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11 The People of the State of California

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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

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

18 Plaintiff,

19 v.

20 NORTEÑOS, a criminal street gang sued
as an unincorporated association,
21 ALBERTO ACOSTA, RAUL ACOSTA
(A.K.A. RAUL GUTIERREZ), ROBERT
22 ALARID, LUIS AVALOS, SALVADOR
AVALOS, STEVEN AVALOZ, PEDRO
23 CARDENAS, JR., JOSEPH COOMBS
(A.K.A. JOSE GUERRERO, A.K.A.
24 JOSELITO CARRASCO), RUBEN
CORDOVA, ALEX CURIEL, VINCENT
25 DELGUIDICE (A.K.A ANTHONY
DELGUIDICE, A.K.A. MICHAEL
26 DELGUIDICE), ONORATO DELTORO
(A.K.A. FRANK LOPEZ, A.K.A. ARTURO
27 DELTORO, A.K.A. DELTORO
ONORATO), VICTOR FLORES,
28 ANTHONY GARCIA (A.K.A. ANTONIO

CASE NO. RG10541141

**PEOPLE'S AMENDED MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR A
PRELIMINARY INJUNCTION TO ABATE
A PUBLIC NUISANCE CAUSED BY THE
CONDUCT AND ACTIVITIES OF THE
NORTEÑOS, A CRIMINAL STREET
GANG AND ALL ITS MEMBERS**

Date: December 17, 2010
Time: 11:00 a.m.
Dept.: 20

Reservation No.: R-1125508

Action Filed: October 13, 2010
Trial Date: Not Yet Set

BY FAX

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ALAMEDA COUNTY
DEC - 1 2010
CLERK OF THE SUPERIOR COURT
By F. Wilson Deputy

1 GARCIA), FRANCISCO GOMEZ, JUAN
2 FRANCISCO GONZALEZ, RICARDO
3 MARIO GUERRERO, OMAR GUZMAN,
4 DAVID HERNANDEZ, MARTIN
5 HURTADO, ANTONIO LAMBAREN
6 (A.K.A. ANTONIO MANZO, A.K.A. LUIS
7 LAMBAREN), POOI LAUTAIMI, RUBEN
8 LEAL, JOSE MIGUEL LOPEZ (A.K.A.
9 JOSE JOZOLLAZ), OCTAVIO LUPIEN,
10 ABEL MANZO, JOEY ANTHONY
11 MARTINEZ, CRUZ ANTONIO MENDOZA,
12 ALEX MONDEZ, A.K.A. ALEX
13 MENDOZA, A.K.A. ALEJANDRO
14 VELASQUEZ), MICHAEL MUSCADINE,
15 ANGELO ORTEGA, DAVID PELAYO,
16 VICTOR PERALTA, JAVIER QUINTERO,
17 JOSE RODRIGUEZ, CARLOS ROMERO,
18 RAMON SANCHEZ, LUIS MIGUEL
19 SERRANO, AUGUSTINE VIGIL,
20 KENNETH VIGIL, DAVID WALLACE, and
21 RUBEN ZEPEDA (A.K.A. RUBEN
22 ZEPEDA GOMEZ) and DOE ONE through
23 DOE SEVENTY, inclusive,

Defendants.

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1 I. INTRODUCTION

2 The Norteño gang is a highly organized violent street gang—the street level arm of
3 a nationally recognized dangerous prison gang—a gang that exists only to maintain
4 control over its street territory through intimidation and violence. The Norteño gang and
5 its members have brazenly laid claim to a section of Oakland as its “turf,” they prey on
6 the neighborhood’s youth to increase their ranks and conduct their most violent crimes,
7 and they use extreme violence to intimidate the community and control this “turf.”
8 Norteño gang members do, and will continue to, kill, shoot, beat, stab, rob, take over
9 residential and public spaces by force to openly deal and use controlled substances, put
10 up gang graffiti, loiter in public, and treat residents’ property as if it were their own—all to
11 instill fear in the community and rival gangs. In fact, the Norteño gang is routinely at war
12 with rival gangs and responsible for frequent shootings. Blood is flowing and more harm
13 is imminent.

14 California law is clear and the courts are unanimous:¹ when the conduct and
15 activities of a turf-based, violent, criminal street gang are a cause of a public nuisance in
16 a proposed Safety Zone, then the conduct and activities of that gang may be abated by
17 an injunction brought by a City Attorney.² Therefore, Plaintiff prays that this Court enjoin
18 the Norteño gang and help bring a stop to the fear, intimidation and harm caused by the

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

25 ² *People v. Acuna*, 14 Cal.4th 1090 (1997) (upholding gang injunction); *People v. Colonia*
Chiques, 156 Cal.App.4th 31 (2007) (upholding permanent gang injunction, reversing
26 “curfew” provision with instructions how to correct it); *People v. Englebrecht*, 88
27 Cal.App.4th 1236,1263 (2001) (upholding permanent gang injunction); *In re Englebrecht*,
67 Cal.App.4th 486, 493-96 (1998) (upholding “do not associate” provision in preliminary
28 gang injunction).

1 Norteño gang.

2 Plaintiff, the People of the State of California, moves this Court to issue a
3 preliminary injunction, commonly called a "gang injunction," against the defendant
4 Norteño gang and all of its members, to abate a public nuisance caused by their conduct
5 and activities in a proposed "Safety Zone," located in the City of Oakland.

6 The People also ask this Court to allow service, including the preliminary
7 injunction, on the defendant, a criminal street gang sued as an unincorporated
8 association, by personal service on three or more members of the Norteño gang, and
9 additional service by mailing to the gang in care of five or more additional Norteño gang
10 members.³ The People will effect service upon the individually named defendants as
11 provided for in the Code of Civil Procedure.

12 **II. STATEMENT OF FACTS**

13 The Norteño gang is a predominantly Hispanic, violent, turf-based criminal street
14 gang affiliated with a nationally recognized, highly-organized and dangerous prison gang
15 known as "Nuestra Familia."⁴ This gang has existed for more than 40 years.⁵ The
16 Norteño gang engages in the type of criminal and nuisance behavior commonly

17
18 ³ In this action the People are proceeding against both the individual the street gang itself
19 as the civil defendant *and* several individually-named members of the gang, although the
20 law permits the People to seek a gang injunction binding all members of the enjoined
21 entity without doing so. *See, e.g., People v. Saffell*, 74 Cal.App.2d Supp. 967, 979
22 (1946) (injunction against unincorporated association binds its nonparty members).
23 Under California law, service may be affected on an unincorporated association that has
24 not designated an agent for service, by service on a designated member of that
25 association, followed by mailing to the entity's last known address. Cal. Civ. Proc. Code
26 § 416.40(c), Cal. Corp. Code § 18220. This Court should allow the People to serve the
27 defendant Norteños, a criminal street gang, by serving a member of the Norteños gang
28 because (1) it is proper under the law, (2) it is the only practical way to effect service on a
street gang, and, (3) as the People have named individual members of the gang as
Defendants, there is no question that these members will receive actual notice. Cal. Civ.
Proc. Code § 416.40(c).

26 ⁴ Expert Declaration of Officer Douglass Keely ("Keely Expert Decl.") at ¶¶ 40, 44, 45, 46,
63.

27 ⁵ Keely Expert Decl. at ¶ 40.

1 associated with modern violent street gangs, including turf-based murders, shootings and
2 gang violence.⁶ The Norteño gang operates in cities throughout Northern California,
3 including the City of Oakland.⁷

4 The Norteño gang boldly claims a portion of the City of Oakland as their own for
5 the sole purpose of furthering their criminal enterprise. Specifically, the Norteño gang
6 concentrates its criminal and nuisance behavior within a certain neighborhood in
7 Oakland, an area that this gang seeks to control as its “turf”⁸ so as to engage in criminal
8 conduct without interruption.⁹ It is this gang’s “turf” that the People seeks to reclaim for
9 the community and its residents, and therefore proposes as a “Safety Zone.”

10 The proposed “Safety Zone” is described as follows:

11 The eastern boundary starts at Brookdale Avenue, at the
12 intersection of Brookdale Avenue and High Street, then running
13 north along Brookdale Avenue to 35th Avenue and continuing
14 north to Fruitvale Avenue, then moving in a westerly direction
15 along Fruitvale Avenue, then continuing north along Brookdale

16 ⁶ Plaintiff’s evidence is in the form of declarations by percipient witness police officers,
17 which is necessary to protect the safety of civilian victims and witnesses from retaliation
18 by gang members. Norteños, like most street gangs, are successful as a criminal
19 organization, because the witnesses and victims to their criminal activity are too scared to
20 talk. The crime is Penal Code section 136, intimidating a witness. See citations in
21 footnote 77, 164, 151(e). Officer declarants are necessary to protect civilians, and are
22 proper and admissible: (1) because their evidence is percipient (e.g., “I recovered a gun
23 from the gang member”; “I observed a gang member selling crack cocaine”);(2) because
24 it includes statements made by a gang member (e.g., gang member admits he’s a
25 member of a particular gang) which is admissible as a declaration against interest, Cal.
Evid. Code § 1230, and/or as a party admission, *Id.* at § 1220; and/or (3) because it
includes 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.* at § 1240),
contemporaneous statements (*Id.* at § 1241), prior identification (*Id.* at § 1238), and/or
statements made to a police officer about the infliction or threat of infliction of physical
injury (*Id.* at § 1370).

26 ⁷ Keely Expert Decl. at ¶ 36.

27 ⁸ Keely Expert Decl. at ¶ 34.

28 ⁹ *Id.*

1 Avenue to 22nd Avenue, then east along 22nd Avenue to E.
2 28th Street, then continuing north along E. 28th Street to 21st
3 Avenue, then moving westerly along 21st Avenue all the way to
4 E 12th Street, then moving southwest along 23rd Avenue until
5 29th Avenue, then moving south via Glascock Street to
6 Lancaster Street, then moving in an easterly direction along
7 Lancaster Street to E. 7th Street, then moving south along E. 7th
8 Street, to Fruitvale Avenue, then west along Fruitvale to
9 Alameda Avenue, then continuing south along Alameda
10 Avenue to Howard Street and then to High Street, then moving
11 in an easterly direction along High Street to Foothill Boulevard,
12 then moving south along Foothill Boulevard to 48th Avenue,
13 then moving east along 48th Avenue to Melrose Avenue,
14 then moving north along Melrose Avenue to 42nd Avenue to
15 High Street, then moving east along High Street to the
16 starting point at Brookdale Avenue and High Street.

17 A copy of a map illustrating the proposed Safety Zone is
18 attached hereto as **Exhibit A**.

19 This proposed Safety Zone represents that area of Oakland that has been the most
20 negatively impacted by the public nuisance created by Norteño gang activity.¹⁰

21 For years the Norteño gang has run amuck in the proposed Safety Zone. Gang
22 members fearlessly kill,¹¹ shoot,¹² beat¹³ and rob,¹⁴ residents. This gang is responsible
23 for nearly half of all shooting incidents in this area for the past year.¹⁵ They will shoot at a

24 _____
25 ¹⁰ Keely Expert Decl. at ¶ 34.

26 ¹¹ Keely Expert Decl. at ¶¶ 115-124 (detailing killings of rival gang members by Norteños,
27 and vice versa).

28 ¹² Keely Expert Decl. at ¶¶ 125-127 (discussing shootings by or at Norteños gang
members).

¹³ Keely Expert Decl. at ¶¶ 76, 77, 151(e), 156(g), 164(e) (discussing beatings likely
committed by Norteños gang members during street robberies).

¹⁴ Keely Expert Decl. at ¶¶ 81(f), (g), 149(j), 150(e), 151(e), 154(g), 156(g), 158(e),
173(h), 176(d), 180(p), 181(e) (discussing street robberies likely connected to Norteños
Gang members).

¹⁵ Allison Expert Decl. at ¶¶ 23-24.

1 truck filled with children because the truck passed by a slain gang member's funeral.¹⁶
2 They will attack and rob their elderly and young neighbors, people who *know* them,
3 without shame or fear of reprisal.¹⁷ They fear no reprisal because they collectively
4 intimidate and threaten *anyone* who attempts to complain.¹⁸

5 Further, the Norteños litter the proposed Safety Zone with their gang graffiti to
6 mark their "turf" and declare war on rival gang members.¹⁹ They routinely trespass onto
7 private property to escape the police.²⁰ They use private and public spaces to sell and
8 use controlled substances.²¹ And they openly refuse to participate in legitimate
9 employment opportunities, such as those offered by Project Safe Neighborhood.²²

10 The Norteño gang and its members also loiter in public spaces in large menacing
11 numbers²³ throwing gang signs and stopping passers-by to question them about their
12 gang loyalty.²⁴ They will vandalize and rob public facilities—even elementary schools.²⁵

14 ¹⁶ Keely Expert Decl. at ¶¶ 147(e), 157(d), 172(l).

15 ¹⁷ Keely Expert Decl. at ¶¶ 156(e), 81(f), (g).

16 ¹⁸ Keely Expert Decl. at ¶¶ 76, 134, 149(g) (where witnesses expressed fear of gang
17 retaliation for cooperating with police, and one incident of a Norteño gang member being
charged for threatening a witness).

18 ¹⁹ Keely Expert Decl. at ¶¶ 105-111 (discussing Norteños' gang graffiti in depth, along
19 with photographs).

20 ²⁰ Keely Expert Decl. at ¶¶ 158(e), 184(g) (summarizing the facts of numerous incidents
of Norteño gang members fleeing through neighbor's private property to escape the
21 police).

22 ²¹ Keely Expert Decl. at ¶¶ 151(j), 153(j), 158(g), (h), (j), 159(d), 163(f), 165(f), 166(f),
168(d), (e), (f), (i), (k), 169(b), (c), (d), 170(g), (k), (o), 171(d), 173(i), 174(j), 175(e),
23 176(e), 177(e), (f), (g), 178(c), 180(e), 181(g), 182(f), (g), (h), 185(p) (discussing incidents
of Norteño gang members' street level controlled substance sales activity); Keely Expert
24 Decl. at ¶¶ 146(a), 155(b), 158(b), 168(a), 169(a), 170(c) (discussing convictions of
Norteño gang members for controlled substance sales crimes).

25 ²² Keely Expert Decl. at ¶ 155(k).

26 ²³ Keely Expert Decl. at ¶¶ 72, 74, 158(i), (j), 167(d), 171(e), 172(k), (n), 174(k), 175(e),
27 (f), 176(d), 182(g).

28 ²⁴ Keely Expert Decl. at ¶¶ 72, 74, 99, 103, 149(g), 150(e), 170(f), 173(h).

1 In fact, they specifically target school grounds and students to increase their ranks with
2 young members, who are often ordered to commit the gang's most violent acts.²⁶

3 All of this is intentionally done to create a climate of fear, to increase the gang's
4 ranks and maintain exclusive control over the claimed "turf."²⁷ This is central to this
5 gang's purpose: the larger the gang's numbers and "turf," the more powerful it is.²⁸ And
6 the gang's power facilitates its criminal agenda.²⁹ Thus, they will beat their own to
7 prevent a gang member from leaving—simply to maintain this power.³⁰

8 Right now, the Norteño gang is at war with at least two violent rival gangs, the
9 Border Brothers and the Sureños.³¹ They "defend" their "turf" at the community's
10 expense. Shootings are frequent and guns are ever present.³² Residents are terrorized
11 by the frequent shootings, innocent people are being killed,³³ and the violence is

14 ²⁵ Keely Expert Decl. at ¶¶ 127, 156(f), 185(h).

15 ²⁶ Keely Expert Decl. at ¶¶ 54, 55, 56, 78-84.

16 ²⁷ Keely Expert Decl. at ¶¶ 68, 69, 71, 72, 73, 74, 77, 129.

17 ²⁸ Keely Expert Decl. at ¶ 51.

18 ²⁹ Keely Expert Decl. at ¶¶ 74, 77.

19 ³⁰ Keely Expert Decl. at ¶¶ 53, 55.

20 ³¹ Keely Expert Decl. at ¶¶ 67, 115, 116, 120, 121, 122, 123, 129, 147(e), 151(e), 168(i),
21 170(f), 172(e), (f), (g), (l), 173(h), 175(d), 180(d), 181(d), 182(e), 183(d), (e), 185(d)
(discussing the series of murders and shootings involving Norteños members and
22 bystanders in the proposed Safety Zone as a byproduct of Norteños feud with rival
Berkeley and other gangs).

23 ³² Keely Expert Decl. at ¶¶ 81(h), 84(a), 118, 119, 125, 126, 127, 147(e), (i), 149(h), (j),
24 150(h), 152(k), (l), 154(g), 155(g), 159(d), 160(c), 162(f), 163(e), (g), 164(f), (p), 165(c),
25 (e), (h), 166(g), 167(c), 168(e), (h), (k), 170(g), (i), (o), 171(e), 172(e), (f), (g), (h), (j), (l),
173(h), 174 (j), (k), 176(d), 177(d), (e), (g), 179(e), (h), 180(h), 185(g) (discussing many
incidents involving guns illegally possessed and used by or against Norteños gang
members).

26 ³³ Keely Expert Decl. at ¶¶ 67, 118, 119, 149(g), 164(l), 166(h), 169(e), 176(d), 180(f),
27 183(e) (discussing the bystanders who have been injured or killed as a result of gang
violence on the public streets and sidewalks).

1 escalating.³⁴ More harm is imminent.

2 **III. ARGUMENT**

3 The Norteño gang's activities described above unquestionably constitute a public
4 nuisance under the law. California law defines a nuisance as:

5 Anything which is injurious to health, including, but not limited to, the illegal sale of
6 controlled substances, or is indecent or offensive to the senses, or an obstruction
7 to the free use of property, so as to interfere with the comfortable enjoyment of life
8 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.³⁵

9 It also defines a public nuisance as a nuisance "which affects at the same time an entire
10 community or neighborhood, or any considerable number of persons, although the extent
11 of the annoyance or damage inflicted, upon individuals may be unequal."³⁶

12 Here, the type of gang violence, vandalism and drug dealing engaged in by
13 Defendant Norteños, all intended to intimidate the community and control the gang's
14 "turf," unreasonably "interfere[s] with the comfortable enjoyment of life."³⁷ These acts
15 along with the gang's other nuisance activities warrant issuance of a civil gang injunction
16 to abate this gang's violent blight on the community.

17 **A. A statutory public nuisance caused by the Norteño gang exists in the**
18 **safety zone**

19 To obtain an injunction against a criminal street gang and its members, the People
20 must show: (1) that the activities and conduct of the defendant "can be brought within the
21 terms of the statutory definition of public nuisance," and (2) that the nuisance is
22 "substantial and unreasonable."³⁸ Here, both of these prongs are easily met.

23 _____
24 ³⁴ Keely Expert Decl. at ¶ 186.

25 ³⁵ Cal. Civ. Code § 3479.

26 ³⁶ Cal. Civ. Code § 3480.

27 ³⁷ Cal. Civ. Code § 3479.

28 ³⁸ *In re Englebrecht*, 67 Cal.App.4th at 492. See also *Acuna*, 14 Cal.4th at 1104-05.

1 First, the activities and conduct of the defendant Norteño street gang in the Safety
2 Zone satisfy the statutory definition of public nuisance because the shootings and other
3 gun violence, robberies, beatings, burglaries, and other theft and violence, are "injurious
4 to health," "offensive to the senses," and "an obstruction to the free use of property," and
5 "interfere with the comfortable enjoyment of life or property."³⁹ The "illegal sale of
6 controlled substances" qualifies a street gang as a public nuisance.⁴⁰ And gang graffiti
7 constitutes a public nuisance because of its economic harm and also because of the fear
8 and intimidation gang graffiti inflicts.⁴¹

9 The Norteño gang's nuisance activity within the proposed Safety Zone is also a
10 nuisance because many of the documented gang activities are violations of Oakland's
11 community standards as set forth in the City's ordinances, such as drinking alcoholic
12 beverages in public;⁴² loitering upon public sidewalks, thereby causing an obstruction and
13 unreasonable interference of free passage for pedestrians;⁴³ riding bicycles on
14 sidewalks⁴⁴ and discharging firearms within city limits.⁴⁵

15 Second, the Norteño gang creates a nuisance that is "substantial and
16 unreasonable." In this context, "substantial" is defined as "proof of 'significant harm,' ...
17 that is 'definitely offensive, seriously annoying or intolerable.'"⁴⁶ The conditions
18 documented by the People, including shootings, beatings, robberies, and gang graffiti,
19 are substantial. "Unreasonable" is determined by "comparing the social utility of an

20 _____
21 ³⁹ Cal. Civ. Code § 3479.

22 ⁴⁰ *Id.*

23 ⁴¹ See *Mclvor v. Mercer-Fraser Co.*, 76 Cal.App.2d 247, 254 (1946) ("mere apprehension
of injury from a dangerous condition may constitute a nuisance").

24 ⁴² Oakland Municipal Code ("OMC") § 9.08.180.A.

25 ⁴³ OMC § 9.08.170.

26 ⁴⁴ OMC § 10.16.150.

27 ⁴⁵ OMC § 9.36.080.

28 ⁴⁶ See *Acuna*, 14 Cal.4th at 1105.

1 activity against the gravity of the harm it inflicts.”⁴⁷ No social utility exists in the conduct
2 and activities of this street gang, while the harm it inflicts is immeasurably great.
3 Accordingly, a substantial and unreasonable public nuisance exists in the Safety Zone,
4 caused by the conduct and activities of this defendant gang and its members.

5 **B. The Public Nuisance caused By the Norteño gang is properly abated**
6 **by an injunction**

7 In *Acuna*, the California Supreme Court explicitly sanctioned the use of an
8 injunction to abate a nuisance caused by gang conduct.⁴⁸ Code of Civil Procedure
9 section 731 expressly provides for injunctive relief by a City Attorney to abate a public
10 nuisance. Code of Civil Procedure section 526(a) sets forth grounds under which an
11 injunction may issue. The public nuisance caused by the defendant Norteño gang
12 satisfies several of these grounds.

13 Specifically, Code of Civil Procedure section 526(a)(2) authorizes an injunction if
14 continuation of the nuisance would produce “great or irreparable injury.” This gang’s past
15 violence and continuing threat of violence qualifies as such an injury. Code of Civil
16 Procedure section 526(a)(4) states that injunctive relief is appropriate if pecuniary
17 compensation would not afford adequate relief. And under Code of Civil Procedure
18 section 526(a)(5), an injunction is appropriate if it would be “extremely difficult to
19 ascertain the amount of compensation” which would afford adequate relief. Here, no
20 amount of monetary compensation can restore to the residents of the proposed Safety
21 Zone their sense of personal safety, or compensate them for this loss. Under Code of
22 Civil Procedure section 526(a)(6), an injunction is proper to prevent a multiplicity of
23 judicial proceedings. Because this gang nuisance is community-wide, the pool of
24 potential plaintiffs is vast and would require a multiplicity of private lawsuits to vindicate
25 the community’s rights. Therefore, a gang injunction is the *only* adequate remedy.

26 ⁴⁷ *Id.*

27 ⁴⁸ *Acuna*, 14 Cal.4th at 1102; see also Cal. Civ. Code §§ 3491, 3494.

1 **C. The standard of proof required for an injunction against the Norteño**
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.”⁴⁹
7 The People have proven by clear and convincing evidence that they will prevail under
8 both of these prongs.

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

10 Here, the People are likely to prevail at trial because the People have already
11 introduced overwhelming evidence establishing a cause of action for public nuisance
12 against this street gang.⁵⁰ The California Supreme Court requires a plaintiff in a gang
13 injunction case to prove a public nuisance exists in the Safety Zone, and “the gang and
14 its members present in [the Safety Zone] were responsible for the public nuisance.”⁵¹ But
15 a plaintiff in a gang injunction case need only establish that one of the primary activities
16 of a defendant street gang is “the commission of the acts constituting the public
17 nuisance.”⁵²

18 Here, the People have gone further and established that the defendant gang is a
19 “criminal street gang” under the more rigorous definition set forth in Penal Code section
20 186.22, the Street Terrorism Enforcement and Prevention (STEP) Act, which requires

21 _____
⁴⁹ *Acuna*, 14 Cal.4th at 1109.

22 ⁵⁰ Plaintiff has documented over 850 different Norteño gang-related criminal and
23 nuisance incidents that occurred between 1990 and the present, in the Expert
24 Declarations of Officer Keely, Officer Guerrero, and Captain Allison, and percipient
25 witness declarations of over 125 officers, ranging from controlled substance possession
26 and sales, killings, shootings, robberies, beatings, car thefts, and graffiti vandalism, to
drinking in public, all of which is more than sufficient to warrant provisional injunctive
relief.

27 ⁵¹ *Acuna*, 14 Cal.4th at 1125.

28 ⁵² *People v. Englebrecht*, 88 Cal.App.4th at 1258.

1 that one of the primary activities of a gang be the commission or attempted commission
2 of "predicate felonies," such as murder (Cal. Penal Code § 187), assault with a deadly
3 weapon (Cal. Penal Code § 245), robbery (Cal. Penal Code § 211), "car-jacking" (Cal.
4 Penal Code § 215), grand theft (Cal. Penal Code § 487), sales, possession for sales, and
5 transportation of controlled substances (Cal. Health & Safety Code § 11054 - § 11058),
6 shooting at occupied dwellings or automobiles, discharging firearms from motor vehicles
7 (Cal. Penal Code § 12034), witness and victim intimidation (Cal. Penal Code 136.1),
8 illegal sale, or transfer of a firearm (Cal. Penal Code § 12072), firearms possession
9 crimes (Cal. Penal Code §§ 12010, 12021, 12025, and 12031) and burglary (Cal. Penal
10 Code § 459), all of which "STEP predicates" are also "nuisance activities" of the highest
11 magnitude.⁵³

12 Here, the Norteño gang's conduct and activities—as detailed in the Statement of
13 Facts, *supra*, and the declarations cited in this brief—cause a public nuisance in the
14 proposed Safety Zone, and the defendant street gang is documented to be a cause of
15 that public nuisance.

16 **2. Balancing Of The Respective Harms Favors Protecting The**
17 **Community From This Street Gang**

18 Once the People establish they are likely to prevail on the merits, this Court is
19 required to weigh the equities, and here it is clear that the equities favor granting the
20 People their requested relief. The balancing test approved in *Acuna* compared the social
21 utility of the enjoined conduct with the harm the conduct inflicts.⁵⁴ This remains the
22 standard in assessing whether a preliminary injunction ought to issue.

23 Here, should this injunction not issue, the continuing harm to the residents is
24 unmistakable: they will continue to be victims of turf-based gang violence, gang

25 _____
26 ⁵³ See Keely Expert Decl. at ¶¶ 146-185, which detail 76 felony convictions and 6
27 pending felony charges against Norteños gang members.

28 ⁵⁴ *Acuna*, 14 Cal.4th at 1105.

1 robberies, gang graffiti, and other gang crimes. By contrast, any harm to the Defendants
2 should the injunction issue would be minimal. The proposed injunctive terms are not
3 absolute prohibitions, but apply only within the proposed Safety Zone. The prohibitions
4 contained in the proposed gang injunction are proper restrictions on the conduct and
5 activities of each of the Defendants. Each requested injunction provision seeks to enjoin
6 criminal or nuisance behavior or the precursors to such behavior. As a result, the
7 injunction is reasonable when balanced against this gang's harmful and dangerous
8 conduct, conduct that has impaired the public safety, the quality of life, and the property
9 and security rights of the local community. The balancing test favors, and the equities lie
10 with, the local community.

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

12 The goal of the requested gang injunction is to abate the Norteño gang's criminal
13 and nuisance behavior. To do so, the proposed gang injunction sets forth new "civility
14 rules" for this gang and its members, including no guns, no drugs, no trespassing, no
15 witness/victim intimidation, and a "do not associate in public" provision. These rules are
16 necessary to abate the public nuisance and to protect the innocent citizens in the Safety
17 Zone. They are elaborated upon below, in more detail.

18 In addition, for those defendants who either dispute that they are members, or can
19 demonstrate that they are no longer gang members, the People will provide an Expedited
20 Administrative Process ("Opt Out provision") for persons to dispute that they are gang
21 members, or who wish to show they are no longer gang members. Through this process
22 the People wish to facilitate removal of persons from the scope of this injunction so long
23 as they can show, based upon specific, verifiable criteria that they are not gang
24 members.

25 The information that will be considered during the administrative process will
26 include but not be limited to evidence indicating the person is no longer a gang member
27 of the Norteño gang, or any of the sub-cliques identified throughout this brief and the
28 supporting documentation, and has not violated the provisions of any injunction which

1 may be issued in this Action for a period of two years following service. Additional
2 evidence that will be considered include but is not limited to a showing that for one year
3 the person (1) has maintained gainful employment, (2) has actively pursued employment,
4 (3) has been enrolled in an education or job training program, or (4) has regularly
5 participated in civic, cultural or community activities. Based on the recommendation by
6 the administrative hearing officer and advisors that the person has fully complied with the
7 terms of the injunction as stated above, the People will agree not to oppose a person's
8 request to the Court to be removed from the injunction.

9 **Do Not Associate with Gang Members.** is the Norteños are a ruthless criminal
10 organization affiliated with a prison gang, that exists to further criminal activity for the
11 purpose of making money. Association together in places accessible by the public is the
12 cornerstone of a street gang's criminal activity; after all, a gang's fundamental intimidation
13 is achieved by its "strength in numbers," not so much as individuals. In fact, associating
14 together in large numbers is critical to the gang's typical modus operandi (MO) to further
15 their criminal enterprise.

16 For many of their crimes, which include overseeing the distribution of illegal
17 weapons, the sale of narcotics, the recruitment of new members, and physical violence
18 against rival gangs, the gang must "protect their turf." Hence, the Norteño gang
19 members strategically loiter in public places and commit crimes in menacing numbers.⁵⁵
20 Abating the public association of gang members will serve to abate their subsequent
21 criminal and nuisance behavior.⁵⁶

22 The non-association order requested in this case tracks the language upheld by
23 the California Supreme Court in *Acuna*, and is proper because "[f]reedom of association,
24 in the sense protected by the First Amendment, 'does not extend to joining with others for

25 _____
26 ⁵⁵ Keely Expert Decl. at ¶¶ 74, 158(h), (i), 165(f), 166(e), 167(d), 169(b), 171(e), 172(k),
27 (n), 175(e), (f), 178(d), (j), 179(f), 180(m), 182(f), (g), 185(f), (n).

28 ⁵⁶ Keely Expert Decl. at ¶ 31.

1 the purpose of depriving third parties of their lawful rights.”⁵⁷ Furthermore, the
2 “association” condition only applies in places accessible by the public, where gang
3 activity has its greatest impact on the community. “[T]he non-association provision of the
4 preliminary injunction is constitutional. *Acuna* is controlling.”⁵⁸

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. As with the non-association clause above, the language of this
9 provision tracks the language upheld in *Acuna*.⁵⁹

10 **No Firearms, Imitation Firearms, or Dangerous Weapons.** The violent crimes,
11 such as murder, assault with a deadly weapon, robbery, and witness intimidation turf-
12 based violence, committed by the defendant street gang often involve firearms, the
13 gang’s weapon of choice, to control its proclaimed turf. Guns, and the violence guns are
14 capable of, are critical to a criminal street gang.⁶⁰

15 **No Graffiti or Graffiti Tools.** Gang graffiti damages property and creates fear.
16 The Norteños gang specifically uses graffiti vandalism to claim and control its “turf” by
17 instilling fear in the community. To better abate the graffiti nuisance, the tools of the
18 trade (spray cans, markers, etc) must be controlled.⁶¹

19 _____
20 ⁵⁷ *Acuna*, 14 Cal.4th at 1110, 1112.

21 ⁵⁸ *In re Englebrecht*, 67 Cal.App.4th at 496.

22 ⁵⁹ *Acuna*, 14 Cal.4th at 1118-19. See also Cal. Penal Code § 136.1 (intimidating victim or witness).

23 ⁶⁰ Keely Expert Decl. at ¶¶ 15, 81(h), (g), 131, 132, 147(i), (g), 149(j), 150 (h), 154(e), (g),
24 (h), 164(f), (h), (n), (o), (p), 165(e), 166(g), (i), 167(c), 168(a), (e), (h), (k), 169(h), 170(c),
25 (f), (g), (i), (o), 171(i), 172(e), (f), (g), (h), (j), (k), 173(a), (j), 174(j), (k), 175(a), (d), 176(c),
26 (d), 177(d), (e), (g), 178(d), (l), 179(b), (e), (h), 180(b), (d), (h), (l), (m), (n), (t), 181(e),
182(e), 183(d), (e), 184(a), (e), (f), (g), 185(b), (g), (h), (l), (p); see Cal. Penal Code
§ 12028(a) (unlawful carrying of concealed handguns and dangerous weapons is a nuisance).

27 ⁶¹ See Cal. Penal Code § 594.2 (listing and banning certain graffiti tools).

28

1 **Stay Away From Controlled Substances.** Many of the Norteño gang members
2 are contacted while under the influence of drugs. This public drug use is a nuisance to
3 area residents and their children.⁶² Moreover, an injunction provision requiring them to
4 stay away from controlled substances will help suppress illegal street trafficking and the
5 crimes it attracts.⁶³

6 **Obey Time Restriction.** A significant amount of the most violent criminal and
7 nuisance activity documented in the declarations submitted in support of this gang
8 abatement occurred at night, and limiting the nocturnal behavior of Norteño gang
9 members in the Safety Zone makes sense considering the nature and the activities of a
10 criminal street gang.⁶⁴ These time restrictions will have a substantial impact on reducing
11 violent gang-related crime in the Safety Zone.

12 **No Trespassing.** Norteño gang and its members believe they can use any and all
13 property in the Safety Zone, as if it were their own property. This provision is necessary
14 to protect the property, peace of mind, and security of the Safety Zone residents.⁶⁵

15 **Obey All Laws.** An obligation to obey certain laws is nothing more than the
16 requirement all good people in society have operated under since laws were first passed,
17 and orderly society first organized. This provision seeks to abate these defendants'
18 criminal nuisance behavior. It is time these gang members be ordered to comply with the
19 laws prohibiting nuisance conduct and activities.⁶⁶

21 ⁶² Keely Expert Decl. at ¶¶ 146(a), 148(a), 149(b), 150(j), 153(b), (h), (j), (n), 155(b), (f),
22 158(b), (g), (h), (j), (k), 159 (d), (e), 163(f), 164(a), (i), (j), (k), (m), (n), 168(a), (d), (e), (f),
23 (i), (k), 169(a), (b), (c), 170(c), (g), (j), (k), (l), (n), (o), 171(a), (b), (c), (d), (e), (f), (g),
24 173(i), 174(e), (j), 175(e), 176(e), 177(a), (e), (f), (g), 178(a), (c), 180(b), (e), (l), (q),
181(g), 182(b), (g), (h), (j), 183(b), 185(b), (i), (p).

25 ⁶³ Ibid.

26 ⁶⁴ Keely Expert Decl. at ¶¶ 115-127 (Summarizing homicides and shootings that have
occurred within the proposed Safety Zone).

27 ⁶⁵ See Cal. Penal Code § 602 (trespass).

28 ⁶⁶ *Acuna*, 14 Cal.4th at 1106-09; see also Cal. Civ. Code § 3369 (proper to enjoin
(footnote continued)

1 **No Gang Recruitment.** Norteño gang members need to keep increasing their
2 numbers as members are killed or put in jail. It is Norteño practice to initiate new
3 members by using them to commit some of the gang's most violent crimes—including
4 murder. As demonstrated in Officer Keely's declaration, this particular gang targets
5 youths to fill its ranks and conduct these violent crimes.⁶⁷ And it uses children to hold or
6 deliver drugs, or money, as a part of street drug sales activities in order to avoid arrest or
7 conviction.⁶⁸ This provision is necessary to stop the inflow of new gang members, and to
8 protect the youth who live and go to school in the proposed Safety Zone.

9 **No Loitering as Prohibited by Health and Safety Code section 11532.**

10 Loitering by Norteño members is commonplace, and usually is part of street-level
11 narcotics sales. Norteño street-level drug sales have made the streets and sidewalks
12 dangerous for any residents who pass by or live in the area. Prohibiting this precursor to
13 street-level drug sales will abate the nuisance and criminal conduct that the residents
14 have been suffering.

15 **No Gang Signs, Gang Symbols or Gang Clothing.** Flashing hand signs,
16 meaning the use of one's hands or finger or fingers, to form the numbers "14," or "15";
17 wearing clothing hats or an accessory that contains red in whole or part that is visible to
18 the public, or publicly displaying by any means the following gang symbols, the numbers
19 "14", "XIV," "X4" "XXIV," "15", "XV", or "X5", the letter "N" or "M," the words, phrases or
20 acronyms for the following words or phrases, "Norte, " "Norteno" "Bridge Avenue
21 Norteños," the "Mitchell Street Norteños" (MSN), the "Untouchables" (UNT),
22 "Quince/Norteños E-15th", "Norteños on the Rise" (NOR), "Raza United Norteños"
23 (RUN), "Fruitvale Gangsters" (FVG), "36th Ave Locos" (TSL), "38th Ave Locos" (TEL),
24 and "51st Ave Locos" (FFL), with the exception of wearing a uniform that must be worn

25 _____
26 criminal nuisance behavior).

27 ⁶⁷ Keely Expert Decl. at ¶¶ 54, 55, 56, 78-84.

28 ⁶⁸ Keely Expert Decl. at ¶ 55.

1 while one is engaged in lawful employment or coming to and from the place of lawful
2 employment.

3 **No Prevention of Any Person From Leaving the Gang.** Making any threats or
4 doing anything threatening, including without limitation shooting, striking, battering,
5 destroying the personal property or disturbing the peace (1) to prevent a person from
6 leaving the Norteños gang or (2) to any person known to have left the Norteños gang.

7 **IV. SERVICE EXCEEDS DUE PROCESS REQUIREMENTS**

8 In this action, pursuant to standard California injunction practice, the People are
9 proceeding against both individual gang members and the street gang itself as the civil
10 defendant, with the proposed gang injunction binding all individually named members of
11 the enjoined entity (as opposed to naming the hundreds of members of this gang as
12 individual civil defendants).⁶⁹ The rationale of this "time honored equitable practice,"⁷⁰ is
13 explained more fully in this oft-cited opinion:

14 [I]t has been a common practice to make the injunction run
15 also to classes of persons through whom the enjoined party
16 may act, such as agents, servants, employees, aiders,
17 abettors, etc., though not parties to the action, and this
18 practice has always been upheld by the courts, and any of
19 such parties violating its terms with notice thereof are held
20 guilty of contempt for disobedience of the judgment. But the
21 whole effect of this is simply to make the injunction effectual
22 against all through whom the enjoined party may act...⁷¹

19 The practice of making an injunction run against nonparty members of an enjoined
20 entity does not raise any due process concerns,⁷² and is not "unconstitutionally
21 overbroad."⁷³ "[T]his practice has always been upheld by the courts," and "this practice is

22 _____

23 ⁶⁹ *E.g., People v. Saffell*, 74 Cal.App.2d Supp. 967, 979 (1946) (injunction against
24 unincorporated association binds its nonparty members).

25 ⁷⁰ *Acuna*, 14 Cal.4th at 1124.

26 ⁷¹ *Berger v. Superior Court*, 175 Cal. 719, 721 (1917) (italics omitted).

27 ⁷² *Ross v. Superior Court*, 19 Cal.3d 899, 905-906 (1977) (nonparty agent of enjoined
28 defendant bound by injunction; rejecting due process arguments).

⁷³ *Greenly v. Cooper*, 77 Cal.App.3d 382, 395 (1978).

1 thoroughly settled and approved by the courts.”⁷⁴

2 In *People v. Englebrecht*, the Court of Appeal opined that the People must prove
3 their cause of action for a civil gang injunction by clear and convincing evidence.⁷⁵ The
4 People have done so by overwhelming evidence, establishing to a “high probability” that
5 the conduct and activities of the defendant street gang and its members constitute a
6 public nuisance in the Safety Zone.⁷⁶

7 In addition to naming individual gang members in this Complaint, the People wish
8 to proceed against the gang itself as an unincorporated association. Service may be
9 affected on an unincorporated association that has not designated an agent for service
10 by service on a designated member of that association, followed by mailing to the entity’s
11 last known address.⁷⁷ This Court should allow the People to serve defendant Norteños, a
12 criminal street gang, by serving a designated subset of members of the Norteño gang
13 because (1) it is proper under the law, (2) it is the only practical way to effect service on a
14 street gang, and, (3) as will be discussed, it works and will provide actual notice to each
15 gang member.

16 Serving a street gang by serving a designated number of gang members is the
17 court-approved method of service in gang injunction cases. In this action, out of an
18 abundance of caution, and to address the concerns regarding notice raised in *Broderick*
19 *Boys, supra*, Plaintiff proposes to exceed the minimum requirements for serving process,
20 and requests this Court to enter the proposed service order which fully satisfies due
21 process requirements by (1) requiring personal service on three gang members, and (2)
22 mailing to all individually named defendants as members.

23 In its Complaint, the People sued the defendant Norteño gang, as “a criminal
24

25 ⁷⁴ *Berger*, 175 Cal. at 721.

26 ⁷⁵ *Englebrecht*, 88 Cal.App.4th at 1256-57 & fn.7.

27 ⁷⁶ *In re Angelia P.*, 28 Cal.3d 908, 919 (1981).

28 ⁷⁷ Cal. Civ. Proc. Code §416.40(c), Cal. Corp. Code §18220.

1 street gang sued as an unincorporated association.” Our Supreme Court recognized that
2 a criminal street gang is amenable to suit as an entity because “it was the gang itself,
3 acting through its membership, that was responsible for creating and maintaining the
4 public nuisance in [the neighborhood].”⁷⁸ Code of Civil Procedure section 369.5(a) states
5 that an unincorporated association may be sued in the name by which it is known. The
6 Norteños qualify as an unincorporated association pursuant to *Barr v. United Methodist*
7 *Church*, because its members share a common purpose and because the gang functions
8 under a common name in circumstances where the group should be recognized as a
9 legal entity.⁷⁹

10 To support an order allowing service under Corporations Code section 18220, the
11 People must prove that it is unable, after exercising reasonable diligence, to serve
12 defendant under Code of Civil Procedure section 415.10 (personal service), section
13 415.20(a) (substitute service), and section 415.30 (notice and acknowledgment of
14 receipt). The People are unable to effect service on the defendant gang under any of
15 those provisions because, after exercising reasonable diligence, the People have been
16 unable to locate a registered agent, or any mailing address or “place of business” for the
17 defendant gang.

18 Moreover, the Norteño street gang, like other Hispanic Oakland-based street
19 gangs, lacks formal organization and does not have any formal officers or managers who
20 can be served. The People’s inability to effect service on the Norteño gang by any
21 method other than by service on a member is a result of defendant’s failure to designate
22 an agent for service, to file “dba” forms, or to take any other proper or official action taken

23 ⁷⁸ *Acuna*, 14 Cal.4th at 1125 (dicta).

24 ⁷⁹ *Barr v. United Methodist Church*, 90 Cal.App.3d 259, 266-67 (1979); Keely Expert
25 Decl. at ¶¶ 62-136. *Cf. Colonia Chiques*, 156 Cal.App.4th at 38-41 (street gang is a jural
26 entity which may be sued under section 369.5, noting it was “highly unlikely” that
27 Legislature intended their new Corporations Code section 18035(a) to grant street gangs
28 immunity from suit) with *Broderick Boys*, 149 Cal.App.4th at 1520-1522 (examining
whether a street gang is an entity subject to suit, relying on section 18035(a)).

1 by entities doing business in Alameda County. As the Court of Appeal has noted, a
2 defendant entity should not “be allowed to take advantage of its own failure to designate
3 a registered agent for service of process.”⁸⁰

4 Corporations Code section 18220 requires that the members of an unincorporated
5 association who may be served on its behalf should be designated in advance in the
6 order allowing such service. The People’s proposed Order identifies all of the individually
7 named defendants as “designated” gang members. The People’s expert witness, Officer
8 Keely, opines that each designated member is a member of Norteño gang and states in
9 the declaration the basis for his opinions.⁸¹

10 Corporations Code section 18220 also requires that a copy of the documents
11 served be mailed to the entity’s last known address. The Norteños have failed to
12 establish any fixed address to which such documents could be mailed. Plaintiffs in gang
13 injunction cases often ask to be excused from the mailing requirement; however, to
14 address *Broderick Boys’* concerns about notice, the People in this case request that this
15 Court authorize it to mail the documents to the defendant gang by mailing the documents
16 to Norteños “in care of the address of record or last known address of five Norteño gang
17 members.”⁸²

18 As a practical matter, serving defendant Norteño gang by serving one of its
19 members will in fact give the defendant gang actual notice of this lawsuit, and in this
20 action, the People will also serve in person and by mail all individually named gang
21 members and

24 ⁸⁰ *Gibble v. Car-Lene Research, Inc.*, 67 Cal.App.4th 295, 311 (1998) (corporate
25 defendant had failed to designate an agent).

26 ⁸¹ Keely Expert Decl. at ¶¶ 15, 145-185.

27 ⁸² *Broderick Boys*, 149 Cal.App.4th at 1528 (“mailing notices to those addresses is
28 reasonable,” referring to addresses of record filed with government).

1 **V. GANG INJUNCTIONS ARE PROVEN SUCCESSFUL IN ABATING STREET**
2 **GANGS**

3 Civil gang injunctions are a proven solution to abate the public nuisance caused by
4 the conduct and activities of a street gang. Studies have shown that these injunctions at
5 the very least immediately reduce the rate of crime in the targeted area, and equally
6 important, immediately reduce the residents' fear of gang members and gang-related
7 crime within the targeted area.⁸³ And as the California Supreme Court has noted, the
8 community has rights, and the rights of the good people should not be less than the
9 "rights" of gang members to run amuck, shoot, beat, and rob people, graffiti the walls,
10 and caper unrestrained throughout the Safety Zone.⁸⁴ In fact, gang members have no
11 "right" to continue doing what they have done in the past unrestrained.

12 **VI. CONCLUSION**

13 Activities of an association which deprive third parties of their lawful rights fall
14 outside the constitutional pale. The commission of crimes is the most apparent
15 manifestation of such unprotected conduct. "The performance of acts that constitute a
16 civil nuisance is another."⁸⁵ Even if these gang members were to claim they have a
17 "right" to walk the streets at 3 a.m., to loiter in large groups, to intimidate others, or to do
18 any other activity that would be restricted in whole or in part by this gang injunction, they
19 misunderstand the concept of equitable relief. Injunctions "may work to deprive the

20 ⁸³ See Jeffrey Grogger, *The Effects of Civil Gang Injunctions on Reported Violent Crime: Evidence From Los Angeles County*, J. L. & ECON., April 2002, at 89; Management Audit of the Civil Gang Injunction (CGIS) Executive Summary, 2003-2004 Civil Grand Jury Report for the County of Los Angeles, at 220; Cheryl Maxson et. al, "It's Getting Crazy Out There": Can A Civil Gang Injunction Change a Community?, CRIMINOLOGY AND PUB. POL'Y, Vol. 4, No. 3, Aug. 2005, at 591, 596; see also Jeremiah Goulka, et. al, RAND Working Paper, *FY2006 Anti-Gang Initiative Grants in the Central District of California: Report to the U.S. Attorney* Feb. 2009, at 27 (injunction generated a possible increase in reporting of violent crime, but a decrease in reporting of property crime by 20% following an gang injunction—with one possible explanation being that citizens in the injunction zone may have been *more* willing to report violent crime following the injunction).

27 ⁸⁴ *Acuna*, 14 Cal.4th at 1102.

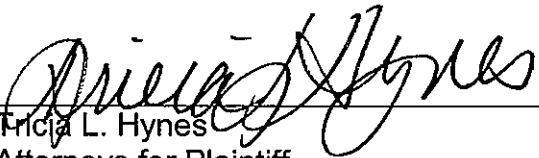
28 ⁸⁵ *People v. Lopez*, 66 Cal.App.4th 615, 632 (1998) (citing *Acuna*, 14 Cal.4th at 1112).

1 enjoined parties of rights others enjoy precisely because the enjoined parties have
2 abused those rights in the past."⁸⁶ This defendant street gang and its members have
3 brought these restrictions upon themselves by their prior conduct and activities.

4 Plaintiff agrees with the Supreme Court's statement: "The state has not only a right
5 to 'maintain a decent society,' but an obligation to do so."⁸⁷ The community in the
6 proposed Safety Zone deserves to live in safe neighborhood free from the criminal and
7 nuisance activities of street gangs. The level of violence and threatened violence is too
8 high in the proposed Safety Zone. The People pray this Court issue the proposed
9 injunction, and abate the public nuisance caused by this defendant street gang.

10 DATED: December 1, 2010

MEYERS, NAVE, RIBACK, SILVER & WILSON

11
12 By: 
13 Tricia L. Hynes
14 Attorneys for Plaintiff
The People of the State of California

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⁸⁶ *People v. Conrad*, 55 Cal.App.4th 896, 902 (1997).

⁸⁷ *Acuna*, 14 Cal.4th at 1102 (citation omitted).

28