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9 PEOPLE OF THE STATE OF CALIFORNIA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

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

16 Plaintiff,

17 vs.

18 NORTEÑO, a criminal street gang, sued as an
19 unincorporated association, and DOES 1
through 500,

20 Defendants.
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22
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Case No. CGC 07-464492

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION TO MODIFY PERMANENT
INJUNCTION RELATED TO NORTEÑO
(California Civil Code §3424, California Code of
Civil Procedure §533)

Reservation No: 05150629-05

Hearing Date: June 29, 2018

Hearing Judge: Hon. Harold Kahn

Time: 9:30 a.m.

Place: Dept. 302

Date of Injunction: June 17, 2008

24 Plaintiff People of the State of California seek to modify the Permanent Injunction issued by
25 the San Francisco Superior Court on June 17, 2008 against Defendant NORTEÑO Criminal Street
26 Gang ("Defendant NORTEÑO"). This Permanent Injunction is currently enforceable against
27 Defendant NORTEÑO and twenty-four (24) named non-party individuals that this Court previously
28 found to be active gang members. Plaintiff seeks a court order modifying the Permanent Injunction to

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Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

1 remove sixteen (16) non-party individuals currently bound by the Permanent Injunction because they
2 no longer contribute to the nuisance in the safety zones caused by Defendant NORTEÑO.

3 BACKGROUND & PROCEDURAL HISTORY

4 On June 21, 2007, Plaintiff filed a Complaint for Injunctive Relief against Defendant
5 NORTEÑO. (“Declaration of Samuel C. Ray ISO Plaintiff’s Motion to Modify Permanent Injunction
6 Related to NORTEÑO” (“Ray Decl.”), ¶ 3 (filed concurrently with this Motion).)

7 On July 12, 2007, Plaintiff filed a motion seeking a preliminary injunction against Defendants.
8 (Ray Decl., ¶ 4.) This motion included a declaration from a San Francisco Police Department gang
9 expert and ninety-three (93) declarations of San Francisco Police Department Officers documenting
10 the nuisance caused by Defendant NORTEÑO and thirty (30) of Defendant NORTEÑO’s most active
11 gang members. (*Ibid.*)

12 On October 12, 2007, following a hearing, the Court signed an Order granting a Preliminary
13 Injunction against Defendant NORTEÑO and thirty (30) non-party individual gang members,
14 enjoining them from certain enumerated activities within the designated safety zone located in the
15 southeast portion of San Francisco’s Mission District (“Safety Zone”). (Ray Decl., ¶ 5.)

16 Defendant NORTEÑO failed to respond to Plaintiff’s Summons and Complaint. (Ray Decl., ¶
17 6.) On April 1, 2008, the Clerk of the Superior Court entered Default against Defendant NORTEÑO.
18 (*Ibid.*)

19 On June 17, 2008, the Court issued an “Order For Granting Default Judgment in the Form of
20 Permanent Injunction” against Defendant NORTEÑO (“Permanent Injunction”). (Ray Decl., ¶ 7, Exh.
21 A.) The Court found by clear and convincing evidence that: (1) Defendant NORTEÑO is a criminal
22 street gang as defined by California Penal Code § 186.22 and *People v. Englebrecht* (2001) 88
23 Cal.App.4th 1236, 1258; and (2) Defendant NORTEÑO, through its members, has created substantial
24 and unreasonable public nuisance in the City and County of San Francisco, within the Safety Zone.
25 (*Id.*, at ¶ 8, Exh. A.) In the Permanent Injunction, the Court permanently enjoined Defendant
26 NORTEÑO and thirty (30) non-party individual gang members from engaging in certain enumerated
27 activities within the Safety Zone. (*Id.*, at ¶ 9, Exh. A.)
28

1 The names of the thirty (30) non-party individual gang members were listed in a “List of Gang
2 Members for Service and Enforcement of Permanent Injunction” (“Enforcement List”) attached as
3 Exhibit B to the Permanent Injunction. (Ray Decl., ¶ 9, Exh. A.) A map delineating the Safety Zone
4 was attached as Exhibit A to the Permanent Injunction. (*Ibid.*)

5 On June 20, 2013, following a hearing, the Court granted Plaintiff’s “Motion to Modify
6 Permanent Injunction to Remove Six Members” (“2013 Order Removing Six Members”). In this
7 Order, the Court found that “the ends of justice would be served” by modifying the Permanent
8 Injunction to remove six (6) non-party individuals from the Enforcement List. (Ray Decl., ¶ 10,
9 Exh. B.)

10 On May 10, 2018, this Court issued an Order providing instructions on how Plaintiff’s Motion
11 for Modification should be served on Defendants. (Ray Decl., ¶ 11, Exh. C)

12 **THE PERMANENT INJUNCTION SHOULD BE MODIFIED TO REMOVE**
13 **SIXTEEN (16) MEMBERS FROM THE ENFORCEMENT LIST**

14 Upon notice and motion, this Court may modify a final injunction upon a showing that there
15 has been a material change in the facts upon which the injunction was granted, the law upon which the
16 injunction was granted has changed, or “the ends of justice would be served.” (Cal. Civ. Code §
17 3424(a); Cal. Code Civ. Proc. § 533; *Sontag Stores Co. v. Superior Court* (1941) 18 Cal.2d 92, 94-95
18 [finding that a preventive injunction is continuing in nature and is always subject to modification upon
19 proper showing].) On Pages 5 and 6, the Permanent Injunction also authorizes any party to move to
20 modify the Permanent Injunction upon proper notice and motion. (Ray Decl., Exh. A.)

21 Plaintiff seeks to modify the Permanent Injunction to reflect changes in membership in the
22 enjoined gang over the years because, “membership evolves over time.” (“Expert Declaration of San
23 Francisco Police Department Sergeant Robert Trujillo ISO Plaintiff’s Motion to Modify Permanent
24 Injunction Related to NORTEÑO” (“Trujillo Decl.”), ¶ 23 (filed concurrently with this Motion).)
25 Courts have recognized that, “. . . membership [in gangs] is continually changing. New members are
26 joining the gang, while old members are leaving or becoming inactive.” (*People ex rel Gregory D.*
27 *Totnine v. Colonia Chiques* (2007) 156 Cal.App.4th 31, 41.)

1 Plaintiff seeks to remove sixteen (16) non-party individuals from the Permanent Injunction's
2 Enforcement List because they no longer participate in gang-related activity and/or actively contribute
3 to the nuisance in the Safety Zone. (Trujillo Decl., ¶¶ 44-45.)

4 The names of the sixteen (16) non-party individuals Plaintiffs seeks to remove are as follows:

- 5 • Ernesto Arroyo
- 6 • Juan Barrera
- 7 • Hector Barrera
- 8 • Victor Cano
- 9 • Joshua Deleon
- 10 • Rocky Deleon
- 11 • Joseph Fuimano
- 12 • Antonio Garcia
- 13 • Daniel Gonzalez
- 14 • Jesus Guerrero
- 15 • Henry Hernandez
- 16 • Alex Reyes
- 17 • Salvador Rodriguez
- 18 • Miguel Sanchez
- 19 • Daniel Santiago
- 20 • Omar Varela

21 Accordingly, Plaintiff requests that the names of these sixteen (16) non-party individuals be
22 removed from the Enforcement List of the Permanent Injunction in the interests of justice.

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CONCLUSION

Based on the aforementioned, Plaintiff requests that the Court issue an Order Modifying the Permanent Injunction to remove the aforementioned sixteen (16) non-party individuals from the Enforcement List.

Dated: May 18, 2018

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By: /s/ Samuel C. Ray
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