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ENDORSED FILED
SUPERIOR COURT
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S. WIDEMANN
BY _____ DEPUTY CLERK

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SOLANO

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 vs.

16 NORTEÑO, a criminal street gang sued as an
17 unincorporated association, and DOES ONE
18 through TWO HUNDRED FIFTY, inclusive,

19 Defendants

Case No. FCS033620

~~Proposed~~ ORDER GRANTING
PRELIMINARY INJUNCTION

Assigned for All Purposes to:

Judge David E. Power

Date: July 24, 2009

Time: 8:30 a.m.

Dept: 11

Place: 600 Union Ave., Fairfield, CA

Trial Date: No Trial Date Set

Case Filed: June 1, 2009

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21 Plaintiff, the People of the State of California, applied for an order to show cause (the
22 "OSC") re: preliminary injunction to abate a public nuisance through the use of what is
23 commonly known as a "gang injunction," against defendant "Norteño," which is an
24 unincorporated association alleged to be a criminal street gang, and against all members of the
25 defendant, in a "Safety Zone" (a map of which is included as Exhibit A), located in the City of
26 Fairfield, starting at Interstate 80 and Beck Avenue, east on I-80 to Airbase Parkway, east on
27 Airbase Parkway to Heath Drive, north on Heath Drive to Dahlia Street, east on Dahlia Street to
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1 Orchid Street, north on Orchid Street to Atlantic, east on Atlantic to North Texas Street,
2 continuing east on Cement Hill Road to Dover Avenue, south on Dover Avenue to Airbase
3 Parkway, east on Airbase Parkway to the pedestrian over crossing, southwest on the Linear Trail
4 Park to Dover Avenue, south on Dover Avenue to East Tabor Avenue, east on East Tabor
5 Avenue to Sunset Avenue, south on Sunset Avenue to the railroad tracks (City Limit Line),
6 southwest on the railroad tracks to Highway 12, west on Highway 12 to Beck Avenue, north on
7 Beck Avenue to Interstate 80, and extending 100 yards to the outside of each of those boundary
8 streets. After consideration of the application, this Court issued the OSC. Upon return of said
9 OSC, and after due consideration of all papers filed in this action, including the declarations,
10 other evidence submitted, plaintiff's memorandum of points and authorities including *People v.*
11 *Acuna* (1997) 14 Cal. 4th 1090, *cert. denied*, 521 U.S. 1121; *People v. Colonia Chiques* (2007)
12 156 Cal. App. 4th 31; *People v. Englebrecht* (2001) 88 Cal. App. 4th 1236; *In re Englebrecht*
13 (1998) 67 Cal. App. 4th 486, and other argument of counsel, this Court finds by clear and
14 convincing evidence that service is proper under the circumstances, and makes the following
15 additional findings of fact: (a) that the defendant is a criminal street gang as defined in Penal
16 Code section 186.22 (the Street Terrorism Enforcement and Prevention "STEP" Act); (b) that the
17 defendant is a gang as defined for the purpose of a gang abatement injunction in *People v.*
18 *Englebrecht* (2001) 88 Cal. App. 4th 1236, 1258, (c) that the defendant is an "unincorporated
19 association" as defined in Code of Civil Procedure section 369.5; (d) that a public nuisance
20 caused by the conduct and activities of the Norteño criminal street gang exists in the Safety
21 Zone, and (e) that the conduct and activities of the defendant, the members of the defendant, and
22 those persons through whom the defendant acts, is a cause of the public nuisance that exists in
23 the Safety Zone; and

24 **GOOD CAUSE HAVING BEEN SHOWN, IT IS HEREBY ORDERED** that:

25 1. Defendant Norteño; and all members of defendant Norteño, are enjoined and
26 restrained from engaging in or performing, directly or indirectly, any of the following activities
27 in the Safety Zone:

1 a. **Do Not Associate:** Driving, standing, sitting, walking, gathering or appearing,
2 anywhere in public view or anyplace accessible to the public, with any known member of the
3 Norteño gang, but not including: (1) when all individuals are inside a school attending class or
4 on school business, (2) when all individuals are inside a church, (3) while actively engaged in a
5 legitimate business, trade, profession or occupation requiring the enjoined person's presence, (4)
6 while actively engaged in a lawful, non-gang related entertainment event, (5) while actively
7 involved in a legitimate emergency, such as a fire, natural disaster, automobile accident or
8 situation that requires immediate action to prevent serious bodily injury or loss of life, or (6)
9 while inside court, Fairfield City Hall, or the County Administrative Center, on legitimate city or
10 county business, or ~~actively involved in~~ *participating in private or public* social service programs administered publicly, provided
11 however that this prohibition against associating shall apply to all claims of travel to or from any
12 of those locations. For purposes of this provision, "entertainment event" means an amusement
13 activity that occurs at a commercial establishment and includes only events for which admission
14 is charged, such as movies, plays, public performances or sporting events;

15 b. **No Intimidation:** Confronting, intimidating, annoying, harassing, threatening,
16 challenging, provoking, assaulting or battering any person known to be a witness to any activity
17 of Norteño, known to be a victim of any activity of Norteño, or known to have complained about
18 any activity of Norteño;

19 c. **No Firearms, Imitation Firearms, or Dangerous Weapons:** Anywhere in
20 public view or anyplace accessible to the public, (1) possessing any firearm, imitation firearm,
21 ammunition, or illegal weapon as defined in Penal Code section 12020, (2) knowingly remaining
22 in the presence of anyone who is in possession of such firearm, imitation firearm, ammunition or
23 illegal weapon, or (3) knowingly remaining in the presence of such firearm, imitation firearm,
24 ammunition or illegal weapon;

25 d. **No Graffiti or Graffiti Tools:** Damaging, defacing, or marking any public
26 property or private property of another, or possessing any spray paint container, felt tip marker,
27 or other graffiti tool as defined in Penal Code section 594.2, including "slap tags";

1 e. **Stay Away From Drugs:** Without a prescription, (1) selling, possessing, or using
2 any controlled substance or related paraphernalia, including but not limited to rolling papers and
3 pipes used for illegal drug use, (2) knowingly remaining in the presence of anyone selling,
4 possessing, or using any controlled substance or such related paraphernalia, or (3) knowingly
5 remaining in the presence of any controlled substance or such related paraphernalia;

6 f. **Stay Away From Alcohol:** Anywhere in public view or anyplace accessible to
7 the public, except on properly licensed premises, (1) possessing an open container of an
8 alcoholic beverage, (2) knowingly remaining in the presence of anyone possessing an open
9 container of an alcoholic beverage, or (3) knowingly remaining in the presence of an open
10 container of an alcoholic beverage;

11 g. **No Trespassing:** Being present on or in any property not open to the general
12 public, except (1) with the prior written consent of the owner, owner's agent, or the person in
13 lawful possession of the property, or (2) in the presence of and with the voluntary consent of the
14 owner, owner's agent, or the person in lawful possession of the property;

15 h. **Obey Curfew:** Being present in public view, in a public place or in any place
16 accessible to the public, between the hours of 10:00 p.m. on any day and 5:00 a.m. of the
17 following day, unless (1) inside a school attending class or on school business, (2) inside a
18 church, (3) going directly to, returning directly from, or actively engaged in a legitimate
19 business, trade, profession or occupation requiring the enjoined person's presence, (4) going
20 directly to, returning directly from, or actively engaged in a lawful, non-gang related
21 entertainment event, or (5) actively involved in a legitimate emergency, such as a fire, natural
22 disaster, automobile accident or situation that requires immediate action to prevent serious bodily
23 injury or loss of life. For purposes of this provision, "entertainment event" means an amusement
24 activity that occurs at a commercial establishment and includes only events for which admission
25 is charged, such as movies, plays, public performances or sporting events; and

26 i. **Obey All Laws:** Failing to obey all laws that (1) prohibit violence and threatened
27 violence, including murder, robbery by force or fear, assault and battery, (2) prohibit interference
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1 with the property rights of others including robbery, theft, driving or taking a vehicle without the
2 owner's consent, and vandalism, or (3) prohibit the commission of acts which create a nuisance
3 including the illegal sale of controlled substances and blocking the sidewalk or street;

4 2. **“Opt Out” Provision:** Any person (hereinafter, “Served Person”) who has been
5 served with this injunction or any subsequent injunction entered in this action (hereinafter,
6 “Gang Injunction”) may move this Court under this opt-out provision or any subsequent opt-out
7 provision approved by this Court (hereinafter, “Opt Out Provision”), to be dismissed from this
8 action. This Gang Injunction shall not be enforceable against a Served Person who is dismissed
9 under this Opt Out Provision. The terms of the current Opt-Out Provision are as follows:

10 a. **Requirements:** Plaintiff agrees not to object to a Served Person’s motion
11 to be dismissed under this provision, so long as the dismissal is to be without prejudice and with
12 each side to bear its own costs and fees, and so long as the motion satisfies the following
13 requirements:

14 (1) **Proper Notice:** A motion under this provision shall be made on
15 proper notice, properly served on plaintiff’s counsel, and shall not be made on shortened time;

16 (2) **Not/No Longer a Gang Member:** Served Person must declare
17 he/she is a reformed, former Norteño gang member (or that he/she was never a Norteño gang
18 member), he/she is not active with the Norteño gang, and he/she has renounced the Norteño gang
19 and gang life. This declaration regarding Norteño and gang life is an essential part of this
20 provision; and

21 (3) **Proof Required:** (A) Served Person must declare that he/she has
22 not been convicted of a gang related offense for the past three years, not including any time spent
23 incarcerated, which must be true and that there are no pending charges for any gang related
24 activity; (B) Served Person must declare that he/she has not been documented by law
25 enforcement for the past three years to have been in the company or association of any known
26 active Norteño gang member, other than an immediate family member, which must be true; (C)
27 Served Person must declare that he/she has not obtained any new Norteño gang-related tattoos
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1 for the past three years, which must be true; and (D) Served Person must declare that he/she is
2 gainfully employed or a full time student at an accredited school and has so been so employed or
3 enrolled consistently for a period of one year, which must be true.

4 **b. No Third-Party Beneficiaries:** It shall not be a defense to any civil or
5 criminal contempt charge or civil or criminal charge of any nature whatsoever, that any person
6 including any Served Person was eligible to apply for dismissal under this provision.

7 **c. Effect in Other Proceedings:** Plaintiff shall not be bound by the criteria
8 of this Opt Out Provision (three arrest-free years, and other criteria), in any action, civil or
9 criminal, other than a motion brought under this provision in this action. Moreover, a dismissal
10 under this provision shall be without prejudice and shall not operate as a retraxit in any other
11 action.

12 **d. Judgment Not Admissible:** This Gang Injunction shall not be admissible
13 in any criminal or other civil action, and cannot be used against Served Person for any purpose
14 whatsoever in any other action, other than in a civil or criminal contempt proceeding brought for
15 violation of this judgment.


16 **e. Dismissed "Served Person" Committing New Violation:** If a Served
17 Person who has successfully been dismissed from this Gang Injunction pursuant to this Opt Out
18 Provision, fails to abide by all of the above "opt-out" provisions, such as by associating with
19 known active Norteño gang members, by getting new gang tattoos, or by getting arrested for any
20 crime that is determined to be a gang-related crime, then such Served Person may be re-served
21 with this Gang Injunction, and will be required to comply with all of its terms;

22 **3. Personal Service Required:** No person shall be subject to the provisions of this
23 Order unless that person has been previously personally served with this Order; and

24 **4. No Bond Required:** Plaintiff shall not be required to post an undertaking
25 pursuant to Code of Civil Procedure section 529(b)(3).

1 DATED: _____

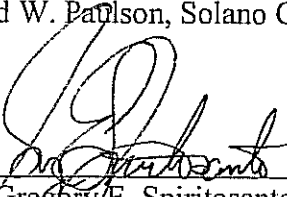
7/24/09

2 
Judge of the Superior Court

3 FCS 033620

4 Submitted on 7-24-09, by:

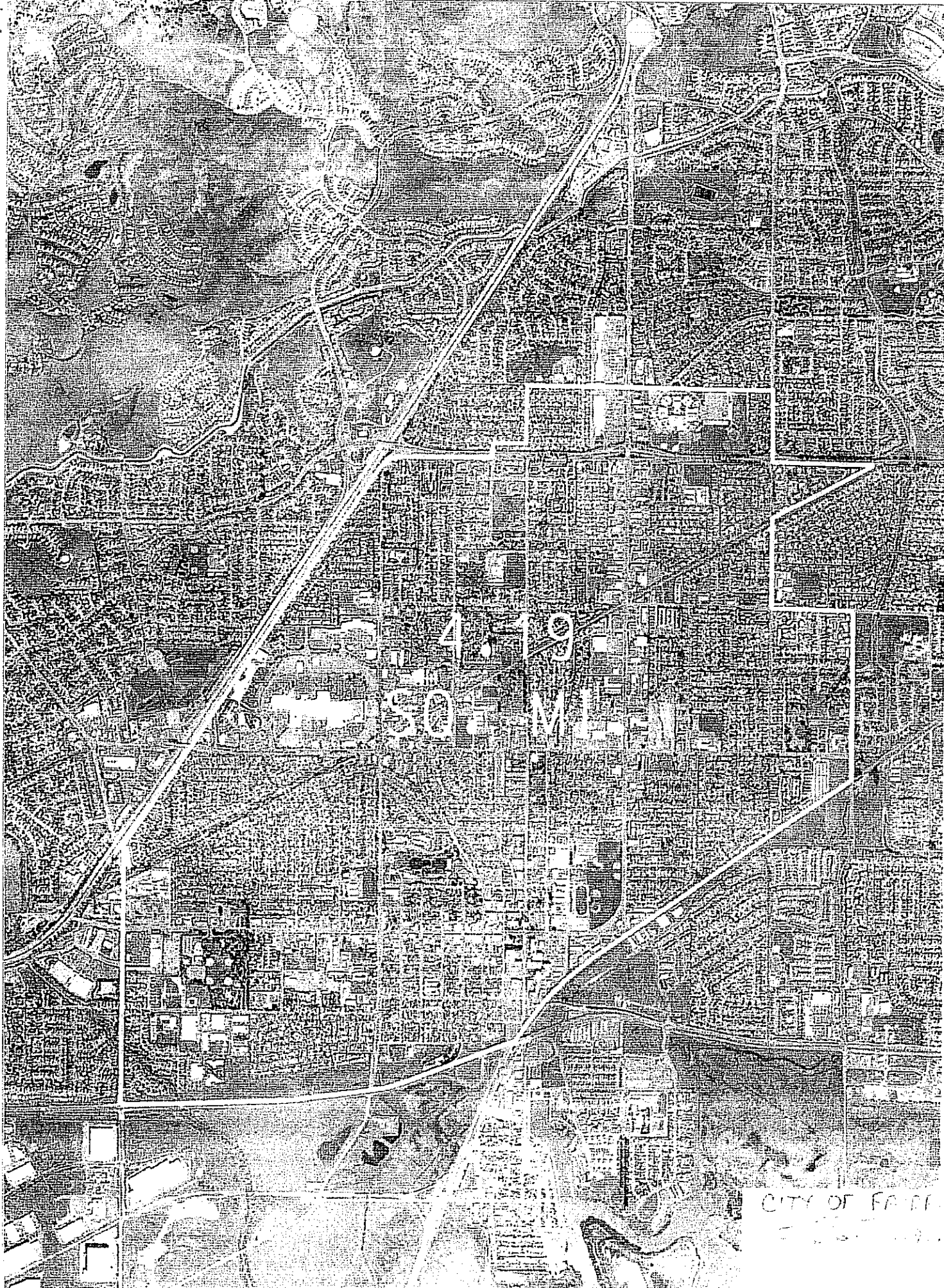
5 David W. Paulson, Solano County District Attorney

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By: Gregory E. Spiritosanto, Deputy District Attorney
Attorneys for Plaintiff

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EXHIBIT A



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CITY OF FAIRPORT
NEW YORK STATE