

1 DENNIS J. HERRERA, State Bar #139669
City Attorney
2 OWEN J. CLEMENTS, State Bar #141805
Chief of Special Litigation
3 MACHAELA M. HOCTOR, State Bar #194400
Deputy City Attorney
4 Fox Plaza
1390 Market Street, Sixth Floor
5 San Francisco, California 94102-5408
Telephone: (415) 554-3850
6 Facsimile: (415) 437-4644
E-Mail: machaela.hoctor@sfgov.org
7

8 Attorneys for Plaintiffs
CITY AND COUNTY OF SAN FRANCISCO AND
9 PEOPLE OF THE STATE OF CALIFORNIA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION
13

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

16 Plaintiffs,

17 vs.

18 OAKDALE MOB, a criminal street gang
19 sued as an unincorporated association; and
DOES 1—500,

20 Defendants.
21

Case No. CGC 06 456517

PEOPLE'S REPLY TO SHANTEAK
HARRIS' OPPOSITION TO ORDER TO
SHOW CAUSE RE: PRELIMINARY
INJUNCTION

Hearing Date: November 22, 2006
Hearing Judge: Hon. Peter J. Busch
Time: 9:30 a.m.
Place: Dept. 301

Date Action Filed: September 27, 2006
Trial Date: N/A

22
23
24 **INTRODUCTION**

25 The People of the State of California, *ex rel.* Dennis J. Herrera as the City Attorney for the
26 City and County of San Francisco, have submitted overwhelming evidence to this Court that the
27 OAKDALE MOB is creating a public nuisance in a four-block area in the Bayview District. The
28

1 People's motion is unopposed by the Defendant. The evidence also clearly establishes that
2 Proposed Intervenor SHANTEAK HARRIS is a member and a leader of the OAKDALE MOB who
3 has contributed to the creation of this nuisance. Thus, the People respectfully request that the Court
4 issue the proposed Preliminary Injunction as to Defendant OAKDALE MOB and its members.

5 **I. ABBREVIATED FACTUAL AND PROCEDURAL BACKGROUND**

6 In an effort to avoid duplication and for the sake of brevity, the People ask that that the
7 Court refer to its previously filed Memorandum of Points and Authorities and additional pleadings
8 filed in conjunction with this case. The Court issued an Order to Show Cause Re: Preliminary
9 Injunction on September 29, 2006, setting the matter for hearing on October 30, 2006. On October
10 30, 2006, the Court issued a Temporary Restraining Order and set further hearing on an Order to
11 Show CauseRe: Preliminary Injunction for November 22, 2006.

12 Defendant OAKDALE MOB, who to date has chosen not to appear in this matter, has had
13 ample time to respond to the People's motion and oppose it if they so wish.¹ To date, the gang has
14 chosen not to do so and remains the only party to the action. As the Court recognized in its findings
15 granting the Temporary Restraining Order, there is a serious and grave nuisance being perpetrated
16 by the Defendant OAKDALE MOB.

17 **II. PROCEDURAL ARGUMENTS**

18 **A. The People's Motion Should be Granted As Defendant Has Filed No Opposition**

19 Defendant OAKDALE MOB was properly served with this Court's order, yet has failed to
20 file an opposition to the People's request for a Preliminary Injunction. As such, the People's motion
21 remains unopposed and the People respectfully request the Court issue the Preliminary Injunction as
22 to Defendant OAKDALE MOB.

26 ¹ As argued on October 30, 2006, the People contend that the OAKDALE MOB is choosing to pursue a
27 political forum rather than a legal one to voice their concerns.

1 **B. Proposed Intervenor's Opposition Brief Was Not Served on the Defendant and**
2 **Should Not be Considered by this Court**

3 Proposed Intervenor Harris failed to serve his Opposition brief on Defendant OAKDALE
4 MOB or any member of the Mob. *See* Defendant Intervenor's Proof of Service, Declaration of
5 Cynthia D. Williams, filed concurrently with Opposition to OSC re: Preliminary Injunction. Thus,
6 Harris' unserved filings are not properly before this Court and should not be considered. CITE

7 **C. Counsel for Proposed Intervenor Harris Do Not Represent the Defendant and**
8 **has No Standing to Argue on Its Behalf**

9 Counsel for Proposed Intervenor Harris does not represent the OAKDALE MOB, the only
10 Defendant in this case. As such, counsel has no standing to argue on behalf of the OAKDALE
11 MOB. To allow him to do so, would be to allow not only counsel the benefit of representation
12 without the corresponding duties and responsibilities, such as accepting service and discovery on
13 behalf of the Defendant gang, but also to bind Defendant OAKDALE MOB to the representations
14 of non-counsel. Such inequity would unfairly prejudice the People in this case and should not be
15 permitted.

16 **III. A PRELIMINARY INJUNCTION SHOULD ISSUE AGAINST THE DEFENDANT**
17 **OAKDALE MOB**

18 **A. The OAKDALE MOB is an Entity that is Properly Sued and Enjoined**

19 The People properly named the gang itself as the defendant in this civil gang injunction
20 action. *People ex rel. Gallo v. Acuna* (1997) 14 Cal. 4th 1090, 1124 ("the City could have named
21 the gangs themselves as defendants and proceeded against them"; dicta), *cert. denied*, ___ U.S.
22 1121. California's Supreme Court recognized that the gang itself could have been named as the
23 civil defendant because "it was the gang itself, acting through its membership, that was responsible
24 for creating and maintaining the public nuisance." *Id.*

25 As stated in our Memorandum of Points and Authorities filed in this matter, the California
26 Supreme Court has held that a non-party agent of an enjoined defendant was bound by an
27 injunction, even though the non-party was not a civil defendant, was not served in the civil case,
28 had no notice of the civil case, and no opportunity to defend the civil case. *Ross v. Superior Court*
29 (1977) 19 Cal.3d 899, 905-906. The Court rejected the non-parties' due process arguments, finding

1 that the non-party members of a County Board of Supervisors were bound by an injunction against
2 a state agency for whom they acted in a principal/agent relationship, even though the supervisors
3 were not named defendants. *Id.* Similarly, as stated in *Berger v. Superior Court* (1917) 175 Cal.
4 719, persons not party to an action may be bound by an injunction if they have knowledge of it,
5 provided they are servants or agents of the parties enjoined or act in collusion or combination with
6 them. *Id.* at 721.

7
8 **B. Proposed Intervenor Offers No Valid Reason Why An Injunction Against The
9 Defendant OAKDALE MOB Should Not Issue At This Juncture.**

10 Proposed Intervenor briefly mentions that the Oakdale Mob cannot be sued because the
11 definition of "unincorporated association" included in California Corporations Code 18035(a)
12 requires an "unincorporated association" be organized for a "common lawful purpose." The People
13 strenuously disagree. Although the People looked to the Corporations Code for guidance as to the
14 proper mode for service of the pleadings in this case, this is a public nuisance action against a
15 criminal street gang. As stated in *Acuna*, "both the organization and the members through which it
16 acts are subject to injunctive relief." *Acuna, supra*, at 1125.

17 Even if the Court were to entertain Proposed Intervenor's arguments regarding the language
18 of "common lawful purpose" the argument does not preclude the relief the People are seeking. The
19 People contend that the appropriate criteria for determining whether a given entity is an
20 "unincorporated association" can be found in *Barr v. United Methodist Church* (1979) 90
21 Cal.App.3d 259. *Barr* lays out a test with two elements: one, a group whose members share a
22 common purpose and, second, who function under a common name under circumstances where
23 fairness requires that the group be recognized as a legal entity.

24 The People have submitted evidence that there is a group called the OAKDALE MOB, that
25 they are organized under that common name, that they are organized as a criminal street gang
26 whose purpose is to commit criminal acts for financial and other gain. The dictates of equity,
27 fairness make the OAKDALE MOB a proper Defendant. To find otherwise, would lead to an
28

1 absurd result: that Defendant OAKDALE MOB would in fact be able to shield itself from liability
2 for its acts by committing them unlawfully.

3 **C. Overwhelming Evidence Shows the OAKDALE MOB is Creating a Public**
4 **Nuisance in the Safety Zone**

5 As this Court found on October 30, 2006, the evidence clearly establishes that the
6 OAKDALE MOB is creating and maintaining a public nuisance within the Safety Zone. More than
7 75 declarations before the Court show that with its murders, shootings, robberies, carjackings and
8 assaults, the OAKDALE MOB terrorizes the community. The evidence shows that with its daily
9 acts of trespassing, loitering, blocking the street and sidewalk, and instilling fear through threats and
10 intimidation, the OAKDALE MOB destroys the community's quality of life.² *Acuna, supra*, 14 Cal.
11 4th at 1090. To allow residents of the Safety Zone to lead normal lives free from fear and violence,
12 the conduct of the OAKDALE MOB must be abated.

13 **IV. THE PEOPLE WILL NOT FURTHER JEOPARDIZE THE LIVES OF**
14 **COMMUNITY MEMBERS**

15 The People did not, as Proposed Intervenor Harris suggests, fail to get declarations from
16 residents and other community members in support of enjoining the criminal street gang because it
17 could not do so. The People intentionally did not procure community declarations because such
18 evidence is not required under the law, is not necessary given the overwhelming evidence presented
19 against the Defendant, and, most importantly, because the People believe to do so would further
20 endanger the lives of the declarants.³ The threat of retaliation is grave given that the last
21 community member to speak out against the OAKDALE MOB was assassinated, despite being in
22 the Witness Protection Program.⁴

23
24 ² See Declarations of 65 Officers filed ISO People's Application for OSC re: Preliminary Injunction and
Officer declarations filed ISO People's Reply to Amicae and People's Reply to Proposed Intervenor Harris.

25 ³ See Declaration of Machaela M. Hctor ISO People's Reply to Proposed Intervenor Harris' Opposition to
OSC re: Preliminary Injunction,

26 ⁴ See Declaration of Officer Leonard Broberg ISO of Plaintiff's Application for OSC re: Preliminary
27 Injunction,

1 The People chose to allow the voices of the residents and the members of the community to
2 be heard through their pleas for help to law enforcement officials. Such evidence is proper, as noted
3 by the Court in *Acuna*: "A police officer declared Rocksprings residents had told him gang
4 members confront and threaten them with physical violence when asked to leave residential
5 property. Others refused to furnish declarations, fearing for their lives if any gang member should
6 discover their identities." *Acuna, supra*, 14 Cal.4th 1090.

7 Similarly, in the instant matter, the evidence submitted to the Court reflects more than 55
8 occasions where residents and community members reported crimes committed by the OAKDALE
9 MOB and asked for help. The residents' reports of crime contained within the more than 75 officer
10 declarations submitted to this Court are uncontested in this case.⁵ As the California Supreme Court
11 found in *Acuna*, such declarations are proper and powerful evidence before the Court. *Id.*

12 Finally, were the law or this Court to require a plaintiff to present citizen declarants attesting
13 to the crimes and nuisance activities of a violent criminal street gang taking over their
14 neighborhood, surely civil gang injunctions would cease to exist. Such evidence is not required
15 under the law, not necessary given the overwhelming evidence presented to the Court, and not
16 prudent given the grave risk facing residents who speak out against the gang.

17
18
19
20
21
22 ⁵ Moreover, none of the facts regarding specific instances of criminal and nuisance activity cited within the
23 more than 65 officer declarations submitted to the Court are contested by Proposed Intervenor Harris. Although certain
24 declarations submitted by Harris seem to generally contradict some of the People's evidence at first blush, they do not
25 when examined more closely. For instance, the Declaration of Betty Higgins does not state that she has never seen any
26 gang graffiti, but rather that she has "never had gang graffiti written on [her] car."

27 Although several Declarants in Support of Proposed Intervenor Harris minimize the pervasiveness of the
28 OAKDALE MOB in the area, pictures taken in the Safety Zone show that the area is riddled with gang graffiti
identifying the OAKDALE MOB and its turf. *See* Declarations of Stephen Benzinger ISO of People's Reply to
Proposed Intervenor Harris.

1 **V. SHANTEAK HARRIS IS A MEMBER AND LEADER OF THE OAKDALE MOB**

2 Abundant evidence establishes that SHANTEAK HARRIS was, and is, a member of the
3 OAKDALE MOB criminal street gang. As the evidence shows, HARRIS is in fact one of the
4 leaders of the OAKDALE MOB.⁶

5 Although HARRIS' counsel denies the existence of the OAKDALE MOB or HARRIS'
6 membership therein, HARRIS has admitted to law enforcement that he was not only a member of
7 the OAKDALE MOB, but its leader.⁷ HARRIS also told a police officer that the OAKDALE MOB
8 makes it money by selling drugs.⁸ Perhaps this is why HARRIS fails to deny his gang membership
9 in his Declaration, which is made under penalty of perjury.⁹

10 The People's prior evidence submitted to this Court provides numerous gang-related
11 incidents involving SHANTEAK HARRIS, stemming from 2000 to the present, including his
12 convictions for dealing crack cocaine and for possessing a loaded firearm at Oakdale and Baldwin
13 for which he went to prison.¹⁰ Although HARRIS was not an active leader in the OAKDALE MOB
14 while he was in prison, he has maintained a leadership role with the MOB ever since he was
15 released from custody last year.¹¹

16 Since December 2005, HARRIS has been loitering and trespassing with other known violent
17 OAKDALE MOB gang members in the Safety Zone on at least ten occasions.¹² In May 2006,
18 HARRIS was loitering and trespassing with fellow gang members CHARLES ROLLINS and
19

20
21 ⁶ See Declarations of Sgt. Toney Chaplin and Officer Leonard Broberg ISO of People's Reply to Proposed
Intervenor Harris.

22 ⁷ See Declarations of Sgt. Toney Chaplin ISO of People's Reply to Proposed Intervenor Harris.

23 ⁸ *Id.*

24 ⁹ See Declaration of Shanteak Harris ISO Motion for Leave to File Complaint in Intervention.

25 ¹⁰ See *People's prior pleadings*.

26 ¹¹ See Declarations of Sgt. Toney Chaplin and Officer Leonard Broberg ISO of People's Reply to Proposed
Intervenor Harris.

27 ¹² See Declarations of Officer Leonard Broberg and Kevin Knoble ISO of People's Reply to Proposed
Intervenor Harris.

1 SEAN ROBINSON. SEAN ROBINSON had a black ski mask in his pocket at the time.¹³ A
2 number of carjackings were committed in the area by men who were wearing black ski masks.¹⁴

3 On August 30, 2006 at around 2:00 a.m., HARRIS evaded the police throughout the
4 neighborhoods surrounding the Safety Zone with a convicted felon in his car who is currently
5 wanted by the police. No evidence suggests that HARRIS was engaged in community outreach
6 work while evading the police at 2:00 a.m. with a convicted felon in his car, or during any of the the
7 other incidents.

8 The fact that HARRIS assisted in negotiating the "truce" with rival street gangs only further
9 bolsters his leadership status in the OAKDALE MOB. As gang experts Sgt. Toney Chaplin and
10 Officer Leonard Broberg state in their Declarations, no one other than a gang member possessing a
11 leadership role in a gang such as the OAKDALE MOB would be allow to negotiate a contract with
12 a rival gang that binds its membership.¹⁵ Certainly, a former gang member who had renounced the
13 gang would not enjoy such a position of authority and credibility within the gang to negotiate on its
14 behalf.¹⁶ Moreover, the evidence before the Court demonstrates what happens to a former gang
15 member who ventures back into OAKDALE MOB territory: they are severely retaliated against.¹⁷

16 HARRIS' own employer states in his declaration that HARRIS neither currently works in
17 the Safety Zone for the Mayor's Office of Community Development, nor will he ever do so.¹⁸

18 Finally, SHANTEAK HARRIS is a suspect in the commission of three homicides in the City
19 and County of San Francisco.¹⁹ The first homicide is a gang-related murder that occurred in 2002.
20 The second and third homicides were of witnesses to the first homicide.²⁰

21 ¹³ See Declarations of Officer Stephen Coleman ISO of People's Reply to Proposed Intervenor Harris.

22 ¹⁴ *Id.*

23 ¹⁵ See Declarations of Sgt. Toney Chaplin and Officer Leonard Broberg ISO of People's Reply to Proposed
Intervenor Harris.

24 ¹⁶ *Id.*

25 ¹⁷ *Id.*

26 ¹⁸ See Declaration of Dwayne Jones.

27 ¹⁹ See Declaration of Homicide Inspector Antonio Casillas.

28 ²⁰ See Declaration of Homicide Inspector Antonio Casillas.

1 Thus, the evidence clearly establishes that SHANTEAK HARRIS is a member and a leader
2 of the OAKDALE MOB.

3 **VI. THE COURT'S TRO HAS SIGNIFICANTLY REDUCED THE OAKDALE MOB'S**
4 **PUBLIC NUISANCE ACTIVITIES IN THE SAFETY ZONE**

5 Since the Court issued the Temporary Restraining Order in this case on October 30, 2006, public
6 nuisance activity by the OAKDALE MOB in the Safety Zone has significantly decreased.²¹

7 Officers working in the area report a dramatic reduction in gang members loitering to sell narcotics
8 and trespassing. Officers and residents report that children are playing football in the street and
9 riding their bicycles down the sidewalk like never before.²² One officer even reports that the
10 residents and community members are more friendly to him now that there is less threat of a gang
11 member observing such a friendly interaction with police.²³

12 Moreover, an OAKDALE MOB member's own mother told police that since the Court
13 issued its order, she had not heard any gun shots, she "has not seen as many guys hanging out
14 outside," and she feels "it is safer for the kids to play outside."²⁴

15 Perhaps an example of what occurred when Counsel for the People and law enforcement
16 officers were in the Safety Zone posting the OSC sums up the effectiveness of the Court's order
17 best: While affixing the papers to poles at Oakdale and Baldwin, an elderly gentlemen walking
18 with a cane walked up to the Deputy City Attorney and officers and said, "Thank you for what
19 you're doing. This is the first time that I can remember where I haven't had to sleep on the floor."
20 The elderly disabled gentleman had been sleeping on the floor of his home in public housing
21 because of his fear that bullets would come through his windows.

22
23
24 ²¹ See Declarations of Officers Leonard Broberg, Kevin Knoble, Stephen Benzinger, and Stephen Coleman
ISO People's Reply re: OSC re: Preliminary Injunction.

25 ²² See Declarations of Officers Stephen Coleman and Stephen Benzinger ISO of People's Reply to Proposed
Intervenor Harris.

26 ²³ See Declarations of Officer Stephen Coleman ISO People's Reply re: OSC re: Preliminary Injunction.

27 ²⁴ See Declarations of Officer Leonard Broberg ISO of People's Reply to Proposed Intervenor Harris.

1 All residents of the Safety Zone deserve the continued quiet peace and enjoyment of their
2 homes and neighborhood.

3
4 **VII. CONCLUSION**

5 The OAKDALE MOB has not opposed the proposed injunctive relief. It has made no
6 attempt to appear in this action, despite ample time and opportunity. In addition, clear and
7 convincing evidence demonstrates that Proposed Intervenor Shanteak Harris is a member and a
8 leader of the OAKDALE MOB and should be subject to the Court's order.

9 Although the Court's Temporary Restraining Order has significantly reduced the public
10 nuisance crimes of the gang, including shootings, loitering to sell-narcotics, and trespass,²⁵ the
11 community remains at risk. Irreparable harm will occur should immediate relief not be continued in
12 this case. As such, the People respectfully request this Court grant the People's requested relief and
13 issue the proposed Preliminary Injunction in this case.

14 Dated: November 20, 2006

15 DENNIS J. HERRERA
16 City Attorney
17 OWEN J. CLEMENTS
18 Chief of Special Litigation
19 MACHAELA M. HOCTOR
20 Deputy City Attorney

21 By: _____
22 MACHAELA M. HOCTOR
23 Attorneys for the People
24 PEOPLE OF THE STATE OF CALIFORNIA

25
26 _____
27 ²⁵ See Declaration of Officer Leonard Broberg ISO of People's Reply to Proposed Intervenor Harris;
28 Declaration of Officer Stephen Coleman ISO of People's Reply to Proposed Intervenor Harris; Declaration of Officer
Stephen Benzinger ISO of People's Reply to Proposed Intervenor Harris.