

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 ALEX G. TSE, State Bar #152348
Chief Attorney, Neighborhood and Resident Safety Division
3 MICHAEL S. WEISS, State Bar #168378
YVONNE R. MERE, State Bar #173594
4 Deputy City Attorneys
Fox Plaza
5 1390 Market Street, Sixth Floor
San Francisco, California 94102-5408
6 Telephone: (415) 554-3800
Facsimile: (415) 437-4644

7
8 Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION

13 PEOPLE OF THE STATE OF
14 CALIFORNIA, by and through DENNIS
J. HERRERA, City Attorney for the CITY
15 AND COUNTY OF SAN FRANCISCO,

16 Plaintiff,

17 vs.

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19
20 NORTEÑO, a criminal street gang, sued
as an unincorporated association, and
21 DOES 1 THROUGH 500,

22 Defendants.

Case No. 464-492

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S EX PARTE APPLICATION
FOR ORDER TO SHOW CAUSE RE:
PRELIMINARY GANG INJUNCTION

Hearing Date: July 12, 2007
Hearing Judge: Hon. Patrick Mahoney
Time: 11:00 a.m.
Place: Department 302

Date Action Filed: June 21, 2007
Trial Date: Not yet set

Attached Exhibits:

(A) Map of Proposed Safety Zone;
(B) Map of Gang Activity in Proposed
Safety Zone;
(C) List of gang members designated for
service.

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Robbins v. Superior Court of Sacramento County
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1 **INTRODUCTION**

2 Plaintiff PEOPLE OF THE STATE OF CALIFORNIA brings this *Ex Parte* Application for an
3 Order to Show Cause re: Preliminary Injunction against Defendant NORTEÑO Criminal Street Gang, and
4 anyone acting on its behalf (collectively and hereinafter, "NORTEÑO" or "Defendant") to enjoin
5 Defendant from continuing to operate its criminal enterprise in a manner constituting a public nuisance, to
6 the detriment of the surrounding community, in violation of California Civil Code sections 3479 and 3480
7 and Business and Professions Code section 17200.

8 Plaintiff seeks a judicial determination that Defendant and its members have created a public
9 nuisance within the gang's turf or territory in the Mission District neighborhood of San Francisco.
10 Plaintiff requests that the Court enjoin Defendant and its members from engaging in their nuisance-
11 causing conduct, effectively turning Defendant's gang territory into a nuisance-free "Safety Zone."

12 Plaintiff brings this Application pursuant to California Code of Civil Procedure §§ 527 and 731,
13 California Rules of Court 3.1200 et seq., California Civil Code §§ 3479, 3480, and 3491, and California
14 Business and Professions Code §§ 17200-17210.

15 **STATEMENT OF FACTS**

16 Defendant NORTEÑO is a nationally recognized, violent criminal street gang with a substantial
17 presence in California. See Expert Declaration of San Francisco Police Department ("SFPD") Officer
18 Mario Molina, ¶20, filed herewith.¹ In the southeast section of San Francisco's Mission District,
19 Defendant NORTEÑO is known by local monikers such as "LNS," "SFM," "21ABL," or "22B,"
20 representing the San Francisco-specific subsets or "cliques" of Defendant gang. Molina Expert Decl. ¶21.

21 NORTEÑO means Northerner in Spanish, and its members distinguish themselves from
22 Defendant's historical archrival, the Sureño (Southerner) criminal street gang, an equally recognized,
23 violent criminal street gang with a substantial presence in California. Molina Expert Decl. ¶¶20, 23.
24 Ironically, while Defendant "claims" for its turf the southeast section of the Mission, the Sureño criminal
25 street gang "claims" for its turf the northeast section of the Mission. Molina Expert Decl. ¶¶71, 79.

26 ¹ Plaintiff has filed numerous declarations in support of this motion. In addition to the Expert Declaration of Officer
27 Mario Molina, Plaintiff filed an additional ninety-three Declarations of SFPD Officers in support of this motion.

1 Since they were formed, these two criminal street gangs, whose members are predominantly
2 Latino, have evolved into structured, disciplined, and organized criminal enterprises. Molina Expert
3 Decl. ¶¶24-25. The power hierarchy of Defendant's leadership includes gang members who are
4 incarcerated and gang members on the street. Molina Expert Decl. ¶¶26-28. Street-level operators, also
5 known as "street soldiers" or "homies," are the primary perpetrators of the public nuisance at issue here,
6 and they work at the direction of the "shot callers." Molina Expert Decl. ¶26. The term "shot caller"
7 refers to those gang members who have served time in prison, and upon release have been appointed to
8 manage local gang operations or "regiments." Molina Expert Decl. ¶26. Those appointments are made
9 by the gang's "generals," all of whom are incarcerated, some serving life sentences. Molina Expert Decl.
10 ¶26. Though some of Defendant's leaders are incarcerated, they continue to direct Defendant's criminal
11 enterprise from prison. Molina Expert Decl. ¶28. Profits from Defendant's drug dealing enterprise are
12 distributed throughout the hierarchy, with a percentage deposited into accounts, benefiting the high
13 ranking incarcerated members and their families. Molina Expert Decl. ¶44.

14 Since at least 2004, Defendant and its members have been creating a public nuisance that
15 persistently diminishes the quality of life and threatens the health and safety of the people who live and
16 work in the southeastern section of the Mission District, which Defendant "claims" as its territory or
17 "turf." Molina Expert Decl. ¶45-47. Defendant's claimed turf in San Francisco consists of an "L" shaped
18 area generally bordered by 23rd Street to the North (but extending to 21st Street at Alabama Street),
19 Valencia to the West, Cesar Chavez to the South, Potrero Avenue to the East, and extending to encompass
20 La Raza Park, also known as Potrero Del Sol Park (hereinafter referred to as "Proposed Safety Zone").
21 Molina Expert Decl. ¶1. A map of the Proposed Safety Zone is attached hereto as Exhibit A.

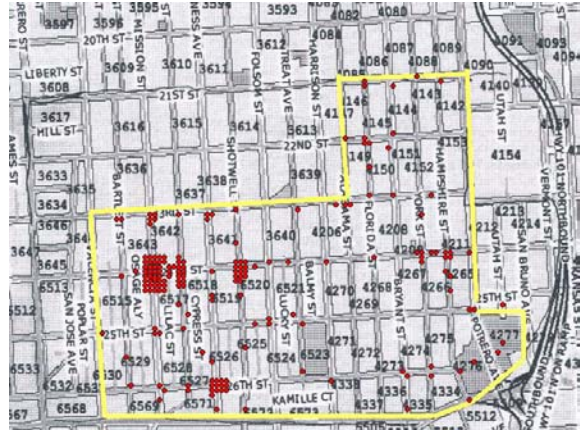
22 Defendant NORTEÑO gang is responsible for creating an ongoing public nuisance that threatens
23 the quality of life and the health and safety of the residents and merchants of this area. This nuisance is
24 amply demonstrated through the 93 supporting declarations of police officers, filed herewith, which
25 present an abundant amount of evidence of homicides, stabbings, shootings, aggravated assaults, drug
26 dealing, vandalism, verbal and physical threats, loitering, public drinking and intoxication, and other
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1 public nuisances being committed in the Proposed Safety Zone by Defendant through its members.²



An approximate representation of gang activity as reflected in the 93 police officer declarations

(Attached hereto as Exhibit B)



A Map of the Proposed Safety Zone

(Attached hereto as Exhibit A)

² See Declaration of Police Officer Gerard Arquero, ¶¶7, 8; Declaration of Police Officer Lauro Baca, ¶8; Declaration of Police Officer Kenneth Bates, ¶6; Declaration of Police Officer Stephen Benzinger, ¶6; Declaration of Police Officer Brian Canedo, ¶7; Declaration of Police Officer Nicholas Chorley, ¶10; Declaration of Police Officer Calvin Chow, ¶8; Declaration of Police Officer Murray Daggs, ¶9; Declaration of Police Officer Rain Daugherty, ¶8; Declaration of Police Officer Alberto Esparza, ¶7; Declaration of Police Officer Priscilla Espinoza, ¶7; Declaration of Police Officer Jacob Fegan, ¶7; Declaration of Police Officer Joelle Felix, ¶¶7, 8; Declaration of Police Officer Martin Ferreira, ¶¶7, 10; Declaration of Police Officer Mark Fraize, ¶¶8, 10; Declaration of Police Officer Tracy Gallo, ¶3; Declaration of Police Officer Marco Garcia, ¶8; Declaration of Police Officer Tracy Green, ¶8; Declaration of Police Officer Brian Greer, ¶8; Declaration of Police Officer Robert Grenier, ¶¶8-10; Declaration of Police Officer James Gustafson, ¶¶8, 9; Declaration of Police Officer Stephen Hampton, ¶¶9-10; Declaration of Police Officer Frank Harrell, ¶¶7, 8; Declaration of Police Officer Scott Heidohn, ¶¶6-8; Declaration of Police Officer Jamie Hyun, ¶¶6, 9-11; Declaration of Police Officer Karen Jeske, ¶¶7, 9, 10; Declaration of Police Officer Jose Jimenez, ¶8; Declaration of Police Officer Michael Kawaguchi, ¶10; Declaration of Police Officer Steven Keith, ¶¶8, 9; Declaration of Police Officer Matthew Kenney, ¶7; Declaration of Police Officer Vien Lam, ¶8; Declaration of Police Officer Scott Lau, ¶¶6-11; Declaration of Police Officer John Leong, ¶¶6, 8, 9; Declaration of Police Officer Michelle Liddicoet, ¶4; Declaration of Police Officer Sergio Lopez, ¶¶8, 9; Declaration of Police Officer Laurence Lynch, ¶¶7-9; Declaration of Police Officer Carlos Manfredi, ¶¶6, 8; Declaration of Police Officer Dion McDonnell, ¶¶8, 9, 11, 13, 14, 18, 19, 20-22, 23, 25-28, 32; Declaration of Police Officer Michael Moody, ¶7; Declaration of Police Officer Roger Morse, ¶¶8, 9; Declaration of Police Officer Carlos Mustafich, ¶3; Declaration of Police Officer Elmer Najarro, ¶8; Declaration of Police Officer Michael Nelson, ¶3; Declaration of Police Officer Matthew Neves, ¶¶8, 9; Declaration of Police Officer Glenn Ortega, ¶7; Declaration of Police Officer Sean Padilla, ¶¶8, 9; Declaration of Police Officer Leonard Poggio, ¶¶7, 8; Declaration of Police Officer Lyn Reilly, ¶¶6, 7; Declaration of Police Officer Matthew Reiter, ¶6; Declaration of Police Officer Daniel Reyes, ¶8; Declaration of Police Officer Peter Richardson, ¶¶8-10; Declaration of Police Officer Patrick Robinson, ¶7; Declaration of Police Officer Edmond Robles, ¶6; Declaration of Police Officer Robert Sanchez, ¶¶6-7; Declaration of Police Officer Eric Santiago, ¶8; Declaration of Police Officer Steven Spagnuolo, ¶6; Declaration of Police Officer Joseph Valdez, ¶8; Declaration of Police Officer Robert Vernengo, ¶8; Declaration of Police Officer Wesley Villaruel, ¶8; Declaration of Police Officer Michael Wolf, ¶¶9-10; Declaration of Police Officer Darren Wong, ¶8; Declaration of Police Officer Edward Yu, ¶¶9-14;

1 Attached hereto as Exhibit B is a map of the Proposed Safety Zone area with an approximate
2 representation of Defendant gang's nuisance and criminal activity. The red dots in Exhibit B
3 approximately represent each of the incidents documented in the 93 police officer declarations, filed
4 herewith.

5 Defendant commits its nuisance and criminal activities to support its primary business purpose,
6 which is making money selling narcotics within the Proposed Safety Zone. Molina Expert Decl.¶35.
7 Defendant NORTEÑO Criminal Street Gang, through its members, controls the drug trade within the
8 Proposed Safety Zone, openly selling illegal narcotics, including cocaine and marijuana, on the street and
9 on the sidewalks. Molina Expert Decl.¶¶ 35, 37. Defendant's street level drug dealing frequently takes
10 place openly on and around the commercial corridor of 24th Street, near major transportation centers such
11 as 24th and Mission Streets, which include a BART station and a major Municipal Railway artery,
12 impeding street and sidewalk traffic, and unreasonably interfering with lawful, legitimate commerce.

13 In furtherance of its drug-selling enterprise, Defendant's members commit a wide range of felony
14 crimes within the Proposed Safety Zone, including those crimes enumerated in Penal Code section
15 186.22(e), such as robberies, aggravated assaults, shootings, stabbings, and homicides. Molina Expert
16 Decl.¶65. These violent felonies are committed against rival gang members or perceived rivals, and allow
17 Defendant to strengthen its grip on the community by shoring up Defendant's reputation for violence,
18 effectively subduing its rivals and deterring crime reporting. Molina Expert Decl.¶64. Defendant stakes
19 its turf and frightens the immediate community by constantly congregating and loitering on public streets
20 and sidewalks, maintaining a large and menacing presence, regularly threatening violence against anyone
21 for any reason, causing would-be witnesses to remain silent. Molina Expert Decl.¶66-68. Without
22 interference from rivals, neighbors, merchants, or police, Defendant enjoys a nearly unfettered ability to
23 profitably sell their narcotics in public, without fear of repercussions. Defendant's members further ensure
24 the financial success of their narcotics trade within their claimed turf by using some or all of the following
25 methods: 1) wearing gang colors; 2) flashing gang signs; 3) accosting people, demanding to know "who
26 do you claim?" 4) obstructing free passage of public streets and sidewalks; 5) exercising verbal and
27 physical harassment; 6) trespassing on private property; 7) committing graffiti vandalism to mark
28

1 territory; and 8) swelling their ranks by recruiting kids from the neighborhood. Molina Expert Decl. ¶¶64,
2 66, 81, 84, 95, 101, 102, 116, 133.

3 In order to exert control over the Proposed Safety Zone, and to ensure its drug dealing enterprise is
4 successful, Defendant's members commit acts of violence within the Proposed Safety Zone on a regular
5 basis, using violence, fear, and intimidation to subdue and discourage rivals and deter crime reporting.
6 Molina Expert Decl. ¶¶64-68.

7 The activities of Defendant NORTEÑO criminal street gang, and its members, are documented in
8 greater detail in the Declaration of SFPD Gang Expert Officer Mario Molina, the Declaration of SFPD
9 Officer Delos C. Putz, the Declaration of Deputy Sheriff Jose Velasco, and the Declarations of 93 San
10 Francisco Police Officers, filed herewith. These Declarations describe and establish the ongoing public
11 nuisance perpetrated by Defendant in the Proposed Safety Zone.

12 For these reasons, Plaintiff requests that this Court issue an Order to Show Cause why a
13 preliminary injunction should not be issued to enjoin Defendant NORTEÑO Criminal Street Gang and its
14 members from committing crimes and other specified activities constituting a public nuisance within the
15 Proposed Safety Zone.

16 In addition, Plaintiff requests the Court to issue an order permitting Plaintiff to accomplish service
17 by a combination of the following efforts: 1) personally serving the moving papers and reply papers, if
18 any, on members of NORTEÑO criminal street gang; 2) publishing notice of the hearing on the Order to
19 Show Cause Re: Preliminary Injunction in the San Francisco Chronicle, once a week for four consecutive
20 weeks; and 3) posting Notices of the hearing on the Order to Show Cause within the Proposed Safety
21 Zone.

22 Finally, at the Order to Show Cause hearing, Plaintiff requests that this Court issue a Preliminary
23 Injunction against the NORTEÑO criminal street gang.

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LEGAL ARGUMENT

I. INJUNCTIVE RELIEF IS THE APPROPRIATE REMEDY TO ABATE THE ONGOING PUBLIC NUISANCE PERPETRATED BY DEFENDANT IN THE SAFETY ZONE.

The conduct and activities of the NORTEÑO criminal street gang, and their members in the Mission District neighborhood of San Francisco constitute a statutory public nuisance. Plaintiff has filed the above-entitled action in order to abate this nuisance. California Code of Civil Procedure section 731 specifically authorizes a City Attorney to bring such an action. Due to the recent rise in violent crimes perpetrated by Defendant, Plaintiff now seeks injunctive relief prior to trial in order to abate the public nuisance and restore peace to the community.

A. Legal Standard For Injunctive Relief Against Criminal Street Gangs.

California Code of Civil Procedure section 527 authorizes a Court to issue an Injunction prior to trial "if sufficient grounds exist therefor." These grounds include circumstances where a party may suffer great or irreparable injury or where pecuniary compensation would fail to provide adequate relief. CCP §§526(a)(2), 526(a)(4). In addition, California Business and Professions Code Section 17203 authorizes the City Attorney to bring an action for injunctive relief in order to enjoin unfair or unlawful business practices. Bus. & Prof. Sec. §17203.

The decision to grant a preliminary injunction rests in the sound discretion of the Court. *Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 527. In exercising its discretion, the Court must consider two factors: (1) whether there is a reasonable probability that plaintiff will prevail on the merits at trial, and (2) whether the denial of the injunction would cause plaintiff more harm than the defendant would suffer if the injunction were granted, and then "exercise its discretion 'in favor of the party most likely to be injured.'" *Robbins v. Superior Court of Sacramento County* (1985) 38 Cal.3d 199, 205; *See also People v. Acuna* (1997) 14 Cal.4th 1090, 1109.

Courts have specifically sanctioned injunctive relief against criminal street gangs to abate the public nuisance caused by gang conduct. *Acuna*, 14 Cal.4th at 1102, 1125; *see also People v. Englebrecht* (2001) 88 Cal.App.4th 1236, 1263; *In re Englebrecht* (1998) 67 Cal.App.4th 486, 493-96. Before injunctive relief can be provided, however, the moving party must show that: (1) the activities and conduct

1 of the gang "can be brought within the terms of the statutory definition of public nuisance" and (2) the
2 nuisance is "substantial and unreasonable". *In re Englebrecht, supra*, 67 Cal.App.4th at 492; *see also*
3 *Acuna, supra*, 14 Cal.4th at 1104-05.

4 **B. Plaintiff Will Prevail On The Merits At Trial.**

5 In *Englebrecht*, the Court declared that a party seeking a gang injunction must prove its case by
6 clear and convincing evidence. *Englebrecht, supra*, 88 Cal.App.4th at 1257 & n.7. The evidence in the
7 present case more than satisfies this burden of proof.

8 Plaintiff has alleged two causes of action against Defendant NORTEÑO. The First Cause of
9 Action alleges that Defendant is a criminal street gang under California Penal Code section 186.22a (a),
10 and its conduct constitutes a public nuisance under California Civil Code sections 3479 and 3480. The
11 Second Cause of Action alleges that Defendant's conduct violates California Business and Professions
12 Code sections 17200-17210. At trial, Plaintiff will present overwhelming evidence to establish both
13 causes of action.

14 **1. Defendant Is A Criminal Street Gang With Documented Gang Members.**

15 California Penal Code § 186.22 defines a criminal street gang as a group of three or more persons,
16 having a common name or common identifying sign or symbol, having as one its primary activities the
17 commission of one or more of the crimes listed under 186.22 (e),³ and whose members individually or
18 collectively engage in, or have engaged in, a pattern of criminal gang activity. For purposes of a civil
19 gang abatement action, however, plaintiff need only establish that one of the primary activities of the gang
20 is the "commission of the acts constituting the public nuisance" and not the crimes listed under 186.22.
21 *Englebrecht, supra*, 88 Cal.App.4th at 1261. Nevertheless, in the present case, Plaintiff has more than
22 sufficient evidence to establish that each of the Defendant qualifies as a criminal street gang under the
23 more rigorous standard set in Penal Code § 186.22.

25 ³ The offenses listed in Penal Code § 186.22(e) include: assault with a deadly weapon or by force likely to cause great
26 bodily injury; robbery; homicide or manslaughter; sale, possession for sale, transportation or manufacture of controlled
27 substances; witness or victim intimidation; grand theft; burglary; carjacking; possession of a concealable firearm; terrorist
28 threats; possession of a firearm by a felon; carrying a concealed firearm; and carrying a loaded firearm.

1 Defendant NORTEÑO is a nationally recognized, turf-based, violent criminal street gang with a
2 substantial presence in California, including San Francisco. In San Francisco alone, Defendant
3 NORTEÑO is comprised of hundreds of adult individuals who claim a common gang name and symbols.
4 Locally, Defendant's San Francisco Regiment is known by monikers such as "LNS," "SFM," "21ABL,"
5 "22B," and "Shotty Block." Defendant's members wear the color red in their clothing and their
6 accessories, and will flash gang signs to identify themselves, including making the numbers "14," to
7 symbolize the letter "N," the 14th letter of the alphabet, and "24," representing 24th Street, the heart of their
8 turf. Members of Defendant gang routinely vandalize property in its claimed territory and rival Sureño
9 territory with graffiti bearing their symbols and their local monikers.

10 One of Defendant's primary activities is conducting street level drug sales. The other nuisance and
11 criminal activities in support of the gang's drug sales, include a host of other, violent crimes listed under
12 section 186.22(e): stabbings, shootings, assaults, robberies, and possession of firearms. All of these
13 crimes are committed for the purpose of promoting Defendant's drug enterprise, staking its claim to its
14 "turf", creating a climate of fear and intimidation among ordinary residents and merchants, and asserting
15 their strength against rival gangs. Defendant's members, who will be subject to this Injunction, are
16 documented, admitted members, who have engaged in a pattern of criminal and nuisance gang- activity.
17 The documented members' activities are described in detail in 93 Declarations of SF Police Department
18 officers and in the Expert Declaration of Gang Officer Mario Molina. In sum, the evidence in the present
19 case clearly establishes that each Defendant is a criminal street gang, as defined by Penal Code section
20 186.22(f).

21 **2. Defendants' Primary Activities Constitute A Public Nuisance Under Both**
22 **Penal Code Section 186.22a(a) And California Civil Code Section 3479.**

23 Penal Code section 186.22a (a) describes a public nuisance as the following:

24 Every building or place used by members of a criminal street gang for the
25 purpose of the commission of the offenses listed in subdivision (e) of
26 Section 186.22 or any offense involving dangerous or deadly weapons,
27 burglary, or rape, and every building or place wherein or upon which that
28 criminal conduct by gang members takes place

1 California Civil Code section 3479 defines a public nuisance as "anything which is injurious to
2 health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to
3 the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment
4 of life or property" Defendant's documented activities within the Proposed Safety Zone abundantly
5 satisfy both statutory definitions of a public nuisance.

6 As described in greater detail in the Statement of Facts, within the Proposed Safety Zone, members
7 of Defendant NORTEÑO conduct drug sales and commit a host of other crimes to promote their drug
8 trade, stake their claim to their territory, create a climate of fear and intimidation among ordinary residents
9 and merchants, and assert their strength to rival gang members and the community.

10 Members of Defendant NORTEÑO gang conduct their illegal drug sales in public spaces, which
11 interfere with pedestrian traffic and diminish the quality of life in the Safety Zone. This drug trade leads
12 to violent crimes as well as other nuisance activity, as gang members use violence to maintain their
13 control of the drug trade, and untold numbers of stupefied drug users converge on the area. The violent
14 crimes committed by Defendant's gang members include the serious and violent felonies listed in
15 California Penal Code section 186.22(e) such as stabbings, shootings, assaults, robberies, and possession
16 of weapons. Although Defendant NORTEÑO gang's criminal conduct is encompassed in the detailed
17 police officer declarations, below are several examples of the kinds of crimes Defendant NORTEÑO gang
18 has committed in the Proposed Safety Zone:

- 19 • Beating a pregnant tourist with a baseball bat because she was wearing a blue t-shirt within
20 the Safety Zone. Molina Expert Decl. ¶147.
- 21 • Accosting two individuals riding their bicycles in the Proposed Safety Zone, choking one
22 of the victim's pets. Molina Expert Decl. ¶161.
- 23 • Vandalizing private property in the Proposed Safety Zone by spray-painting large, red,
24 gang graffiti on a business along the 24th Street commercial corridor. Molina Expert Decl.
25 ¶161.
- 26 • Assaulting and intimidating two teenage boys in the Proposed Safety Zone, leaving the
27 victim's mother fearing retaliation and unwilling to cooperate with the police investigation.
28 Molina Expert Decl. ¶172.
- Stabbing a 15 year-old boy at a community event for no apparent reason. Molina Expert
Decl. ¶165.
- Selling drugs within the Proposed Safety Zone. Molina Expert Decl. ¶¶ 144-175.

1 Members of Defendant NORTEÑO gang further interfere with the quality of life of those who live
2 and work in the Proposed Safety Zone by loitering in large, intimidating and menacing groups on the
3 public streets, public sidewalks, public transit stops, public plazas, public parks, and at the entrances to
4 businesses in the Proposed Safety Zone. Defendant NORTEÑO gang members also stash, hide and store
5 narcotics and weapons in planters, trees, gates, fences, mailboxes, yards, cars, businesses, and residences
6 within the Proposed Safety Zone. Defendant's members further stake out and control its turf by
7 vandalizing public and private property with gang graffiti.

8 In short, all of these activities are "injurious to the health" of the law-abiding members who live
9 and work in the southeast section of the Mission District neighborhood of San Francisco and "interfere
10 with the comfortable enjoyment of life or property." Defendant's activities, therefore, are a public
11 nuisance under both statutory definitions.

12 **3. Defendant's Public Nuisance Conduct Is "Substantial And Unreasonable."**

13 In addition to showing that Defendant NORTEÑO's conduct constitutes a public nuisance, Plaintiff
14 must also show that the nuisance is "substantial and unreasonable." *In re Englebrecht, supra*, 67
15 Cal.App.4th at 492. The California Supreme Court has defined "substantial" as "'definitely offensive,
16 seriously annoying, or intolerable'" and "unreasonable" as when the harm inflicted by the activities
17 outweighs any social utility. *Acuna, supra*, 14 Cal.4th at 1105.

18 In *Acuna*, the Court was presented with evidence that the gang in question had engaged in drug
19 dealing, taken over public streets and sidewalks, possessed weapons and firearms, committed assaults,
20 committed shootings, committed thefts, trespassed on private property and vandalized property with gang
21 graffiti. The California Supreme Court applied the "substantial and unreasonable" standard to the facts in
22 *Acuna* and found the evidence sufficient to issue the Injunction. *Acuna, supra*, 14 Cal.4th at 1125-1126.

23 The facts in the present case are nearly identical to the facts in *Acuna*. Within the Proposed Safety
24 Zone, members of Defendant NORTEÑO gang have engaged in drug dealing, taken over public streets
25 and sidewalks, possessed weapons and firearms, committed shootings and stabbings, committed robberies,
26 committed thefts, trespassed on private property and vandalized property with gang graffiti. Like the gang
27 in *Acuna*, Defendant has created the same type of public nuisance in the Proposed Safety Zone.

1 Consequently, the Court should find that the public nuisance activities of Defendant NORTEÑO are
2 similarly “substantial and unreasonable.”

3 **4. Defendant's Drug And Crime Enterprise are Unfair and Unlawful and**
4 **Violates California Business And Professions Code Sections 17200-17210.**

5 California Business and Professions Code § 17200 prohibits unfair and unlawful business
6 practices. Defendant NORTEÑO’s members have violated this statute by engaging in an illegal drug
7 enterprise within the Proposed Safety Zone. Defendant NORTEÑO's members routinely sell controlled
8 substances within the Proposed Safety Zone to generate income for Defendant. Along with their drug
9 sales, Defendant NORTEÑO's members also commit violent crimes against rival gang members or
10 perceived rivals to assert their strength, to create fear and intimidation, to defend their turf, to defend their
11 drug profits, and to show disrespect to their Sureño rivals. Defendant NORTEÑO's members also
12 intimidate, threaten or harass individuals to keep them from reporting crime and nuisance to the police,
13 and to deter witnesses from cooperating with police, to avoid being prosecuted by law enforcement.
14 People who report crimes or nuisance, or cooperate with police investigators, are labeled "snitches."
15 "Snitches" and their families face genuine danger of being physically harmed for reporting or cooperating.
16 As a result, Defendant NORTEÑO's drug enterprise thrives in the Proposed Safety Zone, because there is
17 little or no competition from rivals, and little or no fear of being reported to or investigate by the police.
18 In other words, Defendant benefits financially as a direct result of their criminal enterprise. Such a
19 windfall is in violation of Business and Professions Code § 17200.

20 **C. The Harm To The Community Caused By Defendants’ Nuisance-Causing Conduct**
21 **Outweighs The Gang’s Right To Commit The Conduct.**

22 Once Plaintiff has established that it is reasonably likely to prevail on the merits at trial, the Court
23 must weigh the equities. The Court must determine whether the harm to the law-abiding individuals who
24 live and work in the Proposed Safety Zone if the Injunction is denied, outweighs the harm to the
25 Defendant if the Injunction is granted. Faced with this identical situation, the court in *Acuna* found in
26 favor of the law-abiding individuals. *Acuna, supra*, 14 Cal.4th at 1105. The Court stated:

27 To hold that the liberty of the peaceful, industrious residents [in the gang’s
28 territory] must be forfeited to preserve the illusion of freedom for those
whose ill conduct is deleterious to the community as a whole is to ignore

1 half of the political promise of the Constitution and the whole of its sense.
2 *Id.*, at 1125.

3 Based on the facts in the present case, the Court should make the same finding. Should the Court
4 deny the Injunction, it is nearly certain that the law-abiding citizens who live and work within the
5 Proposed Safety Zone will continue to be victimized by Defendant NORTEÑO gang, the crimes it
6 commits, and the nuisance it creates. On the other hand, the Court grants the Injunction prohibiting
7 Defendant NORTEÑO's members from continuing their nuisance-causing conduct, the harm to
8 Defendants would be minimal. Other than being prohibited from loitering, associating with other gang
9 members, creating a nuisance, or breaking the law within the Proposed Safety Zone, Defendant's members
10 should not be affected by the Injunction. Moreover, the Injunction is limited to the geographic area
11 defined by the Proposed Safety Zone. Defendant's conduct outside of the Proposed Safety Zone would be
12 unaffected by the Injunction. The boundaries of the Proposed Safety Zone were narrowly drawn based
13 exclusively on the evidence of Defendant NORTEÑO gang's criminal and nuisance activity occurring
14 there since 2004.

15 In balancing the equities, the scale should tip in favor of the community's law-abiding residents
16 and merchants. In sum, the evidence in the present case provides abundant support for the issuance of an
17 Injunction against Defendant NORTEÑO criminal street gang.

18 **II. THE SPECIFIC PROVISIONS OF THE INJUNCTION ARE NECESSARY TO ABATE
19 THE PUBLIC NUISANCE CAUSED BY DEFENDANTS.**

20 The proposed Injunction sets forth new "rules" for public behavior for the NORTEÑO criminal
21 street gang, and its members, which are necessary to abate the public nuisance, and to protect the ordinary,
22 law-abiding residents and merchants within the Proposed Safety Zone. These new rules are proper
23 restrictions on the conduct of this gang. "Activities of an association which deprive third parties of their
24 lawful rights fall outside the constitutional pale. The commission of crimes is the most apparent
25 manifestation of such unprotected conduct. The performance of acts that constitute a civil nuisance is
26 another." *People v. Lopez* (1998) 66 Cal.App.4th 615, 632, *citing Acuna*, 14 Cal.4th at 1112.

27 The proposed Injunction provisions would only apply to Defendant and its members *inside* of the
28 narrowly defined Safety Zone. The requested injunctive provisions are narrowly tailored to limit the

1 gang's activities only so much as is needed to protect the law-abiding individuals who live and work in the
2 Safety Zone. In addition, the proposed Injunction only seeks to enjoin the amply demonstrated criminal
3 and nuisance behavior, and the precursors to such behavior.

4 The declarations from the 93 individual police officers, as well as the expert declaration of Gang
5 Officer Mario Molina, filed with this Motion, document the harm caused by the gang members' activities
6 in the Proposed Safety Zone. Within the Proposed Safety Zone, NORTEÑO gang members intimidate,
7 threaten and harass community members, assault rival gang members, conduct street level drug
8 transactions, commit robberies, shootings, and stabbings, possess dangerous weapons, commit graffiti
9 vandalism to mark the gang's claimed territory, loiter with the intent to commit drug offenses, trespass on
10 private property, flash gang signs to communicate with each other, gather in menacing numbers to
11 intimidate the community and rival gang members, and commit crimes with other gang members.

12 The requested injunctive provisions are all necessary to provide equitable relief from the criminal
13 and nuisance behavior committed by Defendant and its members. If Defendant NORTEÑO and its
14 members claim to have a "right" to associate with other gang members within the Safety Zone, or do any
15 other activity prohibited by the proposed Injunction, it would suggest a fundamental misunderstanding of
16 the concept of *equitable* relief. The NORTEÑO gang and its members have enjoyed these rights in the
17 past and have grossly abused them. It is precisely because they have they abused these rights that this
18 injunction is necessary. *See People v. Conrad* (1997) 55 Cal.App.4th 896, 902.

19 Moreover, each provision of the Injunction is specifically linked to the illegal and nuisance activity
20 committed by the NORTEÑO criminal street gang. *See Acuna*, 14 Cal.4th at 1110 (non-association
21 provision of injunction is proper because the gang's activities in the Proposed Safety Zone consist mainly
22 of drug trafficking and securing control of the community through systematic acts of intimidation and
23 violence.) It is time for the NORTEÑO gang and its members to be held accountable for their past
24 criminal and nuisance behavior, and it is time for the community's right to be free from gang crime and
25 nuisance to be recognized and respected.

1 As the California Supreme Court has noted, the community's members also have rights, and the
2 rights of the good people trapped in fear should not be less than the "rights" of gang members to run amok
3 and commit crimes unrestrained throughout the Proposed Safety Zone. *Acuna*, 14 Cal.4th at 1102.

4 **III. SERVICE OF PROCESS ON A CRIMINAL STREET GANG CAN BE EFFECTUATED**
5 **BY SERVING MEMBERS OF THE GANG.**

6 California Code of Civil Procedure section 369.5(a) states that an unincorporated association may
7 be sued in the name by which it is known. Defendant NORTEÑO gang qualifies as unincorporated
8 association pursuant to *Barr v. United Methodist Church* (1979) 90 Cal.App.3d 259, *cert. denied*, 444 U.S.
9 973. Like the group in *Barr*, Defendant's members share a common purpose and function under a
10 common name in circumstances where the group should be recognized as a legal entity. *Barr v. United*
11 *Methodist Church* (1979) 90 Cal.App.3d 259, 266-67. The California Supreme Court recognized in
12 *Acuna* that a criminal street gang is amenable to suit as an entity because "it was the gang itself, acting
13 through its membership, that was responsible for creating and maintaining the public nuisance in [the
14 neighborhood]." *Acuna, supra*, 14 Cal.4th at 1125 (*dicta*).

15 California Code of Civil Procedure section 416.60 authorizes service of process on an
16 unincorporated association through the entity's agent of process registered with the Secretary of State, the
17 entity's officers or general manager, or as authorized by Corporations Code section 18220. Code Civ.
18 Proc. §416.60(a)-(c). Section 18220 provides that, by order of court, service may be effected on an
19 unincorporated association which has not designated an agent for service, by service on a designated
20 member of that association, followed by mailing to the entity's last known address. Corp. Code. Section
21 18220. Before a Court can authorize such service, however, the party seeking service must show that it is
22 unable to serve the entity personally, by substitute service, or by mail, after exercising reasonable
23 diligence. Plaintiff can make this showing.

24 After exercising reasonable diligence, Plaintiff has been unable to locate a registered agent, a
25 mailing address, phone number, or "place of business" for Defendant. In his declaration, Deputy City
26 Attorney Michael Weiss recites the steps he took to identify an agent for service of process, a mailing
27 address, and a telephone number for Defendant NORTEÑO gang. In short, Plaintiff has no traditional
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1 method of serving Defendant NORTEÑO gang personally, by substitute service, or by mail. Service as
2 authorized by Corporations Code section 18220, therefore, should be allowed in the present case. This
3 method of service is standard practice in gang injunction cases.

4 When effecting service under Corporations Code section 18220, the party seeking the service must
5 designate the individual member or members in advance. Plaintiff has designated for service a total of 32
6 gang members from the three Defendant gangs. Attached hereto as Exhibit B, is a list of all of the
7 documented members of Defendant gang, designated for possible service. Plaintiff anticipates that at least
8 ten members will be served. In addition, Plaintiff requests that the Court waive the requirement that a
9 copy of the documents served also be mailed to the last known address of Defendant. As explained
10 previously, Defendant has no established or fixed address to which such documents could be mailed.

11 In addition to service on the individual gang members, in order to ensure that as many gang
12 members as possible are given notice of the upcoming hearing, Plaintiff requests that the Court permit
13 Plaintiff to publish Notice of the Order to Show Cause hearing in the San Francisco Chronicle, once a
14 week, for four consecutive weeks. Plaintiff also requests that the Court permit Plaintiff to post a Notice of
15 the Order to Show Cause hearing in visible locations throughout the Proposed Safety Zone.

16 CONCLUSION

17 "The state has not only a right to 'maintain a decent society,' but an obligation to do so."
18 *Acuna, supra*, 14 Cal.4th at 1102 (citations omitted). Plaintiff cannot and should not simply stand by and
19 allow Defendant NORTEÑO, a criminal street gang, hold an entire neighborhood hostage by its criminal
20 and nuisance behavior. Defendant NORTEÑO's nuisance and criminal conduct, therefore, must be abated
21 to allow law-abiding residents and merchants of the Proposed Safety Zone the freedom to lead their lives
22 free of Defendant gang and the fear and violence it promotes. Consequently, Plaintiff respectfully
23 requests this Court issue an Order to Show Cause (OSC) re: Preliminary Injunction and issue an Order
24 allowing service on designated members of Defendant NORTEÑO criminal street gang, as discussed
25 herein.

1 Dated: July 11, 2007

DENNIS J. HERRERA, City Attorney
ALEX G. TSE
Chief Attorney, Neighborhood and Resident Safety

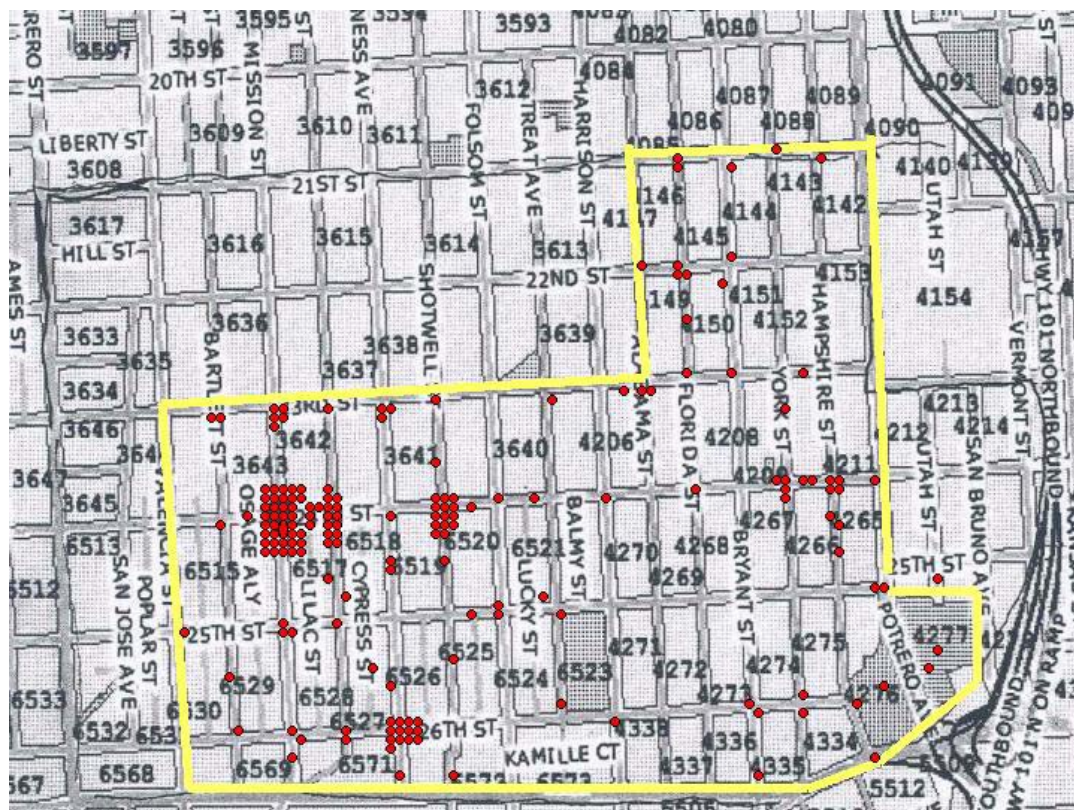
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3 By: _____
MICHAEL S. WEISS

4
5 By: _____
YVONNE R. MERE
Deputy City Attorneys
Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

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EXHIBIT A

MAP OF PROPOSED SAFETY ZONE



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EXHIBIT B

AN APPROXIMATE REPRESENTATION
OF GANG ACTIVITY
AS REFLECTED IN THE
93 POLICE OFFICER DECLARATIONS



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EXHIBIT C

**LIST OF GANG MEMBERS DESIGNATED FOR SERVICE FOR
DEFENDANT NORTEÑO GANG**

	NAME	GANG	MONIKER	DOB
1	Amador, Jose	LNS	pee wee	12/19/81
2	Arguello, Noel	22B	mafioso	3/25/83
3	Arroyo, Ernesto	LNS	spooks	1/22/86
4	Behena, Ana	22B	muñeca	6/17/86
5	Barrera, Hector	22B	wise	11/12/72
6	Barrera, Juan	LNS	lolo	7/31/79
7	Buitrago, Antonio	LNS	tone	9/21/84
8	Cano, Victor	LNS	nino	9/14/87
9	Chavez, Kevin	21ABL	young c	3/1/85
10	Deleon, Joshua	LNS	little sneeks	7/24/88
11	Deleon, Rocky	LNS	sneeks	2/24/80
12	Dueñas, Samuel	22B	moro	9/3/86
13	Fuimano, Joseph	LNS	capone	4/2/86
14	Garcia, Antonio	LNS	triste	2/15/85
15	Garcia, Hector	22B	pulga	12/27/76
16	Gonzalez, Daniel	LNS		12/24/85
17	Guerrero, Jesus	SFM	chewy	4/7/69
18	Hernandez, Henry	21ABL	solo	5/29/87
19	Martinez, Elvis	22B	little man	6/1/85
20	Morales, Carlos	22B	smokey	8/16/77
21	Napolean, Antonio	LNS	tank	1/30/83
22	Ocampo, Bizmark	SFM	nicoya	5/12/70
23	Reyes, Alex	22B	hated	11/19/86
24	Reynoso-Jimenez, Ruben	Shotty Block	little man	3/6/88
25	Rodriguez, Salvador	22B	trucho	9/15/80
26	Sanchez, Alfred	SFM	mousey	11/2/71
27	Sanchez, Michael	21ABL	monster	4/26/88
28	Sanchez, Miguel	LNS	joker	8/14/84
29	Santiago, Daniel	LNS	vamps	12/1/85
30	Urbina, Anthony	LNS	boracho	3/21/81
31	Varela, Omar	LNS		7/8/87
32	Whitebone, William	Shotty Block	dolla bill	5/29/85