

1 JOHN A. RUSSO, City Attorney - SB #129729
2 BARBARA J. PARKER, Chief Asst. City Atty., SB #069722
3 ROCIO V. FIERRO, Supervising Deputy City Atty., SB #139565
4 AMBER R. MACAULAY, Deputy City Atty., SB #253925
5 One Frank H. Ogawa Plaza, 6th Floor
6 Oakland, California 94612
7 Telephone: (510) 238-7543 Fax: (510) 238-6500
8 X03487/659587

9 CELIA RUIZ, ESQ. – SB #87671
10 DAVID E. LYON, ESQ. – SB #133065
11 KONSTANTIN SAVRANSKY – SB #267707
12 RUIZ & SPEROW
13 2000 Powell Street, Suite 1655
14 Emeryville, CA 94608
15 Telephone: (510) 594-7980 Fax: (510) 594-7988

16 Attorneys for Plaintiff, The People of the
17 State of California, et al.

18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
(UNLIMITED JURISDICTION)

THE PEOPLE OF THE STATE OF
CALIFORNIA ex rel John A. Russo, City
Attorney for the City of Oakland,

Plaintiff,

v.

NORTH SIDE OAKLAND, a criminal street
gang sued as an unincorporated association, and
DOE ONE through DOE SEVENTY, inclusive,

Defendants.

Case No. RG10498901

**ASSIGNED FOR ALL PURPOSES TO
JUDGE ROBERT B. FREEDMAN
DEPARTMENT 20**

**PEOPLE'S CONSOLIDATED REPLY
BRIEF IN RESPONSE TO (1) BRIEFS
FILED BY FRIENDS OF THE COURT
AND (2) DEFENDANT YOUNG'S
SUPPLEMENTAL OPPOSITION TO
PRELIMINARY INJUNCTION,
DECLARATIONS IN SUPPORT
THEREOF, AND EVIDENTIARY
OBJECTIONS**

Date: May 27, 2010

Time: 2:00 p.m.

Department: 20

Action Filed: February 18, 2010

Trial Date: not assigned

TABLE OF CONTENTS

Page No(s).

1		
2		
3	I.	Introduction 1
4	II.	The Propriety Of Enjoining Criminal Street Gangs And Those Who Commit Nuisance Acts Is Well Established.....2
5	III.	The People’s Evidence Remains Undisputed That the NSO is a Criminal Street Gang and the Defendants are Members5
6	IV.	The Proposed Injunction Appropriately Defines Gang Membership.....6
7	V.	The Proposed Injunction Is Not Overbroad.7
8	VI.	The Proposed Injunction Is Not Vague.8
9	VII.	The Proposed Injunction Does Not Improperly Limit Associational Rights.9
10	VIII.	The Proposed Injunction Does Not Improperly Limit Free Speech Rights.9
11	IX.	Each of the Provisions in the Proposed Injunction is Constitutional. 10
12		A. The Prohibition On Gang Association in Public Is Constitutional 10
13		B. The Provision Against Witness Intimidation is Constitutional. 11
14		C. The Anti-Weapon Provision is Constitutional. 12
15		D. The Anti-Graffiti Provision is Constitutional..... 12
16		E. The Anti-Drug Provision is Constitutional. 13
17		F. The Anti-Trespassing Provision is Constitutional..... 14
18		G. The Curfew Provision is Constitutional 14
19		H. The “Obey All Laws” Provision is Constitutional 15
20		I. The Anti-Recruitment Provision is Constitutional..... 15
21		J. The Anti-Loitering Provision is Constitutional..... 15
22		K. The Definition of Active Gang Member is Not Unconstitutionally Vague..... 16
23		L. The Limitations on Familial Relationships are Constitutional..... 16
24	X.	The Proposed Injunction is Constitutional as Applied to Yancie Young as an Active Member of the North Side Oakland Gang..... 17
25	XI.	The Issue of Racial Profiling is not Relevant to the People’s Proposed Injunction..... 21
26	XII.	Gang Injunctions work in reducing gang crime in the community providing a meaningful degree of Protection from harm and An Opportunity for the community to feel safe again..... 21

1 XIII. The People’s Expedited Administrative Review Process (“Opt-Out”) is
2 Almost Identical to the One Sanctioned by the ACLU and LCCR in San
3 Francisco and Affords Gang Members an Expedited Way to Abandon the
4 Gang24
5 XIV. The People Have Obtained an Entry of Default Against the North Side
6 Oakland Gang24
7 XV. The People Have Diligently Attempted Service on Every Named Defendant.....25
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF AUTHORITIES

Page No(s).

FEDERAL CASES

Ashcroft v. ACLU,
542 U.S. 656 (2004)7

Carey v. Brown,
447 U.S. 455 (1980)7

City of Chicago v. Morales,
527 U.S. 41 (1999)8

Dawson v. Delaware
(1992) 503 U.S. 15920, 22

Duran v. City of Douglas, Ariz.,
904 F.2d 1372 (9th Cir. 1990).....3

Lanzetta v. State of N.J.,
306 U.S. 451 (1939)8, 11

Madsen v. Women's Health Center, Inc.,
512 U.S. 753 (1994)7

Melugin v. Hames,
38 F.3d 1478 (9th Cir. 1994).....7

Nunez v. Davis
(9th Cir. 1997) 114 F.3d 93514

Washington State Grange v. Washington State Republican Party,
552 U.S. 442, 449 n. 6 (2008)7

Wright v. State of Ga.,
373 U.S. 284 (1963)8

STATE CASES

People ex rel. Reisig v. Acuna (“Broderick Boys II”)
(2010) 182 Cal.App.4th 866.....passim

City and County of San Francisco v. Ballard,
136 Cal.App.4th 381 (2006).....5

In re Jose T.,
230 Cal. App. 3d 1455 (1991).....7

Kajima/Ray Wilson v. Los Angeles County Metropolitan Transp. Authority
(2000) 23 Cal.4th 305.....5

Korean Philadelphia Presbyterian Church v. California Presbytery
77 Cal.App.4th 1069 (2000).....3

1	O'Connell v. Superior Court 141 Cal.App.4th 1452, 47 Cal.Rptr.3d 147 (2006)	3
2	People ex rel. Dept. Pub. Wks. v. Adco Advertisers, 35 Cal.App.3d 507 (1973)	3
3		
4	People ex rel. Gallo v. Acuna (1995) 40 Cal.Rptr.2d 589	12
5	People ex rel. Gallo v. Acuna, 14 Cal.4th 1090 (1997)	passim
6	People ex rel. Totten v. Colonia Chiques, 156 Cal.App.4th 31 (2007)	passim
7		
8	People v. Englebrecht (2001) 88 Cal.App.4th 1236	11, 12, 15, 16
9	People v. Gardeley (1996) 14 Cal.4th 605	8
10		
11	People v. Gonzales 87 Cal.App.4th 1 (2001)	8
12	Schwartz v. P.A.H. Arata, 45 Cal. App. 596 (1920)	3
13		
14	Smith v. Silvey, 149 Cal.App.3d 400 (1983)	3
15	Vo v. City of Garden Grove (2004) 115 Cal.App.4th 425	15
16	West v. Lind, 186 Cal. App. 2d 563 (1960)	3
17		
18	RULES	
19	Civil Code § 3369	15
20	Civil Code § 3479	2
21	Civil Code § 3480	2
22	Civil Code § 3491	3
23	Code of Civil Procedure § 585(b)	25
24	Code of Civil Procedure § 731	3
25	Health and Safety Code § 11364	13
26	Penal Code § 136.1	11
	Penal Code § 186.21	2
	Penal Code § 186.22	17

1	Penal Code § 370.....	3
2	Penal Code § 594.2.....	13
3	Penal Code § 602.....	14
4	Penal Code § 12020.....	12
5	Penal Code § 12020.1267.....	12
6	47 Cal. Jur. 3d Nuisances §10	3
7	19 J. Juv. L. 272, 273 -274 (1998)	4

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 To hold that the liberty of the peaceful, industrious residents of [this
2 community] must be forfeited to preserve the illusion of freedom for those
3 whose ill conduct is deleterious to the community as a whole is to ignore half
4 the political promise of the Constitution and the whole of its sense. The
5 freedom to leave one's house and move about at will, and to have a measure
6 of personal security is “implicit in 'the concept of ordered liberty' ” enshrined
7 in the history and basic constitutional documents of English-speaking
8 peoples. Preserving the peace is the first duty of government, and it is for the
9 protection of the community from the predations of the idle, the contentious,
10 and the brutal that government was invented.

11 *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1125 -1126 (1997).

12 **I. Introduction**

13 The People’s consolidated reply brief responds to the amici briefs filed by the ALCU and
14 the LCCR both of which affirm that they “philosophically oppose gang injunctions”
15 notwithstanding our Supreme Court holding in *Acuna* affirming their constitutionality. *People ex*
16 *rel. Gallo v. Acuna* (“*Acuna*”) (1997) 14 Cal.4th 1090, 1125-1126. This brief also addresses the few
17 concerns respecting the proposed injunction, which were raised by the Alameda County Public
18 Defender’s Office. It should be noted that the Public Defender’s Office have confirmed they’re no
19 longer representing any defendant in this action and instead are participating only as a friend of the
20 court. Finally, this brief corrects the misstatements and errors found in Defendant’s Young’s
21 opposition papers and restates the applicable legal standards while illustrating Defendant’s
22 misunderstanding of the same and its application to gang injunctions.

23 In sum, the briefs in opposition to the request by the People of California for an injunction
24 to enjoin the activities of the Northside Oakland street gang share one common failing – by
25 focusing exclusively on the interests of the 19 individually named gang members, they ignore the
26 civil rights and liberty interests of the 30,000 or so other residents of the proposed safety zone to be
protected from the violence perpetrated by the gang and its rivals. ¹

¹ Plaintiffs’ request that this court take judicial notice of the latest figures from Census 2000 which show that 31,908 people live in the North Oakland area. North Oakland Community Information Booklet, 2001, Alameda County Health Services Agency, at 10, attached as Exhibit A to Plaintiffs’ Request for Judicial Notice. Children under 14 years of age make up 21% while Seniors (65 and older) make up 14% of the population. *Id.* at 12.

1 **II. The Propriety Of Enjoining Criminal Street Gangs And Those Who Commit**
2 **Nuisance Acts Is Well Established.**

3 Almost 25 years ago, the California Supreme Court in *Acuna, supra* 14 Cal.4th at 1125 -
4 1126 upheld the constitutionality and propriety of enjoining criminal street gangs from terrorizing
5 neighborhoods with their illegal and dangerous activities.

6 In approving such injunctions, the California Supreme Court acknowledged “the right of
7 every person ... to be secure and protected from fear, intimidation, and physical harm caused by the
8 activities of violent groups and individuals” and endorsed the legislature’s findings that “the State
9 of California is in a state of crisis ... caused by violent street gangs whose members threaten,
10 terrorize, and commit a multitude of crimes These activities ... present a clear and present danger
11 to public order and safety and are not constitutionally protected.” Penal Code § 186.21; *Acuna* at
12 1127-28.

13 Following *Acuna*, numerous appellate courts have upheld the propriety of injunctions such
14 as the one requested here. *E.g., People ex rel. Reisig v. Acuna (“Broderick Boys II”)* (2010) 182
15 Cal.App.4th 866, 869-870; *People ex rel. Totten v. Colonia Chiques*, 156 Cal.App.4th 31, 41
16 (2007). These decisions have consistently rejected the objections advanced by Defendant Yancie
17 Young (“Young”), and Amici American Civil Liberties Union (“ACLU”) and the Alameda County
18 Public Defender’s Office (“Public Defender” and collectively “Opponents”) which ask this court to
19 disregard the civil rights of nearly the entirety of the residents of North Oakland in favor of that tiny
20 element (substantially less than .01% of the population) engaged in violent criminal gang activities.

21 Actions to enjoin gang activity are brought in the form of actions to abate a public nuisance.
22 A “nuisance” as defined under Civil Code § 3479, in pertinent part, is:

23 Anything which is injurious to health, including, but not limited to, the
24 illegal sale of controlled substances, or is indecent or offensive to the senses,
25 or an obstruction to the free use of property, so as to interfere with the
26 comfortable enjoyment of life or property...

27 Civil Code §3480, in turn, explains that a “public” nuisance is “one which affects at the
28 same time an entire community or neighborhood, or any considerable number of persons ...”

1 *Accord*, Penal Code § 370.² And finally, Civil Code §3491 specifically authorizes an action in
2 abatement to redress, in addition to civil and criminal actions, while Code of Civil Procedure §731
3 specifically authorizes the city attorney to bring such an action. *See Acuna*, 14 Cal.4th at 1104.

4 Moreover, a civil abatement action is clearly distinct from and holds distinct advantages
5 over criminal prosecution. As the California Supreme Court explained in *Acuna, supra*, at 1108, in
6 rejecting the argument that criminal prosecution is adequate to redress gang crimes in the proposed
7 safety zone,

8 Whether [the gang activity] be a criminal nuisance or not is wholly
9 immaterial. If it is indictable as a crime, it does not bar the remedy in equity,
10 because the citizen and the general public have an immediate right to the
11 enjoyment of the thing interfered with. A criminal prosecution is inadequate
12 in such case, because it does not prevent the doing of the unlawful act. It may
ultimately correct the wrong, but, while the process of correction is going on,
the public is deprived of an important and valuable right, wherefore the
injury is irreparable.

13 Young finds no pertinent authority to support his contention that the request for injunctive
14 relief must include a declaration from one of the besieged residents of this neighborhood.³ In fact,
15 “[a] legislatively declared public nuisance constitutes a nuisance per se against which an injunction
16 may issue without allegation or proof of irreparable injury.” *People ex rel. Dept. Pub. Wks. v. Adco*
17 *Advertisers*, 35 Cal.App.3d 507, 511-512 (1973); *accord*, 47 Cal. Jur. 3d Nuisances §10 California
18 Jurisprudence 3d (Database updated May 2010). Moreover, the People have submitted abundant
19 evidence of *ongoing* gang related crimes, including the murder of a 17 year old girl last fall, and the
20 murder of three men last May in the North Oakland area, as well as regular and continuing dealing
21

22 ² Young’s authorities generally do not concern injunctions to abate public nuisances. *E.g.*, *Schwartz v. P.A.H. Arata*, 45
23 Cal. App. 596, 601 (1920)(action seeking to enjoin mining activities pending ownership determination); *West v. Lind*,
186 Cal. App. 2d 563, 565-566 (1960) (appeal from an order denying a preliminary injunction sought by Mae West to
24 enjoin use of the name “Diamond Lil”); *O’Connell v. Superior Court* 141 Cal.App.4th 1452, 1457, 47 Cal.Rptr.3d 147,
150 (2006)(action to enjoin denial of high school diplomas); *Korean Philadelphia Presbyterian Church v. California*
25 *Presbytery* 77 Cal.App.4th 1069 (2000)(preliminary injunction to prevent defendants from interfering with worship
services and other church functions and disrupting its day-to-day operations.); *Smith v. Silvey*, 149 Cal.App.3d
400 (1983) (injunctive sought to enjoin former tenant from complaining to government agencies about trailer park).

26 ³ Young’s authority concerning the arrest a drunken man yelling at a policeman on an otherwise deserted country road
in the middle of the night has no pertinence here. *Duran v. City of Douglas, Ariz.*, 904 F.2d 1372, 1377 (9th Cir. 1990).

1 in controlled substances, robberies, assaults, illegal gun possession, which in themselves manifest a
2 substantial proof of injury and constitute individual and collective nuisances in and of themselves.
3 *Broderick Boys II, supra*, 182 Cal.App.4th at 882 (past consistent history of serious crime justified
4 issuance of preliminary injunction enjoining gang activity).⁴

5 Any weighing of the relative harms of permitting continued gang activity against the limited
6 restrictions upon gang members in the specified areas clearly requires granting of the injunction.
7 Courts repeatedly find that demonstration of repeated criminal and other illegal and improper
8 actions by street gangs justifies the issuance of injunction. For example, the court in *Broderick*
9 *Boys II, supra*, 182 Cal.App.4th at 882-883, approved the issuance of an anti-gang injunction, and
10 noted, “Defendants, of course, cannot claim harm from any restrictions in the activities that
11 constitute the public nuisance. As to nonnuisance conduct, the injunction applies only to “active
12 members” of the [gang], where that term is defined to encompass only those who participate in or
13 act in concert with the gang.... Furthermore, the injunction applies only within the Safety Zone.”

14 Young’s assertion that gang injunctions do not prevent crime is not borne out by the
15 evidence. As is discussed in further detail below, numerous studies confirm that evidence
16 demonstrates that injunctions substantially reduce crime and increase the well being of the affected
17 community. *E.g.*, 19 J. Juv. L. 272, 273 -274 (1998), California’s Two-Prong Attack Against Gang
18 Crime and Violence, etc., at 273 (footnotes omitted), See Plaintiffs’ Request for Judicial Notice,
19 Exhibit B. See also, Request for Judicial Notice Exhibits C to F.

20 [C]rime has consistently decreased where [anti-gang] injunctions have been
21 issued. For example, in the Pico Union area of Los Angeles, a thirty-one
22 percent drop in the most violent felonies was reported after an injunction was
23 issued against the 18th Street gang. In North Redondo Beach, California,
24 crime dropped by almost ninety percent, and graffiti was down seventy-one
25 percent, after a preliminary injunction was granted. In Los Angeles's San
26 Fernando Valley, violent crimes decreased from 160 in 1993 (the year the

25 ⁴ Young’s assertion that “[w]hen over 25% of the people whom Plaintiff contends are creating a nuisance are in jail
26 and cannot create any public nuisance in North Oakland, there is no imminence of any irreparable injury to Plaintiff”
makes no sense. That 75% of the identified gang members are on the street creates an imminent danger. Moreover, the
fact that certain members might be currently incarcerated is hardly any assurance that they will not be released.

1 injunction was issued) to 125 in 1994, 132 in 1995, and 117 in 1996 after an
2 injunction was issued against the Blythe Street Gang.

3 Similarly without merit is Young’s assertion that the criminality of the NSO gang must be
4 allowed to continue due to “delay” in bringing this action. Assertions of delay, laches or estoppel
5 are inapplicable to actions undertaken for the protection of the public. *Kajima/Ray Wilson v. Los*
6 *Angeles County Metropolitan Transp. Authority* (2000) 23 Cal.4th 305, 316; *City and County of*
7 *San Francisco v. Ballard*, 136 Cal.App.4th 381, 393 (2006). Moreover, Young’s argument
8 confuses evidence relevant to establishing his gang ties – long-term evidence of illegal drug dealing
9 which confirms his admission to police that he is a “veteran dealer” in an area where drug dealing is
10 controlled by the NSO gang – with the ongoing and escalating criminal activity of the NSO gang
11 which the city seeks to enjoin.

12 **III. The People’s Evidence Remains Undisputed That the NSO is a Criminal Street**
13 **Gang and the Defendants are Members**

14 Neither the ACLU, LCCR or the ACPD’s office submit any evidence disputing the People’s
15 strong record establishing the NSO is a criminal street gang. And Young’s attempts to do so fail.

16 As shown in the People’s numerous declarations from police experts, 70 plus declarations of
17 percipient peace officers from Oakland, Berkeley and Emeryville, the NSO gang and defendants
18 have a history of gang and nuisance activity in the safety zone. The NSO gang was served through
19 eight individually named members all of whom failed to respond on its behalf, resulting in a default
20 having been entered against the gang itself.

21 Mr. Young is the only defendant who disputes the existence of the gang and his affiliation to
22 it. As to said defendant, his conclusory statements and objections fall short compared to the
23 overwhelming evidence that the NSO is a gang and that its members are subject to an injunction.
24 The People’s evidentiary record is already on file with the court. For purposes of this reply, the
25 People summarize some of the evidence to highlight the following:

- 26 1. At least 16 declarations of Oakland police officers and experts and four from Berkeley
police officers document the murders related to the gang activities;

- 1 2. At least 18 declarations of Oakland police officers and experts, and four Berkeley police
2 officers document the shootings related to the gang's activities and gang rivalries. Many of
3 these and other declarations document the guns and ammunition related to the gang
4 activities;
- 5 3. At least 42 declarations of Oakland police officers and experts, including three from
6 Berkeley police officers document the gang's street level narcotics, sales and possession
7 activities;
- 8 4. At least 28 declarations of Oakland police officers and experts, one from Berkeley police
9 and one from El Cerrito police document the street robberies related to the gang activities,
10 including armed robberies;
- 11 5. At least 19 declarations of Oakland police officers and experts, document the loitering
12 practices of the activities of the gang;
- 13 6. At least 7 declarations of Oakland police officers and experts document the trespassing
14 activities of the gang;
- 15 7. At least 7 declarations of Oakland police officers and experts document the witness
16 intimidation activities related to the gang.

17 Based on the evidence submitted thus far, the People's papers show that the NSO gang and
18 its members, individually or collectively engage in gang related conduct which is a nuisance in the
19 safety zone.

20 **IV. The Proposed Injunction Appropriately Defines Gang Membership**

21 Young's suggestion that there are certain essential elements necessary to establish gang
22 membership is inaccurate. Instead, as explained by his own authority on this issue, *Broderick Boys*
23 *II*, 182 Cal.App.4th at 884,

24 Of necessity, the definition [of active gang member] cannot be much
25 more specific. It is not likely criminal street gangs maintain rosters of
26 their active members. Such membership must be determined from the
individual's actions.... The four factors-self-identification, gang

1 tattoos, crimes committed with other gang members, and information
2 from reliable informants - “may be used” to determine active gang
3 membership but do not alone define the concept. Other factors
4 that may be considered are “[c]lothing, accessories, photographs and
5 close association with known gang members.”

6 Young lacks standing to argue the definition of active gang membership in the injunction
7 since he has been individually named in this action. *Id.* at 883-884 (2010) (named defendants lack
8 standing to challenge that definition of gang membership on behalf of parties not before the
9 court.”); *People ex rel. Totten v. Colonia Chiques*, 156 Cal.App.4th 31, 42, (2007) (defendants, they
10 lack standing to claim that the judgment cannot operate against nonparties).⁵

11 **V. The Proposed Injunction Is Not Overbroad.**

12 The proposed injunction is consistent with prior injunctions which have been upheld against
13 overbreadth objections. *E.g.*, *Acuna, supra*, at 1114. As explained by the California Supreme
14 Court in *Acuna*, citing *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753, 768-769 (1994) “the
15 narrow and particularized focus inherent in the nature of the injunction as an equitable remedy is
16 also significant in evaluating the contention that features of a given decree suffer from
17 constitutional overbreadth.” *Acuna, supra*, at 1114. Thus, the California Supreme Court noted that
18 the preliminary injunction enjoining gang activity “does not embody the broad and abstract
19 commands of a statute. Instead, it is the product of a concrete judicial proceeding prompted by
20 particular events-inimical to the well-being of the residents of the community-that led to a
21 specific request by the City for preventive relief.” *Ibid.*

22 Accordingly, Young’s citation to authorities regarding *statutory* overbreadth are inapposite
23 here.⁶ In addition, because “the foundation of the overbreadth doctrine is the inhibitory effect a

24 ⁵ Young’s citation to *In re Jose T.*, 230 Cal. App. 3d 1455, 1462 (1991) in this context is flawed. First, that
25 decision addressed a sentence enhancement under the penal code and thus employed a beyond a reasonable doubt
26 standard. *Ibid.* Secondly, the court in *Jose T.* specifically held that sentence enhancements even under that high
27 standard were properly based upon “*substantial evidence* to support a finding of the existence of a “criminal street
28 gang” whose members engage in a “pattern of criminal gang activity.” *Ibid.*

29 ⁶*Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 n. 6 (2008); *Melugin v. Hames*, 38
30 F.3d 1478, 1483-1484 (9th Cir. 1994); *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004); *Carey v. Brown*, 447 U.S. 455, 461
31 (1980).

1 contested statute may exert on the freedom of those who, although possibly subject to its reach, are
2 *not* before the court” (*Acuna, supra*, 14 Cal.4th at 1113), Plaintiffs decision to individually name
3 and adjudicate the gang membership of those it seeks to enjoin, renders Young’s overbreadth
4 argument inapplicable. *Id.* at 1114.

5 **VI. The Proposed Injunction Is Not Vague.**

6 Young’s argument that the proposed injunction is impermissibly vague must also be
7 rejected. The California Supreme Court rejected similar vagueness arguments as alleged against an
8 anti-gang injunction in *Acuna, supra*, 14 Cal.4th at 1115 -1119. In upholding the legitimacy of the
9 injunction, the court noted two important points which it felt provided adequate specificity to the
10 gang injunction at issue. First, the court noted that any prohibition needed to be analyzed in
11 context, and that any decree only need to be “reasonably specific.” *Id.* at 1116-1117. Accordingly,
12 the Supreme Court rejected the appellate court analysis, and found that the history of the gang’s
13 activities, as well as an implicit requirement that gang members must know another was a gang
14 member, rendered the preliminary injunction adequate to put gang members on notice as to the
15 scope of the injunctions prohibitions. *Id.* at 111-6-1119.⁷

16 Young’s citation to *Lanzetta v. State of N.J.*, 306 U.S. 451, 453 (1939) and *City of Chicago*
17 *v. Morales*, 527 U.S. 41, 50-51 (1999) do not assist him here. The definition of gang member
18 adopted here and consistent with the definition of criminal street gang membership contained in the
19 STEP act was specifically upheld against constitutional challenge based on *Lanzetta* by the
20 California Supreme Court in *People v. Gardeley* (1996) 14 Cal.4th 605, 623 and on *Morales* by the
21 court in *People v. Gonzales* 87 Cal.App.4th 1, 15 (2001).

22
23
24 _____
25 ⁷ *Wright v. State of Ga.*, 373 U.S. 284 (1963) provides no assistance to Young here. In *Wright*, the court held that the
26 African-American defendants did not have reasonable notice that their peaceful playing of basketball in a city park
would constitute a breach of the peace under a local, general ordinance.

1 **VII. The Proposed Injunction Does Not Improperly Limit Associational Rights.**

2 Young’s asserted impairment of constitutionally protected associational and speech
3 activities through the issuance of this injunction is misplaced. As summarized by the court in
4 *People ex rel. Totten v. Colonia Chiques*, 156 Cal.App.4th 31, 45 (2007) (citations omitted), in
5 rejecting similar freedom of association arguments,

6 The court concluded that the First Amendment does not “protect the
7 collective public activities of the gang members within the [area subject to
8 the injunction], activities directed in the main at trafficking in illegal drugs
9 and securing control of the community through systematic acts of
10 intimidation and violence.” The court noted: “Freedom of association, in the
11 sense protected by the First Amendment, ‘does not extend to joining with
12 others for the purpose of depriving third parties of their lawful rights.’”

13 **VIII. The Proposed Injunction Does Not Improperly Limit Free Speech Rights.**

14 Young’s general assertion of a violation of his free speech rights similarly fails. The
15 California Supreme Court rejected similar free speech challenges to a gang injunction in *Acuna*, 14
16 Cal.4th at 1121, explaining,

17 The provision seeks to ensure that, within the circumscribed area ..., gang
18 members have no opportunity to combine. It is the threat of *collective*
19 conduct by gang members loitering in a specific and narrowly described
20 neighborhood that the provision is sensibly intended to forestall. The
21 effect of [injunction]'s ban on defendants' protected *speech* is minimal. To
22 judge from the evidence placed before the superior court, the gangs appear to
23 have had no constitutionally protected or even lawful goals within the limited
24 territory So far as the record before the trial court shows, the gangs and
25 their members engaged in no expressive or speech-related activities which
26 were not either criminally or civilly unlawful or inextricably intertwined with
unlawful conduct.

27 Courts following *Acuna* have similarly rejected free speech objections to injunctions very similar to
28 the one requested here. *E.g.*, *People v. Englebrecht*, *supra*, 88 Cal.App.4th at 1265.

1 **IX. Each of the Provisions in the Proposed Injunction is Constitutional.**

2 **A. The Prohibition On Gang Association in Public Is Constitutional**

3 The language, purpose, and effect of the non-association provision in this case is
4 substantively indistinguishable from the non-association provisions upheld in *People ex rel. Reisig*
5 *v. Acuna* (2010) 182 Cal.App.4th 866 (“*Reisig*” hereafter) and *People ex rel. Gallo v. Acuna* (1997)
6 14 Cal.4th 1090 (“*Gallo*” hereafter).

7 The non-association provision in the injunction challenged and upheld by the appellate court
8 in *Reisig* prohibited “Standing, sitting, walking, driving, gathering or appearing, anywhere in public
9 view or anyplace accessible to the public, with any *known member* of the [gang] including but not
10 limited to those members identified by name in this order. . . [except] when the enjoined parties are
11 inside a school attending class or on school business, or inside a church” *People ex rel. Reisig*
12 *v. Acuna, supra*, 182 Cal.App.4th at 885-886 (emphasis added). In *Reisig*, the upheld injunction
13 covered an area of “2.98-square-mile area.” *Id.* at 869. Like the Safety Zone in our case, the
14 injunction area in *Reisig* has the same types of public places and private places open to the public
15 that gang members will be prohibited from gathering in. *Id.* (court referencing a store located within
16 safety zone); *Id.* at 582 (court upholding the curfew provision even though it would prohibit gang
17 members from going to “hospitals, office buildings and transport facilities”). Based on the gravity
18 of the nuisance created by the gang, the *Reisig* court upheld the non-association provision despite
19 the fact that public places were within the Safety Zone. Additionally, the magnitude of the NSO
20 Safety Zone area is equivalent to the area of the zone in *Reisig*. Furthermore, like in *Reisig*, the
21 demonstrated gravity of the nuisance created by NSO within the injunction area shows that the
22 injunction does not burden associational rights more than is necessary to serve the significant
23 governmental interests at stake.

24 In addition, the NSO non-association provision is equivalent to the provision upheld by the
25 California Supreme Court in the *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1110
26

1 (emphasis added⁸) and *People v. Englebrecht* (2001) 88 Cal.App.4th 1236, 1253, 1262 and *People*
2 *ex rel. Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 45-46. As it many analogous
3 predecessors, the non-association provision found in the Plaintiff’s proposed order is
4 constitutional.⁹

5 **B. The Provision Against Witness Intimidation is Constitutional.**

6 Defendant Young fails to cite to a single case to support his argument that the witness
7 intimidation provision is unconstitutional. Witness intimidation is, of course a crime. Penal Code §
8 136.1. A similar anti-intimidation provision was specifically upheld in in *Englebrecht, supra*, 88
9 Cal.App.4th at 1243, fn. 2; *Id.* at 1267 (upholding provion) and *Acuna, supra*, 14 Cal.4th at 1118-
10 19. Witness intimidation allows the NSO to continue its illegal and nuisance-causing activities
11 without being detected and is thus a necessary and important part of the requested relief.
12 Importantly, as it relates to Young the no intimidation provision is critical to protect others from his
13 gang intimidation tactics. As Officer Cunnie’s declaration filed in support of the People’s reply
14 states, Young has threatened his girlfriend with killing her if she told police about his narcotics
15 business in the safety zone and has pistol whipped her on the head with a machinegun.
16 Supplemental Declaration of OPD Officer John Cunnie In Support of the People’s Consolidated
17 Reply Brief filed herewith (hereinafter “Cunnie Reply Supplemental”) ¶ 11-16. Young’s girlfriend
18

19 ⁸ The fact that the injunction is applicable to “known gang members” is also constitutional. As emphasized above,
20 both the *Reisig* and *Acuna* courts found no infirmity that the injunction was applicable to known gang members. Also,
21 *Lanzetta v. New Jersey* (1939) 306 U.S. 451 is distinguishable because that case was about a statute of general
application, not a local injunction. Gang injunctions with this nuance have been upheld numerous in recent years.

22 ⁹ The suggestion by Alameda Public Defender’s Office in their Amici brief that the non-association provision be
23 limited to gatherings of three or more gang members is neither required by law nor workable. Their brief
24 acknowledges that a similar limitation on any two or more members associating with each other was specifically
25 approved in *Acuna supra*, 14 Cal.4th at 1121-22. Moreover, a three or more person limitation would allow for ready
26 evasion of the provision. Specific examples of NSO gang member activity prompting the need for each of the
individual injunction provisions discussed in this part of the brief can be found in 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, 11:6-14:20 (citing to illustrative specific
declarations and explaining why each injunction provision is necessary to the success of the abatement). In order to
avoid redundancy, the anecdotal evidence will not be reiterated in this Reply.

1 has told police that she's afraid of Young because he's connected and is a member of the NSO
2 gang. Cunnie Reply Supplemental ¶ 11-16. As the People's record proves, Young is a violent
3 narcotics dealer who is surrounded by guns and machine guns and who uses his property located
4 within the safety zone to deal drugs from and store his weaponry.

5 **C. The Anti-Weapon Provision is Constitutional.**

6 Like the upheld anti-weapon provisions in the cases above, the anti-weapon provision in this
7 case seeks to restrict NSO members from possessing weapons listed in Penal Code §12020.
8 Enforcing the penal code against the gang via an injunction is necessary to curtail the nuisance
9 created by the NSO gang. Furthermore, the weapons unlisted in the Code are used for intimidation
10 and to inflict property damage and bodily injury. Similar anti-weapon provisions were upheld in
11 *Englebrecht, supra*, 88 Cal.App.4th at 1243, fn. 2 (injunction forbade “[p]ossessing any weapons:
12 knives; clubs; concealed or loaded firearms; baseball bats; glass bottles; or any other instrument
13 prohibited by Penal Code Section 12020.1267. And, in *People ex rel. Gallo v. Acuna* (1997) 14
14 Cal.4th 1090, 1135-36, Justice Mosk noted that in a portion of the opinion from which no appeal
15 had been taken [*People ex rel. Gallo v. Acuna* (1995) 40 Cal.Rptr.2d 589, 598 (overruled on other
16 grounds)], the lower appellate court upheld provisions of the injunction that forbade possession of
17 weapons contained in Penal Code section 12020, although it refused to enjoin the possession of
18 “innocent tools, and toys.” See Penal Code §§12020, 12028(a)(unlawful carrying of concealed
19 handguns and dangerous weapons is a nuisance).

20 **D. The Anti-Graffiti Provision is Constitutional.**

21 An anti-graffiti provision similar to that sought here was specifically upheld in *People v.*
22 *Englebrecht, supra*, 88 Cal.App.4th at 1263-1267, where the court explained, “The state's
23 motivation for including these provisions in the injunction is not some disagreement with the
24 content of the communications. The district attorney demonstrated a pattern of criminal and other
25 conduct in the target area by the [gang] that amounted to a public nuisance.” *Id.* at 1266. The court
26 concluded that the provisions did not burden more speech than necessary to serve a significant

1 governmental interest, explaining, “[t]he legitimate basis for the restrictions is that such expression
2 amounts to or contributes to the nuisance enjoined. Gangs use such means of expression to
3 demonstrate affiliation which in turn facilitates collective criminal action, defines exclusive
4 territoriality, intimidates nongang members and serves as a warning and challenge to members of
5 other gangs.” Additionally, an anti-graffiti provision analogous to the NSO anti-graffiti provision
6 was implicitly upheld in *Acuna* (1997) 14 Cal.4th 1090, 1141-42 (Justice Mosk explaining that
7 although he while would strike down other provisions in the *Gallo* injunction, a provision that
8 forbid “spray painting or otherwise applying graffiti to public or private property” was
9 constitutional [dis. opn. of Mosk, J.]; *see also* Penal Code § 594.2 (listing and banning certain
10 graffiti tools).

11 The anti-graffiti provision the NSO would be subject to are less burdensome than the
12 upheld *Englebrecht* anti-expression provisions, and the NSO provision is substantively
13 indistinguishable from the provision in *Gallo*. Gang graffiti creates a nuisance by damaging
14 property, creating fear and demarcating gang control. The anti-graffiti provision is necessary to
15 abate the nuisance created by the NSO and should be sustained.

16 **E. The Anti-Drug Provision is Constitutional.**

17 Anti-drug provisions similar to the one proposed here have been upheld in *People ex rel.*
18 *Totten v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 37, 52, and *Englebrecht, supra*, 88
19 Cal.App.4th at 1243-44, fn. 2, 1267, and *Acuna* (1997) 14 Cal.4th 1090, 1141-42 (Justice Mosk
20 explaining that although he while would strike down other provisions in the *Gallo* injunction, a
21 provision that forbid “public consumption of alcoholic beverages or drugs,” was constitutional and
22 needed to abate a nuisance [dis. opn. of Mosk, J]).¹⁰

23
24 ¹⁰ In *Reisig*, the court struck down an anti-drug provision because it “would prohibit gang members from entering
25 a public store where prescription drugs are sold.” See *People ex rel. Reisig v. Acuna, supra*, 182 Cal.App.4th at 887-
26 888. The scope of the anti-drug provision in this case is narrower than the provision in *Reisig* because it only applies to
prescription drugs defined by Health and Safety Code 11364. NSO members would be allowed to enter a public store where
prescription drugs are sold without violating this provision.

1 As demonstrated by numerous accounts in the declarations filed in this case, the sale of
2 illegal narcotics is a serious and overarching nuisance that fuels the activities of the NSO. The anti-
3 drug provision is vital to the success of this injunction, and the court relying on the above-outlined
4 precedent, should include it.

5 **F. The Anti-Trespassing Provision is Constitutional**

6 Provisions enjoining trespassing identical to the one requested here was upheld in
7 *Broderick Boys II, supra*, 182 Cal.App.4th at 888, and one similar in content and form was upheld
8 in *Englebrecht, supra*, 88 Cal.App.4th at 1243, fn. 2, 1267.¹¹ NSO gang members trespass during
9 the perpetration, or while fleeing from completion, of other crimes. This contributes to the nuisance
10 the Plaintiff's injunction seeks to eliminate. Relying on the precedent established by the above case
11 law, the court should uphold the city's anti-trespassing provision.

12 **G. The Curfew Provision is Constitutional**

13 As explained in plaintiff's supplemental brief filed earlier, the NSO curfew provision is
14 virtually identical to the curfew provision upheld in *Broderick Boys II*, 182 Cal.App.4th at 889-
15 891.¹² Young's reliance on the curfew in *Nunez by Nunez v. Davis* (9th Cir. 1997) 114 F.3d 935, is
16 misplaced. *Nunez* is distinguishable because that curfew applied to minors, not gang members, thus
17 implicating different policy considerations. Because a majority of the most violent criminal
18

19 ¹¹ A similar anti-trespassing provision was implicitly upheld in *Gallo*. See *People ex rel. Gallo v. Acuna* (1997) 14
20 Cal.4th 1090, 1141-42 (Justice Mosk explained that although he would strike down other provisions in a gang
21 injunction, he found no constitutional infirmity with a provision that forbid gang members from "trespassing on or
22 encouraging others to trespass on any private property" [dis. opn. Mosk, J.]); see also Penal Code § 602 (trespass).

23 ¹² The curfew provision in *Reisig* prohibits "Remaining upon public property, a public place, on the premises of any
24 establishment, or on a vacant lot, between the hours of 10:00 p.m. on any day and 6:00 a.m. the following day..." The
25 provision defines "public place" as "any place to which the public has access, including but not limited to sidewalks,
26 alleys, streets, highways, parks, the common areas of schools, hospitals, office buildings, and transport facilities." It
further defines "establishment" as "a restaurant, bar, nightclub, shop, or other privately-owned business operated for
profit to which the public is invited." However, the following are expressly excluded from the curfew provision: "(1) a
meeting or scheduled entertainment activity at a theater, school, church or other religious institution, or sponsored by a
religious institution, local education authority, governmental agency or support group like Alcoholics Anonymous; (2)
actively engaging in a business, trade, profession or employment which requires such presence; (3) in an emergency
situation ...; or (4) in the side yard or back yard of his/her own residence." *Id.* at 889.

1 nuisance activity documented in the declarations submitted in this case occur at night, the curfew
2 provision is necessary to substantially reduce gang-related crime and activity.

3 **H. The “Obey All Laws” Provision is Constitutional**

4 The California Supreme Court explained *People ex rel. Gallo v. Acuna, supra*, 14 Cal.4th at
5 1107-1109, that an injunction may properly enjoin acts otherwise punishable under criminal law;
6 *see also* Civil Code § 3369 (proper to enjoin criminal nuisance behavior).¹³

7 **I. The Anti-Recruitment Provision is Constitutional**

8 Courts have recognized the importance of preventing gang recruitment and have upheld
9 the constitutionality measures to do so. For example, in *Vo v. City of Garden Grove* (2004) 115
10 Cal.App.4th 425, 440-443, the court upheld a city ordinance provision restricting minors from
11 visiting “Cyber Cafes” at nocturnal hours due to the high risk of minors being subjected to gang
12 recruit efforts. As explained above, efforts by NSO members to recruit new members does not fall
13 under the rights of association protected by the constitution. *E.g., People v. Englebrecht, supra*, 88
14 Cal.App.4th at 1262, the court explained, “[i]nsofar as the injunction's restrictions are nonfamilial,
15 nonpolitical and nonreligious association, in whatever location, it does not touch associations
16 protected by the Constitution.” *Accord, Acuna, supra*, 14 Cal.4th at 1110.

17 **J. The Anti-Loitering Provision is Constitutional**

18 In *Acuna, supra*, 14 Cal.4th 1090, 1121 the California Supreme court held that a provision
19 seeking to enjoin gang members from loitering is constitutional. As the court explained, “[i]t is the
20 threat of *collective* conduct by gang members *loitering* in a specific and narrowly described
21 neighborhood that the provision is sensibly intended to forestall.” (Emphasis added.) Accordingly,
22 court held that the non-association provision was constitutional. *Id.* at 1122; *see also People v.*

23 _____
24 ¹³ Also, in *Acuna*, the California Supreme Court implicitly affirmed the appellate court’s decision to uphold numerous
25 provisions of a gang injunction, despite the fact that many of the enjoined activities were already criminal violations.
26 *See Acuna supra* 14 Cal.4th 1090, 1141-42 (Justice Mosk explaining, “That some or all of these activities may also
constitute criminal violations does not limit the superior court's power to grant a preliminary injunction in this
case”[dsn. opn. Mosk, JJ]).

1 *Englebrecht, supra*, 88 Cal.App.4th at 1262-63. The NSO anti-loitering provision seeks nothing
2 more than to enforce a section of the Health and Safety Code.

3 **K. The Definition of Active Gang Member is Not Unconstitutionally Vague**

4 In their proposed order, Plaintiff's have specifically included a definition of "active gang
5 member" that conforms to law. The court in *Broderick Boys II, supra*, 182 Cal.App.4th at 884,
6 upheld the propriety of a similar definition, explaining, "Of necessity, the definition cannot be
7 much more specific. It is not likely criminal street gangs maintain rosters of their active members.
8 Such membership must be determined from the individual's actions." In addition, the proposed
9 definition conforms to the definition set forth in *Englebrecht, supra*, 88 Cal.App.4th at 1261. The
10 court explained that self-identification factors such as gang tattoos, crimes committed with other
11 gang members, and information from reliable informants "may provide a useful guide for
12 determining if a defendant is a gang member but they do not ultimately define the concept of
13 membership in the gang abatement injunction context." *Id.*

14 **L. The Limitations on Familial Relationships are Constitutional**

15 Numerous gang injunctions with provisions equivalent to that proposed here have been
16 upheld despite argument regarding their possible effect on familial association. In *Englebrecht,*
17 *supra*, 88 Cal.App.4th at 1263, the court upheld such a provision explaining that, "Any attempt to
18 limit the familial associational impact of the injunction would make it a less effective device for
19 dealing with the collective nature of gang activity."¹⁴ Similarly, the courts in *Totten, supra*, 156
20 Cal.App.4th at 45-46 and *Broderick Boys II, supra*, 182 Cal.App.4th at 885-886, also found that a
21 non-association provision did not impermissibly burden familial associational rights. The court in
22 *Broderick Boys II* explained that, "Although [the nonassociation provision] places an incidental

23 _____
24 ¹⁴ The *Englebrecht* court explained, "Collective activity by gang members is at the core of the nuisance the injunction
25 justifiably attempts to abate. While it may be that many gang members are also related by family, and while the
26 injunction's associational restrictions may affect, in the target area, contact between those family members, those facts
are not determinative. The injunction places no restrictions on contact between any individuals outside the target area.
In the target area the injunction merely requires gang members not to associate in public. While the injunction may
place some burden on family contact in the target area, it by no means has, in our view, a fundamental impact on
general family association." *Id.* at 1263.

1 burden on familial relationships, such burden is necessary under the circumstances in order for the
2 injunction to be effective. The injunction does not burden associational rights more than is
3 necessary to serve the significant governmental interests at stake.” Young fails to distinguish any of
4 the above cases, despite the fact that they are all directly on point. (See Yancy Young’s
5 Supplemental Opposition to Preliminary Injunction at 20:3-10.)¹⁵ The court should follow
6 precedent and uphold the non-association provision in the NSO injunction, despite its incidental
7 burden on familial associations.

8 **X. The Proposed Injunction is Constitutional as Applied to Yancie Young as an**
9 **Active Member of the North Side Oakland Gang.**

10 For the purposes of a gang injunction an active gang member is “a person who participates
11 in or acts in concert with an ongoing organization, association or group of three or more persons
12 whether formal or informal, having as one of its primary activities the commission of acts
13 constituting the enjoined public nuisance, having a common name or common identifying sign or
14 symbol and whose members individually or collectively engage in the acts constituting the enjoined
15 public nuisance.” *Englebecht* at 1261. As is demonstrated in this brief and other papers filed by
16 the People, North Side Oakland meets the definition of an association of this type. Therefore, as to
17 Young, the People only need demonstrate that he is “a person who participates in or acts in concert
18 with this association.” This participation, or acting in concert, must be more than nominal, passive,
19 inactive or purely technical.” *Id.* It is not necessary to prove the commission of criminal acts.
20 *Reisig* at 875. The People do not have to demonstrate that each individual member has committed
21 felonies under the STEP Act (Penal Code section 186.22), as Young attempts to argue. See *Reisig*
22 at 880.

23 As the expert declarations supporting this proposed injunction adequately demonstrate,
24 Young actively participates in the NSO association. In June of 2009, Oakland police officers

25 _____
26 ¹⁵ In fact, Young’s brief consistently ignores California precedent directly addressing anti-gang injunctions for
each challenged injunction provision, instead citing to distinguishable, tangentially-persuasive authority.

1 conducted a probation search of Young’s residence. During this search officers found photographs
2 of other North Side Oakland gang members, a stocking with the words “North Pole”, and a hat with
3 the words “North Pole Savage 456”. (Expert Declaration of OPD Officer John Cunnie in Support of
4 Injunctive Relief, A “Gang Injunction”, And Other Relief Against North Side Oakland, A Criminal
5 Street Gang and All its Members (hereinafter “Cunnie”) ¶ 21hh). As the People have shown both
6 the words “north pole” and “4-5-6” are common identifying symbols of the NSO gang.
7 (Supplemental Expert Declaration of OPD Officer John Cunnie In Support of Injunctive Relief, A
8 “Gang Injunction”, And Other Relief Against North Side Oakland, A Criminal Street Gang and All
9 Its Members (hereinafter “Cunnie Supplemental”) ¶ 2).

10 Young attempts to argue that these gang indicia are not enough to support active
11 membership. In support of his position Young attributes the following holding to the *Reisig* case:
12 “Clothing, accessories, photographs, and close association with known gang members may be
13 relevant to whether a person is an active gang member, but these factors alone are insufficient to
14 validate a subject as an ‘active member’ of and alleged gang.” This is wholly inaccurate. That
15 statement was part of the definition of a gang member in the proposed injunction at issue in that
16 case. This was not the Court’s ruling on the definition of an active gang member. See *Reisig* at 883.

17 Further, the above-referenced photographs and accessories are not the only evidence of
18 Young’s active participation with NSO. During the June search, along with the photographs of
19 fellow gang members, and NSO identifications, officers also found a large amount of marijuana, a
20 large amount of U.S. currency, three digital scales, a .40 caliber semi-automatic firearm, body
21 armor, a silencer, an automatic weapon magazine with thirty-round capacity, and several boxes of
22 ammunition. Cunnie ¶ 21hh.

23 Five months later, in November of 2009, during another search of Young’s home, officers
24 found approximately 320 grams of marijuana, a large amount of U.S. currency, a large amount of
25 handgun and assault rifle ammunition, another silencer, and loaded high capacity magazines, as
26 well as more clothing with NSO references. Cunnie ¶ 21ii. The fact that within a five month

1 interval Young had amassed large amounts of ammunition and marijuana and further gang indicia,
2 is evidence that Young's participation with NSO is active and ongoing.

3 On December 27, 2009 police officers searched Young's residence whom he shared with his
4 girlfriend and again found marijuana (63 grams), and an electronic scale, as well as .65 grams of
5 Ecstasy and \$2,205 in U.S. currency. Officers also searched a unit of a Public Storage facility
6 which was under Young's name and for which he was the authorized user and holder of a key.
7 Inside it police found a MAC -11 assault weapon and a loaded .45 caliber semiautomatic handgun.
8 Cunnie Reply Supplemental ¶ 13-14. The gun had been reported stolen in a home burglary. Cunnie
9 Reply Supplemental ¶ 13-14.

10 Young's participation in this criminal enterprise was not limited to 2009. In January of
11 2005 an Oakland police officer observed Young selling crack cocaine to several individuals within
12 the proposed safety zone. Cunnie ¶ 76c. During the summer of 2005, and six months after Young
13 was observed selling cocaine, officers conducted a search warrant at Young's home and found five
14 bags of marijuana, digital scales, packaging materials \$1,317 in U.S. currency, .38 caliber revolver,
15 ammunition, and a stun gun. Cunnie ¶ 76d. During this encounter Young told officers he was a
16 "veteran dealer". Cunnie ¶ 76d. In 2005 Young already considered himself a "veteran dealer" and
17 he has continued his narcotics operation and his participating in this criminal enterprise through
18 dominance, intimidation and with the protection of the NSO gang and its members.

19 In his Supplemental Opposition Young includes a discussion of his right to possess certain
20 accessories and photographs advocating gang membership. Young sites a litany of case law in
21 attempt to prove Young's constitutional right to display the items, and the position that the items
22 cannot be used as evidence here. However Young confuses and distracts from the issue at hand.
23 The People do not argue the legality of Young's possession of the photographs, clothing, stockings,
24 and hats demonstrating NSO membership. The People do not dispute Young's right to own and
25 display such items. Rather, the People appropriately use these items only as evidence that Young is
26 affiliated with the NSO organization, as rightfully permitted by our Supreme Court.

1 Young's reliance on cases such as *Dawson v. Delaware* is inappropriate. In *Dawson* the
2 Supreme Court held that **in that specific case** the introduction of Dawson's Aryan Brotherhood
3 membership was inadmissible at the sentencing phase of his criminal trial. *Dawson v. Delaware*
4 (1992) 503 U.S. 159. However, the ruling was narrow and the Court specifically stated that "the
5 Constitution does not erect a per se barrier to the admission of evidence concerning one's beliefs
6 and associations at sentencing simply because those beliefs and associations are protected by the
7 First Amendment. *Dawson* at 165. In fact, the Court said that in many cases associational evidence
8 might serve a legitimate purpose in showing that a defendant represents a future danger to society.
9 *Dawson* at 166.

10 Here, the civil hearing on the People's proposed injunction is very different from a
11 sentencing phase in a criminal trial, but even if the court finds the issues analogous, the *Dawson*
12 decision was very narrow and did not rule out the admissibility of protected speech as evidence of a
13 defendant's beliefs or associations.

14 Young also alleges in passing that his designation in this injunction is in retaliation for his
15 pending civil rights lawsuit against Oakland police officers. Young offers absolutely no substantial
16 basis for this significant accusation besides the fact that the injunction was filed two months after
17 he obtained a partial summary judgment in his favor. This fact alone is not evidence of any
18 retaliation. Separate from Young's claims in the civil rights case, which he's entitled to litigate, the
19 evidence in this case remains unrefuted - that Young is affiliated with NSO, that Young possesses
20 NSO indicia, that Young frequently possesses and stores guns firearms in the Safety Zone, that
21 Young frequently possesses, large amounts of ammunition, and that Young stores, packages, and
22 sells drugs from his properties located within the safety zone..

23 As the People's evidence aptly demonstrates, Yancie Young's association with the NSO
24 gang is more than nominal and passive, and as recent as five months ago he was engaged in
25 criminal behavior. Young's attempts to argue that this evidence of his association is inadmissible
26 are inaccurate and not relevant to a civil equitable proceeding such as the proposed injunction.

1 **XI. The Issue of Racial Profiling is not Relevant to the People’s Proposed**
2 **Injunction.**

3 Young devotes a portion of his brief to discussing the issue of racial profiling by police
4 officers. While this topic is an important social issue it is wholly irrelevant here. While Young
5 presents many statistics on racial profiling, he does not cite any support for his position that civil
6 gang injunctions actually lead to more racial profiling. He does quote the Justice Policy Institute
7 report as stating that “young men of color are disproportionately identified as gang members,” but
8 this is not the same as an increase in racial profiling caused by the injunction itself.

9 The People have named as defendants in this case the NSO gang and nineteen individual
10 members. Each defendant has the opportunity to have his day in court. The People must go back to
11 court to prove that the injunction should be applicable to additional NSO members. In fact the
12 procedural and substantive aspects of this injunction actually prevent racial profiling. The People
13 have designated specific individuals who will be enjoined from causing a nuisance in the
14 community. The police officers charged with enforcing this injunction will know exactly to whom
15 this injunction applies. This injunction in no way gives police officers power to randomly stop
16 citizens in the affected area.

16 **XII. Gang Injunctions work in reducing gang crime in the community providing a**
17 **meaningful degree of Protection from harm and An Opportunity for the**
18 **community to feel safe again**

19 The ACLU and LCCR argue that a study supports their argument that the balance of harms
20 weighs against issuing an injunction. (See ACLU and LCCR Amici Curiae Br. at pp. 17-19.) Not
21 so. The research on the issue shows that the North Oakland community is likely to reap substantial
22 benefits from the injunction. These benefits include an almost-immediate reduction in crime in the
23 targeted area, and equally important, an increase in the residents’ sense of safety.

24 For example, Professor Jeffrey Grogger concluded that the injunctions “significantly
25 reduced the level of violent crime in the target areas without causing spillovers.” (Grogger, The
26 Effects of Civil Gang Injunctions on Reported Violent Crime: Evidence From Los Angeles County
(2002) 45 J. L. & Econ. 69, at p. 81.) Statistically, he observed a decline of 5-10% in violent crime,

1 and concluded that the majority of reduction in crimes involved a reduction in assault. (Id. at p.
2 89.) His conclusions were based on analysis of eight years worth of data from four Los Angeles
3 County police departments relevant to 14 of the 17 injunctions issued in Los Angeles County
4 between 1993 and 1998. (Id. at pp. 70-72.) He also constructed a “counterfactual”—in which he
5 analyzed data to estimate how target-area crime levels would have changed if the injunctions had
6 not been issued. (Id. at p. 70.)

7 Similarly, the City and County of Los Angeles independently investigated whether civil
8 gang injunctions reduced violent crime and concluded that in the first year of implementation, the
9 injunctions directly caused a six to nine percent reduction in the eight categories of violent crimes
10 examined (homicide, rape, robbery, aggravated assaults, burglary, larceny, vehicle theft, and arson),
11 and a reduction of three to seven percent in total crimes. (Management Audit of the Civil Gang
12 Injunction, County of Los Angeles Civil Grand Jury, 2003-2004 LA Grand Jury Report, at p. 214.)
13 There were also no findings of spillover. (Ibid.). These conclusions were based on Los Angeles
14 Police Department crime data for the period between 1990 and 2004. (Id. at p. 198.)

15 Moreover, Professor Cheryl Maxson and her colleagues found an almost immediate
16 reduction in gang visibility, intimidation by gang members, and fear of gang members among
17 residents, followed issuance of a gang injunction. (Maxson et. al, “It’s Getting Crazy Out There”:
18 Can A Civil Gang Injunction Change a Community? (2005) 4 Criminology and Pub. Pol’y 577, at
19 pp. 591, 597.) These findings were based on a hybrid community assessment survey method
20 involving both self-administered surveys and doorstep interviews with residents in target areas. (Id.
21 at pp. 585-586, 589.) These researchers also concluded, among other things, that the apparent
22 decrease in intimidating behavior suggested that the injunction did not spur an increase in gang
23 cohesion over the short term. (Id. at p. 597.) Ultimately, their research led them to propose that
24 gang injunctions be coupled with skill-development and treatment resources for targeted gang
25 members to enhance the positive impact of gang injunctions. (Id. at p. 600.) While these studies
26

1 analyzed data from other jurisdictions, there is no reason to believe that the North Oakland
2 community will not reap these same types of benefits if the Court issues this injunction.

3 And the ACLU and LCCR have not provided anything to demonstrate otherwise—nor can
4 they. Instead, these organizations heavily rely on a policy advocacy paper that is neither
5 “groundbreaking” nor a “study.” (See ACLU and LCCR Amici Curiae Br. at p. 17.) The Justice
6 Policy Institute’s report is not an independent analysis of data collected on the issue, it is a report
7 issued by a think-tank that selectively references excerpts from actual studies (including those
8 referenced above) and then draws its own conclusions.¹⁶ It does not provide any data to contradict
9 or undermine the research findings discussed in the reports referenced by the People above.

10 Finally, to the extent that the ACLU and LCCR raise concerns about racial profiling, these
11 concerns are addressed by the relief sought in this case. Here, the City seeks an injunction that
12 would individually name 19 gang members based on evidence of each individual’s substantial
13 involvement in gang-related violent crimes. The injunction, if granted, would not apply to anyone
14 else within the neighborhood – unless subsequently brought into the case - thus alleviating the risk
15 of racial profiling.

16 Contrary to the ACLU and LCCR’s arguments, the balance of harms in this matter weigh
17 heavily in favor of granting the relief sought. Accordingly, the City respectfully requests that this
18 Court grant the relief sought—as the North Oakland Community is more than entitled to the peace
19 and quiet it seeks to gain from use of this new legal tool.

20
21
22
23 ¹⁶ Notably, this paper appears to misrepresent the work of Cheryl Maxson and fellow researchers (discussed briefly
24 above) as suggesting that gang injunctions are ineffective because they do not engage the community enough; in fact,
25 these researchers recognize the positive impact of gang injunctions and advocate coupling gang injunctions *with*
26 community-based programs to enhance those positive impacts. (Compare Green and Prannis, *Gang Wars: The Failure
of Enforcement Tactics and the Need for Effective Public Safety Strategies*, (July 2007) Justice Policy Institute
<http://www.justicepolicy.org/images/upload/07-07_REP_GangWars_GC-PS-AC-JJ.pdf> (as of May 24, 2010), at pp.
77-78, with Klein and Maxson, *Street Gang Patterns and Policies* (2006) at pp. 220-221, 241, 259, 264-265.)

1 **XIII. The People’s Expedited Administrative Review Process (“Opt-Out”) is Almost**
2 **Identical to the One Sanctioned by the ACLU and LCCR in San Francisco and**
3 **Affords Gang Members an Expedited Way to Abandon the Gang**

4 The People have provided for an Expedited Administrative Process, or “Opt-Out” process,
5 available to any persons who have been served with the injunction and want the opportunity to
6 dispute that they are gang members or who wish to show that they are no longer active gang
7 members. This process will facilitate removal of the individual from the case and the scope of the
8 injunction. All decisions will be based on specific, verifiable, documented criteria, including, but
9 not limited to, gainful employment, active pursuit of employment, enrollment in education or job
10 training program, and regular participation in civic, cultural, or community activities. Proof that the
11 person is no longer committing gang activity and nuisance acts in the Safety Zone will also be
12 required.

13 All individuals subject to the injunction may, at any time, seek removal through this Court.
14 The expedited process is an additional voluntary process conducted by the City to assist individuals
15 who have proof that the injunction should not be enforced against them. If a decision is reached
16 that the person is not, or no longer, an active gang member then the City will not oppose an
17 individual’s request in court to be removed from the injunction.

18 An individual may request that he or she be removed from the enforcement list either before
19 a preliminary or permanent injunction has been issued by the Court (“pre-injunction opt-out
20 request”) or after a preliminary or permanent injunction has been issued by the Court (“post-
21 injunction opt-out request”).

22 This opt-out process will further ensure that only the appropriate individuals who continue
23 their gang activities are enjoined by this injunction.

24 **XIV. The People Have Obtained an Entry of Default Against the North Side Oakland**
25 **Gang.**

26 North Side Oakland did not file a response in this case and a default was entered as to
27 Defendant North Side Oakland gang on May 10, 2010, pursuant to California Code of Civil

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

PROOF OF SERVICE
The People of the State of California, et al. v. North Side Oakland, et al.
Alameda County Superior Court No. RG10498901

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is City Hall, One Frank H. Ogawa Plaza, 6th Floor, Oakland, California 94612. On the date set forth below, I served the within document:

PEOPLE’S CONSOLIDATED REPLY BRIEF IN RESPONSE TO (1) BRIEFS FILED BY FRIENDS OF THE COURT AND (2) DEFENDANT YOUNG’S SUPPLEMENTAL OPPOSITION TO PRELIMINARY INJUNCTION, DECLARATIONS IN SUPPORT THEREOF, AND EVIDENTIARY OBJECTIONS

by e-mailing the document(s) listed above to the person(s) set forth below:

Michael Haddad, Esq. Julia Sherwin, Esq. Haddad & Sherwin 505 Seventeenth Street Oakland, CA 94612 Attorneys for Defendant Yancie Young Haddad.sherwin@sbcglobal.net	Jory Steele, Esq. 39 Drumm Street San Francisco, CA 94111 Attorneys for amicus curiae, ACLU Jsteele@aclunc.org
Kendra Fox-Davis, Esq. 131 Steuart Street, Suite 400 San Francisco, CA 94105 Attorneys for amicus curiae, LCCR kfoxdavis@lccr.com	Andrea Auer, Esq. 1611 Telegraph Avenue Suite 1100 Oakland, CA 94612 Attorneys for amicus curiae aauer@averlaw.com
Andrew Steckler Alameda County Public Defender’s Office 1401 Lakeside Drive, Suite 400 Oakland, CA 94612 Attorneys for amicus curiae Andrew.steckler@acgov.org	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below, or as stated on the attached service list, on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Oakland, California addressed as set forth.
- by causing personal delivery by EXPRESS MAIL of the document(s) listed above to the person(s) at the address(es) set forth below.
- by personally delivering the document(s) listed above to the person(s) set forth below.

Roy Johnson, Jr. In Propria Persona 886 52 nd Street Oakland, CA 94608	Bao Viet Ngo In Propria Persona 2140 Highland Road Pinole, CA 94806
Anthony Smith In Propria Persona 2717 Fruitvale Avenue, Apt. A Oakland, CA 94601	Anthony Price PFN BDE054 Santa Rita Jail 5325 Broder Boulevard Dublin, CA 94568
Brian Downing In Propria Persona 5206 Anapolis Avenue San Pablo, CA 94806	Derris Dillard In Propria Persona 5428 Market Street Oakland, CA 94608
Stephon Anthony PFN BGF001 Santa Rita Jail 5325 Broder Boulevard Dublin, CA 94568	Marcelus Collins CDCR #AC8843 San Quentin Reception Center 1 Main Street San Quentin, CA 94964
Darrel Easley Register #12506-111 Federal Correctional Institution Herlong P.O. Box 800 Herlong, CA 96113	Tyrone Elebeck In Propria Persona 843 44 th Street Oakland, CA 94608

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Donta Easley c/o Andrew A. Steckler Assistant Public Defender Alameda County Public Defender's Office 1401 Lakeside Drive, Suite 400 Oakland, CA 94612	Samuel Flowers PFN BFF551 Santa Rita Jail 5325 Broder Boulevard Dublin, CA 94568
Tyrone Jackson In Propria Persona 2341 Valley Street, #10 Oakland, CA 94612	Chanzae Johnson In Propria Persona 6620 Helen Court Oakland, CA 94608
Christopher Patrick PFN BCN624 Santa Rita Jail 5325 Broder Boulevard Dublin, CA 94568	Lucious Taylor PFN BDX204 Santa Rita Jail 5325 Broder Boulevard Dublin, CA 94568
Eric Tullis In Propria Persona 405 Sycamore, #10 Hayward, CA 94544	Rafael Campbell PFN BDE069 Santa Rita Jail 5325 Broder Boulevard Dublin, CA 94568

I am readily familiar with the City of Oakland's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 25, 2010, at Oakland, California.

BARBARA J. WOODS