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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES PRESS CLUB, STATUS COUP,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a municipal entity, JIM MCDONNELL, LAPD CHIEF, sued in his official capacity;

Defendants.

CASE NO. 25-CV-05423 HDV-E
Hon. Hernan D. Vera, Crtrm. 5B
Magistrate Judge Charles F. Eick, Crtrm. 750

DEFENDANT CITY OF LOS ANGELES'S OPPOSITION TO PLAINTIFFS'S EX PARTE APPLICATION FOR CONTEMPT; SANCTIONS

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

Defendant CITY OF LOS ANGELES hereby submits the following Memorandum of Points and Authorities in Opposition to Plaintiffs' Ex Parte Application for Contempt; Sanctions.

Date: August 14, 2025

HYDEE FELDSTEIN SOTO, City Attorney
DENISE C. MILLS, Chief Deputy City Attorney
KATHLEEN KENEALY, Chief Asst City Attorney

By: /s/ *Cory M. Brente*

CORY M. BRENTE, Senior Assistant City Attorney
Attorneys for Defendant City of Los Angeles

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' ex parte application should be denied. Plaintiffs' application primarily seeks monetary relief, which is effectively a criminal sanction requiring the full panoply of heightened procedural protections afforded to criminal defendants, yet Plaintiffs seek this relief via an ex parte application.

Likewise, Plaintiffs' application is focused on August 8, a date which has passed. There is no pending emergency warranting that these issues be resolved outside of the regularly noticed motion procedures. As will be seen with the City's soon to be filed opposition to Plaintiffs' motion for preliminary injunction, these are important issues that should be resolved only upon a full and complete briefing, with evidence from both sides, and not based on an "emergency motion" that the City only has 24 hours to oppose. The City requests that the Court deny Plaintiffs' ex parte application without prejudice to be filed as a noticed motion.

II. LEGAL STANDARD FOR *EX PARTE* APPLICATIONS

"Unlike regularly noticed motions, applications for *ex parte* relief are inherently unfair and pose a threat to the administration of justice because the parties' opportunities to prepare are grossly unbalanced. The opposing party can rarely make its best presentation on the short notice accompanying an ex parte application. Hence, to justify use of *ex parte* procedures, a party seeking ex parte relief must show: (1) the moving party's case will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures; and (2) the moving party is without fault in creating the crisis that requires ex parte relief, or that the crisis occurred as a result of excusable neglect. Failure to file a properly noticed motion constitutes sufficient grounds for denying an *ex parte* application." *Terry v. State Farm Gen. Ins. Co.*, 2017 U.S. Dist. LEXIS 228187, at *3-4 (C.D. Cal. July 27, 2017) (citations omitted).

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III. PLAINTIFFS'S EX PARTE SHOULD BE DENIED AS THERE IS NO EMERGENCY BASIS FOR THE RELIEF SOUGHT.

Plainly, Plaintiffs' claim that the City violated the TRO on August 8, and that they are entitled to damages as a result, is not an emergency appropriate for an ex parte application. The opportunities for legitimate *ex parte* applications, even when timely sought, are extremely limited. *In re Intermagnetics America, Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989). This is because *ex parte* applications "are inherently unfair, and they pose a threat to the administration of justice. They debilitate the adversary system. Though the adversary does have a chance to be heard, the parties' opportunities to prepare are grossly unbalanced. Often, the moving party's papers reflect days, even weeks, of investigation and preparation; the opposing party has perhaps a day or two." *Mission Power Eng'g Co. v. Cont'l Cas. Co.*, 883 F. Supp. 488, 490 (C.D. Cal. 1995). *Ex parte* relief is not available to compensate for an alleged past wrong. *Id*.

This is especially true here. The City does not have the time to develop an evidentiary record on an ex parte basis, all the more problematic given the criminal sanctions Plaintiffs are seeking. The City needs to collect and review body worn video, as well as interview officers and reports, in order to respond to the claims made by Plaintiffs. The City has begun to do that, but 24 hours is an insufficient amount of time for that work to be completed.

Moreover, the alleged conduct complained of has already occurred. Whatever happened on August 8 will not change if the issues are heard via noticed motion. There are no facts substantiating that Plaintiffs will be irreparably harmed if their request for a contempt order is not decided on an emergency basis. In fact, it is the City that will be prejudiced if the issues raised in the application are not decided based upon a full and complete record, but instead based upon the one-sided information provided by Plaintiffs which the City does not have sufficient time to investigate and rebut in the 24-hour turn-around provided by the ex parte rules.

Simply put, there is no good cause to consider the relief sought by Plaintiffs on a

shortened *ex parte* basis and for this reason, Plaintiffs' request should be denied.

IV. SANCTIONS AND ATTORNEY'S FEES SHOULD NOT BE AWARDED.

As explained, this ex parte is inappropriate and Plaintiffs' arguments that the City is in contempt must be heard on a regularly noticed motion. *See General Signal Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1380-81 (9th Cir. 1986) [vacating $400,000 sanction, despite affirming contempt finding, because record was insufficient to support the sanction as either compensatory or coercive]; *see also Cuviello v. City of Oakland*, 2009 U.S. Dist. LEXIS 102537, at *8 (N.D. Cal. Oct. 19, 2009) ["Should a court find a party in contempt, the court has discretion in deciding whether to impose sanctions."] (citation omitted).

The purpose of civil contempt sanctions is remedial to coerce obedience with the court order, or to compensate the party pursuing the contempt action for "actual loss" resulting from past non-compliance, or both. *See Cuviello v. City of Oakland*, 2009 U.S. Dist. LEXIS 102537, at *8 (N.D. Cal. Oct. 19, 2009); *see also In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 696 (9th Cir. 1993) ["award to defendants must be limited to their 'actual loss' for 'injuries which result from the noncompliance.'"]. Where a sanction is instead intended to punish a party for past defiance of an order, as here, that must be viewed as a criminal sanction, which requires the full panoply of heightened procedural protections afforded to criminal defendants. *See Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992). Furthermore, "[w]here a fine is not compensatory, it is civil only if the contemnor is afforded the opportunity to purge." *Int'l Union v. Bagwell*, 512 U.S. 821, 829 (1994); *United States v. Ayres*, 166 F.3d 991, 997 (9th Cir. 1999) ["Civil contempt sanctions, however, are only appropriate where the contemnor is able to purge the contempt by his own affirmative act and 'carries the keys of his prison in his own pocket'"] (citation omitted).

Similarly, Plaintiffs' request for attorney's fees should be denied. *See Innovation Ventures, LLC v. N2G Distrib., Inc.*, 2014 U.S. Dist. LEXIS 184735, at *51 (C.D. Cal. Nov. 4, 2014) ["courts may (but are not required to) impose attorneys' fees as an

appropriate remedial fine after a finding of civil contempt."].

V. PLAINTIFFS'S REQUESTS THAT CHIEF McDONNELL PERSONALLY APPEAR AT THE REQUESTED OSC HEARING AND THAT THE TRO SHOULD BE MODIFIED SHOULD BE DENIED.

In addition, if the Court is inclined to hold any hearing based on the Plaintiffs' application, the request that Chief McDonnell personally appear should be denied.

There is no evidence upon which to order Chief McDonnell to personally appear. None of the evidence presented by Plaintiffs depicts Chief McDonnell at the scene where any of the alleged conduct occurred, and none of the evidence demonstrates that Chief McDonnell has any personal knowledge of the alleged conduct or why it occurred, if it occurred at all. Demanding that an apex witness and high-ranking public official, such as the Chief of the Los Angeles Police Department, personally appear in court to answers questions that the witness does not have sufficient personal knowledge to answer is burdensome, harassing, vexing and annoying to that witness and is without any substantial justification. Plaintiffs have offered no evidence that any testimony by Chief McDonnell would be relevant or admissible as to the alleged issues. Fed. R. Civ. Proc., rule 26, does not allow fishing expeditions and demands that any discovery be proportional to the needs of the case. Here, Chief McDonnell should not have to take time out of his highly demanding schedule overseeing the Los Angeles Police Department to come to court to answer questions of which he has no personal knowledge. Plaintiffs also have not shown that any potential questions cannot be answered by other lower-level employees of the LAPD and can only be answered by Chief McDonnell. Accordingly, Plaintiffs' request that the Court order Chief McDonnell to personally appear should be denied.

As explained above, the matters raised in this ex parte application are inappropriate for deciding on an emergency basis. This includes Plaintiffs' request that the TRO be modified. Any modification should only be done after a full and fair hearing, based on a complete record. Plaintiffs' counsel did not sufficiently meet and confer or make a good faith attempt to informally resolve the proposed TRO modifications with defense counsel.

Notice of an ex parte application the day it was filed is not a sufficient attempt to see if an agreement can be reached before resorting to court intervention. *See* Docket No. 63-3, declaration of Weston Rowland. The City requests that the ex parte be denied.

VI. A SPECIAL MASTER SHOULD NOT BE APPOINTED.

Plaintiffs' request that a special master be appointed should be likewise be denied. As explained previously, this request is not the proper subject of an ex parte application. As Plaintiffs point out in their papers, Fed. R. Civ. Proc., rule 53(a), authorizes the appointment of a special master where the parties have not consented to those situations where "exceptional conditions" exist. The alleged conduct does not demonstrate "exceptional conditions" upon which a special master can be appointed.

Plaintiffs argue that a special master should be appointed because of "both the complexity of the litigation and the obvious need to investigate and monitor Defendants' compliance with the preliminary injunction support the appointment of a Special Master." *See* Docket No. 63-1, p. 19:2-4. However, a preliminary injunction has not been issued, and Plaintiffs' request is premature. Plaintiffs' other stated reason that a special master could assist with findings reasons for violations of the TRO also is not an "exceptional circumstance." The Court has not made any findings that the TRO has been violated, and there is no evidence that this Court or one of the magistrate judges in the Central District could not perform this function. *See* 28 U.S.C. §636(b)(2); F.R.C.P. rule 53 ["Unless a statute provides otherwise, a court may appoint a master only to:. . .(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district."]

Contrary to Plaintiffs' arguments, this case is not a complex case. The issues are not complicated or overly technical or scientific. This case is not the sort of complex case contemplated by Fed. R. Civ. Proc., rule 53, for appointment of a special master. As the court in *Sierra Club v. Clifford*, 257 F.3d 444, 446 (5th Cir. 2001) aptly explained,

> "The use of masters is 'to aid judges in the performance of specific judicial duties, as they may arise in the progress of a

> cause, and not to displace the court.'" *La Buy*, 352 U.S. at 256, 77 S.Ct. 309 (citation omitted); *Piper v. Hauck*, 532 F.2d 1016, 1019 (5th Cir.1976). In *La Buy*, the Supreme Court expressly held that a congested docket, the complexity of issues, and the extensive amount of time required for a trial do not, either individually or as a whole, constitute an exceptional condition justifying a Rule 53 reference to a special master in a non-jury antitrust action. *See La Buy*, 352 U.S. at 258–59, 77 S.Ct. 309."

The Advisory Committee notes to the 2003 Amendment to Fed. R. Civ. P. 53(h) [now (g)(3)] states that "The need to pay compensation is a substantial reason for care in appointing private persons as masters." The same notes go on to say that "The nature of the dispute also may be important--parties pursuing matters of public interest, for example, may deserve special protection." Here, there is no basis upon which to appoint a special master or to require the City to expend additional taxpayer dollars to fund a special master, particularly at this juncture in the litigation.

VII. CONCLUSION

Based on the foregoing, Defendant City respectfully requests that the Court deny Plaintiffs' ex parte application in its entirety.

Date: August 14, 2025

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