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 9 Attorneys for Defendant,
 City of San Carlos

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 11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 JEFFREY HERSON, an individual, EAST BAY
 OUTDOOR, INC., a California Corporation

15 Plaintiffs,

16 vs.

17 CITY OF SAN CARLOS, et al.,

18 Defendants.

Case No.: 3:09-cv-04187 MHP

EX PARTE APPLICATION BY
 DEFENDANT CITY OF SAN CARLOS TO
 SHORTEN TIME FOR HEARING ON CITY
 OF SAN CARLOS MOTION TO DISSOLVE
 TRO and ORDER TO SHORTEN TIME
 [Local Rule 6-3]

 Date:
 Time:
 Dept: 15

19
 20
 21 Defendant, City of San Carlos hereby Applies to this Court for an Order Shortening time for
 22 Hearing on Motion to Dissolve Temporary Restraining Order issued against it. The City
 23

1 respectfully requests December 7, 2009 as the date for hearing. Moving papers by the City and
2 Opposition papers from Plaintiff have already been filed.

3 Defendant's counsel are not available on December 10 or 11, 2009.

4 (1) Reasons for the requested shortening of time:

5 At present, the City of San Carlos is the subject of a Temporary Restraining Order issue
6 October 16, 2009. The City has filed a Motion to Dissolve the Temporary Restraining Order. The
7 Temporary Restraining Order and its hearing were pursuant to *Notice*. A Preliminary Injunction
8 hearing has not been set. The City has filed Motion for Summary Judgment to be heard on January
9 11, 2010. Since the hearing on TRO was conducted with Notice, a Motion to Dissolve or Modify, is
10 not subject to the "Two Days Notice" proscription under FRCP 65(b): "(4) Motion to Dissolve. On
11 2 days' notice to the party who obtained the order without notice--or on shorter notice set by the
12 court--the adverse party may appear and move to dissolve or modify the order. The court must then
13 hear and decide the motion as promptly as justice requires."

14 Accordingly, the Motion to Dissolve is subject to Local Rule 7-2 time requirement of 35
15 days.

16 The City, in compliance with the Court's directive to process plaintiff's application for a
17 "Pole Sign" with deliberate speed, continues to expend significant human resources (which
18 incorporates time and money) in evaluating the application, assessing its completeness or lack
19 thereof, and issuing responses to identify the incomplete parts. Likewise, in order to comply with
20 delivery of a complete application, Plaintiff incurs time and money.

21 The City, in its Motion to Dissolve the TRO, raises the question with the court as to
22 whether, due to recent changes in the City Ordinance regarding issues of content, and its
23 longstanding ban on Billboard Structures (note Plaintiff's application uses the phrase of "Pole Sign")
24

1 but the schematic dimensions of a Billboard), whether the TRO has been rendered moot, and if so,
2 would this process which is using resources on both sides of the case.

3 By hearing the Motion to Dissolve earlier than the standard time for hearing, the Court can
4 instruct the parties as to whether to continue proceeding with the application process or to stop. If it
5 is the latter, the parties then stop wasting the resources and money needed to proceed with the
6 application.

7 (2) Efforts the City has made efforts to obtain a stipulation to the time change: On Thursday
8 November 19, 2009, Randall Morrison sent an email to Plaintiff Counsel, Alan Herson, asking if he
9 would stipulate to having the hearing on Nov. 23 or 30. Mr. Herson responded that he would not
10 agree to those dates, suggesting Dec. 21 or January 11, 2010 (the date of the Motion for Summary
11 Judgment.) True and correct copies of the email transmissions are attached hereto as Exhibit "A".

12 (3) The substantial harm or prejudice that will occur if the Court does not change the time:
13 The City is subject to a TRO; this is a burden in and of itself. The harm is that the City is
14 continuously processing an application which may be moot. This is burden on the staff, has
15 financial ramifications, and delays the processing of other applications.

16 (4) (i) Describes the moving party's compliance with Civil L.R. 37-1(a): not applicable this
17 is not a sanctions request or discovery dispute.

18 (5) Disclose all previous time modifications in the case: one time modification was granted
19 to Enlarge time for Filing and Expand Scope of a supplemental briefing request of the court. The
20 Motion for Summary Judgment was the ultimate brief filed. It was timely filed pursuant to the
21 Court's Order granting Enlargement:
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23 (6) Describe the effect the requested time modification would have on the schedule for the
24 case: The modification of time will not effect the schedule of the case. Presently, Case
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Exhibit “A”

David S. Rosenbaum

From: Randal Morrison [rrmatty@yahoo.com]
Sent: Thursday, November 19, 2009 4:49 PM
To: grubens@adcl.com; David S. Rosenbaum; Stephanie Zeller
Subject: Fw: Re: San Carlos motion to dissolve TRO

Randal R. Morrison
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110 Juniper Street
PO Box 531518
San Diego CA 92153-1518
Tel: 619.234.2864
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--- On **Thu, 11/19/09**, Alan Herson <arherson@yahoo.com> wrote:

From: Alan Herson <arherson@yahoo.com>
Subject: Re: San Carlos motion to dissolve TRO
To: "Randal Morrison" <rrmatty@yahoo.com>
Date: Thursday, November 19, 2009, 3:55 PM

Randal,

It is best for the City and Plaintiffs to get this over with so that the court can issue the preliminary injunction and the sign can go up as soon as possible. I will be filing an opposition to your motion (your motion really being an opposition to the motion for preliminary injunction) on Friday. In that opposition, I will request that the court hear this matter on either December 21 or January 11, when the parties will be before the court on other matters. That is the most efficient use of court time and time for the parties. This is particularly important for the City, since, in the end, it will be paying not only your fees, but my fees as well.

Alan

--- On **Thu, 11/19/09**, Randal Morrison <rrmatty@yahoo.com> wrote:

From: Randal Morrison <rrmatty@yahoo.com>
Subject: San Carlos motion to dissolve TRO
To: arherson@yahoo.com
Cc: grubens@adcl.com, drosenbaum@mcclawyers.net, szeller@mcclawyers.net
Date: Thursday, November 19, 2009, 3:30 PM

Mr. Herson:

The City of San Carlos is eager to have a hearing and ruling on the motion to dissolve the TRO, so that your

people and the city people waste no more time processing the billboard permit application.

Please advise as to which of the following dates you prefer for the hearing: Monday 11/23, or any day during the week beginning 11/30.

As an easier alternative, we offer to have both sides stipulate to dissolving the TRO, and then file the stip with a request for an order thereon.

Kindly advise as to your preference.

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