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ALAMEDA COUNTY

MAR 02 2010

CLERK OF THE SUPERIOR COURT
By S. McMillen Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA ex rel John A. Russo, City
Attorney for the City of Oakland,
12 Plaintiff,
v.

13 NORTH SIDE OAKLAND, a criminal street
14 gang sued as an unincorporated
association, and DOE ONE through DOE
15 TWO HUNDRED, inclusive,

16 Defendants.

Case No. RG10-498901

People's Memorandum of Points &
Authorities in Support of *Ex Parte*
Application for an Order to Show Cause
re: Preliminary Injunction and for
Preliminary Injunction Against the
North Side Oakland Criminal Street
Gang

Date: March 3, 2010

Time: 1:00 p.m.

Department: 20

Action Filed: February 18, 2010

Trial Date: not assigned

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I. INTRODUCTION

Since 2002, the North Side Oakland (“NSO”) gang has run amuck in the proposed Safety Zone, killing, shooting, beating, robbing, selling and using controlled substances, putting up their gang graffiti, loitering in public, and treating residents’ property as if their own. At the present, North Side Oakland is at war with a rival gang - shootings are frequent and guns are ever present. Blood is flowing. More harm is imminent. Plaintiff prays that this Court enjoin North Side Oakland and help bring a stop to the fear, intimidation and harm caused by the NSO gang.

Plaintiff, the People of the State of California, asks this Court to issue an Order to Show Cause (“OSC”) re preliminary injunction and then at the return of the OSC, to issue a preliminary injunction, commonly called a "gang injunction," against the defendant North Side Oakland gang and all of its members, to abate a public nuisance caused by their conduct and activities in a "**Safety Zone**," located in the City of Oakland:

Starting at 37th Street and Martin Luther King, Jr. Way, then west on 37th Street until Adeline Street; then north on Adeline Street until 53rd Street; then west on 53rd Street until Boyer Street; then north along Boyer Street and along the northerly line as it continues along Vallejo Street until 66th Street; then east on 66th Street until Herzog Street; then south on Herzog Street until Alcatraz Street; then east on Alcatraz Street until Market Street; then southeast on Market Street until 61st Street; then east on 61st Street until Dover Street; then north on Dover Street until Fairview Street; then east on Fairview Street and along the easterly line as it continues along 66th Street until Telegraph Avenue; then south on Telegraph Avenue until 60th Street; then east on 60th Street until Canning Street; then south on Canning Street until 58th Street; then west on 58th Street until Telegraph Avenue; then south

1 on Telegraph Avenue until 49th Street; then west on 49th Street until Shattuck
2 Avenue; then north on Shattuck Avenue until 52nd Street; then west on 52nd
3 Street until Martin Luther King, Jr. Way; then south on Martin Luther King, Jr.
4 Way until the starting point at 37th Street, and extending 100 yards to the
5 outside of each of those boundary streets. Ofc. Jason Trode Decl. ¶ 6 & Map
6 attached thereto as Exhibit A. The Safety Zone is narrowly drawn and less
7 than 4 square mile in size. *Id.* ¶ 6.

8 The People also ask this Court to allow service, including the OSC, on the defendant,
9 a criminal street gang sued as an unincorporated association, by personal service on
10 three or more members of the NSO gang, and additional service by mailing to the gang in
11 care of five or more additional NSO gang members. CCP § 416.40(c).

12 California law is clear and the courts are unanimous¹: when the conduct and activities
13 of a turf-based, violent, criminal street gang are a cause of a public nuisance in a
14 proposed Safety Zone, then the conduct and activities of that gang may be abated by an
15 injunction brought by a City Attorney. *People v. Acuna* (1997) 14 Cal. 4th 1090 (upholding
16 gang injunction), *cert, denied*, 521 U.S. 1121; *People v. Colonia Chiques* (2007) 156 Cal.
17 App. 4th 31 (upholding permanent gang injunction, reversing "curfew" provision with
18 instructions how to correct it); *People v. Englebrecht* (2001) 88 Cal. App. 4th 1236,1263
19 (upholding permanent gang injunction); *In re Englebrecht* (1998) 67 Cal. App. 4th
20 486,493-96 (upholding "do not associate" provision in preliminary gang injunction).

21
22
23 _____
24 ¹ The one decision where a gang injunction was reversed, *People v. Broderick Boys* (2007) 149 Cal.
25 App. 4th 1506, is not to the contrary. In *Broderick Boys*, West Sacramento's gang injunction was not reversed
26 on its merits, which the Court acknowledged, *id.*, at 1511, but because notice of the action was held
insufficient (service made only on one gang member). Plaintiff, as discussed, *infra*, has requested that this
action's service order set a standard far beyond the statutory (Corporations Code 18220) minimum so that
this gang's "notice" of this action will be beyond reproach.

II. STATEMENT OF FACTS

1 For almost a decade, the North Side Oakland gang, which was founded 2002,² has
2 run amuck, killing,³ shooting,⁴ beating,⁵ robbing,⁶ selling and possessing controlled
3 substances,⁷ putting up their gang graffiti,⁸ loitering in public,⁹ trespassing¹⁰, and
4

5
6 ² The North Side Oakland gang, in its current state, came into existence around 2002 – Sgt. Ortiz Expert
7 Decl. ¶22.

8 ³ Cunnie Expert Decl. ¶¶ 28.a.–28.dd discussing a series of murders and shootings since 2006 in which
9 North Side Oakland gang members are the suspects or victims. The following officer's declarations
10 summarize the facts of numerous killings related to the NSO gang's criminal and nuisance activities: Ofc.
11 Bermudez ¶ 9; Ofc. Brooks ¶ 5; Ofc. Hassna ¶ 5; Sgt. Bassett ¶ 5; Ofc. Calonge ¶ 9; Ofc. Dorham ¶ 6; Ofc.
12 Griffin ¶ 4; Ofc. Kirkland ¶ 6; Ofc. Leyva ¶ 20; Ofc. Miller ¶ 7; Ofc. Mitchell ¶ 7; Ofc. Pereda ¶ 4; Berkeley PD
13 Sgt. Hong ¶ 3; Berkeley PD Ofc. Ledoux ¶ 3; and Berkeley PD Sgt. Stines ¶¶ 3-5.

14 ⁴ Cunnie Expert Decl. ¶¶ 28.a. – 28.dd discussing shootings by or at North Side Oakland gang
15 members. The following officers declarations summarize the facts of numerous shootings related to the NSO
16 gang's criminal and nuisance activities: Ofc. Cunnie Expert Decl. ¶ 28h and 28v; Ofc. Lee ¶ 4; Ofc. Jaeger ¶
17 7 and 8; Ofc. Krump ¶ 6; Ofc. Leyva ¶ 20 and 21; Ofc. Messier ¶ 4; Ofc. Murphy ¶ 6; Ofc. Nieves ¶ 7; Ofc.
18 Pappas ¶ 5; Ofc. Pereda ¶ 4; Ofc. Pulsipher ¶ 6; Ofc. Saunders ¶ 8; Ofc. Souza ¶ 4; Ofc. Trode ¶ 6;
19 Berkeley PD Ofc. LeDoux ¶ 4; Berkeley PD Ofc. Murphy ¶¶ 3-4; Berkeley PD Ofc. Salas ¶¶ 3-6; and
20 Berkeley PD Ofc. Sabins ¶¶ 3-6.

21 ⁵ Ofc. Gerrans Expert Decl. ¶¶ 36a to 36u discussing beatings likely committed by North Side Oakland
22 gang members during street robberies.

23 ⁶ Ofc. Gerrans Expert Decl. ¶¶ 28-39 discussing street robberies likely connected to North Side Oakland
24 Gang members. The following officers declarations summarize the facts of numerous robberies related to
25 the NSO gang's criminal and nuisance activities: Armed (firearm) Robberies - Ofc. Ausmus ¶ 6; Ofc.
26 Botelho ¶ 5; Ofc. Bermudez ¶ 10; Ofc. Castañeda ¶ 4; Ofc. Chen ¶ 8; Ofc. Cunnie Expert Dec. ¶ 21c; Ofc.
Jaeger ¶ 6; Ofc. Eric Kim ¶ 4; Ofc. Lawless ¶ 4; Ofc. Martin ¶ 4; Ofc. Mitchell ¶ 5; Ofc. Ruiz ¶ 7; Ofc. Sarno ¶
4; Ofc. Spediacci ¶ 13; Ofc. Watson ¶ 6; Berkeley PD Ofc. Montgomery ¶ 3; and El Cerrito Ofc. Albrandt ¶ 3;
Strong-Arm Robberies - Ofc. Cheung ¶ 5; Ofc. DelaVega ¶ 5; Ofc.R. Garcia ¶ 3; Ofc. Gerrans Expert Dec.
¶¶ 36d and 36i; Ofc. House ¶ 4; Ofc. Kemmit ¶ 6; Ofc. Leyva ¶ 7 and 8; Ofc. Nash ¶ 5; Ofc. Pappas ¶ 6; Ofc.
Rowbotham ¶ 4; and Ofc. Russell ¶¶ 6, 7 and 8.

27 ⁷ Cunnie Expert Decl. ¶¶ 21. through 21.ii. discussing incidents of North Side Oakland gang members' street
28 level controlled substance sales activity; Ortiz Expert Decl. ¶¶ 40- 41ii discussing convictions of North Side
29 Oakland gang members for controlled substance sales crimes. The following officers' declarations
30 summarize the facts of numerous controlled substance arrests and contacts related to the NSO gang's
31 criminal and nuisance activities: Sales or Possession For Sales - Ofc. Bermudez ¶ 8; Ofc. Bowling ¶ 5; Ofc.
32 Bunn ¶ 5 and 6; Ofc. Calonge ¶¶ 4 and 8; Ofc. Chen ¶ 10; Ofc. Clark Expert Dec. ¶¶ 24c, 24d, 24e, 29, and
33 79j; Ofc. Clement ¶ 5; Ofc. Cunnie Expert Dec ¶¶ 21hh, 21ii, 68d, 72h, 75g, and 77i; Ofc. Gerrans Expert
34 Dec. ¶ 40f; Ofc. Holton ¶ 16; Ofc. Keely ¶ 7, 9, and 10; Ofc. Koster ¶ 7; Ofc. Valle ¶ 5; Ofc. Worcester ¶ 8;
35 Ofc. Ziebarth ¶ 5; and Berkeley PD Sgt. Lindenau ¶ 4; Possession of Controlled Substance - Ofc. Baker ¶
36 6; Ofc. Bergeron ¶ 4, 5 and 6; Ofc. Barocio ¶ 7 and 8; Sgt. Bassett ¶ 4; Ofc. Brooks ¶ 6; Ofc. Brown ¶ 6; Ofc.
Clark Expert Dec ¶ 24b; Ofc. Cunnie Expert Dec. ¶ 21bb, 21gg, 28i, 67i, 73g, 73h, and 74n; Ofc. Crum ¶ 5;
Ofc. DeMarco ¶ 5; Ofc. Foreman ¶ 6; Ofc. Gerrans Expert Dec. ¶ 40c, 40e, and 70j; Ofc. Holton ¶ 9; Ofc.
Keeley ¶ 10; Ofc. Kenneth Kim ¶ 6; Ofc. Katz ¶ 7; Ofc. Kemmit ¶ 4; Ofc. Leonis ¶ 10; Ofc. McMillian ¶ 6 and
8; Sgt. Millington ¶ 7; Ofc. Rhee ¶ 6; Ofc. Ruiz ¶ 9; Ofc. Sanchez ¶ 5; Berkeley PD Ofc. Chu ¶ 4; Berkeley
PD Morillas ¶ 4; and Berkeley PD Ofc. Murphy ¶ 3

1 intimidating anyone who dares complain¹¹. Right now, North Side Oakland is at war with
2 local rival gangs,¹² shootings are frequent and guns are ever present.¹³ Blood is flowing,
3 including innocent blood.¹⁴ More harm is imminent. Plaintiff prays that this Court enjoin
4 the North Side Oakland gang and help stop the terror that the public is suffering.

5 The North Side Oakland is a predominantly African -American, violent, turf-based,
6 criminal street gang that commits the criminal and nuisance behavior unfortunately all too
7 common with modern street gangs, including the turf-based murders, shootings and gang
8 violence that plague a large area of the City of Oakland.¹⁵

9
10 ⁸ Ofc.Gerrans Expert Decl. ¶¶ 41 to 61 discussing North Side Oakland's gang graffiti in depth, along with photographs

11 ⁹ Ofc. Cunnie Expert Decl. ¶¶ 21a -21ii discussing North Side Oakland Gang's loitering practices,
12 especially in connection with street-level drug sales. The following officers' declarations summarize the facts
13 of numerous loitering arrests and contacts related to the NSO gang's criminal and nuisance activities: Ofc.
14 Baglieri ¶ 5; Ofc. Baker ¶ 6; Ofc. Chen ¶ 7 and 9; Ofc. Clark Expert Dec. ¶¶ 24b, 24c, 24e, 78h, and 78j; Ofc.
15 Cunnie Expert Dec. ¶¶ 21i, 21k, 28i, and 72h; Ofc. Gerrans Expert Dec. ¶¶ 40b, 40d, and 106f; Ofc. Holton
16 ¶¶ 7, 8, 10 and 14; Ofc. Lau ¶ 10; Ofc. Leonis ¶ 8; Ofc. Leyva ¶¶ 10, 11, 12, 13, 15, 16, 18, and 19; Ofc.
17 McMillan ¶ 5; Ofc. Messier ¶ 3; Ofc. Miller ¶ 8, 9 and 10; Ofc. Nash ¶ 4; Sgt. Ortiz ¶¶ 3 and 4; Ofc.Perez-
18 Angeles ¶ 6; Ofc.Rhee ¶ 6; Ofc.Ruiz ¶ 8; and Ofc. Worcester ¶ 7.

19 ¹⁰ The following officers' declarations summarize the facts of numerous incidents of NSO gang members
20 fleeing through neighbor's private property to escape the police: Ofc. Bunn ¶ 6; Ofc. Cunnie Expert Dec. ¶¶
21 28h and 28i; Ofc. Foreman ¶ 7; Ofc. Kemmit ¶ 6; Ofc. Lee ¶ 4; Ofc. Watson ¶ 6; and Ofc. Worcester ¶ 9

22 ¹¹ The following are incidents where witnesses expressed fear of gang retaliation for cooperating with
23 police, and one incident of an NSO gang member being charged for threatening a witness: Sgt. Bassett ¶ 9;
24 Ofc. Chen ¶ 9; Cunnie Expert Dec ¶ 28dd; Ofc. Dorham ¶ 7; Ofc.Morrow ¶ 4-14; Ofc. Pulsipher ¶ 6;and Ofc.
25 Ruiz ¶ 8.

26 ¹² Ofc. Cunnie Expert Decl. ¶¶22-29 discussing the series of murders and shootings involving NSO
members and bystanders in the proposed Safety Zone as a byproduct of NSO feud with rival Berkeley and
other gangs.

¹³ Ofc. Cunnie Expert Decl. ¶¶ 28a-28dd discussing many incidents involving guns illegally possessed
and used by or against NSO gang members. The following officers' declarations summarize arrests and
contacts related to the NSO gang where an illegally possessed gun and/or ammunition were involved : Ofc.
Clark Expert Dec. ¶ 24a; Ofc. Cunnie Expert Dec. ¶¶ 21c, 21ii, 28i, 74m, and 76f; Ofc. DeMarco ¶ 5; Ofc.
Gysin ¶ 4; Ofc. Holton ¶ 12; Ofc. Kaney ¶ 6; Ofc. Keely ¶ 9 and 10; Ofc. Lau ¶ 8; Ofc. Leonis ¶ 11; Ofc.
Perez-Angeles ¶ 6; Ofc. Valle ¶ 5; Ofc. Worcester ¶ 9; Berkeley PD Chu ¶ 4; Berkeley PD Morillas ¶ 4; and
Berkeley PD Kassebaum ¶¶ 3 and 4.

¹⁴ Ofc. Cunnie Expert Decl. ¶ 29 discussing the bystanders who have been injured or killed as a result of
gang violence on the public streets and sidewalks.

¹⁵ Plaintiffs evidence is in the form of declarations by police officers, which is necessary to protect the safety of
civilian victims and witnesses from retaliation by gang members. "North Side Oakland, like most street gangs, is

1 As is further discussed in Part V, *infra*, a civil gang injunction is the most appropriate
2 tool to address exactly this problem, a long-term entrenched turf-based violent street
3 gang.

4 III. APPLICABLE LAW RE PUBLIC NUISANCE

5 A nuisance is defined in California as:

6 **Nuisance:** Anything which is injurious to health, including, but not limited
7 to, the illegal sale of controlled substances, or is indecent or offensive to
8 the senses, or an obstruction to the free use of property, so as to interfere
9 with the comfortable enjoyment of life or property, or unlawfully obstructs
the free passage or use, in the customary manner, of any navigable lake,
or river, bay, stream, canal, or basin, or any public park, square, street, or
highway, is a nuisance. [Civil Code section 3479]

10 **Public Nuisance:** A public nuisance is one which affects at the same time
11 an entire community or neighborhood, or any considerable number of
12 persons, although the extent of the annoyance or damage inflicted, upon
individuals maybe unequal. [Civil Code section 3480]

13 IV. ARGUMENT

14 California law on gang injunctions is clear. The gang rivalries engaged in by defendant
15 North Side Oakland, with the foreseeable murders, shootings and other gang violence,
16 unreasonably "interfere with the comfortable enjoyment of life." Civil Code section 3479.
17 The North Side Oakland gang's many other criminal and nuisance activities also warrant
18 issuance of a civil gang injunction, to abate the nuisance caused by this gang.
19
20
21

22 successful as a criminal organization, because the witnesses and victims to their criminal activity are too scared to talk..
23 The crime is Penal Code section 136, intimidating a witness. See citations in footnote 11. Officer declarants are
24 necessary to protect civilians, and are proper and admissible: (1) because their evidence is percipient (e.g., "I recovered
25 a gun from the gang member"; "I observed a gang member selling crack cocaine");(2) because it regards statements
26 made by a gang member (e.g., gang member admits he's a member of a particular gang) which is admissible as a
declaration against interest, Evid. Code § 1230, and/or as a party admission, *id.*, § 1220; and/or (3) because it regards
statements made by a victim shortly after a violent or terrifying incident occurred, which is admissible under one or more
hearsay exceptions often used in criminal cases, especially gang cases, such as spontaneous statements (*id.* § 1240),
contemporaneous statements (*id.*, § 1241), prior identification (*id.*, § 1238), and/or statements made to a police officer
about the infliction or threat of infliction of physical injury (*id.*, § 1370).

1 **A. A Statutory Public Nuisance Caused By The NSO Gang Exists In The**
2 **Safety Zone**

3 To obtain an injunction against a criminal street gang and its members, the People
4 must show: (1) that the activities and conduct of the defendant "can be brought within the
5 terms of the statutory definition of public nuisance," and (2) that the nuisance is
6 "substantial and unreasonable." *In re Englebrecht, supra*, at 492. See also *Acuna, supra*,
7 at 1104-05.

8 The activities and conduct of the defendant NSO street gang in the Safety Zone
9 satisfy the statutory definition of public nuisance because the shootings and other gun
10 violence, robberies, beatings, burglaries, and other theft and violence, are "injurious to
11 health," "offensive to the senses," and "an obstruction to the free use of property," and
12 "interfere with the comfortable enjoyment of life or property." Civil Code section 3479. The
13 "illegal sale of controlled substances," *id.*, qualifies a street gang as a public nuisance.
14 Gang graffiti constitutes a public nuisance because of its economic harm and also
15 because of the fear and intimidation gang graffiti inflicts. *Mclvor v. Mercer-Fraser Co.*
16 (1946) 76 Cal. App. 2nd 247, 254 ("mere apprehension of injury from a dangerous
17 condition may constitute a nuisance"). The NSO gang's nuisance activity within the
18 proposed Safety Zone is also a nuisance because many of the documented gang
19 activities are violations of Oakland community standards which have been set forth in
20 ordinances, such as drinking alcoholic beverages in public (Oakland Municipal Code ("OMC") §
21 9.08.180.A); loitering upon public sidewalks causing an obstruction and unreasonable interference
22 of free passage for pedestrians (OMC § 9.08.170); riding bicycles on sidewalks (OMC §
23 10.16.150) and discharging firearms within city limits (OMC § 9.36.080). The nuisance created
24 by the defendants is "substantial and unreasonable." In this context, "substantial" is
25 defined as "proof of 'significant harm,' . . . that is 'definitely offensive, seriously annoying or
26 intolerable.'" *Acuna* at 1105 (citation omitted). Conditions documented by the People,
including shootings, beatings, robberies, and gang graffiti, are substantial. "Unreasonable"

1 is determined by “comparing the social utility of an activity against the gravity of the harm it
2 inflicts.” *Id.* No social utility exists in the conduct and activities of this street gang, while the
3 harm it inflicts is immeasurably great. Accordingly, a substantial and unreasonable public
4 nuisance exists in the Safety Zone, caused by the conduct and activities of this defendant
5 gang and its members. See, **Exhibit A** – Dotted Map of the Safety Zone showing crimes
6 and nuisance offenses attributable to the NSO gang.

7
8 **B. The Public Nuisance Caused By The NSO Gang Is Properly Abated By**
9 **An Injunction**

10 In *Acuna*, the California Supreme Court explicitly sanctioned the use of an injunction
11 to abate a nuisance caused by gang conduct. *Acuna*, at 1102 and Civil Code § 3491 and §
12 3494. Code of Civil Procedure (CCP) section 731 expressly provides for injunctive relief by
13 a City Attorney to abate a public nuisance. CCP section 526(a) sets forth grounds under
14 which an injunction may issue. The public nuisance caused by the defendant NSO gang
15 satisfies several of these grounds. CCP Section 526(a)(2) authorizes an injunction if
16 continuation of the nuisance would produce “great or irreparable injury.” This gang’s past
17 violence and continuing threat of violence qualifies as such an injury. CCP Section
18 526(a)(4) states that injunctive relief is appropriate if pecuniary compensation would not
19 afford adequate relief. Under CCP section 526(a)(5), an injunction is appropriate if it would
20 be “extremely difficult to ascertain the amount of compensation” which would afford
21 adequate relief. Here, no amount of monetary compensation can restore to the residents
22 of the proposed Safety Zone their sense of personal safety. Under CCP section 526(a)(6),
23 an injunction is proper to prevent a multiplicity of judicial proceedings. Because this gang
24 nuisance is community-wide, the pool of potential plaintiffs is vast and would require a
25 multiplicity of private lawsuits to vindicate the community’s rights. A gang injunction is the
26 only adequate remedy.

1 **C. The Standard Of Proof Required For An Injunction Against the NSO**
2 **Gang Is Overwhelmingly Satisfied By The Evidence**

3 Courts consider two issues when deciding whether to issue injunctive relief. “ ‘The
4 first is the likelihood that the plaintiff will prevail on the merits at trial. The second is the
5 interim harm that the plaintiff is likely to sustain if the injunction were denied as compared
6 to the harm the defendant is likely to suffer if the preliminary injunction were issued.’ ”
7 *Acuna, supra*, at 1109 (citation omitted).

8 **1. The People Are Likely To Prevail On The Merits At Trial**

9 The People are likely to prevail at trial because we have already introduced
10 overwhelming¹⁶ evidence establishing a cause of action for public nuisance against this
11 street gang. See Statement of Facts, *supra*, and the declarations cited in this brief.
12 California’s Supreme Court held plaintiff in a gang injunction case must prove a public
13 nuisance exists in the Safety Zone, and “the gang and its members present in [the Safety
14 Zone] were responsible for the public nuisance.” *Acuna*, at 1125. Plaintiff in a gang
15 injunction case need only establish that one of the primary activities of a defendant street
16 gang is “the commission of the acts constituting the public nuisance.” *People v.*
17 *Englebrecht*, 88 Cal. App. 4th at 1258. Here, the People have gone further and
18 established that the defendant gang is a “criminal street gang” under the more rigorous
19 definition set forth in Penal Code section 186.22, the Street Terrorism Enforcement and
20 Prevention (STEP) Act, which requires that one of the primary activities of a gang be the
21 commission or attempted commission of “predicate felonies,” such as murder (Penal
22 Code § 187), assault with a deadly weapon (Penal Code § 245), robbery (Penal Code §
23 211), "car-jacking" (Penal Code § 215), grand theft (Penal Code § 487), sales, possession
24 for sales, and transportation of controlled substances (Health and Safety Code § 11055 –

25 ¹⁶ Plaintiff has documented over 150 different NSO gang-related criminal and nuisance incidents that occurred in
26 2008 and 2009 alone, in the Expert Declarations of Officers Cunnie, Clark, and Gerrans, ranging from controlled
substance possession and sales, killings shootings, robberies, beatings, stolen cars, and graffiti vandalism, to drinking
in public, which ought to be more than sufficient to warrant provisional injunctive relief.

1 §11058), robbery (Penal Code § 211), shooting at occupied dwellings or automobiles,
2 discharging firearms from motor vehicles (Penal Code § 12034), witness and victim
3 intimidation (Penal Code 136.1), illegal sale, or transfer of a firearm (Penal Code §
4 12072), firearms possession crimes (Penal Code §§ 120101, 12021, 12025, and 12031)
5 and burglary (Penal Code § 459), all of which "STEP predicates" are also "nuisance
6 activities" of the highest magnitude.¹⁷

7 A public nuisance caused by the conduct and activities of criminal street gangs
8 exists in the Safety Zone, as detailed in the Statement of Facts, *supra*, and the many
9 declarations cited in this brief, and the defendant street gang is documented to be a
10 cause of that public nuisance.

11 In this action, pursuant to standard California injunction practice, the People are
12 proceeding against the street gang itself as the civil defendant, with the proposed gang
13 injunction binding all members of the enjoined entity (as opposed to naming the hundreds
14 of members of this gang as individual civil defendants). *E.g.*, *People v. Saffell* (1946) 74
15 Cal. App. 2nd Supp. 967,979 (injunction against unincorporated association binds its
16 nonparty members). The rationale of this "time honored equitable practice," *Acuna*, at
17 1124, is explained more fully in this oft-cited opinion:

18 [I]t has been a common practice to make the injunction run also to classes
19 of persons through whom the enjoined party may act, such as agents,
20 servants, employees, aiders, abettors, etc., though not parties to the
21 action, and this practice has always been upheld by the courts, and any of
22 such parties violating its terms with notice thereof are held guilty of
23 contempt for disobedience of the judgment. But the whole effect of this is
24 simply to make the injunction effectual against all through whom the
25 enjoined party may act....

26 *Berger v. Superior Court* (1917) 175 Cal. 719, 721 (italics omitted).

¹⁷ See Sgt. Ortiz Expert Decl. at ¶¶ 40-42, which detail 29 felony convictions and 6 pending felony charges against NSO gang members.

1 The practice of making an injunction run against nonparty members of an enjoined entity
2 raises no “due process” concerns, *Ross v. Superior Court* (1977) 19 Cal. 3rd 899, 905-906
3 (nonparty agent of enjoined defendant bound by injunction; rejecting due process
4 arguments), and is not “unconstitutionally overbroad.” *Greenly v. Cooper* (1978) 77 Cal.
5 App. 3rd 382,395. “[T]his practice has always been upheld by the courts,” and “this practice
6 is. thoroughly settled and approved by the courts.” *Berger, supra*, at 721.

7 In *People v. Englebrecht, supra*, the Court of Appeal opined that the People must
8 prove their cause of action for a civil gang injunction by clear and convincing evidence. *Id.*,
9 88 Cal. App. 4th at 1256-57 & fn.7. The People have done so by overwhelming evidence,
10 establishing to a “high probability” (*In re Angelia P.* (1981) 28 Cal. 3rd 908, 919) that the
11 conduct and activities of the defendant street gang and its members constitute a public
12 nuisance in the Safety Zone.

13 14 **2. Balancing Of The Respective Harms Favors Protecting The** 15 **Community From This Street Gang**

16 Once the People establish they are likely to prevail on the merits, this Court is
17 required to weigh the equities. The balancing test approved in *Acuna* compared the social
18 utility of the enjoined conduct with the harm the conduct inflicts. *Acuna* at 1105. Should
19 this injunction not issue, the continuing harm to the residents is unmistakable; they will
20 continue to be victims of turf-based gang violence, gang robberies, gang graffiti, and other
21 gang crimes. By contrast, any harm to this defendant gang should the injunction issue
22 would be minimal. The proposed injunctive terms are not absolute prohibitions, but apply
23 only in the proposed Safety Zone. The prohibitions contained in the proposed gang
24 injunction are proper restrictions on the conduct and activities of the gang. Each requested
25 injunction provision seeks to enjoin criminal or nuisance behavior or the precursors to such
26 behavior. See discussion, *infra* (injunction provisions are proper). As a result, the

1 injunction is reasonable in view of the degree to which the conduct and activities of this
2 gang have impaired the public safety, the quality of life, and the property and security
3 rights of the local community. The balancing test favors, and the equities lie with, the local
4 community.

5

6 **D. The Injunction Provisions Are Warranted And Proper**

7 The goal of the requested gang injunction is to abate the NSO gang’s criminal and
8 nuisance behavior. To do so, the proposed gang injunction sets forth new “civility rules” for
9 this gang and its members, including no guns, no drugs, no trespassing, no witness/victim
10 intimidation, and “don’t associate in public.” These rules are necessary to abate the public
11 nuisance and to protect the innocent citizens in the Safety Zone. See discussion, *supra*,
12 section III C.2 (Balancing the Respective Harms).

13 **Do Not Associate with Gang Members.** Association together in places accessible
14 by the public is the cornerstone of a street gang’s criminal activity; after all, a gang’s
15 fundamental intimidation is achieved by its “strength in numbers,” not so much as
16 individuals. In fact, associating together is part, and often a key part, of the gang’s typical
17 MO (*modus operandi*) for many of their crimes. In the NSO gang’s case, this is especially
18 true of the “rat pack” robberies committed by groups of three to eight (or more) suspects
19 together (*E.g.*, Ofc. Gerrans Expert Decl ¶¶ 37-39) and during street sales of controlled
20 substances. (See Sgt. Ortiz Expert Dec. ¶ 19 and Ofc. Cunnie Expert Decl. ¶¶ 21ff and
21 37.) Abating the public association of gang members will serve to abate their subsequent
22 criminal and nuisance behavior. Ofc. Gerrans Expert Decl ¶ 39 and Sgt. Ortiz Expert Decl
23 ¶19. The non-association order requested in this case tracks the language upheld by the
24 California Supreme Court in *Acuna, supra*, at 1110, and is proper because “[f]reedom of
25 association, in the sense protected by the First Amendment, ‘does not extend to joining
26 with others for the purpose of depriving third parties of their lawful rights.’ ” *Acuna, supra*,

1 14 Cal. 4th at 1112 (citation omitted)." Furthermore, the "association" condition only
2 applies in places accessible by the public, where gang activity has its greatest impact on
3 the community. [T]he non-association provision of the preliminary injunction is
4 constitutional. *Acuna* is controlling." *In re Englebrecht, supra*, 67 Cal. App. 4th at 496.

5 **No Witness Intimidation.** Street gangs are successful at avoiding the
6 consequences of their actions because they silence victims and witnesses of their crime
7 through fear and intimidation. Because of the intimidation, the justice system is cheated
8 and undermined. See citations in footnote 11. As with the non-association clause above,
9 the language of this provision tracks the language upheld in *Acuna*, at 1118-19. See Penal
10 Code § 136.1 (intimidating victim or witness).

11 **No Firearms, Imitation Firearms, or Dangerous Weapons.** The violent crimes,
12 such as murder, ADWs, robbery, and witness intimidation turf-based violence committed
13 by the defendant street gang often involve firearms, the gang's weapon of choice, to
14 control its proclaimed turf. Guns, and the violence guns are capable of, are critical to a
15 criminal street gang. "Because every murder described [in my Declaration] (2006 through
16 2009) was by gunfire, I also believe that an injunction condition prohibiting NSO gang
17 members from carrying or being near firearms would reduce the murders and community
18 members and their homes being hit by gunfire." Ofc. Cunnie Expert Decl. ¶¶29. Eight of 21
19 "rat pack" and NSO robberies involved the use or threat of a firearm. Ofc. Gerrans Expert
20 Decl. ¶ 39. "See citations in footnotes 3 and 4. See Penal Code § 12028(a) (unlawful
21 carrying of concealed handguns and dangerous weapons is a nuisance).

22 **No Graffiti or Graffiti Tools.** Gang graffiti damages property and creates fear.
23 "Gang members will often mark their area with graffiti. This graffiti sends a message to the
24 residents of that neighborhood and rival gangs that the gang is active and in control of a
25 given area through fear and intimidation." Ofc. Gerrans Expert Decl. ¶¶ 41-61. To better
26

1 abate the graffiti nuisance, the tools of the trade (spray cans, markers, etc) must be
2 controlled. See Penal Code § 594.2 (listing and banning certain graffiti tools).

3 **Stay Away From Controlled Substances.** “Many of the NSO gang members I
4 have contacted in the proposed Safety Zone were smoking or under the influence of
5 marijuana. This public drug use is a nuisance to area residents and their children.” Ofc.
6 Cunnie Expert Decl ¶ 17. Moreover, as Officer Cunnie discusses in his Declaration at
7 paragraph 17-18, an injunction provision requiring them to stay away from controlled
8 substances will help suppress illegal street trafficking and the crimes it attracts. See
9 citations in footnote 7.

10 **Obey Time Restriction.** A significant amount of the most violent criminal and
11 nuisance activity documented in the declarations submitted in support of this gang
12 abatement occurred at night, and limiting the nocturnal behavior of NSO gang members in
13 the Safety Zone makes sense considering the nature and the activities of a criminal street
14 gang. Ofc. Cunnie’s Expert Declaration discusses how almost 20 % of the NSO gang -
15 related shootings since 2007 occurred between 10pm and 5am (Ofc. Cunnie Expert Decl
16 ¶29.). Ofc. Gerrans’ Expert Declaration discusses how almost 50 % of NSO gang related
17 rat pack robberies since 2007 occurred between 10pm and midnight (Ofc. Gerrans Expert
18 Decl ¶ 39). These time restrictions will have a substantial impact on reducing violent
19 gang-related crime in the Safety Zone.

20 **No Trespassing.** North Side Oakland gang and its members believe they can use
21 any and all property in the Safety Zone, as if it were their own property. See citations in
22 footnote 10. For example, in March 2008, as officers approached to contact Anthony
23 Smith, for a probation check, " Smith fled on foot for about 3 blocks, running through
24 private yards and jumping fences, and was later arrested. Ofc. Bermudez Decl ¶8. This
25 provision is necessary to protect the property, peace of mind, and security of the Safety
26 Zone residents. See Penal Code § 602 (trespass).

1 **Obey All Laws.** An obligation to obey certain laws is nothing more than the
2 requirement all good people in society have operated under since laws were first passed,
3 and orderly society first organized. This provision seeks to abate these defendants'
4 criminal nuisance behavior. It is time these gang members be ordered to comply with the
5 laws prohibiting nuisance conduct and activities. *Acuna, supra*, at 1106-09. See Civil Code
6 § 3369 (proper to enjoin criminal nuisance behavior).

7 **No Gang Recruitment:** North Side Oakland gang members need to keep
8 increasing their numbers as members are killed or put in jail. It is NSO's practice to initiate
9 new members by using them to sell controlled substances or to commit robberies. As
10 demonstrated in Ofc. Clark's Expert Dec. ¶ 29., this can include using children as young
11 as 13 years old to hold drug, deliver drugs, or money as a part of street drug sales
12 activities in order to avoid arrest or conviction. Recruiting also involves using children of
13 12-15 years old to commit robberies. See Ofc. Gerrans' Expert Decl. ¶¶36d, 36h, 36j, 36k,
14 37 and 38. This provision is necessary to stop the inflow of new gang members, and to
15 protect the youth who live in the Safety Zone.

16 **No Loitering as Prohibited by Health and Safety Code section 11532:** Loitering
17 by NSO members is commonplace, and usually is part of street-level narcotics sales.
18 NSO's street-level drug sales have made the streets and sidewalks dangerous for any
19 residents who pass by or live in the area. Prohibiting this precursor to street-level drug
20 sales will abate the nuisance and criminal conduct that the residents have been suffering.

21
22 **V. PLAINTIFF'S PROPOSED SERVICE ORDER EXCEEDS DUE PROCESS**
23 **REQUIREMENTS**

24 Service may be affected on an unincorporated association that has not designated
25 an agent for service, by service on a designated member of that association, followed by
26 mailing to the entity's last known address. CCP § 416.40(c), Corp. Code § 18220. This

1 Court should allow the People to serve the defendant by serving a member of the NSO
2 gang because (1) it is proper under the law, (2) it is the only practical way to effect service
3 on a street gang, and, (3) as will be discussed, it works and will provide actual notice to
4 each gang member.

5 Word travels quickly within the gang. The kind of news they communicate
6 with each other might involve a call for assistance against a rival gang, a
7 warning that a rival gang is coming to shoot them or the police coming to
8 arrest them. If they don't communicate, they could suffer violent recourse
9 from a rival or get arrested by the police. So North Side Oakland, like any
10 street gang, does a great job of communicating news within itself. [Ofc.
11 Clark Expert Decl. ¶35; also see Sgt. Ortiz Expert Dec ¶ 25.]

12 Serving a street gang by serving a gang member is the court-approved method of
13 service in gang injunction cases. In this action, out of an abundance of caution, and to
14 address the concerns regarding notice raised in *Broderick Boys, supra*, Plaintiff proposes
15 to exceed the minimum requirements for serving process, and requests this Court to enter
16 the proposed service order which fully satisfies due process requirements by (1) requiring
17 personal service on three gang members, and (2) mailing to five additional members.

18 In its complaint, the People sued the defendant North Side Oakland gang, as
19 "a criminal street gang sued as an unincorporated association." Our Supreme Court
20 recognized that a criminal street gang is amenable to suit as an entity because "it was
21 the gang itself, acting through its membership, that was responsible for creating and
22 maintaining the public nuisance in [the neighborhood]." *Acuna, supra*, at 1125 (*dicta*).
23 CCP section 369.5(a) states that an unincorporated association may be sued in the
24 name by which it is known. North Side Oakland qualifies as an unincorporated
25 association pursuant to *Barr v. United Methodist Church* (1979) 90 Cal. App. 3rd
26 259,266-67, *cert, denied*, 444 U.S. 973, because its members share a common
purpose and because the gang functions under a common name in circumstances
where the group should be recognized as a legal entity. See Complaint ¶ 3. As an
example of the North Side Oakland gang members using their entity's reputation for

1 their benefit, is the following robbery: “[Suspect] C.M. asked to see the victim’s I-Pod;
2 the victim handed the I-Pod to C.M., then immediately asked for it back; C.M. said
3 “you’ll have to fight me for it”; the victim, knowing C.M. had bragged before about
4 carrying a gun and believing C.M. was a member of a gang from Bushrod Park, did
5 not stop C.M. . . .” Ofc.Rowbotham Decl ¶4. Compare *Colonia Chiques, supra*, 156
6 Cal. App. 4th at 38-41 (street gang is jural entity which may be sued under section
7 369.5, noting it was “highly unlikely” that Legislature intended their new Corporations
8 Code section 18035(a) to grant street gangs immunity from suit) *with Broderick Boys,*
9 *supra*, 149 Cal. App. 4th at 1520-1522 (examining whether a street gang is an entity
10 subject to suit, relying on section 18035(a)).

11 To support an order allowing service under Corporations Code section 18220, the
12 People must prove that it is unable, after exercising reasonable diligence, to serve
13 defendant under CCP section 415.10 (personal service), section 415.20(a) (substitute
14 service), and section 415.30 (notice and acknowledgment of receipt). The People are
15 unable to effect service on the defendant gang under any of those provisions because,
16 after exercising reasonable diligence, the People have been unable to locate a registered
17 agent, or any mailing address or "place of business" for the defendant gang. In his
18 declaration, Deputy City Attorney Pelayo Llamas recites how his thorough investigation of
19 public data bases and other sources failed to locate a mailing address, agent for process,
20 or any other information regarding the defendant street gang which might provide an
21 address of record or agent for service of process. See Llamas Decl at ¶¶ 2-4. Moreover,
22 the NSO street gang, like other African-American Oakland-based street gangs, lacks
23 formal organization and does not have any formal officers or managers who can be
24 served. “NSO is not highly structured; it does not have a formal hierarchy like other more
25 organized gangs. This is somewhat typical of modern-day black/African-American street
26 gangs in Northern California.” Sgt. Ortiz Expert Decl ¶ 25. The People's inability to effect

1 service on the NSO gang by any method other than by service on a member is a result of
2 defendant's failure to designate an agent for service, to file "dba" forms, or to take any
3 other proper or official action taken by entities doing business in Alameda County. As the
4 Court of Appeal has noted, a defendant entity should not "be allowed to take advantage
5 of its own failure to designate a registered agent for service of process." *Gibble v. Car-*
6 *Lene Research, Inc.* (1998) 67 Cal. App. 4th 295, 311 (corporate defendant had failed to
7 designate an agent).

8 Corporations Code Section 18220 requires that the members of an
9 unincorporated association who may be served on its behalf should be designated in
10 advance in the order allowing such service. The People's proposed OSC lists 20 such
11 "designated" gang members. Officers Cunnie, Gerrans, and Clark opine that each
12 designated member is a member of North Side Oakland gang and state in their
13 declarations the basis for their opinions. Ofc. Clark Expert Decl. ¶¶ 69-79j, Ofc.
14 Gerrans Expert Decl. ¶¶ 96-109m, and Ofc. Cunnie Expert Decl ¶¶ 56-76f. Gang
15 membership is a proper subject of expert testimony. *People v. Duran* (2002) 97 Cal.
16 App.4th 1448, 1463. Officers Clark, Cunnie, and Gerrans qualify as gang experts,
17 *People v. McDaniels* (1980) 107 Cal. App.3rd 898, 904-05, Ofc. Clark Expert Decl. ¶¶
18 1-14, Ofc. Gerrans Expert Decl. ¶¶ 1-17, and Ofc. Cunnie Expert Decl ¶¶ 1-12. (listing
19 some of their special skills, training and expertise regarding street gangs in general
20 and the NSO gang in particular.

21 Corporations Code section 18220 also requires that a copy of the documents
22 served be mailed to the entity's last known address. North Side Oakland has failed to
23 establish any fixed address to which such documents could be mailed. Pelayo Llamas
24 Decl ¶¶ 2-4. Plaintiffs in gang injunction cases often ask to be excused from the
25 mailing requirement; however, to address *Broderick Boys'* concerns about notice, the
26 People in this case request that this Court authorize it to mail the documents to the

1 defendant gang by mailing the documents to North Side Oakland “in care of the
2 address of record or last known address of five NSO gang members. *Broderick Boys*,
3 *supra*, 149 Cal. App. 4 at 1528 (“mailing notices to those addresses is reasonable,”
4 referring to addresses of record filed with government).

5 As a practical matter, serving defendant NSO gang by serving one of its
6 members will in fact give the defendant gang actual notice of this lawsuit, and in this
7 action, the People will additionally serve in person three additional gang members and
8 serve by mail five other gang members.

9

10 **VI. GANG INJUNCTIONS ARE PROVEN SUCCESSFUL IN ABATING**
11 **STREET GANGS**

12 Civil gang injunctions are a proven solution to abate the public nuisance
13 caused by the conduct and activities of a street gang.

14 Sgt. Ortiz, a veteran of working with street gangs, opines:

15 I believe that taking gang members off the streets reduced criminal activity.
16 Injunctions and stay away orders don't eliminate 100% of the crime, but they help to
17 suppress crime. They keep a lid on the gang, they prevent the gangs from hanging
18 out in public, which prevents a lot of the intimidation, and the crimes of opportunity,
19 when the group of gangsters will beat or rob someone who walks by, or when the
20 group of gangsters becomes victims themselves of a drive by from a rival gang.
21 North Side Oakland, right now, is very much out in public. They have a very visible
22 presence in the neighborhood, up and down Shattuck Avenue, Martin Luther King
23 Jr, Way, San Pablo Avenue, Market Street, and Gaskill Street. And a civil gang
24 injunction would change the balance of power. The North Side Oakland gang would
25 no longer control the streets and sidewalks. And the next murder, whether it would
26 have been a murder committed by a North Side Oaklander, or a murder committed
against a North Side Oaklander, or a murder of an innocent bystander caught in a
cross fire between North Side Oakland and its rivals, the next murder, whatever it
might be, will likely be prevented.

23 Not only will the next murder be much less likely to occur, but all the
24 robberies, narcotic sales, beatings, graffiti vandalisms, and other criminal and
25 nuisance behavior committed by North Side Oakland will also be suppressed if this
26 Court grants this community a gang injunction.

[Sgt. Ortiz Expert Decl. at ¶¶ 45-46]

26

1 As California's Supreme Court noted, the community has rights, and the rights of
2 the good people should not be less than the "rights" of gang members to run amuck,
3 shoot, beat, and rob people, graffiti the walls, and caper unrestrained throughout the
4 Safety Zone. *Acuna* at 1102. In fact, gang members have no "right" to continue doing
5 what they have done in the past unrestrained.

7 VII. CONCLUSION

8 Activities of an association which deprive third parties of their lawful rights fall
9 outside the constitutional pale. The commission of crimes is the most apparent
10 manifestation of such unprotected conduct. The performance of acts that constitute a
11 civil nuisance is another. *People v. Lopez* (1998) 66 Cal. App. 4th 615, 632 (*citing*
12 *Acuna*, 14 Cal. 4^a at 1112). Even if these gang members were to claim they have a
13 "right" to walk the streets at 3 AM, to loiter in large groups, to intimidate others, or to do
14 any other activity that would be restricted in whole or in part by this gang injunction, they
15 misunderstand the concept of equitable relief. Injunctions "may work to deprive the
16 enjoined parties of rights others enjoy precisely because the enjoined parties have
17 abused those rights in the past." *People v. Conrad* (1997) 55 Cal. App. 4th 896, 902
18 (footnote omitted). This defendant street gang and its members have brought these
19 restrictions upon themselves by their prior conduct and activities.

20 Plaintiff agrees with the Supreme Court's statement: "The state has not only a
21 right to 'maintain a decent society,' but an obligation to do so." *Acuna*, 14 Cal. 4th at
22 1102 (citations omitted). The community in this Safety Zone deserves a decent society
23 free from the criminal and nuisance activities of street gangs. The level of violence and
24 threatened violence is too high in the Safety Zone. The People pray this Court issue the
25 proposed injunction, and abate the public nuisance caused by this defendant street
26 gang.

1 Dated: March 1, 2010

Respectfully submitted,

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6 By: 
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8 Attorneys for Plaintiff
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EXHIBIT A
MAP OF NORTH SIDE OAKLAND SAFETY ZONE
WITH DOTS SHOWING CRIMES AND NUISANCE OFFENSES
ATTRIBUTABLE TO THE NSO GANG

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