IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-0281-WJM-KMT

ABBY LANDOW,
JEFFREY ALAN,
SUSAN WYMER,
LAWRENCE BEALL,
GREENPEACE INC., and
NANCY YORK,
Plaintiffs
v.

CITY OF FORT COLLINS,
Defendant.

DEFENDANT'S RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION

Defendant City of Fort Collins, by and through its attorneys, J. Andrew Nathan and Heidi J. Hugdahl of Nathan, Bremer, Dumm & Myers P.C., and Carrie M. Daggett and John R. Duval, of the Fort Collins City Attorney's Office, submits its *Response to Motion for Temporary Restraining Order and Preliminary Injunction*.

I. Introduction

In response to growing concerns related to citizen-based complaints—arising out of the increasingly aggressive and intimidating tactics of some panhandlers—the Fort Collins City Council unanimously adopted Ordinance No. 70, 1995 ("Ordinance").[1] Council enacted the Ordinance in 1995 in an effort to preserve the health, safety, and general welfare of the citizens. The Ordinance imposes reasonable time, place, and

[1] Ordinance No 70, 1995 Of the Council of the City of Fort Collins Amending Section 17-126 of the City Code and Adding Section 17-127 to the City Code Pertaining to Panhandling. (Attached as "Ex. A").

manner restrictions on panhandling in public places. The Ordinance is narrowly tailored and designed to promote a substantial governmental interest in addressing the more frightening strategies employed by some panhandlers, including the targeting of captive audiences and persons who might be more vulnerable, while leaving open ample alternative channels of communication for those who solicit gifts of money (or things of value) from the public.

The Ordinance does not regulate or attempt to regulate the content of any speech. It does not single out any message for different treatment. It does not distinguish between prohibited and permitted speech on the basis of the content. It applies equally to anyone soliciting gifts of money, and does not draw distinctions between requests for money for religious, political or charitable purposes from other purposes. It does not require enforcement authorities to examine the content of the message to determine whether a violation has occurred; but rather, it is the *manner* of such frightening or aggressive speech that the Ordinance seeks to prohibit. The Ordinance is neither content nor viewpoint based. It does not proscribe speech because of disapproval of the ideas expressed, and it serves purposes wholly unrelated to the content of expression. The Ordinance is, therefore, a content-neutral regulation.

II. Statement of the Case

The Ordinance, when adopted, was aimed at controlling aggressive panhandling. And, it was reasonably necessary to combat the methods employed by some panhandlers who targeted susceptible members of the community, who intimidated

audiences unable to easily extricate themselves geographically, and who disrupted traffic—both vehicular and pedestrian.

Plaintiffs filed a complaint for declaratory, monetary, and injunctive relief. Plaintiffs brought this action under 42 U.S.C. § 1983 alleging that their constitutional rights to free expression under the First Amendment and to due process and equal protection under the Fourteenth Amendment have been violated. Plaintiffs also filed a motion for temporary restraining order and preliminary injunction. The motion for a temporary restraining order was denied, but the matter is set for hearing on March 2, 2015, on the preliminary injunction.

II. Statement of the Facts

It has been twenty years since Council addressed (via the passage of the Ordinance) the mounting concerns expressed by the public related to various techniques or strategies employed by panhandlers. Council focused on regulating conduct by making it unlawful to solicit by way of *knowingly* intimidating, threatening, coercive, or obscene conduct (that reasonably caused fear), or using fighting words, or touching or grabbing, or obstructing the passage of pedestrians, or forcing persons to take evasive action in order to avoid physical contact with the person panhandling. (*See* Ex. A, Sec. 17-127 (b)(2), (3), (4), and (7)).[2] The Ordinance is intended only to regulate conduct.

[2] Plaintiffs do not challenge these subsections. (*See Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction* ("*PMTRPI*") p. 4, n. 4).

In addition to the broader problems brought forth by the citizens of Fort Collins, more specific concerns were expressed associated with panhandlers who solicited after dark, who strategically placed themselves in parking garages, parking lots, and other parking facilities, who stood in or near the flow of vehicular traffic, and who solicited patrons in the outdoor patio areas of local restaurants, near an ATM, and from people exiting their cars. Some of the solicitors also appeared to be targeting people who used public transportation by hanging around bus stops and riding buses. And finally, some panhandlers seemed to focus on pursuing the elderly, young, and persons who suffered from disabilities (physical and mental). (*See* Ex. A, Sec. 17-127 (b)(1), (5), (6), (8), (9), (10), and (11)).[3] In drafting the Ordinance, the architects considered First Amendment precepts while balancing the health, safety, and welfare concerns of the public.[4]

As stated on the face of the Ordinance, Council determined that it was necessary and in the interests of public safety and welfare to impose reasonable time, place, and manner restrictions on panhandling within the City. (*See* "Whereas clauses," Ex. A, p.

[3] Plaintiffs' challenges are based on these subsections. (*See PMTRPI,* pp. 3-4).

[4] The "Agenda Item Summary" presented to Council when it considered the Ordinance, stated in its "Executive Summary" that complaints relating to panhandling had increased significantly, but since the behavior was not illegal, Police Services did not have statistics on the number of complaints; and that the Ordinance was drafted to prohibit specific *behaviors* associated with panhandling that were reported as being "frightening, intimidating or a public nuisance." (emphasis supplied). Many specific concerns were related to panhandling in parking garages, patio restaurants and bus stops where the persons solicited could not easily walk away from the panhandlers, or when the person solicited was exiting a motor vehicle. Complaints were also received about panhandlers loitering near ATMs and approaching individuals while they had money in their hands. Other people complained of being approached at night and in isolated places and feeling frightened and intimidated by the activities of some panhandlers. Several complaints were received from residents of the DMA Apartments (affordable senior housing). Senior citizens were frequent targets of panhandlers (the thought being that they are more easily intimidated). Management at the DMA Apartments even needed to call for assistance in getting its residents on the bus because the bus stop shelter was full of solicitors (a significant reason why the Ordinance incorporated an "at-risk" provision for those who were viewed as less able (emotionally and physically) to protect themselves from aggressive panhandling). (*See* Agenda Item Summaries May 16, 1995 and June 6, 1995, attached as "Ex. B").

1). Council's intention was to impose only those restrictions that were reasonably necessary to address the conduct that threatened the safety and welfare of persons toward whom the activities were directed, without infringing upon the First Amendment rights that any person engaged in panhandling *may* have related to that activity. S*ee id*. The Ordinance was and is not an attempt at an all-out ban of panhandling in the City.

Panhandle is defined in the Ordinance to mean to "*knowingly*[5] *approach, accost* or *stop* another person in a public place and solicit that person, whether by spoken words, bodily gestures, written signs or other means, for a gift of money or thing of value." (*See* Ex. A, Sec. 17-127 (a)(1)(5)) (emphasis supplied). *Approach* in this context generally means "to come near or nearer to." Webster's II Dictionary, Third Edition. *Accost* in this context generally means "to approach and address another in a hostile or aggressive manner." Webster's II Dictionary, Third Edition. And, *stop* means to cease or cause to cease moving; to obstruct or block." Webster's II Dictionary, Third Edition.

Thus, as a condition precedent, the Ordinance is only triggered when a solicitor knowingly approaches, accosts, or stops another person ***and*** then ***only*** if the solicitor does so at a time, in a place, or in a manner described in one of eleven enumerated subsections, which regulate only conduct regardless of the content of the speech.[6]

[5] *Knowingly* is defined as: "with respect to the content or circumstances described in this Section, that a person is aware that such person's conduct is of the nature or that the circumstances exist. With respect to a result of such conduct, this means that a person is aware that such persons conduct is practically certain to cause the result." (*See* Ex. A, Sec. 17-127 (a)(2) (emphasis in original)).

[6] The eleven categories are:1) one-half hour after sunset to one-half hour before sunrise; 2) while knowingly engaging in intimidating, threatening, coercive or obscene manner that reasonably causes the person being solicited to fear for his or her safety; 3) while knowingly directing fighting words to the

The Ordinance does not prescribe what information a panhandler might share with the public (whether by spoken words, bodily gestures, written signs or other means), it only seeks to proscribe when, how, and where the information is shared.[7]

III. Argument

The Ordinance is a reasonable content-neutral, time, place, and manner regulation, that is narrowly tailored (to promote a substantial governmental interest), and leaves open ample alternative channels of communication. As such, Plaintiffs' motion for preliminary injunction should be denied. Plaintiffs cannot carry their burden of showing: a likelihood of success on the merits of their claims (primarily that the Ordinance [as applied or facially] violates the First Amendment);[8] that irreparable injury will occur if the injunction does not issue; that the threatened injury if the injunction does not issue is outweighed by the damage which would be caused if the injunction issues; and, if the injunction issues it will be adverse to the public interest.

person solicited; 4) while knowingly touching or grabbing the person solicited; 5) while knowingly continuing to request the person solicited for a gift of money or thing of value after the person solicited has refused the panhandler's initial request; 6) while knowingly soliciting an at-risk person; 7) on a sidewalk or other passage way in a public place used by pedestrians and done in a manner that obstructs the passage of the person solicited or that requires the person solicited to take evasive action to avoid physical contact with the person panhandling or with any other person; 8) within 100 feet of a ATM or bus stop; 9) on a public bus; 10) in parking garage, parking lot or other parking facility; or 11) when the person solicited is entering or exiting a parked motor vehicle, in a motor vehicle stopped on a street, or present within a patio or sidewalk serving area of a retail business that serves food or drink. (*See* Ex. A, p. 2-3 (b)(1)-(b)(11)).

[7] However, the Ordinance does not prohibit a "passive panhandler' from soliciting in any public place, at any time, and in any manner if he or she does so without approaching, accosting, or stopping a person to solicit a gift of money. An example of this is a person sitting with a sign asking for money.

[8] The City reserves its right to assert that Plaintiffs lack standing based on Plaintiffs' representations as to their activities (all claim that they passively and peacefully solicit money). Therefore, they may lack standing insofar as they must show an objectively reasonable possibility that the Ordinance would be applied to their own activities. *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) (providing federal court jurisdiction depends on plaintiff demonstrating he has suffered "some threatened or actual injury."); s*ee also* U.S. Const. art. III, § 2.

A. Standard for Preliminary Injunction

A preliminary injunction is an extraordinary remedy, and it should not be issued unless the movant's right to relief is "clear and unequivocal." *Kikumura v. Hurley,* 242 F.3d 950, 955 (10th Cir. 2001); *see also Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (finding a preliminary injunction is an "extraordinary and drastic remedy," one that should not be granted unless the movant is able to carry the burden by a clear showing).

Before a preliminary injunction may be entered under Fed.R.Civ.P. 65, the moving party must establish that:

> (1) [the movant] will suffer irreparable injury unless the injunction issues; (2) the threatened injury . . . outweighs whatever damage the proposed injunction may cause the opposing party; (3) the injunction, if issued, would not be adverse to the public interest; and (4) there is a substantial likelihood [of success] on the merits.

Resolution Trust Corp. v. Cruce, 972 F.2d 1195, 1198 (10th Cir.1992). It is the movant's burden to establish that each of these factors weigh in his or her favor. *Id.* Although the Tenth Circuit has adopted a more liberal definition of the "probability of success" requirement in certain circumstances,[9] where a preliminary injunction "seeks to stay governmental action taken in the public interest pursuant to a statutory or

[9] If the moving party establishes that the three "harm" factors tip *decidedly* in its favor, the "probability of success requirement" is somewhat relaxed. *Prairie Band of Potawatomi Indians v. Pierce,* 253 F.3d 124, 1246 (10th Cir. 2001).

regulatory scheme, the less rigorous fair-ground-for-litigation[10] standard should *not* be applied." *Heideman v. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003).

An injunction that alters the status quo is specifically disfavored, and requires a heightened standard for granting such an injunction. *O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft*, 389 F.3d 973, 975-76 (10th Cir. 2004). A preliminary injunction disturbing the status quo "must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course," and "movants seeking such an injunction are not entitled to rely on the [Tenth Circuit's] modified likelihood-of-success-on-the-merits standard." *Schrier*, 427 F.3d at 1261 (internal citations omitted). Instead, a strong showing with respect to the likelihood of success on the merits and the balance of harms is required. *Id.*

The status quo is defined as "the last uncontested status between the parties which preceded the controversy until the outcome of the final hearing," and is determined based on "the existing status and relationship between the parties and not solely to the parties' legal rights." *Schrier v. Univ. of Colorado*, 427 F.3d 1253, 1260 (10th Cir. 2005) (citing *Dominion Video Satellite, Inc. v. EchoStar Satellite Corp.*, 269 F.3d 1149, 1155 (10th Cir. 2001)); *West v. Denver County Jail Warden*, 2007WL1430221, at *1 (D. Colo. May 11, 2007) (finding that "[t]he status quo is not defined by the parties' existing *legal rights*; it is defined by the *reality* of the existing status and relationships between the parties, regardless of whether the existing status

[10] The fair-ground-for-litigation standard requires only that a movant for preliminary injunction show "questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation." *Heideman* 348 F.3d at 1189. (citing *Resolution Trust Corp.*, 972 F.2d at 1199).

and relationships may ultimately be found to be in accord or not in accord with the parties' legal rights.") (emphasis in original).

For the past twenty years, the status quo in this case has been the Ordinance in effect and enforced in the City. Therefore, the status quo will be changed if the preliminary injunction requested by the Plaintiffs is granted.

1. Irreparable injury will not occur if the injunction does not issue

An injury must be certain, great, actual and not theoretical, to constitute irreparable harm. *Wisconsin Gas Co. v. FERC,* 758 F.2d 669, 674 (D.C.Cir.1985); *accord Prairie Band,* 253 F.3d at 1250. Irreparable harm is not harm that is "merely serious or substantial." *Prairie Band,* 253 F.3d at 1250 (quoting *A.O. Smith Corp. v. FTC,* 530 F.2d 515, 525 (3d Cir. 1976)). "[T]he party seeking injunctive relief must show that the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm." *Heideman*, 348 F.2d at 1189. (emphasis in original). Economic loss usually does not, in and of itself, constitute irreparable harm; such losses are compensable by monetary damages. *Cobra N. Am. LLC v. Cold Cut Sys. Svenska AB*, 639 F.Supp. 2d 1217, 1231 (D. Colo. 2008); *see also* Charles Alan Wright, et al., *Grounds for Granting or Denying a Preliminary Injunction - Irreparable Harm*, 11A Fed. Prac & Pro.Civ. § 2948.1 (3d ed.).

Plaintiffs cannot establish that the enforcement of the Ordinance during the time it will take to litigate this case in district court will have an irreparable effect in the sense of making it difficult or impossible to resume their activities—which in this instance would be aggressive panhandling. *See, e.g., Greater Yellowstone Coal. v. Flowers,* 321

F.3d 1250, 1260-61 (10th Cir. 2003) (irreparable harm found when there was danger of actual death of eagles and destruction of their breeding grounds if developer allowed to proceed); *Ohio Oil Co. v. Conway,* 279 U.S. 813, 814 (1929) (irreparable harm found in payment of alleged unconstitutional tax when state law did not provide a remedy for its return should the statute ultimately be adjudged invalid). Indeed, Plaintiffs have managed to solicit the public effectively for the last two decades notwithstanding the Ordinance. As long as Plaintiffs do not engage in aggressive panhandling (something they claim that they do not do) then enforcement of the Ordinance does not cause them any harm. And for those who wish to continue seeking donations, there remain ample alternative venues to panhandle without violating the Ordinance. In an analysis of the irreparable harm prong, the District Court in *Thayer* found those that would solicit for funds would not suffer lost opportunities, but their opportunities would simply be proscribed as to time, place, and manner. *Thayer v. City of Worcester*, 979 F. Supp. 2d 143, 160 (D. Mass 2013).

Finally, the imperative under the First Amendment is that the Plaintiffs are able to convey their chosen message – not that they are able to do so at any time, place, or manner of their choosing – whether by impeding the movement of others, instilling fear, or preying on "at-risk" members of society. Thus, even with a deferential treatment of the First Amendment, the prong does not tip in favor of the Plaintiffs. *Branson School Dist. RE-82 v. Romer*, 161 F.3d 619, 636 (10th Cir. 1998) (holding that when considering a facial challenge, "[the Court] must start with the venerable rule of statutory construction that a statute is presumed to be constitutional unless shown otherwise.").

2. The threatened injury if the injunction does not issue is outweighed by the damage which would be caused if the injunction issues

To be entitled to a preliminary injunction, the movant has the burden of showing that the threatened injury to the movant outweighs the injury to the other party. *Kikumura,* 242 F.3d at 955. As noted, the Ordinance has been in effect for twenty years, but only recently have Plaintiffs deemed it such a hardship that they now, in 2015, must seek *immediate* relief of its enforcement. What is more, if the City cannot enforce its Ordinance during the pendency of the litigation, citizens may once again face fearful, coercive, and, most importantly, threatening and abusive encounters with people soliciting money and at places and times where people might feel the most vulnerable. For example, citizens may be forced to choose between using public transportation or forgoing it in order to avoid what can at best be uneasy confrontations and, at worst, stir a much deeper sense of worry. The elderly, the young, and people with disabilities may feel particularly defenseless to stand up for themselves. And, they may be least able to take alternative paths in any effort to avoid being targets for the solicitors.

Indeed, the Ordinance's legitimate purposes would be silenced, if not completely extinguished insofar as the City would be injured by its inability to enforce its Ordinance and thereby protect its citizens. Although the presumption of constitutionality accorded a municipal ordinance is less than that accorded an Act of Congress, the ability of a city to enact and enforce measures it deems to be in the public interest remains an equity that should be considered in balancing hardships. *See Plaza Health Labs.,* 878 F.2d at 580–83. Again the observations made by the *Thayer* court are equally applicable under

this prong. The "interests [in enforcing the Ordinance] are substantial and necessarily outweigh the Plaintiffs' interest in the unfettered right to solicit in public areas." *Thayer*, 979 F. Supp. 2d at 160.

3. If the injunction issues it will be adverse to the public interest

The movant also has the burden of demonstrating that the injunction, if issued, is not adverse to the public interest. *Kikumura,* 242 F.3d at 955. Plaintiffs essentially restate their own constitutional interest—generally stating that it is always in the public interest to prevent constitutional violations. However, City Council is in the best position to determine matters of public concern and they should be allowed to design policies and establish methodologies to meet evolving community needs, including enacting legislation which regulates conduct, while in the balance not violating any First Amendment rights that the solicitors *might* have. There is no doubt that the Ordinance is within the lawful powers of the City. *Pap's A.M.,* 529 U.S. at 296 (stating the city's "efforts to protect public health and safety are clearly within the city's police powers"). The Ordinance permits the City to regulate frightening and dangerous conduct, and allowing Plaintiffs' interests (to aggressively panhandle) to outweigh those of the general public, improperly elevates the interests of a few panhandlers above all other citizens in the City. The City's legitimate interests in promoting the safety and convenience of its citizens would be thwarted if the injunction issues. *See generally*, *Thayer*, 979 F. Supp. 2d at 157.

4. The injunction should not issue because Plaintiffs are not likely to succeed on the merits

Finally, Plaintiffs cannot demonstrate that they are likely to meet their burden of

proving that the City's Ordinance is unconstitutional by infringing on their First Amendment right to expression. Because the Ordinance is a content-neutral time, place, and manner regulation, intermediate scrutiny – not strict scrutiny as advanced by Plaintiffs – is the appropriate level of review. *See Turner Broad Sys., Inc., v. F.C.C.*, 512 U.S. 622, 642 (1994) (providing content-neutral speech is governed under intermediate scrutiny).

Admittedly, there is a divergence among appellate courts as to whether panhandling ordinances are content-based or content-neutral.[11] And, although the Supreme Court has ruled on solicitation cases, it has yet to rule on this specific issue. It has, however, admonished against the view that an apparently limitless variety of conduct can be labeled "speech" whenever the person engaging in the conduct intends to express an idea. *See Texas v. Johnson*, 491 U.S. 397, 404 (1989) (quoting *U.S. v. O'Brien*, 391 U.S. 367, 376 (1968)). Further, the Supreme Court has carved out exceptions (even when speech is clearly involved) to First Amendment protections.[12] Thus, in part, the analysis might be impacted based on whether panhandling is conduct

[11] Three circuits have concluded that panhandling laws are content-neutral and valid. *Norton v. City of Springfield, Illinois*, 768 F.3d 713 (7th Cir. 2014); *Thayer v. Worcester,* 755 F.3d 60 (1st Cir. 2014) (Souter, J.); and *ISKCON of Potomac, Inc. v. Kennedy,* 61 F.3d 949, 954–55 (D.C.Cir. 1995). The Tenth Circuit has not considered the issue. Three circuits have concluded that panhandling laws are content-based and invalid. *Clatterbuck v. Charlottesville,* 708 F.3d 549 (4th Cir. 2013); *Speet v. Schuette,* 726 F.3d 867 (6th Cir.2013); and *A.C.L.U. v. Las Vegas,* 466 F.3d 784 (9th Cir. 2006).

[12] The prevention and punishment of certain speech, such as bribery, obscenity, and fighting words, and which play no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality have never been thought to raise any constitutional problem. *Chaplinsky v. New Hampshire,* 315 U.S. 568, 571-2 (1942).

or speech[13] or some combination thereof.[14]

The United States Supreme Court's ruling in *McCullen v. Coakley*, ___ U.S. ___, 134 S.Ct. 2518 (2014) (addressing the constitutionality of a 35-foot buffer zone around abortion clinics that limited the ability of individuals to engage with persons entering the clinic), as well as other decisions based on holdings in solicitation cases (discussed herein), and Judge Easterbrook's, September 25, 2014, opinion in *Norton v. City of Springfield, Ill.*, 768 F.3d 713 (7th Cir. 2014), aid in the City's assertion that the Ordinance is content-neutral. A combined review of these cases provides a cohesive explanation and rationale for how the Supreme Court would most likely analyze and hold in cases involving panhandling regulations like the one at issue here.

[13] Plaintiffs claim that the City acknowledges, on the face of its Ordinance, that the subject expression is entitled to First Amendment protection. (*See PMTRPI,* at p.1). However, this characterization is not accurate. In its preamble, the City merely acknowledges that Council's intent in adopting the Ordinance was to impose time, place, and manner restrictions that were reasonably necessary to eliminate conduct which threatened the safety and welfare of persons toward who the activities were directed without infringing upon First Amendment rights that any person engaged in panhandling "***may***" have related to that activity. (Ex. A, p. 1). (emphasis supplied). Thus, the City made no such concession. In any event, a variety of courts have addressed the issue of "conduct" versus "speech." *See, e.g., Community for Creative Non-Violence v. Watt*, 703 F.2d 586, 622 (D.C. Cir. 1983) (rejecting the notion that sleeping in public parks is expressive conduct about the plight of the homeless) (Scalia J. dissenting) (*rev'd sub nom Clark v. Community of Creative Non-Violence*, 468 U.S. 288, 1984). Indeed, a request for money, or other valuable things, seems to fall short of typical First Amendment principles, such as political speech, other invitations for dialogue and discourse, and the free exchange of ideas..

[14] Here, "the message" (the request for money) is different than messages where conduct related activities have been found as avenues of expression under the First Amendment. *See e.g.*, *Texas v. Johnson*, 491 U.S. 397, 405 (1989) (recognizing the expressive nature of burning a United States flag by a protester during a political march); *Tinker v. DesMoines Indep. Sch. Dist.*, 393 U.S. 503, 505 (1969) (recognizing the expressive nature of wearing black armbands by school students on particular days in protest of the Vietnam War). In these cases, the conduct and expression were inextricably joined. In this case, it is not readily evident that panhandling (the conduct) is inextricably intertwined with any protected expressive component so as to enjoy First Amendment protection. *See, e.g.,Young v. New York City Transit Auth.*, 903 F.2d 146, 153-54 (2nd Cir. 1990) (questioning whether the simple act of asking for money carries sufficient communicative intent to fall within the ambit of First Amendment protections); *see also Thayer v. City of Worcester,* 755 F.3d 60 (1st Cir. 2014) (Souter J.) (recognizing that in person solicitation of funds is different in kind from other forms of expression) (citing *Lee*, 505 U.S. at 705 (Kennedy J. concurring in judgment).

In *McCullen,* the United States Supreme Court found that a state statute which made it a crime to *knowingly* stand on a public way or sidewalk within 35 feet of an entrance or driveway to a place other than a hospital where abortions were performed was a content-neutral regulation, although the Court found it was not narrowly tailored. *McCullen*, 134 S.Ct. at 2525-32. Chief Justice Roberts, writing for the Court, recognized that the statute restricted access to public sidewalks and places that had traditionally been open for speech activities—typically labeled "traditional public fora." *Id.* at 2522 (citing *Pleasant Grove City v. Summum,* 555 U.S. 460, 469 (2009)). However, the Court found that the government could impose reasonable restrictions on the time, place, and manner of protected speech, provided the restrictions were justified without reference to the content of the regulated speech, that they were narrowly tailored to serve a significant governmental interest, and that they left open ample alternative channels for communication of information. *Id*. (citing *Ward*, 491 U.S. at 781).

Of particular import and applicability, the *McCullen* Court found that the statute was neither content nor viewpoint based and, therefore, that it need not be analyzed under a strict scrutiny standard. *Id.* at 2531-32. Further, the *McCullen* court observed that the buffer zones created by the statute had the inevitable effect of restricting abortion-related speech more than speech on other subjects, but found that a facially neutral law does not become content-based simply because it may disproportionately impact speech on certain topics. *Id.* at 2530. In point of fact, the *McCullen* Court found that where a regulation serves purposes unrelated to the content of expression it is neutral even if it has an incidental effect on some speakers or message but not others.

Id. (citing *Ward,* 491 U.S. at 791). As also recognized by the *McCullen* Court, "states adopt laws to address the problems that confront them [and] [t]he First Amendment does not require states to regulate for problems that do not exist." *Id.* at 2532 (citing *Burson v. Freeman*, 504 U.S. 191, 207 (1992) (plurality opinion)). This is exactly what the City did here. When sparked by complaints brought forward by business owners, those who cared for the elderly, those who used public transportation, parking facilities, and ATMs, the City took action directed toward the conduct. *See City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 54 (1986) (upholding ordinance that distinguished among types of theatres as proper government action to address "admittedly serious problems created by adult theaters") (internal quotations omitted).

The Ordinance here, like the one in *McCullen*, is neither content nor viewpoint based. And, to the extent that the Ordinance has the effect of restricting some speech – related to solicitations – more than speech on other subjects, the Ordinance is facially neutral and it does not become content-based simply because it may disproportionately impact certain types of speech. Indeed, the City's Ordinance does not regulate, or attempt in any manner to regulate, any specific viewpoint or subject matter. Rather, it applies uniformly to all speech where the solicitor approaches, accosts, or stops a person to request a gift of money or a thing of value. What is more, the City's Ordinance does not regulate or attempt to regulate any spoken, or written words, or gestures (provided that they are not obscene); it seeks only to regulate the time, place, and manner that the message is conveyed. And, it cannot be disputed but that regulations enacted for the purpose of protecting public safety, including the unobstructed use of

the sidewalks and streets, have been deemed content-neutral. *McCullen*, 134 S.Ct. at 2523. (citing *Boos v. Barry*, 485 U.S. 312, 321 (1988)).

Further in *Hill v. Colorado*, 530 U.S. 703, 707 (2000), the Supreme Court addressed the constitutionality of a statute making it unlawful to, within a 100 feet of a health care facility's entrance, "knowingly approach" another person, within eight feet, without that person's consent for purposes of passing out leaflets or handbills, displaying a sign or engaging in oral protest, education or counseling. The *Hill* Court held that the statute was not a regulation of speech, but a regulation of the places where speech may occur. The Court also found that the regulation was not adopted because of disagreement with the message conveyed, and the regulations applied equally to all demonstrators, regardless of viewpoint. Moreover, the statutory language made no reference to the content of the speech. Finally, the Court found that the state's interest in protecting access and privacy, and providing the police with clear guidelines, were unrelated to the content of the demonstrators' speech—in other words, when a government regulation of expressive activity is justified without reference to the content of the regulated speech, it is content-neutral. *Id.* at 724-25.

Additionally, in *Turner Broadcasting,* 512 U.S. at 645, the Supreme Court observed that rules that distinguish speech based only upon the manner in which speakers transmit their messages to viewers, and not upon the messages they carry, are content-neutral regulations.

In the only Circuit Court decision to come out since *McCullen* that addresses panhandling, Judge Easterbrook, writing for the Seventh Circuit, took a unique

approach to interpreting a similar ordinance. *Norton v. City of Springfield,* 768 F.3d 713 (7th Cir. 2014). The subject ordinance in *Norton* prohibited panhandling in its downtown historic district which, although it comprised less than 2% of the city area, contained principal shopping, entertainment and governmental areas. The *Norton* ordinance defined panhandling as an oral request for immediate donation of money.[15] Plaintiffs sought a preliminary injunction from the district court. The parties stipulated that panhandling was a form of speech to which the First Amendment applied, and that if lines were drawn on the basis of the speech's content, it would be unconstitutional. Judge Easterbrook observed the split in the circuits; however, notably, all of the circuit decisions except *Norton* were decided before *McCullen.* It is for this reason that the opinion in *Norton* is particularly instructive insofar as Judge Easterbrook parses through Supreme Court precedent and explains what he views caused a split of circuit authority. *Id.* at 714-16.

First, as observed by the *Norton* Court, if *McCullen* were interpreted as advanced by *Norton* plaintiffs (asserting that *any* attempt by a government to limit the scope of an ordinance governing speech would be unconstitutional because of a disparate impact on some group) the interpretation would become an "engine of destruction" because every effort to narrowly rule would necessarily distinguish some speech from other speech and, therefore, all such ordinances would be "doomed." *Id.* at 715. Judge Easterbrook also explained that the Supreme Court had dealt with panhandling laws or

[15] While recognizing that some of the panhandling ordinances addressed "aggressive panhandling," and others took a broader swath and addressed "begging" in general, Judge Easterbrook observed the common thread that ran through the various ordinances forbade the request for money.

regulations in three cases: *Heffron v. Int'l Soc'y for Krishna Consciousness Inc.,* 452 U.S. 640 (1981) (holding that a state fair may prohibit panhandling and other fundraising by anyone walking its grounds and limiting solicitation to rented booths); *United States v. Kokinda*, 497 U.S. 720 (1990) (holding that the postal service may forbid all fundraising on sidewalks leading to the post office); and *Int'l Soc'y for Krishna Consciousness, Inc., v. Lee*, 505 U.S. 672 (1992) (holding airport authority may prohibit all solicitation and receipt of funds within the terminal). *Id.*

Judge Easterbrook provided a detailed review of Justice Kennedy's opinion in *Kokinda,* and Justice Souter's opinion in *Thayer*. In both instances the Justices concluded that the regulations provided appropriate time, place, and manner limitations independent of the venue's forum. Although Justice Kennedy's vote was not essential for the disposition in *Lee*,[16] Justice Souter concluded in *Thayer*, that Justice Kennedy's analysis illustrates the U.S. Supreme Court's likely disposition of panhandling regulations in traditional public forums. In *Lee*, Justice Kennedy concluded that an airport should be treated the same as a city street, and that restricting panhandling is permissible in both settings. *Lee*, 505 U.S. at 707. Thus, the issue would not likely turn (as plaintiffs argued in *Norton*) on the locations affected by the ordinances; but rather, whether these types of ordinances are constitutional would turn on the regulation itself and whether the regulation was narrowly tailored so that it dealt only with potentially threatening (or advantage-taking) confrontations. *Norton*, 768 F.3d at 716.

[16] Justice Souter dissented in *Lee*; he disagreed with Justice Kennedy on the merits (in *Lee*), but concluded in *Thayer* that Justice Kennedy's view is likely to carry the day. *Norton*, 768 F.3d at 716.

Judge Easterbrook stated that governments regularly distinguish speech by subject-matter, and the Supreme Court does not express special concern. *Norton*, 768 F.3d at 716. Judge Easterbrook further observed that it had never been deemed an abridgment of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed. *Norton*, 768 F.3d at 716. (providing numerous examples of communications that are regulated without offending the First Amendment) (citing *Giboney v. Empire Storage and Ice Co.* 336 U.S. 490 (1949)). Judge Easterbrook went on to explain that the Supreme Court had classified two kinds of regulations as content-based. The first are regulations that restrict speech because of the ideas conveyed. And, the second are regulations that restrict speech because the government disapproves of the message. *Norton*, 768 F.3d at 717. It is noteworthy that Judge Easterbrook struggled, and he noted that Justice Souter had as well in *Thayer,* to see how panhandling ordinances contained either kind of discrimination—observing that a request for money fails to express an idea or message about politics or other topics where government may seek to constrain expression to protect itself against disfavored speakers. *Id*.

The ordinance in *Norton* (like the Ordinance here) did not focus on the content of the "pitch used" to solicit the funds—indeed, the Ordinance is "indifferent" to the solicitor's stated reason, if anything, for seeking money or things of value. What is more, the City's Ordinance is not aimed at meddling "with the marketplace of ideas," and it does not dictate the types of favorable or disfavored speech. *See Norton*, 768 F.3d at

717. The Ordinance only governs the method in which the speech is conveyed. Thus, the type of speech at issue is content-neutral subject to an analysis of whether the speech is narrowly tailored, to serve a substantial governmental interest, and whether there are ample avenues of communication open.

a. Plaintiffs' contention that the Ordinance is content-based and subject to strict scrutiny are unavailing

In addition to the reasons stated above, Plaintiffs are not likely to succeed on the merits, in large part because their argument hinges on the faulty proposition that the Ordinance at issue is content-based and, therefore, subject to strict scrutiny. Plaintiffs seem to simply springboard from the foregoing premise.

Plaintiffs cite numerous holdings from other Circuits in support of their contention that strict scrutiny should apply to the City's Ordinance. However, none of the cases cited by Plaintiffs considered a law with similar specificity to the City's Ordinance, which concerns only problematic *forms* of solicitation and not the content of the solicitation itself. The vast majority of holdings cited by Plaintiffs are based upon laws that criminalized *all* forms of panhandling or solicitation. *See Speet v. Schuette*, 726 F.3d 867, 870-71 (6th Cir. 2013) (invalidating statute that simply criminalized "[a] person found begging in a public place."); *Berger v. City of Seattle*, 569 F.3d 1029, 1050 (9th Cir. 2009) (holding rule unconstitutional because it banned *all* forms of active solicitation); *A.C.L.U. of Idaho v. City of Boise*, 998 F.Supp.2d 908, 913 (challenging portion of ordinance that prohibited all "non-aggressive solicitation").

The City's Ordinance however, only precludes certain *actions* (i.e., approaching, accosting, or stopping), employed by panhandlers, and *only* when combined with the

eleven specific unlawful circumstances identified in the Ordinance. *See Thayer*, 755 F.3d at 69 (noting "behavioral objectives behind [ordinance], but a dearth of the classic indicators of content basis"). It is the foregoing circumstances that the City seeks to regulate, given the potential harassing and unwanted conduct associated with such aggressive tactics. The City's Ordinance, contrary to Plaintiffs' assertion, does not even prohibit solicitation for money. And, it does not consider the motivations of those panhandling; it regulates only a limited subset of tactics that individuals may employ when engaging with the public.

Importantly, the holdings cited by Plaintiffs in support of a content-based analysis concede that distinguishing between *types* of solicitation is content-neutral. *See Berger*, 569 F.3d at 1051 ("regulations that ban certain *conduct* associated with solicitation do not violate the prohibition on content-based regulation of speech") (emphasis in original); *A.C.L.U. of Nevada v. City of Las Vegas*, 466 F.3d 784, 794 (9th Cir. 2006) ("courts have held that bans on the act of solicitation are content neutral"). Courts are also consistently unwilling to invalidate a statute concerning speech if such statute has a limiting instruction that narrows the field of activities to which it applies. *Speet*, 726 P.3d at 879 ("in evaluating a facial challenge to a state law, a federal court must, of course, consider any limiting construction . . ."") (internal citations omitted). The City has such a limiting instruction in the form of a regulation that bans only aggressive styles of panhandling, and even then, it only applies within a small category of locations or times.

The Supreme Court, notwithstanding Plaintiffs' attempt to demonstrate otherwise, has previously concluded that "solicitation is inherently more disruptive than . . . other

speech activities," thus regulations on the *manner* of solicitation need only be *reasonable* restrictions. *U.S. v. Kokinda* 497 U.S. 720, 736 (1990). Indeed, the ACLU of Idaho, in a recent 2014 challenge to Boise's panhandling ordinance, forewent a challenge to the statute's prohibition on panhandling in an "aggressive manner," perhaps acknowledging the clear right of governmental entities to protect the welfare and safety of citizens from potentially harassing conduct. *A.C.L.U. of Idaho*, 998 F. Supp. 2d at 913. Despite the abundance of case law cited by Plaintiffs, none of those holdings addressed the narrow restrictions at play in the City's Ordinance, which concerns only a small number of harassing tactics without encompassing a larger swath of speech.

b. The City's Ordinance is narrowly tailored to serve a substantial governmental interest [17]

For a content-neutral time, place, or manner regulation to be narrowly tailored, it must not burden substantially more speech than is necessary to further the government's legitimate interests. *Ward,* 491 U.S. at 781. Such a regulation, unlike content-based restrictions of speech, "need not be the least restrictive or the least intrusive means of serving the government's interests." *Id.* at 798. Further, while the regulation need not be a perfect fit for the government's needs, it cannot burden substantially more speech than necessary to advance its goals. *Id.* at 799. Even a facially neutral law that disproportionately affects speech on certain topics, remains

[17] Again, assuming, for the purposes of argument, that the alleged expression in this case constitutes some level of protected speech, any regulation must be narrowly tailored to serve a significant governmental interest. *See Ward*, 491 U.S. at 796.

content-neutral as long as it is "justified without reference to the content of the regulated speech." *See Renton,* 475 U.S. at 48.

In determining whether an ordinance is narrowly tailored to serve the governmental interest at stake, an ordinance's preamble may be relevant. *Thayer*, 979 F. Supp. 2d at 156. The Supreme Court has held that a municipality's "own implementation and interpretation" of an ordinance may be considered when evaluating a facial challenge. *Forsyth County, Georgia v. Nationalist Movement,* 505 U.S. 123, 131 (1992); *see also City of Newport, Kentucky v. Iacobucci,* 479 U.S. 92, 96–7 (1986) (finding municipality's intentions may be discerned/clarified by an examination of the preamble).[18]

Here, the preamble sets forth the legislative balancing. In relevant part, the preamble states that the Ordinance had its genesis in a rising number of complaints, voiced by a myriad of citizens, related to panhandling in the City. The preamble also references the conduct that creates an inconvenience, is a public nuisance, and at times threatens the safety and welfare of its citizens. Furthermore, the preamble makes specific reference to the City's "at risk" population, who may be less able emotionally

[18] Appellate Courts have followed suit in determining that preamble language can assist their understanding of a statute or ordinance. *See, e.g., Ass'n of Am. RR v. Surface Transp. Bd.,* 237 F.3d 676, 681 (D.C.Cir. 2001) (citing *Wyoming Outdoor Council v. United States Forest Serv.,* 165 F.3d 43, 53 (D.C.Cir. 1999) ("[A]lthough the language in the preamble of the statute is 'not an operative part of the statute,' it may aid in achieving a 'general understanding' of the statute.")); *Ben's Bar, Inc. v. Village of Somerset,* 316 F.3d 702, 723 n. 28 (7th Cir. 2003) (noting that when federal courts evaluate the "predominant concerns" motivating the enactment of a statute or ordinance, they may look at materials including "any preamble or express legislative findings associated with it"); *Wise Enterprises, Inc. v. Unified Gov't of Athens–Clarke County, Georgia,* 217 F.3d 1360 (11th Cir. 2000) (reviewing preamble appropriate to determine whether the ordinance furthered a substantial interest).

and physically to protect itself. And, the preamble repeatedly mentions the interest of the public's safety and welfare. (*See* Ex. A, p. 1).

The Ordinance was designed to ban more aggressive forms of solicitation that fit within the definition of *knowingly* approaching, accosting or stopping to solicit a gift of money (or thing of value), that are most likely to result in possibly violent confrontation; that are most likely to intimidate those being solicited; and that are most likely to endanger the solicitor and/or members of the general public. Additionally, the City's Ordinance is further narrowed insofar as it only applies to panhandlers who approach, accost or stop, within the eleven enumerated situations. Indeed, if a panhandler does not approach, accost or stop, there are then no time, person, geographical, or perimeter limitations. The narrowly tailored restrictions are only triggered when the panhandler approaches, accosts or stops someone and employs more aggressive tactics.

The City has chosen to restrict soliciting only in those circumstances where it is considered especially unwanted, intimidating, and a safety concern. Review of the Ordinance's specific provisions illustrate its narrow tailoring, and illuminate the furtherance of the substantial governmental interests involved.[19]

i. Subsections (b)(1), (b)(5), (b)(6), (b)(8), (b)(9), (b)(10) and (b)(11) are narrowly tailored and serve substantial governmental interests

Plaintiffs misconstrue the Ordinance with regard to (b)(1) (after dark), insofar as it is not a "total ban" on soliciting after dark. (*See PMTRPI,* p. 27). Plaintiffs' rely on *State v. Boehler*, 262 P.3d 637 (Ariz. Ct. App. 2011), but that case does not support their

[19] Plaintiffs argue that subsections (b)(1), (b)(5), (b)(6), (b)(8), (b)(9), (b)(10) and (b)(11) are not narrowly tailored.

assertions. The ordinance at issue there was much more expansive—having two distinct sections: one that addressed "aggressive" panhandling and another that *per se* criminalized any vocal panhandling in a public area between sunrise and sunset. *Id*. at 640. The City's Ordinance is not similarly broad in scope since it does not ban all forms of panhandling at night; but rather, only addresses certain antagonistic behaviors *in conjunction with* panhandling at night. The critical limiting factor is that the nighttime panhandler only violates the ordinance if she *approaches, accosts,* or *stops* an individual or does so in a very narrow set of circumstances that are reasonable for public safety. Plaintiffs' attempt to paint the City's Ordinance with the same broad brush as other ordinances fails to support their contention that the City's Ordinance is not narrowly tailored.

Regarding subsection (b)(5) (multiple requests), Plaintiffs' objection to the prohibition on persistent requests for money is based solely upon the fact that "it bans polite, peaceful, and nonthreatening requests for reconsideration, which do not pose any arguable threat to public safety." (*See PMTRPI,* p. 28). This objection misses the rationale for enacting such a subsection as it is the *very act* of asking multiple times that has the tendency to intimidate citizens. *See Thayer*, 755 F.3d at 69 (providing that "a person can reasonably feel intimidated or coerced by persistent solicitation after a refusal . . ."). Plaintiffs fail to consider that after having declined an offer to donate money to a panhandler, a reasonable person might feel intimidated or threatened by the panhandler's persistence. And consistent with the City's effort to regulate only conduct and not speech, it is not the act of requesting money which leads to a violation of the

Ordinance; but rather, it is a panhandler's assertive *conduct* in light of a clear statement of a citizen declining the offer to donate.

Subsection (b)(6) ("at risk") is narrowly tailored in an effort to protect those who may be least able to avoid solicitation. *See Lee,* 505 U.S. at 684. *Lee* makes specific reference to the risks of "face-to-face solicitation" and notes that the "skillful, and unprincipled, solicitor can target the most vulnerable, including those suffering from physical impairment who cannot easily avoid the solicitation." *Id.* (citing *Int'l Soc'y for Krishna Consciousness, Inc. v. Barber*, 506 F. Supp. 147, 159-63 (NDNY 1980), rev'd on other grounds, 650 F.2d 430 (CA2 1981) (referencing solicitor's practice of targeting prospective donors by picking certain types of people, or people in certain situations, such as teenagers and the handicapped)). Again, there is no city-wide prohibition on the solicitation of "at-risk" persons, the subsection is only triggered when the solicitor knowingly approaches, accosts or stops an at-risk person - "passive panhandling" of at-risk persons is not prohibited. Furthermore, nothing prohibits an "at risk" person from making the first overture.

Limitations regarding distance requirements, captive audiences, and impediments to foot and motor vehicle travel provisions (Subsections (b)(8), (b)(9), (b)(10), and (b)(11)), are also narrowly tailored (to specified places and circumstances), serve substantial governmental interest, and do not constitute a complete ban. *See e.g., Gresham v. Peterson*, 225 F.3d 899, 906 (7th Cir. 2000); see also *Thayer v. Worcester*, 755 F.3d at 68-9.

Affirming the district court's denial of a panhandler's request for an injunction

where an ordinance limited street begging in certain public places (such as sidewalk cafes, banks, ATMs and bus stops), the appellate court in *Gresham* held that the ordinance did not unduly infringe upon First Amendment right to free speech or Fourteenth Amendment right to due process, and that it was a reasonable response to the public safety threat posed by panhandlers. *Gresham*, 225 F.3d at 901. The *Gresham* Court found that the city chose to restrict panhandling in situations where people would most likely feel a heightened sense of fear or alarm, or might wish especially to be left alone. The Court concluded that city had effectively narrowed the application of the law – noting the ordinance was a "far cry" from a total citywide ban. *Id.* at 906.

In *Thayer*, the appellate court affirmed the denial of a preliminary injunction finding that a panhandling ordinance that covered a range of potentially coercive, though not conventionally aggressive behaviors, including soliciting from someone waiting in line to buy tickets or to enter a building; soliciting anyone within 20 feet of an entrance or parking area of a bank, ATM, public transportation stop, pay phone, theater, or any outdoor commercial seating area like a sidewalk café were not "imaginary concerns that smell of pretext." *Thayer,* 755 F.3d at 64. *Thayer* also addressed an ordinance related to pedestrian safety which targeted distractions on public roads. *Id*. The court in *Thayer* observed that a person could feel "trapped" and fearful in situations where she might not be free to move about—noting that even the "stout-hearted" can reasonably fear assault when requests for money are made near an ATM. *Id*. at 69. Regarding restrictions on using traveled roadways for solicitation or

demonstration, the court stated that it would be hard to gainsay that an unrestricted practice was "an accident waiting to happen." *Id.* The Court noted that the "whole point of soliciting or demonstrating (around automobile traffic) is to distract the attention of drivers to some degree." *Id.; see also Young v. New York Transit Auth.*, 903 F.2d 146, 150 (2d Cir. 1990) (recognizing the inability to avoid or move away from an intimidating person—observing that subway riders enjoy less fluidity and that they may feel captive).

Here the Ordinance's limitations are narrowly prescribed and do not constitute an all-out ban on panhandling in every situation or place. Indeed, the Ordinance references only behavior and, even then, only specific behavior that triggers the Ordinance. It is further narrowly tailored to the eleven more specific prohibitions which take into consideration times, locations, distances, the targets of the solicitations, and the circumstances. Thus, the common thread that runs through the line of cases above is the recognition that the types of provisions at issue here further a substantial interest in public safety, freedom from coercion and disruption, and are narrowly tailored to address aggressive or distracting activities, while leaving open ample channels for solicitation.

c. The City's Ordinance leaves open ample alternative avenues of communication

Insofar as Plaintiffs are not prohibited from soliciting altogether, and because the Ordinance seeks to regulate more aggressive styles of panhandling—those that are particularly obtrusive, or alarming, or risky solicitation along with solicitation that is distracting activity on the roadways including parking areas—the Ordinance leaves open ample avenues of communication for such activities. In fact, if the solicitor is not

"aggressive," then virtually the entire City is available for panhandlers. If however, the methods employed are of a more aggressive style, then the panhandler is subject to the limited restrictions which, even then, afford ample alternative avenues to communicate. Finally, Fort Collins is a large municipality. Thus, the impact of the Ordinance, in any event, only affects a relatively small portion of the City, primarily where the most dangerous activity is occurring.

For the reasons set forth herein, Plaintiffs are unable to carry their burden of showing that they are entitled to a preliminary injunction, in large part, because they cannot show that they are likely to succeed on the merits of their claim that the Ordinance is unconstitutional.

B. Plaintiffs' "as applied" challenges

The City agrees not to violate its Ordinance. And, the Court is certainly free, to the extent it believes necessary, to enjoin the City from doing so.

V. Conclusion

Based on the foregoing Defendant respectfully requests that the Court deny Plaintiffs' request for preliminary injunction.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2015, I electronically filed the foregoing **DEFENDANT'S RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following at their e-mail addresses:.

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