



a. This is a civil gang injunction case by which plaintiff seeks to enjoin an unincorporated association (the gang) and several individuals from future conduct that is alleged to create a public nuisance in a designated geographic section of the City of Oakland<sup>1</sup>. As such, the action is one of the comparatively few (relative to the vast volume of all civil litigation) of such proceedings in the State of California and, so far as known to the Court, only the second such action in this court<sup>2</sup>. Civil gang injunctions, if granted, can impose restrictions on individual liberties including freedom of association, movement, and other aspects of personal expression (such as choice of attire). Individual defendants may and do assert that they may be stigmatized if made subject to an injunction.

b. Before addressing the Court's interim conclusions for the purpose of determining if a preliminary injunction will be granted as to the bifurcated Phase I parties, it is worthwhile to address the context in which this case was litigated before the Court; if for no other reason, than to reiterate what the Court may not, should not, and will not consider. This is a legal proceeding, not a political

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<sup>1</sup> The proposed "Safety Zone".

<sup>2</sup> The related action is People v North Side Oakland, Case No. RG10498901 (hereafter the North Side Oakland case).

process before a legislative body such as a city council. Whether the resources devoted to bringing the action is the *best* use of public funds for the avowed goal (reducing criminal activity in the locale and improving the quality of life for the community) is an issue for the legislative branch of government, not the court. The Court does not count the number of partisans (proponents or opponents) attending court proceedings, public hearings or street demonstrations (orchestrated or spontaneous), or media outlets to determine legal issues. Those efforts are an entirely appropriate means of public expression in a democracy, but the appropriate audience is either or both of the two other branches of government.

2. Procedural Considerations:

- a. Before proceeding to extended hearings on the merits as to the requested preliminary injunction, the Court resolved a variety of threshold matters including reciprocal efforts by counsel for the parties to disqualify each other. The Court's rulings on these issues are contained in previous orders of the Court as to the effort to disqualify plaintiff's counsel and as to the efforts to disqualify defendants' counsel. Following the May 6, 2011 hearing in this matter, developments have occurred that must be

noted for the record and, as appropriate, addressed at the Case Management Conference scheduled for June 24, 2011.

Specifically, the order dated February 7, 2011 denying the motion to disqualify defense counsel, contained a proviso that the Court would expect defense counsel Michael Siegel and Jose Luis Fuentes to voluntarily recuse themselves should certain eventualities occur. On June 23, 2011, Messers. Siegel and Fuentes filed their Notice of Withdrawal of Counsel, citing the subject provisions of the order and the proceedings before the Oakland City Council of May 17, 2011, ratifying the present litigation. The Court takes notice of the proceedings before the Council only for the purpose indicated and accepts the withdrawal of counsel with thanks for their previous efforts.

- b. The Court notes that the former City Attorney, John Russo, Esq. has left his position and that Barbara J. Parker, Esq. is listed as Acting City Attorney on the parties Joint Complex Case Management Conference Statement filed on June 22, 2011. In the Court's view this is of no consequence for the continuity of proceedings herein, but observes that the caption of the action may need to be modified. Counsel may address this issue at the June 24, 2011 Case Management Conference.

c. By previous order the Court bifurcated these proceedings for the purpose of receiving evidence on behalf of the plaintiff as to the defendant unincorporated association (“Nortenos”) and represented individual defendants selected by defense counsel who elected to testify and present evidence in opposition to the requested preliminary injunction, specifically, Abel Manzo and Javier Quintero. The Phase I proceedings also included requests for relief against unrepresented defaulting defendants Alberto Acosta, Antonio Lambaren and Joey Anthony Martinez.

3. Phase I Decision:

a. After a full review of the record including pre- and post May 6, 2011 briefing<sup>3</sup>, the Court finds that Plaintiff has, by the requisite burden of proof established entitlement to a preliminary injunction as to the Phase I parties defendant and will adopt, in substantial part, but with modifications, the Phase I preliminary injunction proposed by Plaintiff on April 22, 2011. Plaintiff shall submit an electronic copy (Microsoft Word readable and

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<sup>3</sup> At the May 6, 2011 hearing the court set a specific post hearing briefing schedule, for the express limited purpose of permitting defendants to submit proposed alternative language for any preliminary injunction. Specifically the Court noted at the hearing that defendants’ argument that attire restrictions should contain an exception for employment required uniforms was appropriate. The Court did not timely receive the proposed language, but intends to incorporate an exception to this effect in the contemplated preliminary injunction.

modifiable) to the Court for the purpose of editing and issuing an operative preliminary injunction. The modifications will include the exception suggested by defense counsel for wearing of attire specified by an individual defendant's employer (standard uniforms). For purposes of clarity the time for seeking appellate review of the Court's order as to Phase I determinations will not commence to run before filing/service of the preliminary injunction rather than from this Order.


4. Further Proceedings:

- a. The Court will address further proceedings herein at the Case Management Conference scheduled for June 24, 2011 at 2:00 p.m. In this regard, the Court anticipates including in the preliminary injunction or by separate order for an implementation review process similar to that in the North Side Oakland matter.

IT IS SO ORDERED.

Date

JUN 24, 2011

  
ROBERT B. FREEDMAN  
Judge of the Superior Court