

1 Plaintiff seeks an order from the Court: (1) stopping Defendants from deleting
2 or editing comments posted on the Sheriff's Department Facebook page; (2) stopping
3 Defendants from preventing any person from posting to the Facebook page; and (3)
4 mandating Defendants allow users, like Plaintiff, who have been previously banned
5 from publishing comments be allowed to post comments. Plaintiff requests this
6 injunctive relief immediately to allow him the opportunity to post comments leading
7 up to the November 4, 2014 election, although he notes Defendant Sheriff Gore is
8 running unopposed.

9 To obtain injunctive relief, including a TRO, Plaintiff must demonstrate he is
10 likely to succeed on the merits, likely to suffer irreparable harm in the absence of
11 preliminary relief, that the balance of equities tips in his favor, and that an injunction
12 would be in the public interest. *Am. Trucking Ass'n, Inc. v. City of LA*, 559 F.3d 1046,
13 1052 (9th Cir. 2009) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365,
14 374 (2008)).

15 Additionally, the "circumstances justifying the issuance of an ex parte order are
16 extremely limited" because "our entire jurisprudence runs counter to the notion of court
17 action taken before reasonable notice and an opportunity to be heard has been granted
18 both sides of a dispute." *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1131 (9th
19 Cir. 2006) (quoting *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438-39
20 (1974)).

21 Although Plaintiff has shown some likelihood of success on the merits and a
22 First Amendment claim often carries with it a presumption of irreparable harm,
23 Plaintiff has not demonstrated he is entitled to a TRO. A TRO is a form of preliminary
24 injunctive relief limited to "preserving the status quo and preventing irreparable harm
25 just so long as is necessary to hold a hearing." *Granny Goose Foods*, 415 U.S. at 439.
26 And, "[w]hile a First Amendment claim 'certainly raises the specter' of irreparable
27 harm and public interest considerations, proving the likelihood of such a claim is not
28 enough." *DISH Network Corp. v. FCC*, 653 F.3d 771, 776 (9th Cir. 2011) (internal

1 citations omitted). Additionally, injunctive relief that seeks to alter the status quo, like
2 the mandatory injunction Plaintiff seeks here, is “subject to heightened scrutiny and
3 should not be issued unless the facts and law clearly favor the moving party. *Dahl v.*
4 *HEM Pharm. Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993).

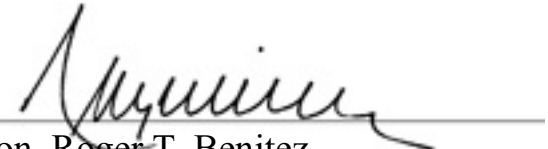
5 Significantly, although Plaintiff indicates he has provided notice of the
6 Application to Defendants, the Application fails to explain why this Court should take
7 any action against Defendants without providing Defendants a fair opportunity to be
8 heard on Plaintiff’s Application or why Plaintiff waited almost two months to take any
9 action on conduct he was aware of as early as September 3, 2014. The urgency of
10 Plaintiff’s TRO request seems to be of his own making and the Court is unwilling to
11 impose a mandatory injunction on Defendants without an opportunity to be heard when
12 Plaintiff waited until the last minute to take action.

13 Accordingly, Plaintiff’s request for a TRO is **DENIED**. However, the Court
14 orders Defendants to file a response to Plaintiff’s request for a preliminary injunction,
15 not to exceed 25 pages, on or before **November 14, 2014**. Plaintiff may file a Reply
16 brief, not to exceed 10 pages, on or before November 18, 2014. The matter is set for
17 hearing on **November 21, 2014 at 9:30 a.m.**

18 As Defendants have not yet appeared in this action, Plaintiff’s shall serve a copy
19 of this Order on Defendants immediately.

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21 **IT IS SO ORDERED.**

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23 DATED: November 3, 2014

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25 
26 Hon. Roger T. Benitez
27 United States District Judge
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