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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

FIREARMS POLICY COALITION,  
INC.; CALIFORNIA GUN RIGHTS  
FOUNDATION; SAN DIEGO  
COUNTY GUN OWNERS PAC,

Plaintiffs,

v.

CITY OF SAN DIEGO; COUNTY OF  
IMPERIAL; COUNTY OF ALAMEDA;  
COUNTY OF VENTURA; COUNTY  
OF LOS ANGELES; CITY OF SAN  
JOSE; and COUNTY OF SANTA  
CLARA,

Defendants.

Case No.: 3:23-cv-00400-LL-VET

**REPLY BRIEF IN SUPPORT OF  
PLAINTIFFS' MOTION FOR AN  
INJUNCTION PENDING APPEAL**

Date: March 11, 2024  
Courtroom 5D (5th Floor)  
Hon. Linda Lopez

**PER CHAMBERS RULES, NO  
ORAL ARGUMENT UNLESS  
SEPARATELY ORDERED BY THE  
COURT**

1 In light of the Court’s denial of Plaintiffs’ request for an order shortening time  
 2 on this motion, ECF No. 63, Plaintiffs have filed a motion for injunction pending  
 3 appeal with the Ninth Circuit. Docket Nos. 14.1, 14.2. Plaintiffs file this short reply  
 4 so that this matter is fully briefed for the Court’s resolution.

5 Defendants’ opposition brief briskly argues that this Court should deny relief  
 6 because (1) this Court lacks jurisdiction to enter an injunction given its dismissal for  
 7 lack of subject matter jurisdiction; (2) in the absence of jurisdiction an injunction is  
 8 “impracticable” such that the Ninth Circuit can issue relief “in the first instance”; and  
 9 (3) Plaintiffs have failed to justify relief because (Defendants contend) the Court’s  
 10 dismissal order was right.

11 Defendants’ initial premise is incorrect. “The general weight of the authority  
 12 among district courts . . . indicates that courts may consider motions for injunction  
 13 pending appeal after dismissal for lack of subject matter jurisdiction.” *Amsted Rail*  
 14 *Co., Inc. v. United States Int’l Trade Comm’n*, 607 F. Supp. 3d 1283, 1289 n. 5 (Ct.  
 15 Int’l Trade 2022); *see also, e.g., Peak Med. Oklahoma No. 5, Inc. v. Sebelius*, No. 10-  
 16 cv-597, 2010 WL 4809319, at \*1 n.2 (N.D. Okla. Nov. 18, 2010) (collecting  
 17 “examples of courts considering the merits of a motion for injunction pending appeal  
 18 after dismissing the matter for lack of subject matter jurisdiction”). In short, this Court  
 19 has jurisdiction to issue relief under Rule 62(c) notwithstanding its dismissal.

20 So while this Court can—and should—issue an injunction pending appeal,  
 21 Plaintiffs agree with Defendants that seeking relief from the Ninth Circuit is  
 22 appropriate: It is “impracticable” for Plaintiffs to wait for the Court to rule on this  
 23 motion because Plaintiffs are suffering ongoing irreparable harm by being denied their  
 24 right of to access the courts. Fed. R. App. P. 8(a)(2)(A)(i). Moreover, the order  
 25 denying Plaintiffs’ request for expedited consideration of the motion confirms that the  
 26 Court does not credit Plaintiffs’ harm and that it remains confident in its dismissal for  
 27 lack of standing:  
 28

1 Plaintiffs’ irreparable injury argument in the *Ex Parte* Application and  
 2 the Motion for Preliminary Injunction does not provide a basis for the  
 3 requested ex parte relief because, as this Court has found in its January  
 4 9, 2024 Order dismissing this action, Plaintiffs do not have standing to  
 pursue their case. . . . As such, Plaintiffs have not made an adequate  
 showing warranting the requested *ex parte* relief.

5 ECF No. 63, at 3:1–7.

6 Given the Court’s commitment to the dismissal order, there is little doubt that  
 7 it will “fail[] to afford the relief requested” by Plaintiffs when it rules. *See* Fed. R.  
 8 App. P. 8(a)(2)(A)(ii). As other circuits have recognized, Rule 8(a) does not require  
 9 Plaintiffs to await relief under these circumstances. *See, e.g., Chem. Weapons Working*  
 10 *Grp. (CWWG) v. Dep’t of the Army*, 101 F.3d 1360, 1362 (10th Cir. 1996) (“When  
 11 the district court’s order demonstrates commitment to a particular resolution,  
 12 application for a stay from that same district court may be futile and hence  
 13 impracticable.”); *Tiger Lily, LLC v. United States Dep’t of Hous. & Urb. Dev.*, 992  
 14 F.3d 518, 522 n.2 (6th Cir. 2021) (construing a district court’s denial of expedited  
 15 relief “as a denial of the [movant’s] requested relief” under Rule 8(a), and considering  
 16 the motion on its merits); *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020  
 17 (10th Cir. 1996) (excusing Rule 8(a) compliance where the district court had  
 18 “demonstrated” its “resolve” such that further motion practice “would serve little  
 19 purpose”); *Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001)  
 20 (holding that Rule 8(a) compliance “would serve little purpose” in the case “because  
 21 of the immediacy of the problem and the district court’s legal error concerning the  
 22 First Amendment”).

23 \* \* \*

24 For the reasons set forth in its opening brief, the Court should issue an  
 25 injunction pending appeal. Plaintiffs respectfully request that the Court resolve the  
 26 motion as soon as its schedule permits so that there is no impediment to the Ninth  
 27 Circuit’s consideration of their pending request for an injunction on the same basis.  
 28

1 Dated: February 14, 2024

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2  
3 By s/ Bradley A. Benbrook  
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