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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

13 UNLIMITED JURISDICTION

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

17 Plaintiff,

18 v.

19 OAKDALE MOB, a criminal street gang sued  
20 as an unincorporated association; and  
21 DOES 1- 500,

22 Defendants.

Case No. CGC-06-456-517

APPLICATION OF AMICUS  
AMERICAN CIVIL LIBERTIES  
UNION OF NORTHERN  
CALIFORNIA TO FILE BRIEF OF  
AMICUS CURIAE

Hearing Date: October 30, 2006  
Hearing Judge: Hon. Peter Busch  
Time: 9:30 a.m.  
Place: Dept. 301

Date Action Filed: Sept. 27, 2006  
Trial Date: Not Yet Set

23 The American Civil Liberties Union of Northern California (ACLU-NC) has been involved in  
24 the issue of gang injunctions since we represented the defendants in *People ex rel. Gallo v. Acuna*, 14  
25 Cal 4<sup>th</sup> 1090 (1997), in which the California Supreme Court first authorized this type of law enforcement  
26 measure. The ACLU-NC has, both in and out of courts, expressed its concerns that the issuance of  
27 gang injunctions raises serious dangers for traditional civil liberties values and individual right, such as  
28 freedom of association, and liberty interests, protected by due process. The ACLU-NC's concerns are  
also based on the undeniable fact that this procedure circumvents many of the traditional protections for  
individual rights that are embedded in our criminal justice system, such as the presumption of innocence

ENDORSED  
FILED  
San Francisco County Superior Court

OCT 25 2006

GORDON PARK-LI, Clerk  
BY: MARYANN MORAN  
Deputy Clerk

1 and the right to counsel.

2 Despite these broader concerns, the ACLU-NC is seeking leave to file this memorandum as  
3 *amicus curiae* only to address a narrow threshold issue that we believe should be brought to this  
4 Court's attention because it has direct relevance to the October 30, 2006 hearing on the City's  
5 proposed preliminary injunction: At the present time, no opposition has been filed to the City's  
6 motion for preliminary injunction, and the October 18<sup>th</sup> deadline for such briefs set by this Court has  
7 passed. It appears likely that the City's request for preliminary injunction will be unopposed on the  
8 merits at the October 30<sup>th</sup> hearing, and thus it is likely to be another *ex parte*-type proceeding.

9 The ACLU-NC believes that this situation is the direct result of the City's actions in serving  
10 the Order to Show Cause on only three of the alleged 80 members and associates of the Oakdale Mob,  
11 and a conscious effort to limit formal and informal notice of this proceeding to the individuals targeted  
12 by the injunction, as well as the community affected, and the public at large. Under the circumstances  
13 of this case, the method and scope of service to date by the City has violated well-established due  
14 process standards, which places on the City the obligation to "apprise interested parties of the  
15 pendency of the action and afford them an opportunity to present their objections." *Mullane v.*  
16 *Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950). These due process standards reflect  
17 bedrock principles of basic fairness that are intended to insure that persons have their day in court,  
18 and, equally important, that the court has the best opportunity to hear both sides in an adversary  
19 proceeding, "the fundamental instrument for judicial judgment." *Carroll v. President &*  
20 *Commissioners of Princess Anne*, 393 U.S. 175, 183 (1968)

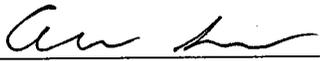
21 We are submitting this brief to present these legal arguments to the Court, and to respectfully  
22 suggest that the Court not resolve the issue of a preliminary injunction on October 30<sup>th</sup>, but instead to  
23 continue the hearing and direct the City to provide broader notice in accordance with these  
24 constitutional standards.

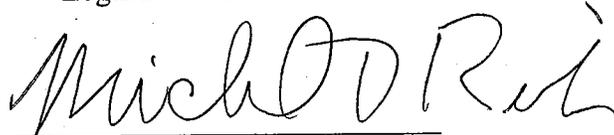
25 We first learned of this pending hearing and of the filing of this case by the City at the end of  
26 the business day on Friday, October 13, 2006. We contacted the office of the City Attorney, the  
27 attorney of record, on Monday, October 16<sup>th</sup>, and received courtesy copies of the papers that the City  
28 filed in this Court the afternoon of Friday, October 23<sup>rd</sup>. We have today notified the City Attorney's  
office of the filing of this Application and Brief, and we will be serving them today with copies of the  
Application, the brief, and the Request for Judicial Notice. Unless otherwise directed by the Court, we  
will attend the hearing on October 30<sup>th</sup>, and will be available to the Court if it wants *amicus* to  
participate in any way in the hearing.

1 Accordingly, the ACLU-NC respectfully request leave of this Court to file the accompanying  
2 Memorandum of Authorities and Request for Judicial notice.

3 Respectfully submitted,

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6 Date: October 25, 2006

7 By:   
8 Alan Schlosser  
9 Legal Director

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11 Michael Risher  
12 Staff Attorney

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28 Attorneys for Amicus Curiae