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12 UNLIMITED JURISDICTION

13 PEOPLE OF THE STATE OF CALIFORNIA,
14 by and through Dennis J. Herrera, City
Attorney for the City and County of San
15 Francisco,

16 Plaintiff,

17 vs.

18 CHRISTIAN NOEL PADILLA-MARTEL aka
CHRISTIAN PADILLA-MARTEL, an
19 individual,

20 Defendant.

Case No. CGC-20-586763

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION**

Hearing Date: April 20, 2021
Hearing Judge: Hon. Ethan P. Schulman
Time: 9:30 a.m.
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INTRODUCTION

1
2 Plaintiff People of the State of California filed this lawsuit against Defendant Christian Padilla-
3 Martel, a drug dealer who commutes from Oakland to sell illegal and deadly drugs on the streets of the
4 Tenderloin neighborhood, harming the people who live in, work in, and visit this community.
5 Defendant's conduct is a per se public nuisance (Civ. Code §§ 3479, 3480), and it violates the Unfair
6 Competition Law (UCL) (Bus. & Prof. Code §§ 17200 *et seq.*). Because the People are likely to
7 succeed in proving violations of one or both of these laws, and both provide for injunctive relief, the
8 People are presumptively entitled to a preliminary injunction against Defendant.

9 The Court should enter the proposed preliminary injunction prohibiting Defendant from
10 entering the Tenderloin Drug Abatement Area. This proposed injunction is appropriate because
11 existing criminal laws against drug dealing have been inadequate to stop Defendant's illegal conduct;
12 and a more geographically limited stay-away order would simply move Defendant's drug dealing from
13 one Tenderloin street corner to another – allowing Defendant to continue to harm this community.
14 Because Defendant cannot prove that this preliminary injunction would cause Defendant grave or
15 irreparable harm, the injunction should issue.

16 And even if Defendant could meet that high burden, the ongoing harm to the community from
17 Defendant selling illegal drugs is far greater than any harm to Defendant from being made to stop. The
18 Legislature has declared illegal drug dealing a nuisance per se – intrinsically harmful. That harm is
19 palpable on the streets of the Tenderloin, where illegal drugs are destroying community health, safety,
20 and welfare. The deadliest public health crisis in our community in 2020 was not COVID-19, which
21 took 249 San Franciscans. Rather, it was accidental drug overdoses. Drug overdoses have skyrocketed
22 since 2017, and in 2020 alone, drug overdoses killed 669 people in San Francisco, 175 of them
23 Tenderloin residents. Countless more drug users have lost their health and livelihoods. It is not just
24 users who are suffering. Drug dealing afflicts the entire community, creating hardship for people who
25 are simply trying to live and work in the Tenderloin. The dealers and their massive open-air drug
26 market overwhelm the public spaces, spawn crime, violence, and fear, and leave the sidewalks littered
27 with used syringes and human waste. This entire community is suffering from the poison Defendant
28 peddles. The Court should issue this preliminary injunction to protect this community from Defendant.

FACTS

I. Defendant comes from Oakland to sell illegal drugs in the Tenderloin.

Defendant is a resident of Oakland, but persistently commutes to the Tenderloin to sell significant quantities of illegal and dangerous drugs such as fentanyl, methamphetamine, cocaine base, cocaine salt, and heroin. Since May 2020, Defendant has been arrested at least three times in the Tenderloin for dealing and/or possessing drugs for sale, and for violating stay-away orders. (Juarez Decl. ¶ 4; Diaz-Deleon Decl. ¶ 5; Lyons Decl. ¶ 4; RJN ¶¶ 5-6 & Exh. E, F.) Defendant has been arrested in various locations in the Tenderloin, including near 350 Golden Gate Avenue (Juarez Decl. ¶ 4), Hyde and McAllister Streets (Diaz-Deleon Decl. ¶ 5), and 125 Hyde Street (Lyons Decl. ¶ 4). Officers regularly observe Defendant in the Tenderloin at locations known for drug trafficking, and as recently as December 2020. (Lyons Decl. ¶ 3.)

A. On May 2, 2020, Defendant was arrested for possessing drugs for sale at 350 Golden Gate Avenue.

On May 2, 2020, officers observed Defendant loitering in the area of the 300 block of Golden Gate Avenue at approximately 4:00 p.m., 5:00 p.m., and 5:44 p.m. (Juarez Decl. ¶ 4.) Officers confirmed Defendant did not live in the area and advised him multiple times that he was in violation of the Shelter in Place Public Health Order and to go home, and when he failed to do so, officers detained him. (*Ibid.*) Defendant stated he lived in Oakland. (*Ibid.*) During a subsequent search of Defendant, officers found the following: one medium-sized, plastic bindle of suspected fentanyl weighing 8.4 grams; one medium-sized, plastic bindle of suspected cocaine salt weighing 7.3 grams; one medium-sized, plastic bindle with several smaller bindles of suspected heroin weighing 11.3 grams; four small plastic bags; and \$446 in cash in multiple denominations. (*Ibid.*) Defendant admitted to the officers that he was conducting narcotics sales and most of the money in his possession was from drug sales. (*Ibid.*) SFPD used a TruNarc device to presumptively test the fentanyl (positive) and cocaine salt (positive); the heroin was not field tested. (Juarez Decl. ¶ 4 & Exh. A; Katolyichuk Decl. ¶ 3.) Scientific data shows the TruNarc test has an overall true value positive rate of 96% for cocaine, methamphetamine, and pure heroin, and the scientific literature indicates it can positively and accurately test for fentanyl. (Chemist Smith Decl. ¶ 10.)

1 **B. On June 29, 2020, Defendant was arrested for selling drugs at Hyde and**
2 **McAllister Streets.**

3 On June 29, 2020, at approximately 4:40 p.m., officers were conducting narcotics surveillance
4 near McAllister and Hyde Streets when they observed Defendant engage in several hand-to-hand
5 narcotic sales. (Diaz-Deleon Decl. ¶ 5; Gunn Decl. ¶ 4.) Officers detained Defendant and determined
6 he was in violation of an active stay-away order, which required he stay 150 yards away from 300
7 Golden Gate Avenue. (Diaz-Deleon Decl. ¶ 5.) Officer Diaz Deleon arrested and searched Defendant,
8 and located 10.9 grams of suspected fentanyl, 7.2 grams of suspected methamphetamine, and \$201 in
9 cash in multiple denominations. (Diaz-Deleon Decl. ¶ 5; Gunn Decl. ¶ 4.) SFPD used TruNarc to
10 presumptively test the fentanyl (positive) and methamphetamine (positive). (Diaz-Deleon Decl. ¶ 5 &
11 Exh. A.)

12 **C. On July 20, 2020, Defendant was arrested for selling drugs at 125 Hyde Street.**

13 On July 20, 2020, at approximately 1:50 p.m., officers were conducting undercover narcotics
14 surveillance near Hyde Street and Golden Gate Avenue, when they observed Defendant conduct
15 multiple hand-to-hand narcotics sales within a few minutes. (Lyons Decl. ¶ 4.) Officer Montero
16 arrested and searched Defendant, and found him in possession of the following: 9.6 grams of
17 suspected fentanyl, 9.3 grams of suspected cocaine base, 5.1 grams of suspected heroin, empty press-
18 lock “dime bags,” and \$1,062 in cash in various denominations (33 x \$20, 18 x \$10, 31 x \$5, and 67 x
19 \$1). (Lyons Decl. ¶ 4; Montero Second Decl. ¶ 4.) SFPD used TruNarc to presumptively test the
20 fentanyl (positive), cocaine base (positive), and heroin (positive). (Lyons Decl. ¶ 4 & Exh. A.) At the
21 time of his arrest, Defendant was in violation of an active stay away-order, requiring him to stay 150
22 yards from 300 Golden Gate. (Lyons Decl. ¶ 4 & Exh. B.)

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1 **II. The entire Tenderloin community is afflicted by Defendant and fellow drug dealers.**

2 **A. A massive open-air drug market exists in the Tenderloin.**

3 Defendant is one of many drug dealers who make up a massive open-air drug market on the
4 sidewalks and streets of the Tenderloin. (Fabbri Decl. ¶ 12; Montero Decl. ¶ 9.) Most of the dealers
5 are, like Defendant, commuters from the East Bay or other Bay Area cities. (Fabbri Decl. ¶ 23;
6 Montero Decl. ¶ 14; Wolf Decl. ¶ 7.) They typically bring a wide variety of drugs for sale, such as
7 heroin, fentanyl, rock and powder cocaine, and methamphetamine. (Montero Decl. ¶ 11.) Dealers sell
8 drugs on nearly every street of the Tenderloin, at all hours of the day and night. (*Id.* ¶ 9.) The
9 frequency, amount, and density of drug sales in the Tenderloin make it an attractive place to buy and
10 sell. Within the Tenderloin, dealers are mobile and are not confined to particular street corners. They
11 often move around to different locations, in response to law enforcement presence. As drug dealers
12 move around the Tenderloin, the drug users follow them. The number and density of drug sellers on
13 the sidewalks and streets of the Tenderloin far exceeds anywhere else in San Francisco. (*Id.* ¶¶ 20-21;
14 Fabbri Decl. ¶ 12 & Exh. D [map showing drug arrests throughout San Francisco].)

15 The number of drug arrests is much higher in the Tenderloin than in other City neighborhoods.
16 (Fabbri Decl. ¶¶ 12-15, 27.) An accompanying map shows the locations of arrests for drug sales or
17 possession of drugs for sale in the Tenderloin, from June 1, 2019 to June 19, 2020. (*Id.* Exh. C.)

18 Like most of the drug dealers, most drug users in the Tenderloin are not from there. Buyers
19 often drive in or take BART from other Bay Area cities, and take their drugs home; but many stay in
20 the Tenderloin to use. (Montero Decl. ¶ 10; Jackson Decl. ¶ 10; La Decl. ¶ 4; Wolf Decl. ¶ 5.) Buyers
21 in the Tenderloin enjoy lower prices for methamphetamine and fentanyl than elsewhere in the Bay
22 Area. (Montero Decl. ¶ 15.) No other neighborhood in the Bay Area is as affected by street drug sales
23 and drug use as the Tenderloin. (*Id.* ¶ 22; Fabbri Decl. ¶ 20.)

24 **B. The drugs sold in the Tenderloin have devastating consequences for drug users.**

25 While street drug dealing has always been a public health problem in the Tenderloin, it has
26 never been as bad as it is now. Beginning in 2017, public health authorities have seen a “crisis” in
27 death by overdose in San Francisco (led by opioids), with Tenderloin residents disproportionately
28 represented in the death toll. (Rodda Decl. ¶ 6.) In 2017 and 2018, there were 222 and 259 overdose
deaths in San Francisco, respectively. In 2019, that number steeply increased to 441 deaths. (*Id.* ¶ 8.)

1 And in 2020, there were a staggering 699 overdose deaths, 175 of them of Tenderloin residents. (*Id.* ¶
2 7.) There are “significant disparities in drug use and overdose deaths by race and ethnicity in San
3 Francisco,” with African Americans suffering disproportionately. (*Id.* ¶ 8.e.) All of this is occurring at
4 the same time police are observing very high quantities of fentanyl being sold in the Tenderloin, or cut
5 into other drugs. (Montero Decl. ¶ 15; Fabbri Decl. ¶ 21.)

6 Even when overdoses do not result in death, there are constant overdose emergencies requiring
7 police and paramedics to respond. (Montero Decl. ¶ 18; Brizee Decl. ¶ 7; Jackson Decl. ¶ 9; Sellars
8 Decl. ¶ 6.) Police officers working out of Tenderloin Station have administered Naloxone (aka
9 Narcan), an antidote for opioid overdoses, 124 times in 2020; comparable figures for 2019 and 2018
10 were 85 and 53 times, respectively. Tenderloin officers administer more than half of all the Naloxone
11 administered by police in the City. (Fabbri Decl. ¶ 22 & Exh. E [map showing Naloxone use].) And
12 overdoses are only the most dramatic harm for users. Many suffer from drug-induced psychosis,
13 erratic and unsafe behavior, and the loss of stability and jobs. (*Id.* ¶¶ 17, 21; Wolf Decl. ¶¶ 2-3.)

14 **C. The open-air drug market has robbed law-abiding Tenderloin community
15 members of their ability to live peacefully in their neighborhood.**

16 The open-air drug market has had disastrous consequences for this neighborhood, as attested in
17 the several community members’ declarations submitted with this motion (Declarations of Muhammad
18 Alabi, Eric Brizee, Rene Dennis, Kim Jackson, Adam La, Sam Meki, Peter Sellars, Tom Wolf), and
19 the flood of neighbor concerns brought to the Tenderloin Station’s police captain. (Fabbri Decl. ¶¶ 17,
20 24.) Everyone agrees: drug dealing and its effects are the worst they have ever been in this community.

21 Along with drug dealing comes other crimes. Fights erupt between dealers and users, between
22 users, between dealers, and between users or dealers and residents. (Alabi Decl. ¶¶ 3, 5; Fabbri Decl.
23 ¶¶ 19-20; Jackson Decl. ¶¶ 8, 11; Meki Decl. ¶ 7; Montero Decl. ¶ 17; Sellars Decl. ¶ 7; Wolf Decl. ¶
24 6.) Dealers often stash drugs and weapons nearby. (Sellars Decl. ¶ 3; Wolf Decl. ¶ 6.) The hunger for
25 drugs fuels larceny, burglary, and violent robbery victimizing community members and businesses.
(Alabi Decl. ¶ 7; Denis Decl. ¶¶ 5, 7; Montero Decl. ¶¶ 16-17; Fabbri Decl. ¶ 19.)

26 And the open-air drug sales and accompanying public drug use have taken over the public
27 spaces in the Tenderloin. Drug buyers use their drugs in public, then engage in offensive and even
28 dangerous behaviors, leaving dirty syringes and bodily excrement in their wake. (Alabi Decl. ¶¶ 3, 6;

1 Brizee Decl. ¶¶ 7-8; Denis Decl. ¶¶ 3-4, 8; Fabbri Decl. ¶ 17; Jackson Decl. ¶ 8; La Decl. ¶ 4; Montero
2 Decl. ¶¶ 10, 17; Sellars Decl. ¶¶ 4-5; Wolf Decl. ¶ 6.) Long-time community members no longer feel
3 safe to walk the streets, to work, or to visit businesses, faith, art, and labor institutions. (Alabi Decl. ¶¶
4 3, 5, 7; Brizee Decl. ¶ 4; Denis Decl. ¶ 5; Jackson Decl. ¶ 6; La Decl. ¶¶ 6-7; Sellars Decl. ¶ 8.)

5 This impact can certainly be observed in the blocks around Turk, Golden Gate, Hyde, and
6 Leavenworth (La Decl. ¶ 3 & Exh. A [photos]; Jackson Decl. ¶ 7; Denis Decl.; Wolf Decl.) – but not
7 just there. It pervades streets and sidewalks throughout the neighborhood (Montero Decl. ¶ 9); near the
8 mosque at Jones and McAllister Streets (Alabi Decl.); the Strand Theater across from U.N. Plaza
9 (Brizee Decl.); the Oddfellows Building on 7th Street south of Market (Sellars Decl.); apartment
10 buildings on O’Farrell and on Polk Street (Meki Decl.); the BART stations (Fabbri Decl. ¶ 23); and
11 elsewhere as shown by arrest data and police declarations. This nuisance affects everyone in this
12 diverse community, as they try to go to school or work, or try to just make it through the day. Middle
13 schoolers on Golden Gate (Jackson Decl. ¶ 7), elementary school pupils on Turk (Fabbri Decl. ¶ 18),
14 and promising high school ballerinas on Seventh Street (Sellars Decl. ¶ 9) clench their teeth as they
15 rush past dealers and users; parents won’t let their children go out alone (La Decl. ¶ 7; Meki Decl. ¶
16 8), and even with their parents close, children still witness violence and shocking street conduct (Denis
17 Decl. ¶ 8, Jackson Decl. ¶ 11). Elders must decide whether to risk their safety and dignity to dealers on
18 the sidewalks, or to cars speeding by in the street. (Jackson Decl. ¶ 7 & Exh. A [photos]; La Decl. ¶ 7;
19 Fabbri Decl. ¶ 17.) Building managers, businesses, and nonprofits work to provide security to tenants,
20 patrons, and workers, often at great expense (Brizee Decl. ¶¶ 4-6; Denis Decl. ¶¶ 6-7; La Decl. ¶ 6);
21 they try to keep the entryways clear of dealers (La Decl. ¶ 5, Meki Decl. ¶¶ 6-7), and to clear the
22 sidewalk of staggering quantities of waste and used syringes (*supra*). A union hall works to maintain
23 access for low-paid workers seeking a job and a voice. (Jackson Decl. ¶¶ 4, 7-8.) Just asking a dealer
24 to move out of the way can trigger a terrifying confrontation. (*Id.* ¶¶ 5, 8.) Meanwhile, recovering
25 addicts find temptation everywhere. (Meki Decl. ¶ 4.) Drug dealers are a scourge on everyone,
26 everywhere in the Tenderloin. And Defendant is one of many causing these terrible conditions.

ARGUMENT

I. A preliminary injunction is presumptively in the public interest, where the People show a likelihood of success on a public nuisance or Unfair Competition Law (UCL) claim.

The legal standard for a preliminary injunction in this case – where government sues under statutes providing for injunctive relief (C.C.P. § 731, Bus. & Prof. Code § 17203) – is as follows:

“[W]hether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief.” (*White v. Davis* (2003) 30 Cal.4th 528, 554.) When the plaintiff is a governmental entity seeking to enjoin illegal activity, a more deferential standard applies: “Where a governmental entity seeking to enjoin the alleged violation of an ordinance which specifically provides for injunctive relief establishes that it is reasonably probable it will prevail on the merits, a rebuttable presumption arises that the potential harm to the public outweighs the potential harm to the defendant. If the defendant shows that it would suffer grave or irreparable harm from the issuance of the preliminary injunction, the court must then examine the relative actual harms to the parties.” (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 72 (*IT Corp.*); *City of Corona v. AMG Outdoor Advertising, Inc.* (2016) 244 Cal.App.4th 291, 299.) (*People ex rel. Feuer v. FXS Management, Inc.* (2016) 2 Cal.App.5th 1154, 1158–1159 (*FXS Management, Inc.*), alterations in original.)

This presumption in favor of a preliminary injunction applies because “where a legislative body has enacted a statutory provision proscribing a certain activity, it has already determined that such activity is contrary to the public interest.” (*IT Corp., supra*, 35 Cal.3d at p. 70; accord *People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 283, rev. denied Feb. 10, 2021.) It applies here because the Legislature has specifically declared that “the illegal sale of controlled substances” is a nuisance – making Defendant’s conduct a nuisance per se. (Civ. Code § 3479; *City of Dana Point v. New Method Wellness, Inc.* (2019) 39 Cal.App.5th 985, 990 [“an injunction may issue against a nuisance per se without [additional] proof of an irreparable injury”].) The same presumption applies in UCL cases. (*People ex rel. Brown v. Black Hawk Tobacco, Inc.* (2011) 197 Cal.App.4th 1561, 1568 & 1571.)

II. The People are likely to prevail on the merits.

A. Defendant is causing a public nuisance by participating in the illegal drug trade on the public streets of the Tenderloin.

The People will easily establish Defendant is liable for nuisance. Because Civil Code section 3479 makes illegal drug dealing a nuisance per se, there is liability “without the need to show the additional elements of a common law public nuisance.” (*Adams v. MHC Colony Park, L.P.* (2014) 224 Cal.App.4th 601, 612.) “Nuisances per se are so regarded because no proof is required, beyond the

1 actual fact of their existence, to establish the nuisance. No ill effects need be proved.” (*McClatchy v.*
2 *Laguna Lands, Limited* (1917) 32 Cal.App. 718, 725 (*McClatchy*)). And this nuisance is *public*,
3 “affect[ing] at the same time an entire community or neighborhood, or any considerable number of
4 persons.” (Civ. Code § 3480.) It is public in *two* ways.

5 *First*, Defendant’s own personal conduct of selling illegal drugs – even without considering
6 how it combines with other drug dealers’ conduct – amounts to a public nuisance. The rule that “any
7 condition which, actually or potentially, menaces life or limb or obstructs a public highway amounts to
8 a public nuisance.” (*People v. Greene* (1968) 264 Cal.App.2d 774, 777 [improper excavation on
9 private property].) Defendant’s drug dealing easily meets this standard, given the actual or potential
10 injury that drugs cause to drug users’ health, and the detritus of drug use itself, like discarded used
11 syringes. In addition, Defendant’s drug dealing occurs on the Tenderloin’s public sidewalks, and
12 public nuisance law is exceptionally protective of public space. For example, a single person urinating
13 in “the empty parking lot of a closed restaurant” is a public nuisance affecting a “considerable number
14 of persons,” simply by virtue of the fact that the offensive act is visible from a busy public street.
15 (*People v. McDonald* (2006) 137 Cal.App.4th 521, 538–539.) Under this rule, Defendant’s use of
16 public spaces to sell drugs, forcing people to detour to avoid this dangerous and offensive conduct,
17 squarely qualifies as a public nuisance. “Blocking a public sidewalk constitutes a public nuisance per
18 se.” (*Kempton v. City of Los Angeles* (2008) 165 Cal.App.4th 1344, 1348; accord *People v. McCue*
19 (1907) 150 Cal. 195, 196–197 [“By express provision of statute, anything which unlawfully obstructs
20 the free passage or use, in the customary manner, of a public highway is a public nuisance. Civ. Code,
21 §§ 3479, 3480; Pen. Code, § 370.”]; *People v. Amdur* (1954) 123 Cal.App.2d Supp. 951, 958–959 [a
22 single card table on a public sidewalk, even though it “caused no appreciable obstruction to traffic,”
23 held a public nuisance under Civ. Code § 3480].)

24 And by any numerical measure, Defendant’s conduct affects a “considerable number of
25 persons” (Civ. Code § 3480), where Defendant is peddling dozens if not hundreds of doses of
26 dangerous drugs, in the plain view of all who use the streets and sidewalks of the Tenderloin. (See
27 *People v. McDonald, supra*, 137 Cal.App.4th at p. 539 [single act of public urination near busy street
28 was “sufficient to interfere with the comfortable enjoyment of life or property by a considerable

1 number of persons”]; *Wade v. Campbell* (1962) 200 Cal.App.2d 54, 59 [eleven affected “constituted a
2 considerable number of persons in the neighborhood”].) Defendant alone is causing a public nuisance.

3 *Second*, Defendant’s nuisance conduct combined with all of the other concurrent drug dealing
4 in the Tenderloin creates a public nuisance. While Defendant may be only one of hundreds of drug
5 dealers creating these conditions, Defendant is still legally responsible for personally contributing to
6 this cumulative harm. The rule is that even if an individual defendant’s contribution to a tort is “a very
7 minor force,” that is sufficient to satisfy the “substantial factor” test for liability. (*Bockrath v. Aldrich*
8 *Chemical Co., Inc.* (1999) 21 Cal.4th 71, 79 (*Bockrath*.) That rule applies in public nuisance cases:

9 “ ‘ The substantial factor standard is a relatively broad one, requiring only that
10 the contribution of the individual cause be more than negligible or theoretical.’
11 [Citation.] Thus, ‘a force which plays only an “infinitesimal” or “theoretical”
12 part in bringing about injury, damage, or loss is not a substantial factor’
13 [citation], but a very minor force that does cause harm is a substantial factor
14 [citation].” (*People v. ConAgra Grocery Products Co.* (2017) 17 Cal.App.5th
15 51, 102 (*ConAgra Grocery Products Co.*), quoting *Bockrath, supra*, 21 Cal.4th
16 at p. 79, alterations in *ConAgra Grocery Products Co.*)

17 The rule that all contributors to a nuisance are held jointly liable for the cumulative harm, is consistent
18 with the well-established rule that “all parties to a nuisance per se, he who creates it and he who
19 maintains it, are responsible for its effect, without limitations of condition or time.” (*McClatchy,*
20 *supra*, 32 Cal.App. at 725.) “[T]he fact that ... others are contributing is not a defense to his own
21 liability.” (*People v. ConAgra Grocery Products Co., supra*, 17 Cal.App.5th at p. 108, quoting Rest.2d
22 Torts, § 840E, com. B, internal quotation marks omitted.) That same principle applied in *Lew v.*
23 *Superior Court* (1993) 20 Cal.App.4th 866, where an apartment owner was held liable for the nuisance
24 caused by the collective misconduct of third-party drug dealers plying their trade around his property,
25 based on the apartment owner’s failure to take steps to reduce drug dealing. Under this rule, Defendant
26 is liable for contributing to the cumulative harm in the Tenderloin, and subject to injunctive relief.

27 For all of these reasons, the People will prevail on their public nuisance claim.

28 **B. Defendant’s illegal drug activity violates the Unfair Competition Law (UCL).**

 The UCL prohibits unlawful business practices, and this law reaches “anything that can
properly be called a business practice and that at the same time is forbidden by law.” (*Barquis v.*
Merchants Collections Assn. (1972) 7 Cal.3d 94, 112-113 (*Barquis*.) “By proscribing ‘any unlawful’
business practice, ‘section 17200 “borrows” violations of other laws and treats them as unlawful

1 practices' that the unfair competition law makes independently actionable." (*Cel-Tech*
2 *Communications, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 180 (*Cel-Tech*), quoting
3 *State Farm Fire & Cas. Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1103.) Criminal law
4 violations can be "borrowed" to establish UCL liability. (*People v. E.W.A.P. Inc.* (1980) 106
5 Cal.App.3d 315, 320.) The illegal sale of controlled substances meets the test: it is both a business and
6 unlawful. (E.g., *People ex rel. Trutanich v. Joseph* (2012) 204 Cal.App.4th 1512, 1525 [unlawful sale
7 of marijuana violated UCL].) Thus, the People will also prevail on their UCL claim against Defendant.

8 **III. The Court should issue a preliminary injunction ordering Defendant to stay away from**
9 **the Tenderloin Drug Abatement Area.**

10 **A. The Court has broad equitable authority to determine the injunctive terms**
11 **appropriate for abatement of a public nuisance or to prevent UCL violations.**

12 Both the UCL and public nuisance law confer broad equitable authority to issue injunctions
13 against violators. Beginning with the UCL, that law gives ample authority to enter an appropriate
14 injunction against unlawful business conduct like Defendant's drug dealing: "The court may make
15 such orders or judgments ... as may be necessary to prevent the use or employment by any person of
16 any practice which constitutes unfair competition." (Bus. & Prof. Code § 17203.) Case after case
17 affirms the court's broad equitable power to craft injunctions strong enough to stop misconduct:

18 "[T]he Legislature ... intended by this sweeping language to permit tribunals to
19 enjoin on-going wrongful business conduct in whatever context such activity
20 might occur. Indeed, ... the section was intentionally framed in its broad,
21 sweeping language, precisely to enable judicial tribunals to deal with the
22 innumerable 'new schemes which the fertility of man's invention would
23 contrive.'" (*American Philatelic Soc. v. Claibourne* (1935) 3 Cal.2d 689, 698.)
24 As the *Claibourne* court observed: "When a scheme is evolved which on its face
25 violates the fundamental rules of honesty and fair dealing, a court of equity is
26 not impotent to frustrate its consummation because the scheme is an original
27 one...." (3 Cal.2d at pp. 698–699 ...; accord, *FTC v. The Sperry & Hutchinson*
28 *Co.* (1972) 405 U.S. 233, 240.) ..." (*Cel-Tech, supra*, 20 Cal.4th at p. 181,
quoting *People ex rel. Mosk v. National Research Co. of Cal.* (1962) 201
Cal.App.2d 765, 772, alterations in original.)

24 Similarly, in public nuisance cases a court of equity possesses far-reaching and flexible
25 injunctive power. "An abatement of a nuisance is accomplished by a court of equity by means of an
26 injunction proper and suitable to the facts of each case." (*ConAgra Grocery Products Co., supra*, 17
27 Cal.App.5th at p. 132, quoting *Sullivan v. Royer* (1887) 72 Cal. 248, 249.) To remedy a public
28 nuisance, a court has "broad discretion to fashion an appropriate abatement injunction." (*Id.* at p. 134.)

1 In *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1105 & 1120 (*Acuna*), the California
2 Supreme Court endorsed “the equitable injunction[] to protect the quality of organized social life” in a
3 neighborhood harmed by a gang-caused public nuisance with effects much like rampant drug dealing:

4 Acts or conduct which qualify as public nuisances are enjoined as civil
5 wrongs or prosecutable as criminal misdemeanors, a characteristic that derives
6 not from their status of independent crimes, but from their inherent tendency to
7 injure or interfere with the community’s exercise of and enjoyment of rights
8 common to the public. It is precisely this recognition of—and willingness to
9 vindicate—the value of community and the collective interests it furthers rather
10 than punish criminal acts that lie at the heart of the public nuisance as an
11 equitable doctrine. (*Acuna, supra*, 14 Cal.4th at pp. 1108–09.)

12 In both nuisance and UCL cases, there is no need to show that some lesser measure would be
13 inadequate to address misconduct, before issuing a strong injunction to secure relief. A court of equity
14 is not required to issue a nuisance abatement order that will inconvenience a tortfeasor the least. For
15 example, in *ConAgra Grocery Products Co., supra*, the Court of Appeal acknowledged that a trial
16 court grappling with how to abate hazardous lead paint in California’s housing stock could have
17 selected less onerous abatement options than setting up a \$1.1 billion abatement fund, funded by the
18 defendants and managed by a receiver; but the trial court’s “choice of this method” was “reasonable”
19 and “well within the court’s discretion.” (17 Cal.App.5th at pp. 133–134; accord *Acuna, supra*, 14
20 Cal.4th at pp. 1121–1122 [public nuisance injunction could disallow *all* association between gang
21 members].) Likewise, in UCL cases a court need not forbear from issuing an injunction, in favor of a
22 lesser remedy. (*California Service Station and Automotive Repair Assn. v. Union Oil Co.* (1991) 232
23 Cal.App.3d 44, 56–57 [rejecting argument that adequate declaratory relief precluded injunction].)

24 **B. Ordering Defendant to stay out of the Tenderloin is an appropriate injunction.**

25 What the People seek here is a stay-away order to protect the Tenderloin neighborhood from
26 Defendant. Defendant’s sole reason to be in the Tenderloin is to deal illegal drugs. The consequences
27 of that trade for the Tenderloin are amply shown by the evidence: an inordinate number of people
28 killed by drugs; other users’ lives wrecked; a neighborhood where children and elders cannot use
sidewalks occupied by dealers; increased street violence; shared public space littered with used
syringes, broken crack pipes, burnt fentanyl foil, human waste; and drug-induced misery. To say that
Defendant is causing a public nuisance is too clinical; what Defendant is doing is destroying a

1 community. The Court should issue the injunction to protect this community from Defendant.

2 **1. A stay-away order is a well-established protective measure.**

3 A stay-away order is a legally sound remedy for harmful conduct. Criminal courts issue stay-
4 away orders to protect domestic violence victims from further abuse. (Penal Code § 1203.097(a)(2).)
5 Stay-away orders may be issued to protect witnesses during trial. (*Id.* § 136.2.) Such orders may also
6 be issued to protect stalking victims. (*Id.* § 646.9(k) .) Stay-away orders are not limited to violent
7 crimes; they may also be issued in response to crimes against property. (*People v. Petty* (2013) 213
8 Cal.App.4th 1410, 1423.) Beyond criminal proceedings, stay-away orders are issued as a civil remedy.
9 Stay-away orders can protect victims of elder abuse (Welf. & Inst. Code § 15657.03(b)(4)), victims of
10 harassment or threats (C.C.P. § 527.6(b)(6)), employees who have been threatened in the workplace
11 (*Id.* § 527.8(b)(6)), and students and staff who have been threatened at schools (*Id.* § 527.85(b)(8)).

12 Drug dealers are routinely issued stay-away orders. When a drug dealer is released on his or
13 her own recognizance, the court will normally order the condition of staying away from where the
14 drug dealing occurred (with a stay-away area of varying size, as discussed below). (Penal Code §
15 1318(a)(2).) And after a conviction for dealing drugs, the “terms and conditions” of probation can
16 include stay-away orders (again, with the stay-away area varying in size). (*Id.* § 1203.1(a) , (i)(2) , (j).)

17 **2. A stay-away order from the Tenderloin is appropriate to abate the**
18 **nuisance caused by Defendant, where existing legal bans on selling illegal**
19 **drugs are ineffective, and a lesser stay-away order would just move**
20 **Defendant’s nuisance elsewhere in the Tenderloin.**

21 The evidence makes abundantly clear that the entire Tenderloin neighborhood is afflicted by
22 the nuisance caused by selling illegal drugs. Experienced police leaders recommend the borders of the
23 Tenderloin Drug Abatement Area as appropriate to abate the nuisance, based on the data and their
24 knowledge of the drug trade in the Tenderloin. (Fabbri Decl. ¶ 11, 25; Montero Decl. ¶ 20.) And
25 community members from across the Tenderloin attest to the drug problems in their respective parts of
26 the neighborhood. Acting in equity, the Court should issue an order that will effectively abate
27 Defendant’s nuisance throughout the neighborhood – not simply move it elsewhere in the Tenderloin.
28 The Court should issue a stay-away order protecting the Tenderloin Drug Abatement Area.

A Tenderloin-wide stay-away order is proper regardless whether the Court finds liability based

1 on Defendant’s conduct alone, or based on the cumulative effects of Defendant’s and other dealers’
2 nuisance conduct. Either way, once the Court finds Defendant is a UCL violator or a public nuisance,
3 the Court sits in equity and must determine the appropriate abatement and prohibition order, in light of
4 the evidence before it. And that evidence shows the drug dealing plague in the Tenderloin is
5 widespread. Simply put, if Defendant is banned from any given location in the Tenderloin, Defendant
6 can easily find another location 150 yards away to continue selling drugs and to continue harming this
7 community. The police see it again and again. (Montero Decl. ¶ 20; Fabbri Decl. ¶ 25.) The Court
8 need not – and should not – issue a narrow stay-away order, which would end up allowing Defendant
9 to simply go elsewhere in the Tenderloin to continue harming this community. “[A] court of equity is
10 not impotent to frustrate” schemes that violate the UCL. (*American Philatelic Soc. v. Claibourne*,
11 *supra*, 3 Cal.2d 689, 698–699.) Nor in a nuisance case, where “[a]n abatement of a nuisance is
12 accomplished by a court of equity by means of an injunction proper and suitable to the facts of each
13 case.” (*ConAgra Grocery Products Co.*, *supra*, 17 Cal.App.5th at p. 132, quoting *Sullivan v. Royer*,
14 *supra*, 72 Cal. 248, 249.) Here, an injunction protecting the entire Tenderloin is appropriate to protect
15 “the community’s exercise of and enjoyment of rights common to the public.” (*Acuna*, *supra*, 14
16 Cal.4th at p. 1109.) The requested injunction will properly vindicate “the value of community and the
17 collective interests it furthers,” which “lie at the heart of the public nuisance as an equitable doctrine.”
18 (*Ibid.*) Indeed, the criminal division of this Court has not hesitated to issue broader pre-trial stay-away
19 orders to protect the entire Tenderloin from an accused drug dealer. (RJN Exh. A-D [several stay-away
20 orders protecting the broader Tenderloin].) While such orders terminate when a criminal case is
21 resolved – making them an unreliable tool for abatement – these broader orders reflect the Court’s
22 understanding that it is inadequate to move a drug dealer from one Tenderloin street corner to another.

23 There is another reason why a stay-away order from the entire Tenderloin is appropriate.
24 Namely, existing penal law prohibitions on drug dealing (and multiple arrests) have been inadequate to
25 deter Defendant and other dealers from repeatedly dealing drugs in the Tenderloin. (Fabbri Decl. ¶¶
26 23, 25.) So, there is no reason to expect that a civil injunction, with an identical prohibition on drug
27 dealing, would be sufficient to abate Defendant’s nuisance. Something more is needed, which is why
28 the People are seeking a stay-away order. As explained above, *supra* Section III.A., there is no legal

1 requirement that Defendant receive the least restrictive injunction. But the evidence of Defendant’s
2 continued drug dealing, even after being arrested, shows that the lesser alternative of a purely conduct-
3 based restriction has already fallen short of abating Defendant’s nuisance in the Tenderloin.

4 For all of these reasons, the Court should order Defendant to stay away from the Tenderloin.

5 **3. Defendant cannot show grave or irreparable harm from an injunction**
6 **prohibiting Defendant from entering the Tenderloin – and meanwhile, the**
7 **harm to the community is grave, irreparable, and palpable.**

8 Defendant comes from Oakland to the Tenderloin to deal illegal drugs. The only consequence
9 for Defendant of an injunction against coming to the Tenderloin is that Defendant will have to stop
10 selling illegal drugs there. That is not even a cognizable harm, let alone a grave or irreparable one.

11 There is no grave or irreparable constitutional harm from issuing the requested stay-away
12 order. Any stay-away order necessarily has an incidental effect of precluding a defendant from
13 traveling within the stay-away area, from setting up a soapbox to make a political speech in the stay-
14 away area, or from visiting associates in the stay-away area. But that does not translate into a violation
15 of the constitutional right to travel (*People v. Moran* (2016) 1 Cal.5th 398, 406 & 408 [“reasonable
16 and incidental restrictions on . . . movement are permissible” so long as the restriction is “reasonably
17 related” to a lawful purpose]), or of free speech (*People v. Englebrecht* (2001) 88 Cal.App.4th 1236,
18 1265 (*Englebrecht*) [“[A]n injunction, the purpose of which is to enjoin conduct violating the rights of
19 others, is not a content based regulation of speech even though the injunction may affect the
20 expression of a particular point of view or position.”]), or of association (*Acuna, supra*, 14 Cal.4th at
21 p. 1110, quoting *Dallas v. Stanglin* (1989) 490 U.S. 19, 25 [explaining there is only a “limited right of
22 [intimate] association,” not “a generalized right of ‘social association.’ ”]). And the size of the stay-
23 away area does not raise any First Amendment issue. (*Englebrecht, supra*, 88 Cal.App.4th at p. 1262
24 [“[The] claim the injunction has a geographic scope greater than is justified by the nuisance proved
25 raises no constitutional issue.”].)

26 Further, the People’s proposed injunction clearly delineates the Tenderloin Drug Abatement
27 Area where Defendant is prohibited from going, while permitting Defendant to use the BART and
28 Muni subway and the Van Ness Muni bus to traverse the Area, so long as Defendant remains on board
transit. Nor is there interference with Defendant’s access to the courts: The Area’s borders exclude

1 every court building where Defendant might need to personally appear, and permit the use of both
2 entrances to 450 Golden Gate. And the injunction provides flexibility for unforeseen circumstances:
3 Defendant and the People may stipulate to specific visits to the Area. And of course, if circumstances
4 change, Defendant may move for a longer-term modification under C.C.P. § 533.

5 Because the People have shown a likelihood of success on their nuisance and UCL claims, and
6 Defendant cannot show grave or irreparable harm, the Court need not even engage in a balancing of
7 harms and should issue the injunction. (*FXS Management, Inc.*, *supra*, 2 Cal.App.5th at pp. 1158–
8 1159.) But even supposing the Court were to balance the harms, the community’s suffering would
9 outweigh Defendant’s. Three times as many San Franciscans were killed in 2020 by drug overdoses as
10 by COVID-19. Defendant is selling that poison. And it’s not just drug users who are harmed. Families,
11 children, elders, legitimate businesses, cultural and religious institutions, and everyone else in this
12 community live with a constant threat of violence and sidewalks they are not free to use. At the end of
13 each day, it is this community that must wade through dirty syringes and human waste, while
14 Defendant goes home to Oakland. The harms here weigh too heavily on the Tenderloin community.

15 **CONCLUSION**

16 The Court should issue the requested preliminary injunction against Defendant.

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