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9 Attorneys for Defendant  
10 CITY OF LOS ANGELES

11 **UNITED STATES DISTRICT COURT**

12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 **HOLLYWOOD CHARACTERS**, an  
14 unincorporated association, **MATTHIAS**  
15 **BALKE**, **MELISSA BEITHAN**, **PAUL**  
16 **HARRELL**, **TERRELL "TONY" TOMEY**,

17 Plaintiffs,

18 v.

19 **CITY OF LOS ANGELES**, a municipal  
20 entity, **OFFICER CHACON** (Badge #  
21 36926), **OFFICER GONZALES** (Badge #  
22 37578), **OFFICER MACHADO** (Badge #  
23 37048), **OFFICER JORDAN** (Badge #  
24 32285), **OFFICER ROTKOWSKI** (Badge #  
25 40290) and **DOES 1-10**, all in their official  
26 and individual capacities,

27 Defendants.

CASE NO: CV 10-5848 DDP (CWx)

*Assigned to the Hon. Dean D. Pregerson*

**DEFENDANT'S OPPOSITION TO  
PLAINTIFFS' EX PARTE  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER**

Courtroom: 3

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As Plaintiffs' repeatedly point out, Defendants City of Los Angeles et al.  
4 ("Defendants" or "City") "have no written regulations governing performers on  
5 Hollywood Boulevard."<sup>1</sup> Plaintiffs' were allegedly arrested in the past for violations of  
6 Los Angeles Municipal Code ("LAMC") section 41.18 (a) or for obstructing pedestrian  
7 traffic or loitering on the sidewalk. Plaintiffs' essentially claim that Defendants under the  
8 false guise of a LAMC 41.18a violation, deprived Plaintiffs' of their alleged  
9 constitutional right to dress up as superheroes and movie characters on public sidewalks.  
10 With no evidence of an immediate risk of irreparable injury and/or any evidence of a  
11 policy or practice in place by Defendants of the claimed accusations, Plaintiffs have not  
12 met the standards required for this Court to issue a Temporary Restraining Order against  
13 Defendants.

14 **II. FACTUAL SUMMARY**

15 Plaintiffs' claim that on June 2, 2010, June 4, 2010, and July 8, 2010, each of them  
16 were arrested by the City's Police Department for obstructing pedestrian traffic or  
17 loitering on the sidewalk of Hollywood Boulevard in violation of LAMC section 41.18.  
18 Plaintiffs do not contend that LAMC section 41.18 is unconstitutional and acquiesce that  
19 the City's ordinance "[p]reventing harassment of pedestrians is a significant government  
20 interest."<sup>2</sup> Plaintiffs' further admit that there is "no written regulations" or policies by the  
21 City targeted at individuals dressed up in costume along Hollywood Boulevard soliciting  
22 donations from passer bys.  
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24  
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27 <sup>1</sup> See Plaintiff's Ex Parte Application for Temporary Restraining Order pg. 3, line 5 and pg. 5, line12.

1 **III. ARGUMENT**

2 “In seeking a TRO, the movant must demonstrate that the denial of such relief will  
 3 expose it to ‘some significant risk of irreparable injury.’ *Associated Gen. Contractors of*  
 4 *California, Inc. v. Coalition for Economic Equity*, 950 F.2d 1401, 1410 (9th Cir. 1991),  
 5 *cert. denied*, 503 U.S. 985 (1992). The threat of injury must be immediate. *Caribbean*  
 6 *Marine Services Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Where the TRO is  
 7 sought against actions by a governmental agency which has allegedly violated the law,  
 8 then the movant must establish that the ‘threat of injury is both ‘real and immediate,’  
 9 [\*7] not ‘conjectural’ or hypothetical.’ *City of Los Angeles v. Lyons*, 461 U.S. 95, 102, 75  
 10 L. Ed. 2d 675, 103 S. Ct. 1660 (1983). (*Low v. United States of America*, (1997) U.S.  
 11 Dist. LEXIS 10206.)

12 **A. PLAINTIFFS CANNOT SHOW LIKELY SUCCESS ON THE**  
 13 **MERITS**

14 Plaintiffs do not challenge the constitutionality of any ordinance of the City of Los  
 15 Angeles, either facially or “as applied.” Neither do Plaintiffs challenged any written  
 16 policy of the City of Los Angeles or its police department (LAPD). Instead, Plaintiffs  
 17 bring this motion for a temporary restraining order to stop what they allege is an  
 18 “unwritten rule” of the LAPD to enforce *valid* Los Angeles City ordinances (prohibiting  
 19 (1) obstruction or unreasonable interference with sidewalk pedestrian traffic, and (2)  
 20 aggressive solicitation) exclusively against Plaintiffs association of caped and otherwise  
 21 costumed “street performers” working along Hollywood Boulevard’s “Walk of Fame.”

22 Plaintiffs offer no evidence that the LAPD has such unwritten rule. Plaintiffs’  
 23 allegation is a naked conclusion based exclusively on the fact that each Plaintiff was  
 24 arrested one time in June or July of this year wearing costumes on Hollywood Boulevard,  
 25 and that none of the Plaintiffs can recall witnessing any tourist or metro rider arrested on  
 26

27 <sup>2</sup> See Plaintiff’s Ex Parte Application for Temporary Restraining Order pg. 6 lines 3-4.  
 28

1 Hollywood Boulevard. Plaintiffs allege that since they “were small in number and  
2 standing o the curb,” their arrests must have been the result of this unwritten LAPD  
3 policy to harass costumed performers. [MPI 7:11-12]

4 Essentially Plaintiffs are challenging the merits of their arrest through this action,  
5 and asking that this court enjoin the LAPD from arresting Plaintiffs again pursuant to this  
6 unwritten, supposed policy. Plaintiffs cannot show probable success on the merits to  
7 support the requested relief.

8 Plaintiffs cite *Easyriders Freedom F.I.G.H.T v. Hannigan*, 92 F.3d 1486 (9<sup>th</sup> Cir.  
9 1996) in support of their motion. In that case, the California Highway Patrol had a  
10 *written* policy regarding helmet law enforcement that the court found was constitutionally  
11 infirm because it required officers to “use good judgment” in determining who to cite and  
12 did not require the citing officer to make any determination regarding a motorcyclist’s  
13 knowledge of non-compliance. *Id.* at 1500.

14 In that, *evidence* was presented of the facts of this written policy. Here, Plaintiffs  
15 ask this Court to *assume* the existence of an unwritten policy of the LAPD; a policy  
16 Plaintiffs believe is designed simply to harass costume street performers. Plaintiffs cite  
17 no case that supports their requested relief on the facts and suppositions alleged.

18 **B. PLAINTIFFS CANNOT SHOW THE THREAT OF IRREPARABLE**  
19 **HARM**

20 Plaintiffs must demonstrate that they are **likely** to suffer irreparable harm if a  
21 temporary restraining order is not issued. A mere “possibility” of irreparable harm is  
22 insufficient. *See Winter v. Natural Resources Defense Council, Inc.*, \_\_\_ U.S. \_\_\_, \_\_\_,  
23 129 S.Ct. 365, 374; 129 L. Ed. 249 (2008) (“Our frequently reiterated standard requires  
24 plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely in the  
25 absence of an injunction”). The threatened harm must be immediate. *Caribbean Marine*  
26 *Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Moreover, an  
27 allegation of past harm alone will not suffice. *City of Los Angeles v. Lyons*, 461 U.S. 95,

1 102, 103 S.Ct. 1660, 1665 (1983). Although the presumption of irreparable injury is  
2 particularly strong in cases involving infringement of First Amendment rights, *see Elrod*  
3 *v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690(1976), Plaintiffs have not demonstrated  
4 that any First Amendment rights are here threatened.

5 As set forth above, this is a “he-said, she-said” case. Plaintiffs allege that they are  
6 the victims of some unwritten rule of the LAPD to target costumed street performers on  
7 Hollywood Boulevard. It is a naked presumption based on no evidence other than their  
8 arrests. Moreover, three of the Plaintiffs were arrested at the same time on a Friday night  
9 at 7:30 p.m. while they were “performing” in front of the Hollywood Blvd. and Highland  
10 Ave. shopping complex, which is one of the most congested pedestrian walkways in the  
11 area and the arrest occurred at the busiest day and time of the week for that area.

12 Plaintiffs do not allege they have been arrested a second time, or any time previous to the  
13 single arrest each allege. These allegations fail to establish any pattern or practice of the  
14 LAPD that would support Plaintiffs allegation that costumed street performers are being  
15 targeted for arrest due to their speech. Therefore, the lessened standard to show  
16 irreparable harm where First Amendment rights are threatened should not apply.

17 **C. THE CITY SHOULD BE ALLOWED SUFFICIENT TIME TO**  
18 **OPPOSE PLAINTIFFS’ APPLICATION**

19 Plaintiffs filed this action on August 6, 2010. According to Plaintiffs’ counsel’s  
20 declaration, a copy of the complaint was faxed to the Los Angeles City Attorney’s office  
21 three weeks later on August 26, 2010. Notwithstanding that such service is not proper on  
22 either the City of Los Angeles or any of the 5 individual officers named as defendants in  
23 this case, it is unclear why Plaintiffs delayed so long in seeking preliminary injunctive  
24 relief, and why Plaintiffs require a temporary restraining order on 24 hour notice to the  
25 City.

26 Plaintiffs’ ex parte papers were not served on a litigation unit in the Los Angeles  
27 City Attorney’s Office. The papers were served on a general counsel unit, who then

1 forwarded them to a litigation unit for assignment. Counsel assigned to this case received  
2 the papers at approximately 9:45 a.m. on September 1, 2010, with a deadline to oppose  
3 the papers by 2:16 p.m. that same day. That is insufficient time to prepare an opposition  
4 with the declarations of the officers involve in Plaintiffs alleged arrests, which  
5 declarations are critical in this case that involves simply a factual dispute over the  
6 probable cause justifying Plaintiffs' arrests. This Court is requested to deny the motion  
7 for a temporary restraining order pending a hearing on Plaintiffs' motion for a  
8 preliminary injunction allowing defendants sufficient time to prepare an opposition.

9 **IV. CONCLUSION**

10 For each of the foregoing reasons, Plaintiff is not entitled to injunctive relief and  
11 the Application for a Temporary Injunction should be denied.

12  
13 DATED: Sept. 1, 2010

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY

14  
15  
16 By: /s/

17 JOHN CARVALHO, Deputy City Attorney  
18 CASEY CHON, Deputy City Attorney

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9 **IV. CONCLUSION**

10 For each of the foregoing reasons, Plaintiff is not entitled to injunctive relief and  
11 the Application for a Temporary Injunction should be denied.

12  
13 DATED: Sept. 1, 2010

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY

14  
15  
16 By: /s/

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JOHN CARVALHO, Deputy City Attorney  
CASEY CHON, Deputy City Attorney