movant’s attorney certifies in writing any efforts made to give notice
11 and the reasons why it should not be required.

12 Fed. R. Civ. P. 65(b)(1).

13 “[T]he stringent requirements embodied in Rule 65(b) recognize that ‘our entire
14 jurisprudence runs counter to the notion of court action taken before reasonable notice and
15 an opportunity to be heard has been granted both sides of a dispute.’” *Adobe Sys., Inc. v.*
16 *S. Sun Prod., Inc.*, 187 F.R.D. 636, 638–39 (S.D. Cal. 1999) (citing *Granny Goose Foods,*
17 *Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 438–39 (1974)). “A temporary injunction
18 can be an extremely powerful weapon, and when such an order is issued *ex parte*, the
19 dangers of abuse are great.” *Id.* at 639 (citing *Am. Can Co. v. Mansukhani*, 742 F.2d 314,
20 324 (7th Cir. 1984)).

21 This district’s Civil Local Rules further require that in support of any *ex parte*
22 application, the moving party must submit an affidavit or declaration stating:

23 (1) that within a reasonable time *before* the motion the [moving] party
24 informed the opposing party or the opposing party’s attorney when and where
25 the motion would be made; or (2) that the party in good faith attempted to
26 inform the opposing party and the opposing party’s attorney but was unable
27 to do so, specifying the efforts made to inform them; or (3) that for reasons
28 specified the party should not be required to inform the opposing party’s
attorney.

1 Plaintiffs' *ex parte* Motion for a TRO is denied because it runs afoul of the notice
2 requirements of both the Federal Rules of Civil Procedure and this district's Civil Local
3 Rules. A temporary restraining order on an *ex parte* basis ordinarily is limited to situations
4 where "it is impossible to give notice to the adverse party because the plaintiff does not
5 know the party's identity or location" or where "proceeding *ex parte* is the 'sole method of
6 preserving a state of affairs in which the court can provide effective final relief.'" *Adobe*
7 *Sys.*, 187 F.R.D. at 639 (citing *Matter of Vuitton et Fils S.A.*, 606 F.2d 1, 4 (2d Cir. 1979)).
8 *Ex parte* relief is rarely justified. *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126,
9 1131 (9th Cir. 2006) (citing *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck*
10 *Drivers*, 415 U.S. 423, 438–39 (1974)).

11 Plaintiffs do not argue that their Motion for a TRO falls under either of the two
12 limited situations in which *ex parte* relief is justified. *See Adobe Sys.*, 187 F.R.D. at 639.
13 Plaintiffs do not claim to lack knowledge of Defendants' identity or location, or that it was
14 otherwise impossible to give Defendants notice. Nor have Plaintiffs persuaded the Court
15 that *ex parte* injunctive relief is the only effective relief available to preserve Plaintiffs'
16 rights. Fed. R. Civ. P. 65(b)(1)(B); *see also* Civ. L.R. 83(g)(2).

17 Because the record lacks the extraordinary showing required to justify *ex parte*
18 relief, the Court will not consider the merits of the Motion for a TRO or the Motion to
19 Shorten until Plaintiffs submit proof that Defendants have been served in accordance with
20 the Federal Rules of Civil Procedure and this district's Civil Local Rules.


21 **III. CONCLUSION**

22 For the foregoing reasons, the Court **DENIES** Plaintiff's *ex parte* Motion for
23 A TRO (ECF No. 2) and, consequently, **DENIES** Plaintiff's *ex parte* Motion to Shorten
24 (ECF No. 5) without prejudice to their renewal with the appropriate showing that proper
25 service has been made upon Defendants, or that issuance of the TRO
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1 is proper without notice pursuant to the strict requirements of Federal Rule of Civil
2 Procedure 65(b)(1). *See* Fed. R. Civ. P. 65(b)(1)(B); Civ. L.R. 83(g)(2).

3 **IT IS SO ORDERED.**

4
5 **DATED: September 27, 2021**


6 **Hon. Cynthia Bashant**
7 **United States District Judge**

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