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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 UNLIMITED JURISDICTION

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

15 Plaintiff,

16 vs.

17 DOWN BELOW GANGSTERS, a criminal
18 street gang, sued as an unincorporated
association; TOWERSIDE GANG, a criminal
19 street gang, sued as an unincorporated
association; and DOES 1 through 500,

20 Defendants.
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Case No. CGC-10-502262

PLAINTIFF'S MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT OF
ISSUANCE OF PRELIMINARY GANG
INJUNCTION

Ex Parte OSC Date: August 12, 2010 @ 11:00 am
Hearing Date: TBD
Hearing Judge: Charlotte W. Woolard
Time: 9:30 a.m.
Place: 302

Date Action Filed: August 5, 2010
Trial Date: N/A

Attached Exhibits: (A) Maps of Documented
Criminal Incidents within the Proposed Safety Zone;
(B) Index of Documented Criminal Incidents within
the Proposed Safety Zone; (C) List of Gang
Members Designated For Service

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1 **INTRODUCTION**

2 Plaintiff PEOPLE OF THE STATE OF CALIFORNIA (hereinafter, "Plaintiff") brings this
3 Motion for Preliminary Injunction against Defendants DOWN BELOW GANGSTERS (hereinafter,
4 "DBG"), a criminal street gang, TOWERSIDE GANG (hereinafter, "TOWERSIDE"), a criminal street
5 gang, and anyone acting on their behalf (collectively, "Defendants") to enjoin Defendants from
6 continuing to operate their criminal enterprises in a manner constituting a public nuisance, to the
7 detriment of the surrounding community, in violation of California Civil Code sections 3479 and
8 3480.

9 Plaintiff seeks a judicial determination that Defendants DBG and TOWERSIDE gangs,
10 through their members, have created a public nuisance within their respective turf areas, located in and
11 around the Sunnydale public housing development and the Britton Courts and Heritage Homes public
12 housing development, both located in the Visitacion Valley neighborhood of San Francisco. Plaintiff
13 requests that the Court enjoin Defendants and certain designated members from engaging in their
14 nuisance conduct in this area, and effectively turn their respective gang turf areas into one contiguous,
15 nuisance-free "Safety Zone."

16 Plaintiff brings this Motion pursuant to California Code of Civil Procedure sections 527 and
17 731, California Rules of Court 3.1200 *et seq.*, and California Civil Code sections 3479, 3480, and
18 3491.

19 **STATEMENT OF FACTS**

20 This case involves an active and ongoing public nuisance being created and maintained in the
21 Visitacion Valley neighborhood, by the criminal and nuisance conduct of two violent, turf-based, rival
22 criminal street gangs: Defendant DBG and Defendant TOWERSIDE are both locally recognized, turf-
23 based, violent criminal street gangs with an active and potent presence in San Francisco. As detailed
24 in the declarations filed concurrently herewith, Defendant DBG is comprised of approximately 100
25 members who claim a common gang name and use common symbols including: "Down Below
26 Gangsters," "Down Below Gang," "DBG," "324" (referring to the letters "D", "B", and "G" on a
27 telephone key pad), "Down the Hill," "Down Below," "The/Tha/Da Low," "Lo/w," "Low Boys," "LB,"

1 "Sunnydale," "SD," "Nolia"(referring to Magnolia, a New Orleans public housing development),
2 "N.O."(referring to the Nolia), "Sunnydale 42nd/42," "42" (referring to a parking lot at the Sunnydale
3 Housing Development), "1800 Block" (referring to the 1800 block of Sunnydale Avenue), "1700
4 Block" (referring to the 1700 block of Sunnydale Avenue), "1600 Block" (referring to the 1500 block
5 of Sunnydale Avenue), "1500 Block" (referring to the 1500 block of Sunnydale Avenue), "Spunk
6 Squad," "YGs," "Young Guns/z," "Young, Young Guns/z," "YYGs," "Borderline," "BL," "Borderline
7 Posse," "Borderline Players," "BLP," "257" (referring to the letters "B", "L", and "P" on a telephone
8 key pad), "Border Low," "Swampy D," and "The Swamp." Expert Declaration of San Francisco
9 Police Officer Joshua Kumli, ¶85 ("Kumli Decl.").

10 Defendant DBG members display these signs and symbols on their clothing and their
11 accessories, and flash hand signs in order to publicly demonstrate their membership and allegiance to
12 Defendant DBG. Kumli Decl., ¶¶87-88. Members of Defendant DBG gang also vandalize private and
13 public property in the Proposed Safety Zone, to announce their presence and to antagonize their rivals.
14 Kumli Decl., ¶¶87-88, 104-108.

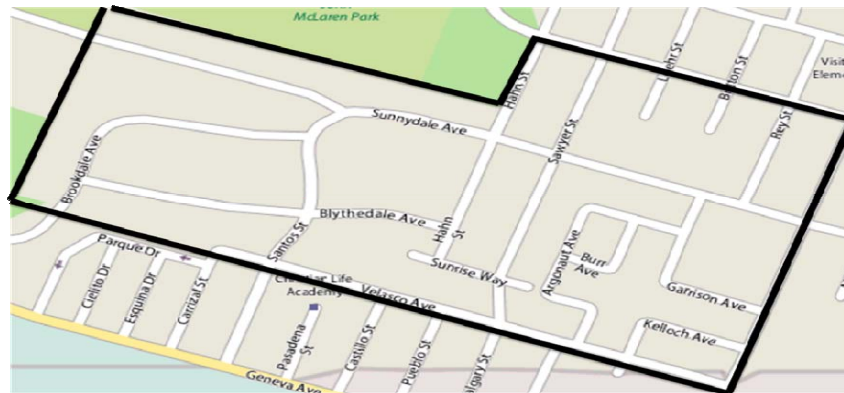
15 Defendant TOWERSIDE is comprised of approximately 50 members who claim a common
16 gang name and use common symbols including: "Geneva Towers," "Towerside," "Towers," "Tower
17 Block," "TB," "T," "T-Side," "33," "33rd," "The/a 3s," "312," "1100 Block" (referring to 1100 Block of
18 Sunnydale Avenue), "Brick Home Posse," "BHP," "Brick Homes," "The Bricks," and "Bricks." Kumli
19 Decl., ¶86.

20 Defendant TOWERSIDE members display these signs and symbols on their clothing and their
21 accessories, and flash hand signs in order to publicly demonstrate their membership and allegiance to
22 Defendant TOWERSIDE. Kumli Decl., ¶¶89-90. Members of Defendant TOWERSIDE gang also
23 vandalize private and public property in the Proposed Safety Zone, to announce their presence and to
24 antagonize their rivals. Kumli Decl., ¶¶89-90, 109-113.

25 For years, Defendants DBG and TOWERSIDE and their members have been creating a public
26 nuisance that persistently diminishes the quality of life and threatens the health and safety of the
27 people who live in and around their gang turf areas, hereinafter, the "Proposed Safety Zone."

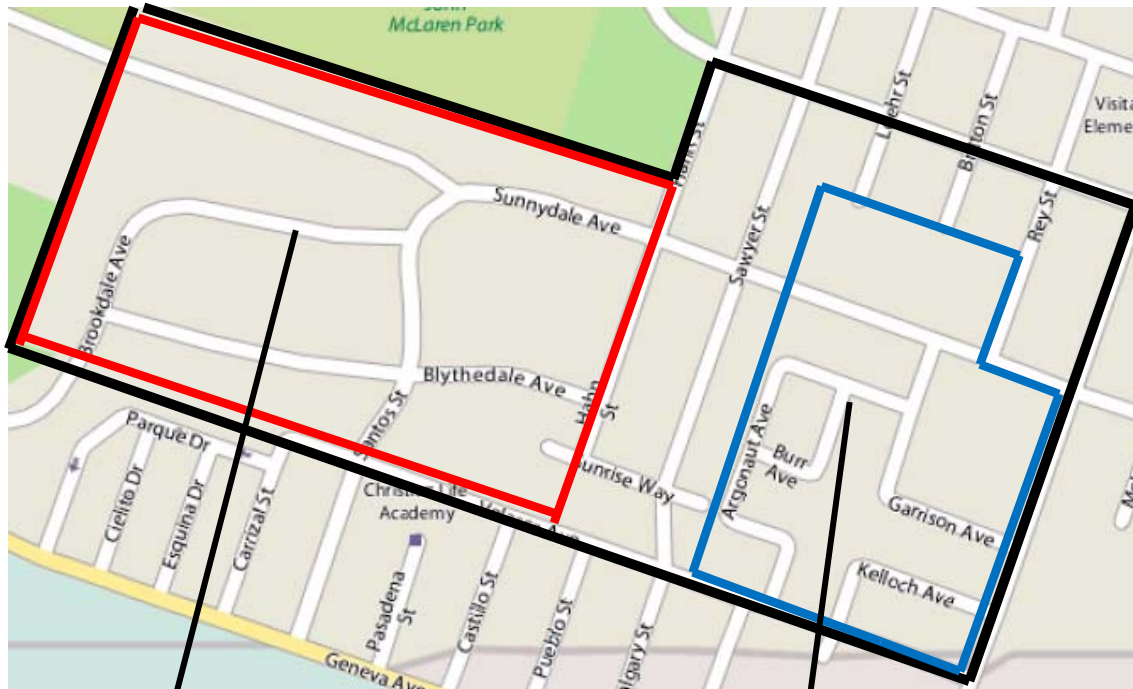
1 Defendant gangs' documented crimes and public nuisance and the activities of their active members
2 are amply demonstrated through the Kumli Declaration and the other 120 supporting declarations of
3 San Francisco and Daly City Police Officers, ("120 Supporting Officer Declarations") filed herewith.

4 The Proposed Safety Zone is best described as follows: an "L" shaped area bordered by
5 Schwerin Avenue to the East, Visitacion Avenue to the North, Hahn Street to the Northern fenced
6 border of the Sunnydale Housing Development (separating the Sunnydale Housing Development from
7 Herz Playground and Gleneagles International Golf Course), the Western border of the Sunnydale
8 Housing Development to the West, South along the perimeter of the Sunnydale Housing Development
9 which becomes Velasco Avenue at Carrizal Street to the South. Below are two maps: a satellite map
10 and a street map, depicting the Proposed Safety Zone.



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24 The Proposed Safety Zone includes the areas claimed by Defendants DBG and TOWERSIDE
25 gangs as their turf. Kumli Decl., ¶¶20-21. These areas are close, being separated by only one or two
26 city blocks. As indicated on the following map, DBG claims the area immediately surrounding the
27 Sunnydale public housing development, while TOWERSIDE claims the area surrounding the privately

1 owned Brick Homes and the Britton Courts and Heritage Homes public housing developments (on the
2 site where the Geneva Towers public housing high rise development once stood).



14
15 DBG GANG TURF

14
15 TOWERSIDE GANG TURF

17 Defendants DBG and TOWERSIDE use the Proposed Safety Zone to commit acts of crime and
18 nuisance that significantly diminish the quality of life for the residents of the community, interfere
19 with residents' rights to quiet enjoyment, and which are offensive to the community at large. Kumli
20 Decl., ¶¶ 22-28, 46-49. As the expert and police officer declarations show, Defendants DBG and
21 TOWERSIDE criminal street gangs, through their members, commit a wide range of felony crimes
22 within the Proposed Safety Zone, including those crimes enumerated in Penal Code section 186.22(e),
23 such as robberies, aggravated assaults, shootings, and homicides. Kumli Decl., ¶¶ 25-26; 120, 124;
24 120 Supporting Officer Declarations, generally. These violent felonies are committed against rival
25 gang members or perceived rivals, and allow Defendants to strengthen their grip on the community by
26 shoring up each gang's reputation for violence, effectively subduing their rivals and deterring crime
27 reporting. Kumli Decl. ¶¶25-28, 46-53, 118-123. The declarations also attest to the nuisance conduct

1 such as street level drug dealing and other drug offenses, loitering or "posting up," selling and using
2 illicit drugs in public, vandalism, littering, threats, shouting, fighting, noise, foot chases, car chases,
3 impeding street and sidewalk traffic, and unreasonably interfering with the community's right to peace
4 and quiet enjoyment. Kumli Decl., ¶¶ 46-49, 77-82, 104-113; 120 Supporting Officer Declarations,
5 generally.

6 Members of Defendants DBG and TOWERSIDE gangs further interfere with the quality of life
7 of those who live in the Proposed Safety Zone by loitering in intimidating and menacing groups on the
8 public streets, public sidewalks, public transit stops, public plazas, public parks, and at the entrances to
9 businesses in the Proposed Safety Zone. See Kumli Decl. ¶¶ 118-119; 120 Supporting Officer
10 Declarations, generally. Defendants DBG and TOWERSIDE's gang members also stash, hide and
11 store narcotics and weapons in planters, trees, gates, fences, mailboxes, yards, cars, and residences
12 within the Proposed Safety Zone. See Kumli Decl. ¶¶ 65, 81; 120 Supporting Officer Declarations,
13 generally.

14 Attached as Exhibit A are two maps that provide a visual representation of the 208 documented
15 criminal and nuisance incidents committed or suspected to have been committed by DBG and
16 TOWERSIDE gang members within the Proposed Safety Zone. Both maps divide the Proposed
17 Safety Zone into city blocks (1-19) and plot the locations of each crime. Each dot represents one
18 incident regardless of the number of crimes committed or the number of individuals involved. An
19 index giving further detail of each identified crime is attached hereto as Exhibit B. The second map
20 includes the 208 documented criminal incidents with the gang turf boundaries delineated.

21 Defendants DBG and TOWERSIDE commit their nuisance and criminal activities in the
22 Proposed Safety Zone as a show of power, and to demonstrate their exclusive control over their gang
23 turf. Kumli Decl. ¶¶ 22-25, 28. Defendants dominate and control their turf areas by using some or all
24 of the following methods: 1) illegally arming themselves with firearms; 2) recklessly discharging
25 firearms at all times of the day or night; 3) discharging firearms into inhabited dwellings and vehicles;
26 4) abandoning, discarding, storing, and hiding firearms on property accessible by the public; 5)
27 committing acts of violence against rivals and perceived rivals; 6) intimidating residents by violence

1 and threats of violence; 7) targeting residents and committing various crimes against persons and
2 property; 8) selling narcotics; 9) loitering in menacing numbers to claim turf and intimidate residents
3 and rivals; 10) flashing gang signs; 11) trespassing on private property; and 12) committing graffiti
4 vandalism to mark territory. Kumli Decl. and 120 Supporting Officer Declarations, generally.

5 Defendant gangs also use threats of violence to deter would-be witnesses by labeling them
6 "snitches." Kumli Decl. ¶¶50-51, 118-122. Once labeled a "snitch" an individual, his/her family, and
7 his/her property is often targeted by gang members/associates for intimidation in the form of assaults,
8 batteries, threats, theft, brandishing weapons, and vandalism. *Id.* By punishing those who report
9 crimes to the police, DBG and TOWERSIDE gang members send a message to the community that the
10 gangs are in control of the neighborhood, which further discourages people from reporting crimes to
11 the police and further diminishes the quality of life for the residents. *Id.* This fear of being labeled a
12 "snitch" causes community members to be afraid to reach out to the police, fearful that they put
13 themselves or their families at risk of retaliation by gang members. *Id.* By frightening residents,
14 deterring witnesses, threatening rivals and perceived rivals, and thwarting law enforcement, gang
15 crime goes unreported and unsolved, leading Defendants DBG and TOWERSIDE gangs to become
16 emboldened to commit further crime and nuisance, without fear of legal repercussions. *Id.*

17 Through their criminal and nuisance conduct, DBG and TOWERSIDE gangs and their
18 members victimize residents in and around the Proposed Safety Zone, leaving community members
19 scared to live in, work in, and enjoy their own neighborhood. *Id.*

20 For these reasons, Plaintiff requests that this Court issue a preliminary injunction to enjoin
21 Defendants DBG and TOWERSIDE criminal street gangs and their members from committing crimes
22 and other specified activities to abate this public nuisance within the Proposed Safety Zone. A list of
23 the individual gang members Plaintiff seeks to enjoin is attached hereto as Exhibit C.

LEGAL ARGUMENT

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

The conduct and activities of DBG and TOWERSIDE criminal street gangs, and their members in the Visitacion Valley neighborhood of San Francisco constitutes 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 level of violent crime perpetrated by Defendants, 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 sections 526(a)(2), 526(a)(4).

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 of the gang "can be brought within the terms of the statutory definition of public

1 nuisance" and (2) the nuisance is "substantial and unreasonable". *In re Englebrecht, supra*, 67
2 Cal.App.4th at 492; *see also, Acuna, supra*, 14 Cal.4th at 1104-05.

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

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

7 Plaintiff has alleged one causes of action against Defendants DBG and TOWERS criminal
8 street gangs: that Defendants are criminal street gangs under California Penal Code section 186.22a(a),
9 and their conduct constitutes a public nuisance under California Civil Code sections 3479 and 3480.
10 At trial, Plaintiff will present overwhelming evidence to establish the sole cause of action.

11 **1. Defendants Are Criminal Street Gangs With Documented Gang Members.**

12 The evidence in the present case amply establishes that each Defendant is a criminal street
13 gang, as defined by Penal Code section 186.22(f).

14 California Penal Code section 186.22 defines a criminal street gang as a group of three or more
15 persons, having a common name or common identifying sign or symbol, having as one its primary
16 activities the commission of one or more of the crimes listed under 186.22(e),¹ and whose members
17 individually or collectively engage in, or have engaged in, a pattern of criminal gang activity.

18 As detailed in the facts above, Plaintiff offers overwhelming evidence that DBG and
19 TOWERSIDE have 100 and 50 members respectively. Further, both DBG and TOWERSIDE utilize
20 unique signs and symbols to publicly identify their members. In addition, the declarations filed in
21 support of this motion amply demonstrate that Defendants have committed the types of crimes
22 specified in Penal Code section 186.22(e). Plaintiff need only establish that one of the primary
23 activities of the gang is the "commission of the acts constituting the public nuisance" and not the
24

25 ¹ The offenses listed in Penal Code section 186.22(e) include: assault with a deadly weapon or
26 by force likely to cause great bodily injury; robbery; homicide or manslaughter; sale, possession for
27 sale, transportation or manufacture of controlled substances; witness or victim intimidation; grand
theft; burglary; carjacking; possession of a concealable firearm; terrorist threats; possession of a
firearm by a felon; carrying a concealed firearm; and carrying a loaded firearm.

1 crimes listed under 186.22. *Englebrecht, supra*, 88 Cal.App.4th at 1261. Nevertheless, in the present
2 case, Plaintiff has more than sufficient evidence to establish that each Defendant qualifies as a
3 criminal street gang under the more rigorous standard set in Penal Code section 186.22.

4 Lastly, the members of Defendant gangs that would be subject to the requested gang injunction
5 are documented, mostly admitted members, who have engaged in a pattern of criminal and nuisance
6 gang activity. See Kumli Decl. ¶¶151-192; 120 Supporting Officer Declarations, generally.

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

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

10 Every building or place used by members of a criminal street gang for the
11 purpose of the commission of the offenses listed in subdivision (e) of Section
12 186.22 or any offense involving dangerous or deadly weapons, burglary, or
13 rape, and every building or place wherein or upon which that criminal conduct
14 by gang members takes place

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

20 As described in greater detail in the Statement of Facts, within the Proposed Safety Zone,
21 members of Defendant DBG and Defendant TOWERSIDE commit a host of crimes and nuisance
22 activities to promote their dominance and control over their claimed turf. By creating a climate of fear
23 and intimidation among ordinary residents, Defendants' members assert their dominance and control
24 through violence, including lethal violence, against rival gang members, which terrorizes the
25 community at large.

26 Members of Defendants DBG and TOWERSIDE gangs conduct most of their crimes and
27 nuisance in public, which interferes with all aspects of life for the larger community, resulting in a
28 substantially diminished quality of life for residents within the Proposed Safety Zone.

1 The violent crimes committed in public spaces within the Proposed Safety Zone by
2 Defendants' members are detailed in the Kumli Declaration and the 120 Support Officer Declaration,
3 and include the following: homicides, attempted homicides, aggravated assaults with firearms,
4 discharging firearms in grossly negligent manner, shooting into inhabited dwellings and occupied
5 vehicles, possession of loaded firearms, and street robberies.

6 All of these activities are inarguably "injurious to the health" of the law-abiding community
7 members who live in this residential neighborhood of San Francisco and "interfere with the
8 comfortable enjoyment of life or property." Defendants' activities, therefore, are a public nuisance
9 under both statutory definitions.

10 11 **3. Defendant Gangs' Public Nuisance Conduct Is "Substantial And 12 Unreasonable."**

13 In addition to showing that Defendants DBG and TOWERSIDE's conduct constitutes a public
14 nuisance, Plaintiff must also show that the nuisance is "substantial and unreasonable." *In re*
15 *Englebrecht, supra*, 67 Cal.App.4th at 492. The California Supreme Court has defined "substantial" as
16 "'definitely offensive, seriously annoying, or intolerable'" and "unreasonable" as when the harm
17 inflicted by the activities 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
21 gang graffiti. The California Supreme Court applied the "substantial and unreasonable" standard to
22 the facts in *Acuna* and found the evidence sufficient to issue the Injunction. *Acuna, supra*, 14 Cal.4th
23 at 1125-1126.

24 The facts in the present case are nearly identical to the facts in *Acuna*. Within the Proposed
25 Safety Zone, members of Defendants DBG and TOWERSIDE gangs have engaged in drug dealing,
26 taken over public streets and sidewalks, possessed weapons and firearms, committed shootings,
27 robberies, and thefts, have trespassed on private property and vandalized public and private property

1 with gang graffiti. Like the gang in *Acuna*, Defendants have created the same type of public nuisance
2 in the Proposed Safety Zone. Consequently, the Court should find that the public nuisance activities
3 of Defendants DBG and TOWERSIDE are similarly "substantial and unreasonable."

4 **C. The Harm To The Community Caused By Defendants' Nuisance-Causing
5 Conduct Outweighs The Gangs' Right To Commit The Conduct.**

6 Once Plaintiff has established that it is reasonably likely to prevail on the merits at trial, the
7 Court must weigh the equities. The Court must determine whether the harm to the law-abiding
8 individuals who live and work in the Proposed Safety Zone if the gang injunction is denied, outweighs
9 the harm to the Defendants if the injunction is granted. Faced with this identical situation, the court in
10 *Acuna* found in favor of the law-abiding individuals. *Acuna, supra*, 14 Cal.4th at 1105. The court
11 stated:

12 To hold that the liberty of the peaceful, industrious residents [in the gang's
13 territory] must be forfeited to preserve the illusion of freedom for those whose
14 ill conduct is deleterious to the community as a whole is to ignore half of the
15 political promise of the Constitution and the whole of its sense. *Id.*, at 1125.

16 Based on the facts in the present case, the Court should make the same finding. Should the
17 Court deny the injunction, it is nearly certain that the law-abiding citizens who live within the
18 Proposed Safety Zone will continue to be victimized by Defendants DBG and TOWERSIDE gangs,
19 the crimes they commit, and the nuisance they create. On the other hand, if the Court grants the
20 injunction prohibiting the members of Defendants DBG and TOWERSIDE gangs from continuing
21 their nuisance-causing conduct, the harm to Defendants would be minimal.

22 The scope of the enforcement of the requested injunction would be limited to specific
23 individuals, in a limited geographic area, would only affect certain specified conduct. First, the
24 requested injunction seeks to enjoin only 41 active adult members of Defendant gangs. Based on
25 Plaintiff's evidence, Plaintiff is asking the court to find that each of the 41 active adult members should
26 be subject to the provisions of the requested gang injunction. Plaintiff proffers evidence of each
27 individuals' gang membership and criminal/nuisance activities within the Proposed Safety Zone to
28 support its request. There is no ambiguity about who would be subject to the injunction and any

1 subsequent changes or modifications to the enforcement of the injunction would be subject to future
2 judicial determination.

3 Second, the boundaries of the Proposed Safety Zone are narrowly drawn based on the evidence
4 of Defendant DBG and TOWERSIDE's criminal and nuisance activity there, considering the
5 geography of the area and the practicalities of enforcement. The proposed injunctive provisions would
6 only apply to Defendants and their members inside of the narrowly defined Proposed Safety Zone. As
7 detailed in Exhibit A, DBG and TOWERSIDE members commit their crimes in gang turf, and use the
8 areas surrounding their respective turf areas within the Proposed Safety Zone to stalk, aim, and shoot
9 at rivals, abscond from law enforcement, and/or flee from the scene of a crime. As discussed in the
10 Kumli Declaration, in order for this gang injunction to be "effective against the public nuisances
11 caused by the DBG and TOWERSIDE gangs, the Safety Zone must include both gang turf areas, and
12 the areas in between and immediately adjacent the turf areas." Kumli Decl., ¶126.

13 Third, the requested injunctive provisions are narrowly tailored to limit the gang's activities
14 only so much as is needed to protect the law-abiding individuals who live in the Safety Zone. The
15 proposed injunction only seeks to enjoin the amply demonstrated criminal and nuisance behavior, and
16 the precursors to such behavior. The injunction would only prohibit judicially determined members of
17 Defendant gangs from loitering, associating with other gang members, creating a nuisance, or breaking
18 the law within the Proposed Safety Zone. Because the injunction requested is limited to the
19 geographic area defined by the Proposed Safety Zone, Defendants' members' conduct outside of the
20 Proposed Safety Zone would remain unaffected.

21 In balancing the equities, the scale should tip in favor of the community's law-abiding
22 residents. In sum, the evidence in the present case provides abundant support for the issuance of an
23 injunction against Defendants DBG and TOWERSIDE criminal street gangs.

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

26 The proposed Injunction sets forth new "rules" for public behavior for the DBG and
27 TOWERSIDE criminal street gangs, and their members, which are necessary to abate the public

1 nuisance, and to protect the ordinary, law-abiding residents within the Proposed Safety Zone. These
2 new rules are proper restrictions on the conduct of these gangs. "Activities of an association which
3 deprive third parties of their lawful rights fall outside the constitutional pale. The commission of
4 crimes is the most apparent manifestation of such unprotected conduct. The performance of acts that
5 constitute a civil nuisance is another." *People v. Lopez* (1998) 66 Cal.App.4th 615, 632, citing *Acuna*,
6 14 Cal.4th at 1112.

7 The 120 Supporting Officer Declarations, as well as the Kumli Declaration, filed with this
8 motion, well document the harm caused by Defendants within the Proposed Safety Zone. DBG and
9 TOWERSIDE gang members intimidate, threaten and harass community members, assault rival gang
10 members, conduct street level drug transactions, commit robberies, commit shootings, possess
11 dangerous weapons, commit graffiti vandalism to mark the gangs' claimed territory, loiter with the
12 intent to commit drug offenses, trespass on private property, flash gang signs to communicate with
13 each other, gather in menacing numbers to intimidate the community and rival gang members, and
14 commit crimes with other gang members.

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

23 Moreover, each provision of the Injunction is specifically linked to the illegal and nuisance
24 activity committed by the Defendant criminal street gangs. *See, Acuna*, 14 Cal.4th at 1110 (non-
25 association provision of injunction is proper because the gang's activities in the Proposed Safety Zone
26 consist mainly of conduct to secure control of the community through systematic acts of intimidation
27 and violence.) It is time for Defendant DBG and TOWERSIDE gangs and their members to be held

1 accountable for their past criminal and nuisance behavior, and it is time to recognize and respect that
2 this residential community has a right to be free from gang crime and nuisance.

3 As the California Supreme Court has noted, the community's members also have rights, and the
4 rights of the good people trapped in fear should not be less than the "rights" of gang members to run
5 amok and commit crimes unrestrained throughout the Proposed Safety Zone. *Acuna*, 14 Cal.4th at
6 1102.

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

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

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

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

9 When effecting service under Corporations Code section 18220, the party seeking the service
10 must designate the individual member or members in advance. Plaintiff has designated for service a
11 total of 41 gang members, including 25 from DBG gang and 16 from TOWERSIDE gang. Attached
12 hereto as Exhibit C, is a list of all of the documented members of Defendant gangs, designated for
13 possible service of the requested Order to Show Cause Re: Preliminary Injunction and moving papers.
14 Because neither Defendant has an established or fixed address for service of process, Plaintiff
15 requested that service on Defendants be deemed complete upon personal service of at least 5 member
16 of each gang. Plaintiff anticipates serving at least 5 members from each gang with the papers
17 supporting this motion.

18 In addition to service on the individual gang members, in order to ensure that as many gang
19 members as possible are given notice of the upcoming hearing, Plaintiff offered to publish Notice of
20 the Order to Show Cause hearing in a local newspaper, once a week, for four consecutive weeks.

21 In advance of the hearing date, Plaintiff will have complied with the Court's service order and
22 made every attempt to serve as many individual gang members as possible.

23 24 CONCLUSION

25 "The state has not only a right to 'maintain a decent society,' but an obligation to do so." *Acuna*,
26 *supra*, 14 Cal.4th at 1102 (citations omitted). Plaintiff cannot and should not simply stand by and
27 allow Defendants DBG and TOWERSIDE criminal street gangs, to hold an entire neighborhood

1 hostage by their criminal and nuisance behavior. Defendants DBG and TOWERSIDE's nuisance and
2 criminal conduct, therefore, must be abated to allow law-abiding residents of the Proposed Safety
3 Zone the freedom to lead their lives free of Defendant gangs and the fear and violence they promote.

4 Plaintiff respectfully requests this Court issue the Preliminary Injunction.

5 Dated:

6 DENNIS J. HERRERA
7 City Attorney
8 ALEX G. TSE
9 Chief Attorney
10 MICHAEL S. WEISS
11 YVONNE R. MERÉ
12 Deputy City Attorneys

13 By: _____
14 MICHAEL S. WEISS

15 By: _____
16 YVONNE R. MERÉ
17 Attorneys for Plaintiff
18 PEOPLE OF THE STATE OF CALIFORNIA
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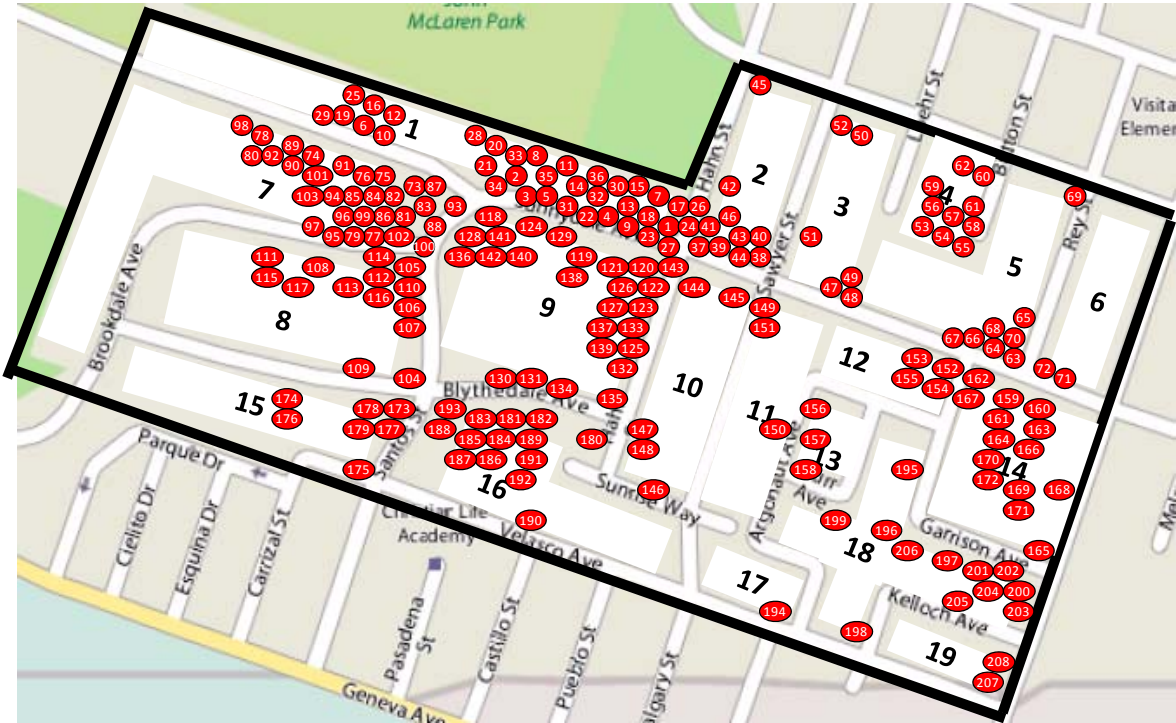
INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Map of Documented Criminal Incidents within the Proposed Safety Zone
B	Index of Documented Criminal Incidents within the Proposed Safety Zone
C	List of Gang Members to Be Enjoined

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EXHIBIT A

MAPS OF DOCUMENTED CRIMINAL INCIDENTS
WITHIN THE PROPOSED SAFETY ZONE



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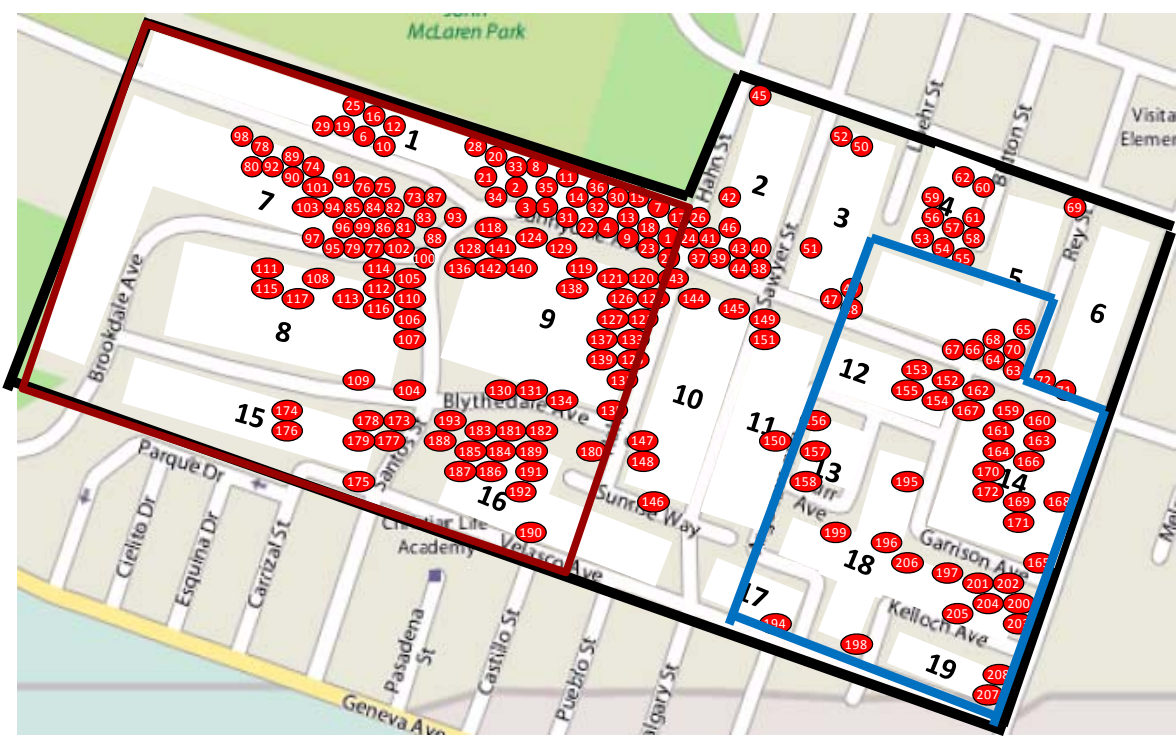


EXHIBIT B

**INDEX OF DOCUMENTED CRIMINAL INCIDENTS
WITHIN THE PROPOSED SAFETY ZONE**

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EXHIBIT C

LIST OF DBG AND TOWERSIDE GANG MEMBERS TO BE ENJOINED

	NAME	GANG	MONIKER
1.	Beard, Sean	DBG	"Dough"
2.	Beasley, Alfonzo	Towerside	"B"
3.	Boston, Lashawn	Towerside	"Snigs"
4.	Brown, Emon	DBG	"Flav/e"
5.	Byes, Christopher	DBG	"C&H"
6.	Byes, Deshawn	DBG	"Posso"
7.	Calloway, Allen	DBG	"Nutso"
8.	Crawford, Tantrell	DBG	"Trail Mix"
9.	Dixon, Howard	Towerside	"Howie T"
10.	Dogan, Deon	Towerside	"Uno"
11.	Durant, Anthony	DBG	"Ant"
12.	Floyd, Edgar	Towerside	"Arrow"
13.	Floyd, Vincent	Towerside	"VC"
14.	Gaines, Marcus	Towerside	"Young Monz"
15.	Glaspie, Frederick	Towerside	"Ace"
16.	Glass, Stephen	DBG	"Stevie Mac"
17.	Green, Alsedee	DBG	"Jizz Mac"
18.	Jackson, Floyd	DBG	"Freak"
19.	Johnson, Ennis	Towerside	"Kiss"
20.	Johnson, Kalaan	Towerside	"KK"
21.	Jones, Jason	DBG	"Jumbo"
22.	Jordan, Jordan	DBG	"J.O."
23.	Justin, Ceabe	Towerside	"CB"
24.	Ledbetter, Llewellyn	DBG	
25.	Lefiti, Samoa	DBG	"Kilo"
26.	McCroey, Cedric	Towerside	"CD"
27.	McCroey, Corey	Towerside	"C Baby"
28.	Mitchell, Kevin	DBG	"Duke"
29.	Mitchell, Kim	DBG	"KI"
30.	Pellette, Wallace	DBG	"Gator/Swally"
31.	Price, Alex	DBG	"Pee Wee"
32.	Punzal, Michael	Towerside	"Snacks"
33.	Reed, Deantray	DBG	"Tray/Dee"
34.	Rodgers, Raymond	DBG	"Boo Gotti"
35.	Rose, Manuel	DBG	"Fresh"
36.	Smith, Joseph	DBG	"Stubb/z"
37.	Ware, Orlando	Towerside	"Anthony"
38.	Washington, George	DBG	"G-Thang"
39.	Wilson, Joc	DBG	"Joc"
40.	Woodson, Aliton	DBG	"Tiggz"

41.	Young, Diondre	Towerside	"D-Nice/Jack"
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