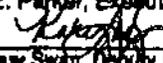


JUL 21 2014

Daniel E. Parker, Executive Officer
BY 
Kary Swain, Deputy Clerk

1 SANTA BARBARA COUNTY SUPERIOR COURT
1100 Anacapa Street
2 Santa Barbara, CA 93101

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SANTA BARBARA
9 ANACAPA DIVISION

11	PEOPLE OF THE STATE OF CALIFORNIA,)	Case No.: 1379826
12	Plaintiff,)	STATEMENT OF DECISION
13	CITY OF SANTA BARBARA, a municipal Corporation,)	Date: May 5, 2014
14	Plaintiff and Real Party in Interest,)	Time: 11:30 a.m.
15	vs.)	Dept.: 5
16	EASTSIDE, a criminal street gang as an unincorporated association, WESTSIDE, a criminal street gang as an unincorporated association, et al.,)	Judge Colleen K. Sterne
17	Defendants.)	

20 On March 14, 2011, The PEOPLE OF THE STATE OF CALIFORNIA and the CITY OF
21 SANTA BARBARA filed a Complaint For Injunctive Relief to Abate Public Nuisance against
22 EASTSIDE, a criminal street gang as an unincorporated association, ("EASTSIDE") and
23 WESTSIDE, a criminal street gang as an unincorporated association. ("WESTSIDE") Also
24 named were individual defendants FRANCISCO ANAYA, MICHAEL CARDENAS, BRYAN
25 CARRENO, EDGAR CORDOVA, AUGUSTINE CRUZ, PEDRO GARCIA, RAYMOND

1 MACIAS, RUBEN MIZE, PATRICIA MORENO, MIGUEL PARRA, OMAR RAMOS, IVAN
2 ROMERO, HUMBERTO TRUJILLO, JONATHAN ALONZO, CESAR BARADAS,
3 CHRISTIAN BOTELLO, ENRIQUE CORTEZ, DANIEL FLORES, RUBEN FLORES,
4 MARICAL GARCIA, MIGUEL GARCIA, LAZARO GONZALEZ, STACY IBARRA, EDWIN
5 MIGUEL, MIGUEL MOLINA, EMMANUEL PADRON, MARCOS RAMOS, MICHAEL
6 RODRIGUEZ, ROY SARABIA, AND RAUL TORRES. A First Amended Complaint was filed
7 on July 22, 2011, and a Second Amended Complaint on November 14, 2011. On April 25,
8 2014, Requests for Dismissal were filed by plaintiffs as to Defendants RAUL TORRES, ROY
9 SARABIA, MICHAEL CARDENAS, RUBEN MIZE, RUBEN FLORES, JONATHAN
10 ALONZO, OMAR RAMOS, EMMANUEL PADRON, PATRICIA MORENO, MIGUEL
11 MOLINA, DENISE LAZARO-GONZALEZ, DANIEL FLORES, ENRIQUE CORTEZ,
12 BRYAN CARRENO, CESAR BARADAS, and MIGUEL PARRA.

13 The remaining eleven individual defendants at time of trial are FRANCISCO ANAYA,
14 represented by counsel William C. Makler, Esq. and Stephen K. Dunkle, Esq.; EDGAR
15 CORDOVA and AUGUSTIN CRUZ, represented by James Crowder, Esq.; PEDRO GARCIA,
16 in propria persona; RAYMOND MACIAS, represented by Neil D. Levinson, Esq., CHRISTIAN
17 BOTELLO, represented by Luis Esparza, Esq.; MARICAL GARCIA, represented by Juan J.
18 Huerta, Esq. and Tara Haaland-Ford, Esq.; MIGUEL GARCIA and STACY IBARRA,
19 represented by the Office of the Public Defender of Santa Barbara County, by Michael W.
20 Hanley, and by counsel Tara Haaland-Ford, Esq.; MARCOS RAMOS and MIGUEL
21 RODRIGUEZ; in propria persona.

22 Plaintiffs initially requested a Preliminary Injunction, but the court determined that
23 proceeding directly to a hearing on the permanent injunction would be more appropriate. Trial
24 of the request for permanent injunction commenced on May 5, 2014 in Department Five of the
25 Santa Barbara County Superior Court before Judge Colleen K. Stern. The court, having

1 received admissible testimony and other evidence, having reviewed the record and file in this
2 matter, having personally inspected the proposed Safety Zones, and hearing argument of
3 counsel, issues this Statement of Decision.

4 I. The Requested Injunction.

5 1. The Second Amended Complaint is pled in a single cause of action alleging
6 maintenance of a public nuisance by defendants EASTSIDE, WESTSIDE and the individual
7 defendants. The nuisance activity described in the complaint includes significant criminal
8 activity such as assault, battery and robbery, and use of illegal weapons. Also alleged are
9 trespass, use of alcohol in public, and the sale of narcotics. It is also claimed that the defendants
10 loiter in public areas, engage in fighting, and maintain "turf" through use of violence, weapons
11 and threats. Defacement of property with graffiti is also alleged, as well as intimidation, through
12 use of said graffiti, the wearing of gang clothing, verbal announcement of gang affiliation, and
13 threats of harm if criminal activity is reported. The Second Amended Complaint also states that
14 the aforementioned activity, performed individually and collectively by gang members, causes
15 residents of the proposed safety zones to "fear for their safety and the safety of their families and
16 friends." It is claimed that gang members challenge residents and others passing through their
17 turf, and that such a challenge is often a precursor to assault, and that the conduct of the
18 EASTSIDE and WESTSIDE gang members is "at best indecent and offensive to the senses and a
19 deprivation of the comfortable enjoyment of life and property, and, all too often, injurious or
20 fatal to the health of the victims." It is also alleged that as a result of gang activity, "law abiding
21 people are forced to stay indoors to avoid being confronted, harassed, shot at, attacked or
22 robbed."

23 2. Paragraph 65 of the Second Amended Complaint states: "The People have no
24 plain, speedy or adequate remedy at law and will continue to suffer irreparable damage, injury
25 and harm unless equitable relief is granted. Criminal prosecution has not stopped Defendants'

1 criminal and nuisance activities. There are many victims and witnesses to nuisance and criminal
2 activities committed by EASTSIDE and WESTSIDE gang members [who] feel Defendants'
3 *constant and pervasive and menacing presence* in their communities, and thus refuse to
4 cooperate with law enforcement. Defendants threaten basic public order with their *oppressive*
5 *and widespread witness intimidation*. Even successful criminal prosecution has not deterred
6 Defendants from pursuing their criminal and nuisance activities. Gang members released after
7 serving sentences for their crimes, return to their gang's "turf" and resume their illegal activities.
8 *Traditional law enforcement methods have not eliminated the immediate and continual risk to*
9 *the lives and property* of the people who live, work, visit and pass through the proposed Safety
10 Zones." [emphasis added]

11 3. Plaintiffs contend that unless restrained, the defendants will continue public
12 nuisance and criminal activities in a manner causing "*great and irreparable damage, injury and*
13 *harm*" to persons in the Safety Zones, and that the "*peace, safety and comfortable enjoyment of*
14 *life and property*" will continue to be disturbed and threatened in the absence of equitable relief.
15 [emphasis added]

16 4. Plaintiffs seek judicial determination that:

17 (a) Defendants WESTSIDE and EASTSIDE are unincorporated associations within
18 the meaning of Code of Civil Procedure section 369.5 and Corporations Code section 18035;

19 (b) Defendants WESTSIDE and EASTSIDE are criminal street gangs within the
20 meaning of Penal Code section 186.22(f) and each is a "gang" as defined by *People v.*
21 *Engelbrecht* (2001) 88 Cal. App.4th 1236;

22 (c) That a public nuisance pursuant to Civil Code sections 3479 and 3480 exists in
23 the Safety Zones proposed for the City of Santa Barbara;

24 // // // //

25 // // // //

1 (d) That EASTSIDE and WESTSIDE gang members, including but not limited to the
2 individually named defendants, are responsible for creating and maintaining the public nuisance
3 in the proposed Safety Zones.

4 5. At paragraph 8 of the Prayer for Relief in the Second Amended Complaint,
5 Plaintiffs request relief in the form of an injunction enjoining and restraining all Defendants from
6 the following activities:

7 “(a) Do Not Associate: standing, sitting, walking, driving, bicycling, gathering, or
8 appearing anywhere in public view, in a public place, or in any place accessible to the public,
9 with any other known member of the Eastside or Westside gangs, including, but not limited to,
10 all individuals listed as ‘Designated Eastside Gang Members’ or ‘Designated Westside Gang
11 Members’ in the Proposed Safety Zones. This prohibition shall not apply in either of the
12 following situations: (1) when an enjoined person is inside the premises of a licensed school
13 attending class or conducting school business, or (2) when an enjoined person is inside the
14 premises of a church or religious institution for purposes of worship. This prohibition against
15 associating shall apply to all methods of travel to and from any of the aforementioned
16 permissible locations;

17 “(b) No Intimidation: confronting, intimidating, annoying, harassing, threatening,
18 challenging, provoking, assaulting, or battering any person who lives, works, visits or passes
19 through the Proposed Safety Zones or any person known to be a witness to, or victim of, any
20 Eastside or Westside gang activity or any person known to have complained about any Eastside
21 or Westside gang activity;

22 “(c) No Firearms, Imitation Firearms, Ammunition, Dangerous or Illegal Weapons: (1)
23 possessing any firearm, imitation firearm, ammunition, dangerous weapon (defined as any fixed
24 or folding knife with a blade two inches or longer), or illegal weapon as defined in Penal Code
25 section 16590, whether or not concealed, while in public view, in a public place or in any place

1 accessible to the public, or (2) knowingly remaining in the presence of anyone who is in
2 possession of such firearm, imitation firearm, ammunition, dangerous weapon or illegal weapon
3 while in public view, in a public place or in any place accessible to the public, or (3) knowingly
4 remaining in the presence of such firearm, imitation firearm, ammunition, dangerous weapon or
5 illegal weapon while in public view, in a public place or in any place accessible to the public, in
6 the Proposed Safety Zones;

7 “(d) To Stay Away From Drugs: selling, transporting, possessing, or using, without a
8 prescription, any controlled substance or marijuana, or such drug-related paraphernalia,
9 including, but not limited to, rolling papers and pipes used for illegal drug use, in the Proposed
10 Safety Zones;

11 “(e) To Stay Away From Alcohol: drinking or possessing an open container of an
12 alcoholic beverage in a public place, or in any place accessible to the public, in the Proposed
13 Safety Zones;

14 “(f) No Lookouts: acting as a lookout by whistling, yelling, or otherwise signaling, by
15 any means, including, but not limited to hand signals, walkie-talkies, or cellular telephones, to
16 warn another person engaged in unlawful or nuisance activity of the approach of law
17 enforcement officers, or soliciting, encouraging, coercing, or employing another person to act as
18 such lookout in the Proposed Safety Zones;

19 “(g) No Obstructing Traffic: obstructing, impeding, or blocking the free passage of
20 any person or vehicle on any street, walkway, sidewalk, driveway, alley, parking lot, or any other
21 area accessible to the public in the Proposed Safety Zones;

22 “(h) No Graffiti or Vandalism Tools: damaging, defacing, marking, painting or
23 otherwise applying graffiti to any public or private property, or possessing any aerosol paint
24 container, felt tip marker, or other item which can be used to paint, spray paint, etch, mark, draw
25 or otherwise apply graffiti in the Proposed Safety Zones;

1 “(i) No Trespassing: being present in or on the property of another person that is not
2 open to the general public, except (1) with the prior written consent of the owner, owner’s agent
3 or person in lawful possession of the property, or (2) in the presence of and with the voluntary
4 consent of the owner, owner’s agent or person in lawful possession of the property in the
5 Proposed Safety Zones;

6 “(j) To Stay Away From Specific School Grounds: being present in or on the grounds
7 of Santa Barbara High School (including Peabody Stadium), Santa Barbara Junior High School,
8 Franklin Elementary School, Cleveland Elementary School, Harding Elementary School,
9 McKinley Elementary School, or the sidewalks, pathways, entrances, or driveways which adjoin
10 and border these schools. For the purposes of this provision, these schools include the adjacent
11 gymnasiums, recreation centers, buildings, structures, playgrounds, handball courts, basketball
12 courts, and parking lots. This provision does not apply in the following circumstances which are
13 expressly excepted from this provision: (1) when the individual Eastside or Westside gang
14 member is on the above designated school property for valid school business concerning his or
15 her children or grandchildren and which valid school business includes transporting said children
16 to attend school classes or school activities, meeting with school officials, administrators or
17 teachers concerning his or her children or grandchildren, and/or attending a school activity,
18 program, or class in which said children are participating; or (2) the individual Eastside and
19 Westside adult gang member is enrolled and attending one of the above schools while in session;

20 “(k) To Stay Away From Specific Locations/Parks: being present in or on the grounds
21 of Boys and Girls Club of Santa Barbara (632 East Canon Perdido Street location), Boys and
22 Girls Club of Santa Barbara (602 West Anapamu Street location), Franklin Neighborhood Center
23 (1136 East Montecito Street), Municipal Tennis Center (1400 Park Place), Pennywise Market
24 (1121 East Montecito Street), Sunflower Neighborhood Park (1124 Mason Street), Eastside
25 Neighborhood Park (Soledad and Yanonali Streets), Ortega Community Park (632 East Ortega

1 Street), Franceschi Park (1510 Mission Ridge Road), Bohnett Neighborhood Park (San Pascual
2 and W Anapamu Streets), Parque De Los Ninos Neighborhood Park (520 Wentworth Avenue),
3 and the adjacent sidewalks, pathways, entrances, driveways, all recreation centers, buildings,
4 structures, playgrounds, or parking lots which adjoin and border these locations;

5 “(l) No Extortion Including Collection of ‘Rents’ or ‘Taxes’: extorting, or obtaining
6 under duress or by threat, ‘rents’ or ‘taxes’ in the Proposed Safety Zones;

7 “(m) No Contact With Minors Who Are Going To And From School: contacting,
8 talking to, speaking to or at, touching, or communicating in any way with minors going to and
9 from school in the Proposed Safety Zones, with the exception that an Eastside or Westside Gang
10 Member may have contact with his or her own children or grandchildren going to and from
11 school;

12 “(n) No Use Of Gang Gestures In Public: using words, phrases, physical gestures, or
13 symbols commonly known as gang hand signs, or engaging in other forms of communication
14 which describe or refer to Eastside or Westside gangs in the Proposed Safety Zones;

15 “(o) No Wearing Of Gang Attire In Public: wearing clothing which bears the name,
16 symbol, letters, or numbers of the Eastside or Westside gangs, including but not limited to
17 ‘Eastside,’ ‘East Side,’ ‘Evil Side,’ ‘93103,’ ‘East Bruta,’ ‘ES,’ ‘Westside,’ ‘West Side,’ ‘Wicked
18 Side,’ ‘West Bruta,’ ‘WS,’ ‘13,’ ‘XIII,’ ‘X3,’ ‘Sureno,’ ‘Sur,’ blue bandanas, Emmitt Smith
19 Dallas Cowboys jerseys, Texas Rangers baseball team hats, St. Louis Cardinals baseball team
20 jerseys and baseball team hats, Pittsburg Pirates baseball team hats, Duke University team hats,
21 Chicago White Sox baseball team hats, or any other clothing that represents the Eastside or
22 Westside gangs, or any subset or clique of those gangs in the Proposed Safety Zones;

23 “(p) To Obey All Laws: failing to obey all laws, including (1) those that prohibit
24 violence or threatened violence, including, but not limited to murder, intimidation, robbery by
25 force or fear, assault or battery, (2) those that prohibit interference with the property rights of

1 others, including, but not limited to trespass, theft, vandalism, or the driving or taking of a
2 vehicle without the owner's consent, (3) those that prohibit the commission of acts that create a
3 nuisance, including, but not limited to, the illegal sale of controlled substances, blocking the
4 sidewalk and street, and (4) any other lawful orders of the Court;"

5 6. The Plaintiffs propose Safety Zones as set forth in detail in their complaint.
6 Zones A (alleged EASTSIDE turf) and B (alleged WESTSIDE turf) encompass the larger part of
7 downtown Santa Barbara, from the 101 Freeway to Las Positas in Zone B, and to Arrellaga
8 Street in Zone A, bisected by State Street; bounded on the Zone A side by the foot of the Riviera
9 neighborhood, and on the Zone B side by the foot of the Mesa. There are spurs that capture
10 Cleveland School and the Municipal Tennis Courts. (This is a very general description, see
11 maps in Evidence.) Also requested is a Special Event Safety Zone applicable on the Fourth of
12 July and during Santa Barbara's annual Fiesta celebration. This Safety Zone is proposed to
13 include the Waterfront area, and public parks including Andree Clark Bird Refuge, Elings Park,
14 Escondido Neighborhood Park, Francheschi Park, Hilda McIntyre Ray Neighborhood Park, La
15 Mesa Neighborhood Park, Mesa Lane Steps Park, Mission Historical Park, and Rosc Garden,
16 Orpet Park, Shoreline Community Park, and Stevens neighborhood Park. It is alleged that the
17 areas encompassed by the Safety Zones have a "high saturation of gang crime" at all times in the
18 case of Zones A and B, and on the Fourth of July and during Fiesta in the Special Event Zone.

19 7. While "Opt-Out" provisions were referenced in the pleadings, requiring those
20 served with the injunction after its enactment to initiate a legal process to be relieved of the
21 injunction, the Plaintiffs amended their request at trial to substitute an "Opt-In" provision,
22 whereby those served with the injunction would simultaneously be cited to a court hearing
23 wherein the Plaintiffs would be required to prove gang affiliation and propriety of inclusion of
24 the served individual in the injunction before a served individual would be bound by its terms.

25 8. Minors are excluded from the injunction.

1 II. Criteria for Issuance of the Injunction.

2 9. The standard of proof that must be met is that of clear and convincing evidence
3 establishing all criteria required to be met. *People v. Englebrecht* (2001) 88 Cal.App.4th 1236,
4 1256.

5 10. For the injunction to issue, Plaintiffs must prove that (1) Defendants WESTSIDE
6 and EASTSIDE are unincorporated associations within the meaning of Code of Civil Procedure
7 section 369.5 and Corporations Code section 18035; (2) That Defendants WESTSIDE and
8 EASTSIDE are criminal street gangs within the meaning of Penal Code section 186.22(f) and
9 each is a “gang” as defined by *People v. Engelbrecht*, supra. 88 Cal. App.4th at 1258-1261; (3)
10 That a public nuisance pursuant to Civil Code sections 3479 and 3480 exists in the Safety Zones
11 proposed for the City of Santa Barbara; (4) That EASTSIDE and WESTSIDE gang members,
12 including but not limited to the individually named defendants, are responsible for creating and
13 maintaining the public nuisance in the proposed Safety Zones of a nature to require injunction;
14 (5) that the Safety Zones requested are narrowly drawn to encompass only the areas where gang
15 conduct has created a clear and significant public nuisance and (6) that the other provisions of
16 the injunction are likewise narrowly drawn to accomplish their stated purpose in the manner least
17 invasive to the rights of the enjoined individuals and the community.

18 III. Analysis.

19 11. Gang Status. Substantial evidence was presented at trial, clearly meeting the clear
20 and convincing evidentiary standard, that WESTSIDE and EASTSIDE are unincorporated
21 associations within the meaning of Code of Civil Procedure section 369.5 and Corporations Code
22 section 19035, and that they are criminal street gangs within the meaning of Penal Code section
23 186.22(f) and as further defined in relevant case law, and the court so finds.

24 /////

25 /////

1 12. Public Nuisance.

2 12.1 The Plaintiffs argue that EASTSIDE and WESTSIDE and their members,
3 including but not limited to the named defendants, have created a public nuisance by “continuing
4 to kill, beat, stab, tag gang graffiti, threaten, intimidate, sell drugs and loiter in public” for the
5 benefit of the gangs, and state that these activities have “terrorized” the citizens of the City of
6 Santa Barbara. Plaintiffs state that the alleged activity “to this day diminishes the quality of life
7 and harms the health and safety” of those who reside in and frequent the proposed Safety Zones.
8 Plaintiffs characterize the EASTSIDE and WESTSIDE gangs as “extremely violent”, stating that
9 “Citizens are attacked, their property is damaged and stolen, and they are afraid to leave their
10 homes, walk the streets, and expose children to the dangers the defendants continue to create.”

11 12.2 The Civil Code, at section 3479, defines nuisance as “anything which is injurious
12 to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so
13 as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free
14 passage or use, in the customary manner, of . . . any public park, square, street or highway. . .”
15 Civil Code section 3480 defines a ‘public nuisance’ as one that affects “an entire community or
16 neighborhood, or any considerable number of persons, although the extent of the annoyance or
17 damage inflicted upon the individuals may be unequal.” “Section 370 of the Penal Code mirrors
18 these civil provisions, combining the characteristics of nuisances generally with a distinctly
19 public quality: that a given activity ‘interfere with the comfortable enjoyment of life or property
20 by an entire *community* or *neighborhood*, or by any *considerable number of persons*.’ (Pen.
21 Code, § 370, italics added.) *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4th 1090, 1104
22 (“*Acuna*”). These definitions have been further considered, in their application to gang
23 injunctions, in cases such as *Acuna*. “Of course, not every interference with collective social
24 interests constitutes a public nuisance. To qualify, and thus be enjoined, the interference must
25 be both *substantial* and *unreasonable*.” *Acuna* at 1105 [Emphasis in original].

1 In *Acuna*, gang activity in the Rockspring area of San Jose was described as an: “urban
2 war zone.” This court quotes the following description at length because of its importance in
3 demonstrating what constitutes a public nuisance:

4
5 “[The neighborhood in question] “is an occupied territory. . . Gang members, all
6 of whom live elsewhere, congregate on lawns, on sidewalks, and in front of
7 apartment complexes at all hours of the day and night. They display a casual
8 contempt for notions of law, order, and decency – openly drinking, smoking dope,
9 sniffing toluene, and even snorting cocaine laid out in neat lines on the hoods of
10 residents’ cars. The people who live in Rockspring are subjected to loud talk,
11 loud music, vulgarity, profanity, brutality, fistfights and the sound of gunfire
12 echoing in the streets. Gang members take over sidewalks, driveways, carports,
13 apartment parking areas, and impede traffic on the public thoroughfares to
14 conduct their drive-up drug bazaar. Murder, attempted murder, drive-by
15 shootings assault and battery, vandalism, arson, and theft are commonplace. The
16 community has become a staging area for gang-related violence and a dumping
17 ground for the weapons and instrumentalities of crime once the deed is done.
18 Area residents have had their garages used as urinals; their homes commandeered
19 as escape routes, their walls, fences, garage doors, sidewalks and even their
20 vehicles turned into a sullen canvas of gang graffiti.

21
22 The people of this community are prisoners in their own homes. Violence and the
23 threat of violence are constant. Residents remain indoors, especially at night.
24 They do not allow their children to play outside. Strangers wearing the wrong
25 clothing are at risk. Relatives and friends refuse to visit. The laundry rooms, the
trash dumpsters, the residents’ vehicles, and their parking spaces are used to deal
and stash drugs. Verbal harassment, physical intimidation, threats of retaliation,
and retaliation are the likely fate of anyone who complains of the gang’s illegal
activities or tells police where drugs may be hidden. . . [there is a] hooligan like
atmosphere that prevails night and day.” *Acuna*, at 1100, 1120.

19 *Acuna* is unique among appellate cases dealing with gang injunctions because it is the only one
20 that describes the nuisance in detail. In the other cases, it appears the issue of whether there was
21 a nuisance was not litigated or, at least, was not an issue on appeal. The discussion is important
22 here because these defendants have actively litigated the issue of whether the Santa Barbara gang
23 activity constitutes a public nuisance. In those instances where gangs only, and not constituent
24 members, have been named, the issue of the need for the injunction tends to be determined by
25 default, and only the terms of the resulting injunction are litigated.

1 12.3 In describing the situation in Santa Barbara, the plaintiffs have used adjectives
2 common to the *Acuna* case, describing EASTSIDE and WESTSIDE as two turf gangs at war
3 with one another, stabbing, attacking and killing opposing members, and recruiting children and
4 youth into their ranks, while citizens cower in their homes. Defendants argue that the citizens of
5 Santa Barbara do not demonstrate the effects of laboring under a public nuisance, and that the
6 data relied upon by the plaintiffs to show such public nuisance exists is unreliable and overstated,
7 that the data is not presented in relation to total crime statistics required to give it rational
8 meaning, and that the conditions in Santa Barbara are not of such an acute nature to require the
9 imposition of injunctive relief.

10 12.4 Plaintiff Evidence of Public Nuisance.

11 (a) The court was favorably impressed by the data compiled by the Santa Barbara
12 Police Department (“SBPD”) in its preparation to seek an injunction. Regardless of the outcome
13 of the injunction effort, this was a necessary and useful exercise, both for improved
14 understanding of gang activity in Santa Barbara and for updating the SBPD computer systems to
15 a more current standard. SBPD’s diligent and substantial review of historical material was
16 undertaken in a very systematic (if not statistically complete) manner, and it produced
17 information of great utility to law enforcement. The data clearly demonstrates that Santa
18 Barbara, like most other cities its size in the State of California, experiences gang related crime,
19 although the conclusions to be drawn from that data are disputed. The data was presented in two
20 increments, the first dealing with alleged gang activity occurring from 2004 to 2009, and a
21 second dealing with activity from 2010 to 2013. The data does not include information
22 concerning the relationship of gang related crime to the overall crime rate, in particular what the
23 percentage is of gang crime of all crime in the community.

24 (b) In approximately June of 2009, SBPD assigned Sgt. David Henderson, an officer
25 with more than 20 years experience, to undertake a review of the history of gang-related crime

1 and nuisance activity in Santa Barbara to the end of making a recommendation to SBPD
2 concerning the appropriateness and viability of a gang injunction for Santa Barbara. Sgt.
3 Henderson presented as a straightforward and reliable witness. Sgt. Henderson had no academic
4 or employment background in compiling statistical data or conducting this type of research. It
5 was felt, however, that his history in gang in enforcement and years of experience in the
6 department qualified him to the task. He was assisted on a part-time basis by several other field
7 officers and by two computer staff.

8 Sgt. Henderson began his inquiry on an anecdotal level, consulting with officers with
9 long patrol and gang enforcement history, to compile a list of known gang members over the last
10 20 years that could be searched in the two existing computer systems. The officers were asked to
11 provide names of individuals about whose gang affiliation they were confident, to the extent that
12 they could comfortably testify to gang affiliation as defined in Penal Code section 186.20 et seq.
13 A list of 537 persons was compiled.

14 These names were then applied to a computer search on each system. The reports
15 produced by the search were then reviewed individually by Sgt. Henderson, who determined
16 what, if any, gang affiliation the report contained. The search matched names to categories
17 including alleged perpetrator, victim, and witness, and persons identified with outstanding
18 warrants. Reports in all categories were included in incident totals as gang related, regardless of
19 the role of the alleged gang member in the incident. Once Sgt. Henderson determined a report
20 was gang related, it was given to computer staff, who were tasked with the creation of the visual
21 report that contains a dot (red for EASTSIDE, blue for WESTSIDE) for each gang related
22 incident.

23 Within the first two months of activity, it was concluded that a gang injunction would be
24 pursued, at which point Detective Gary Siegel, plaintiff's principal gang expert witness, began
25 reviewing the reports produced by the search and preparing his declaration in support of the

1 injunction request. Upon hearing this testimony, the court had concerns about the methodology
2 of the inquiry, the prematurity of the conclusion that an injunction should be sought, and the
3 relevance and reliability of the results. These concerns were confirmed later in the trial by
4 defense expert Dr. Edvina Barvosa, discussed herein.

5 (c) SBPD employed the services of a consultant, Deputy District Attorney for Fresno
6 County Gregory Anderson. Mr. Anderson was designated as an expert to testify concerning a
7 number of issues, including the propriety of a gang injunction for Santa Barbara. The court
8 found him to be a well meaning and well prepared witness, who testified in a straightforward
9 manner. He has been primarily responsible for obtaining a number of gang injunctions in Fresno
10 County, and has consulted with other jurisdictions to assist them in obtaining injunctions. He
11 has written a handbook for California district attorneys in obtaining injunctions. Mr. Anderson is
12 clearly an expert in how to go about seeking gang injunctions generally. He also testified about
13 his personal experiences obtaining injunctions in Fresno County.

14 The court did not find Mr. Anderson's testimony concerning the propriety of an
15 injunction for Santa Barbara to be persuasive. Gang injunctions are highly particular, and
16 require a thorough understanding of the area sought to be covered by the injunction. The court
17 found his knowledge of Santa Barbara to be incomplete.

18 The court was interested by Mr. Anderson's testimony about the importance of
19 community buy-in when injunctions are sought, and receiving input from community members
20 about their perceived need for an injunction. Although not scientific in his approach, in Fresno
21 he did conduct informal surveys in certain injunction areas to determine community support, and
22 he voiced an opinion the court found to be reliable that gang injunctions are generally not
23 successful in achieving crime rate improvement without demonstrable community support.
24 SBPD presented no evidence of significance relating to this important issue. Other than hearsay
25 comments by officers about ad hoc contacts with residents and business owners here and there,

1 and testimony that a number of public meetings occurred, plaintiffs offered no persuasive
2 testimony from any individuals, or any evidence of any systematic effort to measure the need for
3 an injunction (or lack of need) perceived by the community.

4 Mr. Anderson was critical of academic approaches to assessing gang injunctions, but the
5 court did not find his testimony persuasive. He acknowledged that his understanding of Santa
6 Barbara's situation is essentially anecdotal. The court found his testimony about the existence of
7 EASTSIDE and WESTSIDE as Sureno affiliated groups that have some ties to the Mexican
8 Mafia to be generally reliable, but lacking in supportive facts concerning the details of such
9 involvement. Although he had some limited exposure to academic analysis in the past, the court
10 did not find this experience adequate to support his challenge to the susceptibility of gang
11 injunctions to focused sociological study.

12 (d) Lengthy testimony was offered by defense expert Detective Gary Siegel, an 18
13 year officer of SBPD. Detective Siegel drafted the primary factual declaration in support of the
14 injunction request, and his testimony essentially repeated the averments contained in that
15 declaration. Detective Siegel has significant experience in gang-related law enforcement, having
16 actively investigated well over 500 gang related crimes and incidents, many leading to successful
17 prosecutions. He has qualified in the past as a gang expert in State and Federal court, primarily
18 in criminal cases, where he opined on individuals' status as gang members, and the history,
19 membership, and modus operandi of gangs and gang members. In addition to his personal
20 experience, law enforcement related training, inter-agency and subject matter organization
21 involvements, he also has spoken to many gang members and their families. He has also
22 watched reality programming on the History Channel and the Discovery Channel (such as
23 "Gangland") and has read autobiographies of gang members such as the one written by Tony
24 Rafael ("The Black Hand"). In his current employment assignment, an important facet of his
25 work is gang intelligence. He is a gathering point for all gang related reports, field contacts,

1 information from citizens, informants and other officers. He has a significant amount of contact
2 with the Santa Barbara County Jail. He is a sort of repository of all local gang information.

3 Detective Siegel testified at length about the status of EASTSIDE and WESTSIDE as
4 Sureno gangs connected to La Eme, or the Mexican Mafia. This affiliation places EASTSIDE
5 and WESTSIDE gang members within the Sureno hierarchy, where they are subject to Sureno
6 rules and required to move money earned in criminal activities up the chain to leaders in La Eme.
7 This "taxation" occurs in a variety of ways, from direct payments from individual to individual
8 up the chain, to systematic deposit of funds into the prison commissary accounts of La Eme
9 leaders or prisoners under their control. Gang affiliations are loosely knit, with leadership in
10 constant flux as gang membership evolves, and members go in and out of custody. The
11 evidence suggests that problems created by gang activity behind bars, such as improper
12 inmate/outside and inmate/inmate communication, misuse of commissary accounts and violence
13 will not be improved in any substantial way by a gang injunction. The problems in correctional
14 institutions across the country are major and multifaceted, discussion of them is not necessary
15 to this particular inquiry.

16 Detective Siegel testified about gang history in Santa Barbara, and current gang culture.
17 He discussed a host of matters relating to gang culture, including but not limited to gang signs,
18 gang clothing, gang music, gang honor rules, gang tattoos, intimidation, gang crimes, and the
19 intergenerational nature of gang culture. There was a quantity of discussion, by Detective
20 Siegel and individual officers who followed, about gang graffiti. Detective Siegel then provided
21 numerous examples of these and other facets of gang life in Santa Barbara from the particular
22 incidents described in the SBPD data. The court concluded that Santa Barbara is subject to less
23 graffiti than many communities of the same size, and the majority of it is not gang related. There
24 are existing graffiti removal efforts that are largely successful. There was also a lengthy
25 discussion of Penal Code section 186.20 et seq., gang registration, and the criteria used to

1 identify persons as participants or active members in street gangs. The court found this
2 testimony very educative and elucidating.

3 It would be impossible and unnecessary to list each incident discussed by witness Siegel,
4 and the other law enforcement witnesses, and the court simply refers to the record. The court
5 accepts the conclusions of Detective Siegel concerning the existence of EASTSIDE and
6 WESTSIDE as Sureno criminal street gangs. These gangs commit many crimes. Both felonies
7 and misdemeanors are committed by gang members, a significant number of which are drug
8 related. Some of these crimes are violent and assaultive in nature. There have been gang related
9 murders in Santa Barbara, albeit not in significant numbers. The court agrees that this is
10 troubling criminal activity that requires focused attention from law enforcement (which it
11 definitely and properly receives in Santa Barbara). The testimony of Detective Siegel also
12 demonstrates that within the Santa Barbara gangs there are a relatively small number of
13 significant bad actors. Detective Siegel noted that there are effective strategies being employed
14 by SBPD to combat gang activity, from curfew and truancy restrictions on juveniles, to *Terry*
15 stops and searches, and the enforcement of parole and probation requirements.

16 Detective Siegel testified to his opinion that the gang injunction is desired by the
17 community, based on his anecdotal experience of talking to people in the community; as of the
18 date of his deposition he had spoken to roughly thirty people. These were not instances where he
19 sought persons out to seek their opinion, but conversations where the subject matter simply came
20 up. He notes he had only spoken to one person opposing the injunction, a conversation that
21 happened in the courtroom.

22 (e) Plaintiff also offered testimony from Detective Benjamin Ahrens. He is also a
23 long term SBPD officer, with significant gang experience, who has conducted gang training for
24 other local agencies. He also discussed various particular incidents of gang crime, including a
25 robbery at the Mi Fiesta market, and an assault incident at Franklin Center that were both caught

1 on videotape. Thereafter, testimony was offered from a series of SBPD officers who likewise
2 discussed incidents of crime and graffiti, contact with gang members, and other related topics.
3 The court will not enumerate this testimony, but notes that it does demonstrate criminal gang
4 activity in Santa Barbara within the proposed safety zones.

5 (f) The testimony of Mr. Arthur Nevarez was also offered by the plaintiffs. Mr.
6 Nevarez is currently incarcerated in the Santa Barbara County jail. He is serving a life sentence.
7 He was an active EASTSIDE gang member from the time when he moved to Santa Barbara at
8 age 16, until he decided to drop out and debrief two and a half years ago. He is now 40 years
9 old. Mr. Nevarez testified about gang life in a manner consistent with the description of the law
10 enforcement witnesses. He testified about gang communication in prison through the use of
11 notes, or "kites", and the movement of money through the gang hierarchy and its management by
12 incarcerated members, so called "taxing". He testified to his knowledge that \$5,000 to \$6,000
13 moves each month through the Santa Barbara Jail. He testified about various notable gang
14 members.

15 He was cross examined about his criminal history, which is significant and involves
16 crimes with a direct bearing on veracity, such as dissuading witnesses. He acknowledged that his
17 testimony may benefit his situation. He has had numerous interviews with various law
18 enforcement agencies since his decision to debrief. He was in the Santa Barbara jail because he
19 manipulated the system to get sent from prison to the jail for a period of time by arranging to be
20 subpoenaed as a witness in a pending case.

21 Near the end of his testimony, he offered a rather gratuitous statement, to the effect that
22 the pending injunction was the subject of a directive from La Eme shot callers - "Word went
23 around the jail that things should lay low to let the gang injunction cool off."
24
25

1 The court found the testimony of Mr. Nevarez to be obviously self-serving. He seemed
2 highly interested in demonstrating his own self importance, and highly invested in his own
3 notoriety and gang notoriety. The court questions his credibility.

4 (g) After the underlying factual testimony concerning gangs in general and gang
5 activity specific to Santa Barbara offered by Detective Ahrens and other individual officers,
6 Detective Siegel returned to the stand to provide opinion testimony concerning the foundational
7 matters related by other witnesses, including his assessment of each of the individually named
8 defendants as gang members. The court is convinced by his testimony that 10 of the individual
9 defendants, by clear and convincing evidence, are gang members. The court finds that there was
10 not clear and convincing proof of current gang membership of FRANCISCO ANAYA.

11 Detective Siegel offered further opinions concerning the propriety of the configuration of
12 the proposed Safety Zones and the overall need for the gang injunction. He also addressed
13 individual provisions of the injunction, asserting each to be a means to reduce gang activity and
14 notoriety, that will reduce gang recruiting and offer opportunity for gang members to move away
15 from gang life; making generally conclusive statements concerning effectiveness of an injunction
16 as a whole. Asked how the injunction would be enforced, and what the plans were for its use
17 and implementation, Detective Siegel was unclear, noting that details of enforcement were the
18 province of others. Asked by the court to identify with particularity where an injunction would
19 offer anything substantially different from existing gang registration law, parole and probation
20 provisions, Detective Siegel conceded that most do not differ greatly, that the crux of the request
21 is the provision relating to association. He conceded on cross examination that the remaining
22 individual defendants are serious criminals with long criminal histories, a number of whom are
23 already serving long prison sentences, and who, when released, will likely be under parole or
24 probation restrictions. He had previously testified that probation and parole enforcement is not
25 as strong as it used to be, without even anecdotal support of that assertion. On redirect

1 examination, asked further about how the injunction would be used in the field, Detective Siegel
2 testified that if an officer came across an enjoined person doing a prohibited activity, there would
3 be a range of choices how to respond, from a verbal warning, to arrest, to citation, to
4 documentation with later follow up. He then described the proposed 'pre-deprivation'
5 procedure.

6 Overall, Detective Siegel was an effective witness on behalf of the plaintiffs. However,
7 his expert analysis was focused through a very narrow lens, and it did not take into consideration
8 the bigger picture of criminal activity in the Santa Barbara area, in defining the scope of the gang
9 activity. The compiled data was incomplete. There was very little well supported evidence of
10 impact on the community or community buy-in to an injunction program.

11 12.5 Defense evidence concerning Public Nuisance.

12 (a) The defense offered a handful of ordinary Santa Barbara residents as witnesses.
13 These were individuals who had resided for significant periods in a variety of areas in the
14 proposed Safety Zones. These witnesses testified to their individual experience, which was
15 consistent to the effect that gang presence was not significantly notable to them. None had had a
16 direct negative encounter with a gang member. None had observed gang activity in the open in
17 their neighborhoods. Most had a peripheral sense of occasional graffiti, with a lack of certainty
18 as to whether it was gang related. All denied feeling fearful or intimidated. One, a former gang-
19 involved individual, testified about her familial experience and her current experience as a
20 frequent return visitor to her neighborhood, an area in the proposed safety zone she described as
21 a cohesive, generally peaceful place, where gang activity is known, but where it does not impact
22 the day to day lives of residents in significant ways. While these witnesses were few in number
23 and their testimony anecdotal, the court found their impressions more reliable than the
24 generalized and hearsay assertions communicated by other witnesses to the contrary.

1 (b) Dr. Edvina Barvosa, Ph.D. testified on behalf of the plaintiffs. She obtained her
2 Ph.D in Political Science from Harvard University. She has dual M.A. degrees from Cambridge
3 University in Social Science and Political Science. She initiated her academic career with a B.A.
4 from Pomona College. Her area of interest is the measurement of complex social phenomena,
5 and identity formation. She has no practical law enforcement training, but her research has
6 included work on gang membership and the effects of suppressive policing on gang membership
7 and prison populations. She has studied the effectiveness of gang injunctions, primarily through
8 review of the five major studies conducted to date.

9 Peer reviewed academic studies demonstrate that gang injunctions do not have a
10 significant effect on crime reduction beyond their first year of use, do not substantially change
11 the behavior of gang members, and do not decrease recruiting or encourage termination of
12 membership. Injunctions may be criticized for a variety of reasons, including (1) Constitutional
13 questions, (2) disparate racial impact, (3) difficulty of individuals to exit injunctions, (4)
14 potential mislabeling of persons as gang members, (5) increase of already excessive
15 incarceration rates, and (6) the inception of injunction policies tend to be anecdotally based, not
16 evidence based, so it is misguided as public policy.

17 The witness had particular concerns about the SBPD data. It covered a period of close to
18 20 years for collection of potential names; the study begins with an assumption that those
19 persons were/are gang members. These names were used to search a very wide pool of reports in
20 four categories: aggressor, reporting party, victim, or witness – with three benign categories
21 collapsed into the definition of an “offense.” When the reports were reviewed, in certain
22 instances Penal Code numbers describing conduct were changed, without a record of the
23 changes. The 2010 to 2013 data indicates that there is not a high level of gang related crime in
24 Santa Barbara, not a level sufficient to support a gang injunction. As with prior data, the criteria
25 applied in “flagging” the cases was not specific enough.

1 Further, SBPD's own crime statistics offered in other settings, specifically to the public
2 by an SBPD spokesperson on February 10, 2014, stated that there were 52 gang related crimes in
3 2012, and 72 in 2013. Comparing these numbers to the crime statistics compiled by the FBI,
4 statistics that are reported to them by every law enforcement agency, including SBPD, gang
5 related activity amounted to only 1.5% of serious Part 1 crimes (Homicide, rape, robbery,
6 aggravated assault, burglary, arson, etc.). These numbers are for the entire city of Santa Barbara,
7 not just the proposed safety zones. The 1.5% gang crime statistic is exceedingly low compared
8 to other jurisdictions. The national comparisons for cities of 50,000 to 100,000 were between
9 10.9% and 13.2%. Santa Barbara's numbers are incredibly small compared to other
10 jurisdictions. Overall national numbers for gang related crime are up to 48%, and 90% in some
11 jurisdictions. Santa Barbara's rate was 46% to 88% lower than the averages for metropolitan
12 jurisdictions. Santa Barbara's homicide rate is extremely low; there have been only 16 gang
13 related homicides since 1992.

14 Another issue of concern for the witness was "blowback effect." Research suggests that
15 applying a civil gang injunction in a low crime area may cause increased identification within the
16 gang - an us vs. them mentality that may be very risky. The witness described a large quantity of
17 academic literature on street gangs going back to the 1920's. Gang membership generally results
18 from experience of marginalization of various kinds, including race, ethnicity, social exclusions,
19 class, material lack, and others.

20 Gang activity is primarily a youth phenomenon, acute for juveniles age 13 to 19. When
21 individuals reach a position where they are able to find employment, start families and the like,
22 they find other social support and the gang becomes obsolete for these individuals. The 2008
23 Santa Barbara Civil Grand Jury report indicated that gangs are primarily comprised of youth,
24 90% are age 13-19, and primarily Latino youth from low income families. The requested
25 injunction, which essentially targets a very small number of adults, is not going to have a

1 significant effect. The 2008 Grand Jury report documented the impression of marginalization of
2 Latino Youth, hence a public perception about mislabeling of Latino youth expressed in the
3 public comment at the 2013 City Council meeting discussing the injunction. Categorization as a
4 gang member can actually be an obstacle to individuals trying to age out, and identify as other
5 than a gang member. Dr. Barvosa had done some street-level gang research in conjunction with
6 a colleague, Victor Rios, at UCSB, but her primary role in that activity was analysis of the data;
7 she reviews data that has been assembled by others. Cross-examined on several of the studies
8 she referenced, Dr. Barvosa ably supported her opinions relating to those studies. Dr. Barvosa
9 was cross-examined on the distinction between Class 1 and Class 2 crimes (offenses like
10 vandalism and graffiti) and the effect that this distinction may have on her conclusions. The
11 witness noted that Santa Barbara does not even track Class 2 crime, and although there is a
12 category for street crime in its statistics, that category is not further refined to describe gang
13 activity, so it is impossible to state what percentage of Class 2 crime is gang related.

14 Asked for the bottom line, the witness opined that the best a gang injunction can produce
15 is a 4.4 to 8%, or 5.5 to 11% (depending on the study) reduction in crime for one year, after
16 which the improvement declines significantly. "The numbers simply do not warrant this type of
17 intervention." UCSB research demonstrates that while each gang may have 100 or so people
18 (the plaintiffs assert 200) who identify with each gang in some manner, there are about 30
19 significantly active members in each gang at a time. As the SBPD testimony demonstrated,
20 report to report you see the same names over and over again. There are other methods, other
21 than injunction, that have proven to be far more effective, focused on juveniles and preventative
22 policing. Cross-examined for a precise statement of just how much crime, or how many crimes,
23 or how much serious activity would be needed for an injunction, the witness pointed out that she
24 cannot give such a number, that there are many factors to be considered other than just such a
25 number.

1 12.6 Analysis of the Public Nuisance issue.

2 (a) What is the exact ratio of gang-related criminal activity to general criminal
3 activity that supports a gang injunction? Regardless of that ratio, what is the overall quantity of
4 crime that makes a neighborhood injunction-worthy? Do those numbers trump Constitutional
5 and other concerns? These are questions that experts cannot answer; they are the questions that
6 the court, sitting in equity, addresses. And numbers do not tell the whole story. *Acuna* and
7 *Englebrecht* suggest that hard data about rates of crime, and the quantity and incidence of gang
8 crime are important; but they are not the only criteria. The numbers amount to a public nuisance
9 only when their interference with collective social interests of the community is manifest,
10 substantial and unreasonable.

11 (b) We do not know the exact ratio of gang-related criminal activity to general
12 criminal activity in the proposed safety zones or in the Santa Barbara community as a whole. In
13 particular, we do not have reliable numbers to express such a ratio relating to the less egregious,
14 but often more visible aspects of gang activity that comprise the world of Class 2 offenses, and
15 activity like graffiti; because the total numbers are not comprehensively tracked. What the
16 evidence does show is that the overall rate of crime in Santa Barbara is much lower than State
17 and National averages. What the evidence does show is that the homicide rate is extremely low,
18 and the instances of gang-related homicide even lower. Because gang related homicides are
19 nearly always directed at other gang members, they do not occur where members of the public
20 observe them (although there have been a couple of highly publicized exceptions). Of course,
21 any serious crime is one crime too many.

22 (c) Clearly, gang activity has a negative impact on children and youth who are
23 recruited into gangs or who live in an environment where important adults in their lives are gang
24 members engaging in criminal activity. But a gang injunction will not interfere with the ability
25 of a mother to dress her toddler in gang attire and teach him to throw gang signs. It will not

1 interfere with an older gang member, in a room in a private home, when he shows a minor how
2 to use a firearm, extolling what we know to be illusory, or even wrongheaded, “benefits”,
3 material and social, to gang life. It will not interfere with the ability of a seventeen year old to
4 cover his or her face and body with tattoos that may later become a barrier to full participation in
5 the larger society. These things are very dramatic, but they do not go to the heart of the
6 injunction analysis. The injunction at issue here will only impact a relatively small number of
7 adults, many of whom are already under the scrutiny of the criminal justice system.

8 (d) Further, claims that gang activity has been quiescent because of the pendency of
9 the injunction and that gangs will suddenly erupt into lawlessness if the injunction is denied is
10 dramatic, but of very questionable reliability and not pertinent to the analysis.

11 (e) It is a sad fact of gang life, as all the law enforcement witnesses conceded, that
12 much negative gang activity is inwardly focused to gang culture – the gangs and subgangs prey
13 on each other, in ways often invisible to the community around them. They assault each other,
14 shoot each other, steal from each other, even kill each other. And in fact, their code tells them
15 that harming families and community members at large can even be dishonorable. This does not
16 excuse the conduct, of course, nor does it change the dreadful effect such crime may have on the
17 victims, families and friends of those who are gang members or gang involved. The social
18 concerns, from poverty, to substance abuse, to racism – there is a long list – that underlie gang
19 activity at its roots cry out for serious attention. But the question asked relative to a gang
20 injunction has to do with that very question of visibility, and how the activities of the gang are
21 experienced, not just by gang members and their affiliates, families and friends, but by the larger
22 community around them. This can be difficult for law enforcement, whose job is to deal with
23 crime on a day to day basis. The general public does not experience crime in the same way.

24 (f) The desire for a gang injunction is, in a certain sense, thwarted by the success of
25 SBPD, an agency that has been very diligent in its goal to minimize gang activity. Santa Barbara

1 has a comparatively low amount of crime. Only a modest amount of the more serious, Class 1
2 crime, is gang related. As the community learned during the pendency of this case, one painfully
3 ill and deluded person, without any gang involvement at all, can raise the homicide rate
4 dramatically in a few moments on an otherwise peaceful Isla Vista day. Such activity is very
5 hard to predict. Crime can never be wholly eliminated. In a society that values Constitutional
6 rights to associate with those whom one pleases, to wear clothes that express one's individuality
7 (or lack thereof), to move freely about the community and patronize its places of public
8 accommodation, the question is one of degree. How much abridgement of such rights is
9 appropriate in pursuit of the reduction of criminal behavior?

10 (g) A gang injunction stands to the side of the criminal statutes that subject certain
11 behavior to significant consequences like fines and incarceration. The court is asked to make
12 certain persons subject to criminal or quasi-criminal consequences for matters that no legislative
13 body has deemed to be criminal. It abridges certain guarantees of due process. Injunctions, in
14 the civil law, are approached very carefully. Such orders are able to reach in and re-order the
15 conduct of people's lives in ways that have a significant impact on their autonomy and their
16 rights as citizens. So the court considers very carefully what criteria must be satisfied to support
17 such an order. Again, for a nuisance to be enjoined as a public nuisance, its interference with
18 collective social interests must be "both substantial and unreasonable." *Acuna*, supra, at 1105.

19 (h) Law enforcement does have plain, speedy and adequate remedies available to it,
20 utilizing existing law. These include, but are not limited to, provisions related to gang member
21 registration, probation and parole. Plaintiff witnesses also discussed the effectiveness of a
22 variety of community policing techniques that emphasize positive public interaction, especially
23 with youth. Plaintiff witnesses essentially conceded that the injunction they request largely
24 mirrors remedies already available to them to manage gang activity. This evidence suggests
25 there is no emergent need for the injunction.

1 (i) The criteria for issuance must be satisfied by clear and convincing evidence,
2 regardless of the drama or the heightened feelings that may be connected to the circumstances.
3 Here, the court is given guidance from the case law and refers back to paragraph 12.2. The
4 proposed Safety Zones in this case look nothing at all like the neighborhood described in *Acuna*.
5 Not only is the statistical support incomplete and overall suggestive of significantly low rates of
6 crime, of which gang activity is only a small sub-percentage, but the experience of the
7 community is not the experience described in *Acuna*. The court heard from only a handful of
8 citizens, all of whom have had a benign experience in their community. The plaintiffs provided
9 only hearsay impressions related by law enforcement. It is true that the few community
10 members who testified may be statistical anomalies. It is also true that law enforcement, because
11 of its task, views the world through a particular lens, and it perhaps did not broaden its inquiry as
12 it ought to have done to demonstrate the effect of gang activity on the community. The court
13 prefers to look at it another way – all were accurately reporting their own experience. What
14 emerges is the conclusion that the nuisance created by gang activity does not rise to a level that
15 constitutes an emergency or untenable, unbearable situation. Thus, the activity is not a public
16 nuisance that requires injunctive relief.

17 13. Other Issues.

18 13.1 Having determined that public nuisance does not exist, the court's analysis may
19 stop there. But the court did consider certain other issues that had a bearing on the decision to
20 decline the requested injunction.

21 13.2 The Proposed Safety Zones. Even if the court had determined that a public
22 nuisance requiring injunctive relief existed, delineating the safety zones would be a significant
23 challenge. The Zones as proposed are not narrowly tailored as required. And in fact, it might
24 not be possible to tailor such Zones given Santa Barbara's demographics and geography. Zones
25 A and B encompass virtually all of downtown Santa Barbara, including a majority of the places

1 of public interest and public accommodation, that are often filled with visitors. The residential
2 areas within Zones A and B are not homogenous, and persons of many classes, ethnicities, races
3 and socioeconomic status reside in both. And although the plaintiff data described a spread of
4 nuisance activity throughout both Zones A and B, that information is not adequate, and even if it
5 were, it does not seem to reflect the experience of ordinary citizens within the Zones. If an
6 injunction were granted, an effort to reconfigure the Zones would have to be undertaken, an
7 effort that might conclude that traditional gang injunction zones might not be possible to be
8 constructed in the downtown area. Although the Special Event Zone seems like a good idea for
9 public safety, the quantity of criminal/nuisance conduct in the requested areas is not supportive
10 of the establishment of such a Zone.

11 13.3 Individual Injunctive Provisions. Various of the individual injunctive provisions
12 may be subject to contentions of over breadth or other impropriety. The court does not address
13 these here, as the failure to establish a public nuisance requiring injunctive relief renders such
14 analysis unnecessary.

15 13.4 A word about the impending crime wave. Three times during the trial, plaintiff
16 witnesses related hearsay impressions that orders had come down the chain of gang “shot
17 callers” that the ongoing reductions in criminal activity, and the perceived lower profile of gang
18 activity by law enforcement, are due to the pendency of this request for a gang injunction. The
19 suggestion being that, as one witness said, “when it is denied we’ll make up for lost time” (or
20 words to that effect). The fact of the matter is that Santa Barbara crime rates have been generally
21 declining, and have long been well under state and national averages, and its gang activity has
22 been less violent than average. As Dr. Barvosa pointed out, gang injunctions can do significant
23 mischief, actually assisting gang recruitment by enhancing the boastful, negative glamour of
24 gang life, and reinforcing an “us against them” mentality. As a society, we need to work on the
25 social and economic problems that cause gangs to emerge, make gangs attractive to youth, and

1 make gangs the only social option for certain adults. The requested gang injunction will not
2 solve these problems, and there is risk it may worsen them, and alienate vulnerable communities
3 from the law enforcement services they need. The court is confident that SBPD will continue in
4 the future to do what it has done in the past: provide the kind of progressive, forward-looking
5 and effective policing the Santa Barbara community has long enjoyed. The court acknowledges
6 and appreciates the enormous challenges faced and energy expended by municipalities and their
7 law enforcement agencies, like Santa Barbara and the SBPD, dealing with gang activity. But it
8 is the effect of that activity on the community at large that carries greater weight in this analysis.
9 Because SBPD is very proactive in its efforts, it has looked to various mechanisms employed in
10 other jurisdictions to test their viability for Santa Barbara. That quest was and is appropriate. In
11 this instance it was not a wasted effort – it was clear from the testimony that SBPD was using the
12 data it was assembling, and the increased communication within the department it engendered, to
13 make inroads in gang enforcement in real time as the injunction was pending. The information
14 and insight gained was worthwhile, and will doubtless prove its worth further as time goes on.

15 IV. Conclusion and Ruling.

16 14. Plaintiffs PEOPLE OF THE STATE OF CALIFORNIA and the CITY OF
17 SANTA BARBARA have sustained their burden of demonstrating that defendants WESTSIDE
18 and EASTSIDE are unincorporated associations within the meaning of Code of Civil Procedure
19 section 369.5 and Corporations Code section 18035 and that they are criminal street gangs within
20 the meaning of Penal Code section 186.22(f) and each is a “gang” as defined by *People v.*
21 *Engelbrecht, supra*, 88 Cal.App.4th at 1258-1261. They have also proven that certain of the
22 individual defendants are gang members.

23 However, plaintiffs have not sustained their burden of proving, by clear and convincing
24 evidence, that a public nuisance exists or that WESTSIDE, EASTSIDE and the individually
25 named defendants are responsible for creating and maintaining a public nuisance in the proposed

1 Safety Zones of a nature to require an injunction. They did not prove nuisance activity that
2 substantially and unreasonably interferes with the comfortable enjoyment of life or property by
3 an entire community or neighborhood, or any considerable number of persons.

4 Plaintiffs attempted to prove a public nuisance by introducing data showing criminal and
5 other nuisance behavior. But, for purposes of proving a public nuisance, the data was flawed,
6 unreliable and incomplete. As discussed in detail above, SBPD identified gang related incidents
7 without regard for whether gang members were perpetrators, victims, reporting parties or
8 witnesses; data was altered for purposes of the gang injunction analysis, including changing the
9 Penal Code sections cited in the incident reports; and criteria for what was gang related was not
10 sufficiently specific.

11 Plaintiffs did not introduce evidence sufficient to show the relationship between overall
12 crime and purportedly gang related crime. What evidence there was demonstrated that the
13 incidence of gang-related crime in Santa Barbara is relatively low compared to other similarly-
14 sized cities in California and elsewhere.

15 Both plaintiffs' expert and defendants' expert testified that community support or buy-in
16 is important for a successful injunction. Plaintiffs did not produce any evidence demonstrating
17 community buy-in for a gang injunction. Plaintiffs argued that the City Council authorized the
18 suit for an injunction and they represent the community. But the Council consists of seven
19 individuals and there was no evidence of how they gauged support for the injunction in the
20 proposed Safety Zones. Defendants offered testimony of a few individuals who live and work in
21 the proposed Safety Zones and they did not experience substantial or unreasonable interference
22 with their day-to-day lives by gangs.

23 Defendants' expert testified that the low crime rates in Santa Barbara do not justify a
24 gang injunction. The injunction could make things worse by increasing identification within the
25

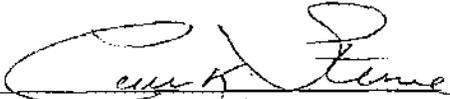
1 gang. She also noted that Santa Barbara gangs consist primarily of young offenders who are not
2 proposed to be covered by this injunction.

3 In short, Santa Barbara is not a community beset by substantial and unreasonable gang
4 related interference with the comfortable enjoyment of life or property by an entire community
5 or neighborhood, or any considerable number of persons. This is not a community like the
6 Rockspring neighborhood of San Jose described in *Acuna*. There is no evidence that residents
7 of the proposed Safety Zones in Santa Barbara are prisoners in their own homes, remain indoors
8 at night, prevent their children from playing outside, or whose relatives and friends refuse to
9 visit.

10 There is gang activity in Santa Barbara and it is a nuisance. But it is not a public nuisance
11 subject to injunction under the law.

12 14. The request by plaintiffs People of the State of California and the City of Santa
13 Barbara for a gang injunction is denied.

14 Dated: JUL 21 2014

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16 Colleen K. Sterne, Judge
17 Santa Barbara County Superior Court
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