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FILED
YOLO SUPERIOR COURT

JUN 9 9 2006

J. MARTE

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11 Attorneys for Plaintiff
12 ANGELO VELAZQUEZ

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF YOLO

15 ANGELO VELAZQUEZ,

16 Plaintiff,

17 vs.

18 DAVID HENDERSON, in his official
19 capacity as the District Attorney for the
20 County of Yolo; COUNTY OF YOLO;
21 DAN DRUMMOND, in his official
22 capacity as the Chief of Police of the City
23 of West Sacramento; and CITY OF WEST
SACRAMENTO,

24 Defendants.

25 CASE NO. CV 06-911

26 **COMPLAINT FOR DECLARATORY AND**
27 **INJUNCTIVE RELIEF**

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INTRODUCTION

1. On February 3, 2005, this Court entered a permanent injunction against the Broderick Boys, an alleged criminal street gang ("Permanent Injunction"). The Permanent Injunction imposes significant restrictions on the daily activities of those served with it, anytime they are within an approximately three-square mile "Safety Zone," which includes almost 80% of the City of West Sacramento. Among its restrictions are a 10:00 p.m. to sunrise curfew, a prohibition on associating in public with any "known member of the Broderick Boys," and a prohibition on being anywhere in public view where an open container of an alcoholic beverage is present.

2. The action leading to the Permanent Injunction was brought by the District Attorney for the County of Yolo. *See People v. Broderick Boys*, Yolo County Superior Court (Case No. CV04-2085). Notice of the action was served on only one of the alleged 350 members of the Broderick Boys, and no one appeared to challenge the action. As a result, the order to show cause and preliminary injunction were issued in *ex parte* proceedings, and the Permanent Injunction was granted in a default judgment.

3. Plaintiff Angelo Velazquez ("Mr. Velazquez") was not named in any of the papers filed to obtain the Permanent Injunction. His membership in the Broderick Boys has never been adjudicated. Nonetheless, Mr. Velazquez was served with the Permanent Injunction on February 9, 2005, informed by West Sacramento police officers that he was subject to its terms, and told that there was no way for him to be released from its restrictions. Mr. Velazquez has had to live under the Permanent Injunction's terms, which impose substantial restrictions on his family life and personal freedom. Mr. Velazquez contends that he has not been lawfully subjected to these restrictions on his associational and liberty interests because he was not a gang member when he was served nor has he associated with the Broderick Boys at any time since he was served.

4. Mr. Velazquez, by this action against David Henderson, in his official capacity as the District Attorney for the County of Yolo; Dan Drummond, in his official capacity as the Chief of Police of the City of West Sacramento; the County of Yolo; and the City of West Sacramento (collectively, "Defendants"), seeks declaratory relief to determine that he was not an active gang

1 member when he was served, should not have been served with nor be bound by the Permanent
2 Injunction, is not a gang member now, and that he cannot be re-served with the Permanent
3 Injunction without a court order establishing that he is an active gang member. Mr. Velazquez
4 also seeks injunctive relief to enjoin Defendants from enforcing the Permanent Injunction against
5 him and from maintaining any and all existing gang records and files regarding him.

6 **PARTIES**

7 5. Plaintiff Angelo Velazquez is, and at all times herein mentioned was, an individual
8 residing in West Sacramento, California.

9 6. Mr. Velazquez was served with the Permanent Injunction, dated February 3, 2005,
10 granted by this Court in *People v. Broderick Boys*, Yolo County Superior Court (Case No. CV04-
11 2085).

12 7. Defendant David Henderson is, and at all times herein mentioned was, the District
13 Attorney for the County of Yolo and is authorized by law with obtaining and enforcing the
14 Permanent Injunction. Mr. Velazquez is informed and believes, and thereon alleges, that
15 Defendant Henderson is, and at all times herein mentioned was, acting under the authority of
16 Code of Civil Procedure § 731 to represent the People of the State of California. Defendant
17 Henderson is responsible for the policies, practices, and actions of personnel employed by the
18 Office of the District Attorney for the County of Yolo.

19 8. Defendant County of Yolo is a public entity and a political subdivision of the State
20 of California.

21 9. Defendant Dan Drummond is, and at all times herein mentioned was, the Chief of
22 Police of the City of West Sacramento. Mr. Velazquez is informed and believes, and thereon
23 alleges, that Defendant Drummond is, and at all times herein mentioned was, charged with
24 serving such individuals with the Permanent Injunction and supporting the efforts of Defendant
25 Henderson to enforce the Permanent Injunction. Defendant Drummond is responsible for the
26 policies, practices, and actions of law enforcement personnel employed by the West Sacramento
27 Police Department.

28 10. Defendant City of West Sacramento is a public entity and municipality

1 incorporated under the laws of the State of California.

2 11. Mr. Velazquez is informed and believes, and thereon alleges, that Defendants, and
3 each of them, caused and are responsible for the acts complained of herein. Further, Mr.
4 Velazquez is informed and believes, and thereon alleges, that Defendants, and each of them, were
5 at all times herein mentioned servants, agents, and/or employees of each other and were acting
6 within the course and scope of such agency and/or employment on behalf of and with the consent,
7 knowledge, and permission of each other, and that each said defendant ratified the conduct of all
8 remaining defendants.

9 **JURISDICTION AND VENUE**

10 12. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
11 § 410.10.

12 13. Venue is proper in this Court under Code of Civil Procedure §§ 393 and 394. The
13 Permanent Injunction that gives rise to this action was entered in Yolo County.

14 **FACTUAL ALLEGATIONS**

15 **Permanent Injunction**

16 14. On December 30, 2004, the People of the State of California, *ex rel.* Defendant
17 Henderson as the District Attorney for the County of Yolo, filed a complaint ("Complaint") and
18 an *ex parte* application for an order to show cause in this Court, seeking an injunction to abate an
19 alleged public nuisance through what is commonly known as a "gang injunction" in an
20 approximately three-square mile area of West Sacramento, California, referred to in the
21 Complaint as the "Safety Zone."

22 15. The Complaint named as defendants the Broderick Boys aka BRK aka BSK aka
23 Norteno aka Norte aka XIV and Does 1-400, and it identified ten specific individuals as alleged
24 members of the Broderick Boys. Mr. Velazquez was not named or identified in the Complaint or
25 in any of the supporting papers.

26 16. The Complaint alleged that the Broderick Boys and its members are responsible
27 for the public nuisance to be abated and that the ten named individuals and Does 1-400 are
28 members of the Broderick Boys.

1 17. Notice of the action was served on only one of the alleged 350 members of the
2 Broderick Boys. No one appeared to challenge the action. As a result, the order to show cause,
3 preliminary injunction and Permanent Injunction were all issued in *ex parte* proceedings.

4 18. On February 3, 2005, the Court entered a default Judgment Granting Permanent
5 Injunction against the “Broderick Boys . . . its members, agents, servants, employees, and all
6 persons acting under, in concert with, for the benefit of, at the direction of, or in association with
7 them or any of them.”

8 19. The Permanent Injunction identified ten specific individuals as members of the
9 Broderick Boys. Mr. Velazquez was not named or identified in the Permanent Injunction or any
10 of the other papers filed to obtain the Permanent Injunction.

11 20. On or about February 3, 2005 the action against all “Doe” defendants was
12 dismissed without prejudice.

13 21. According to its terms, the Permanent Injunction enjoins and restrains individuals
14 subject to the Permanent Injunction from “engaging in or performing directly or indirectly”
15 certain activities in the Safety Zone.

16 22. The Permanent Injunction is extremely burdensome and impinges on fundamental
17 constitutional rights. The “Do Not Associate,” “Stay Away From Alcohol,” and “Obey Curfew”
18 provisions are particularly onerous and restrictive. Those provisions enjoin individuals subject to
19 the Permanent Injunction from the following activities in the Safety Zone:

20 **Do Not Associate:** Standing, sitting, walking, driving, gathering or
21 appearing, anywhere in public view or anyplace accessible to the public, with any
22 known member of the Broderick Boys . . . but not including: (1) when all
23 individuals are inside a school attending class or on school business, and (2) when
24 all individuals are inside a church; provided however that this prohibition against
25 associating shall apply to all claims of travel to or from any of these locations;

26 **Stay Away From Alcohol:** Anywhere in public view or anyplace
27 accessible to the public, (1) possessing an open container of an alcoholic beverage,
28 (2) knowingly remaining in the presence of anyone possessing an open container
of an alcoholic beverage, or (3) knowingly remaining in the presence of an open
container of an alcoholic beverage;

Obey Curfew: Being outside between the hours of 10:00 p.m. on any day

1 and sunrise of the following day, unless (1) going to or from a legitimate meeting
2 or entertainment activity, (2) actively engaged in a legitimate business, trade,
3 profession or occupation which requires such presence, or (3) involved in a
legitimate emergency situation that requires immediate attention.

4 23. The Permanent Injunction provides no termination date. It has been in full force
5 and effect since it was issued and is being enforced by Defendants herein.

6 24. Persons served with the Permanent Injunction are subject to arrest and prosecution
7 for criminal contempt if they are deemed by law enforcement to be violating its terms. Penal
8 Code § 166(a)(4).

9 **Determination of Active Gang Membership**

10 25. The Permanent Injunction provides no criteria for determining active gang
11 membership, nor have any of the Defendants provided a complete list of names of alleged
12 Broderick Boys, despite the fact that Defendants claim that there are at least 350 documented
13 members of the Broderick Boys.

14 26. Mr. Velazquez is informed and believes, and thereon alleges, that the decision to
15 serve individuals with the Permanent Injunction is, and at all times herein mentioned was, made
16 in the sole and unfettered discretion of Defendants, based on Defendants' policies, practices and
17 criteria for gang validation.

18 27. Mr. Velazquez is informed and believes, and thereon alleges, that Defendants are
19 using criteria that do not satisfy Defendants' burden of establishing active gang membership as a
20 prerequisite for binding individuals with a gang injunction, as required by *People v. Englebrecht*,
21 88 Cal. App. 4th 1236, 1261 (2001).

22 28. Mr. Velazquez is informed and believes, and thereon alleges, that Defendants
23 maintain records and files regarding individuals who have been validated as gang members. Mr.
24 Velazquez is informed and believes, and therefore alleges, that Defendants submitted information
25 identifying him as a gang member to the state-wide Cal-Gang database. Further, Mr. Velazquez
26 is informed and believes, and thereon alleges, that Defendants are required by law to review and
27 destroy any information in gang records and files regarding individuals that does not illustrate
28 reasonable suspicion of criminal conduct, and that is misleading, obsolete or otherwise unreliable

1 within the expiration of its retention period, which in no event is longer than five (5) years.

2 **Plaintiff Angelo Velazquez**

3 29. Mr. Velazquez is 29 years old, was raised in West Sacramento, California, and
4 currently rents a house in West Sacramento, within the Safety Zone outlined by the Permanent
5 Injunction. He lives with his two children, ages eight and ten, and his partner, with whom he has
6 been raising his children.

7 30. Mr. Velazquez has been employed full-time at the Valspar Corporation
8 ("Valspar") since July 1999. Valspar is an international company and leading paint manufacturer
9 with approximately 7,000 employees worldwide. Mr. Velazquez was recently promoted in the
10 architectural division to become one of six Valspar purchasers in the nation. In this position, he
11 handles the purchasing of all raw materials for the plant where he works, and assumes
12 responsibility for large contracts, including those over one million dollars. In 2004, Mr.
13 Velazquez won an award for excellence which Valspar presents annually to approximately 100 of
14 its roughly 7,000 employees. He was also recently recognized by Valspar management for not
15 taking a sick day in three years. Mr. Velazquez hopes one day to become the plant manager of
16 the plant where he works.

17 31. In addition to his full-time employment, Mr. Velazquez attends Sacramento City
18 College part-time where he is studying Communications.

19 32. On February 9, 2005, Mr. Velazquez was served with the Permanent Injunction by
20 the West Sacramento Police Department. That morning, several police officers, including SWAT
21 team members, came to Mr. Velazquez's house. Mr. Velazquez's partner answered the door and
22 told the police that Mr. Velazquez was at work. The police told her that they had papers for Mr.
23 Velazquez, but gave no other details. Mr. Velazquez's partner called Mr. Velazquez at work to
24 inform him that the police had come to the house. Mr. Velazquez immediately left work and
25 picked up his partner, so they could go to the West Sacramento Police Department where an
26 officer dressed in SWAT attire served him with the Permanent Injunction. Mr. Velazquez told
27 the officer that he does not engage in any gang-related activity. The officer told Mr. Velazquez
28 that he could not get out from under the Permanent Injunction.

1 33. On July 28, 2005, Mr. Velazquez – along with three other movants – filed a
2 motion to set aside the default judgment granting the Permanent Injunction. On November 22,
3 2005, the Court denied the motion based on its determination that the movants lacked standing to
4 challenge the default judgment. But, the Court explained in its ruling, “Anyone, including any of
5 these ‘movants,’ who wishes to assert that the injunction is being misused by law enforcement
6 because he or she is not a legally cognizable member or authorized representative of the
7 Broderick Boys gang, may bring a [sic] action in this court seeking a determination that the
8 injunction does not apply to him or her.”

9 34. Mr. Velazquez is informed and believes, and thereon alleges, that Defendants
10 contend that he is now an active member and was an active member of the Broderick Boys when
11 he was served with the Permanent Injunction.

12 35. Mr. Velazquez has not associated with the Broderick Boys or engaged in any
13 gang-related activity since 1998. While he did associate with the Broderick Boys at one time, he
14 has transformed his life since then. He has had a full-time job since 1999, he is attending college
15 part-time, and he is raising his two children. Mr. Velazquez is not a member of the Broderick
16 Boys, and he has not associated with the Broderick Boys for eight years.

17 36. Mr. Velazquez has not been arrested or convicted of any crime since 1998, and he
18 successfully completed the state’s rehabilitation programs. In 1998, he was sent to Yolo County
19 Drug Court for possession of a controlled substance for sale. Mr. Velazquez completed a
20 substance abuse recovery program, was a member of the first class to graduate from Dependency
21 Drug Court, and has not been involved in any drug activity since 1998. Mr. Velazquez
22 successfully completed his probation in January 2002.

23 37. Despite his successful rehabilitation and completion of probation, the Permanent
24 Injunction subjects Mr. Velazquez to parole-like restrictions for the rest of his life. The
25 Permanent Injunction severely limits his personal, family, and social life and provides no
26 termination date for the burdensome restrictions that have been imposed on his fundamental
27 constitutional rights.

28 38. The “Obey Curfew” provision, effectively puts Mr. Velazquez under house arrest

1 – with a few limited exceptions – between 10:00 P.M. and sunrise.

2 39. Mr. Velazquez typically leaves his house at approximately 5:30 A.M. to commute
3 to work. Because he usually leaves home before sunrise, Mr. Velazquez has a legitimate fear that
4 he will be arrested on his way to work for violating the “Obey Curfew” provision of the
5 Permanent Injunction.

6 40. In addition to his full-time employment, Mr. Velazquez attends classes at
7 Sacramento City College after work a couple of evenings a week. Because of the “Obey Curfew”
8 restriction in the Permanent Injunction, Mr. Velazquez cannot go to the library to study or to the
9 gym to work out after 10:00 P.M. (after he has put his children to bed) for fear of being arrested
10 for violating the curfew.

11 41. Mr. Velazquez spends his free time with his children, his partner, and a few close
12 friends. Friday night is their “family night” when Mr. Velazquez, his children, and his partner
13 typically engage in family activities such as going to dinner, bowling, or going to the movies. He
14 and his family must terminate such everyday activities early enough to return home before 10:00
15 P.M. because of his concern that he will be stopped by the police and charged with a curfew
16 violation.

17 42. The “Obey Curfew” provision of the Permanent Injunction also precludes Mr.
18 Velazquez from traveling to or from his house to visit friends or family after 10:00 P.M.
19 Whenever Mr. Velazquez and his family visit friends or relatives who live inside or outside of the
20 Safety Zone, they are forced to return home before 10:00 P.M. so that Mr. Velazquez will not risk
21 being charged with a violation of the Permanent Injunction’s curfew.

22 43. The “Do Not Associate” provision of the Permanent Injunction similarly places
23 Mr. Velazquez under the specter of arrest for criminal contempt anytime he attends an event in an
24 area “accessible to the public” or “in public view” because he has no way of knowing all of the
25 “member[s] of the Broderick Boys” or where such people may be present.

26 44. Mr. Velazquez is actively involved in his children’s recreational activities,
27 including sporting events and dance classes. On the weekends he often takes his children to the
28 park to practice baseball and softball. He is currently coaching his daughter’s softball team, and

1 last year he coached his son's little league team. If a "known member of the Broderick Boys"
2 were to show up at the location of any of these activities, Mr. Velazquez could be arrested and
3 charged with criminal contempt.

4 45. The "Do Not Associate" provision of the Permanent Injunction also prevents Mr.
5 Velazquez from participating in core First Amendment activities. There have been two
6 demonstrations against the Permanent Injunction in West Sacramento since its issuance.
7 Immediately before the first demonstration, Jeff Reisig, a Deputy District Attorney of the Office
8 of the District Attorney for the County of Yolo, was quoted in local newspapers saying that
9 anyone served with the Permanent Injunction would be in violation of the Permanent Injunction
10 for attending and at risk of being arrested because the demonstration was taking place at City Hall
11 which is within the Safety Zone. There has also been a community protest at City Hall against
12 police brutality since the Permanent Injunction was issued. Because he had been served with the
13 Permanent Injunction, Mr. Velazquez could not attend any of these lawful and constitutionally
14 protected expressive activities for fear that other alleged members of the Broderick Boys could be
15 present.

16 46. The "Stay Away From Alcohol" provision severely restricts Mr. Velazquez's
17 participation in family and social activities. The provision precludes Mr. Velazquez from
18 attending an event anywhere "in public view" or "accessible to the public" where an "open
19 container of an alcoholic beverage" is present. Mr. Velazquez cannot go to restaurants, backyard
20 barbeques, birthday parties, or even a public park without risking arrest for criminal contempt if
21 someone, *including someone he does not even know*, has an open container of an alcoholic
22 beverage.

23 47. Mr. Velazquez is informed and believes, and thereon alleges, that in order to serve
24 him with the Permanent Injunction, Defendants relied on records and information regarding him
25 from Defendants' gang files, which should have been purged.

26 48. Mr. Velazquez is informed and believes, and thereon alleges, that Defendants
27 served him with the Permanent Injunction based on their reliance on the following two criteria:
28 (1) alleged self-admission of gang membership; and (2) gang-specific tattoos.

1 technical” as required by *People v. Englebrecht*, 88 Cal. App. 4th 1236, 1261 (2001). Defendants
2 dispute these contentions and contend that Mr. Velazquez is an active gang member legally bound
3 by the Permanent Injunction.

4 54. Mr. Velazquez seeks a judicial declaration regarding the parties’ respective rights
5 and obligations under the Permanent Injunction. To that end, Mr. Velazquez seeks a declaration
6 that he is not and cannot be legally bound by the Permanent Injunction because he is not a gang
7 member, let alone an active gang member. Mr. Velazquez further seeks a declaration that it was
8 violative of his legal rights for the Defendants to serve him with the Permanent Injunction on
9 February 9, 2005 since he was not an active gang member at the time that he was served with the
10 Permanent Injunction. Mr. Velazquez also seeks a declaration that Defendants cannot re-serve
11 him with the Permanent Injunction without a court order establishing that he is an active gang
12 member.

13 55. A speedy determination of this dispute is necessary and appropriate at this time
14 under the circumstances in order to determine the rights and obligations of Mr. Velazquez and
15 Defendants and to prevent further restrictions on Mr. Velazquez’s liberty interests and
16 fundamental First Amendment rights.

17 **SECOND CAUSE OF ACTION**

18 **Violation of Right to Privacy**

19 56. Mr. Velazquez incorporates by reference paragraphs 1 through 55, above, as
20 though fully set forth herein.

21 57. Defendants’ above-described conduct violated Mr. Velazquez’s right to privacy
22 under article I, section 1 of the California Constitution by maintaining files and records
23 purporting to validate him as a gang member, failing to purge said files, and reporting and
24 disseminating said files and records.

1 **THIRD CAUSE OF ACTION**

2 **Injunctive Relief**

3 58. Mr. Velazquez incorporates by reference paragraphs 1 through 57, above, as
4 though fully set forth herein.

5 59. Defendants' above-described wrongful conduct, unless and until enjoined and
6 restrained by order of this Court, will cause great and irreparable injury to Mr. Velazquez as the
7 Permanent Injunction severely limits his personal, family, and social life and provides no
8 termination date for the burdensome restrictions that have been imposed on his fundamental
9 rights.

10 60. Mr. Velazquez has no plain, speedy, or adequate remedy at law for the injuries
11 currently being suffered as it is impossible for him to determine the precise amount of damage
12 that he will suffer if Defendants' conduct is not restrained.

13 61. Mr. Velazquez will continue to suffer irreparable damage, injury and harm unless
14 injunctive relief is granted.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Mr. Velazquez prays for judgment against Defendants as follows:

17 For a judicial declaration of the parties' respective rights and obligations under the
18 Permanent Injunction;

19 For a judicial declaration that Mr. Velazquez is not an active gang member;

20 For a judicial declaration that Mr. Velazquez is not and cannot be legally bound by the
21 Permanent Injunction entered by this Court on February 3, 2005 in *People v. Broderick Boys*,
22 Yolo County Superior Court (Case No. CV04-2085);

23 For a judicial declaration that Mr. Velazquez was not an active gang member when he was
24 served with the Permanent Injunction and that said service was unlawful and in violation of his
25 legal and constitutional rights;

26 For a judicial declaration that Mr. Velazquez cannot be re-served with the Permanent
27 Injunction without a court order establishing that he is an active gang member;

28 For a preliminary and permanent injunction enjoining Defendants, and each of them, and

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their agents, servants, and employees, and all persons acting under, in concert with, or for them:

- (a) From enforcing the Permanent Injunction against Mr. Velazquez; and
- (b) From maintaining any and all existing gang records and files regarding Mr. Velazquez;

For Mr. Velazquez's attorneys fees and costs of suit incurred herein; and
For such other and further relief as the Court may deem just and proper.

DATED: June 8, 2006

MUNGER, TOLLES & OLSON LLP

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
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By: 
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