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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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Youth Justice Coalition, et al.,
Plaintiffs,
v.
City of Los Angeles, et al.,
Defendants.

CV 16-07932 VAP (RAOx)

**Order GRANTING Plaintiffs'
Motion to Expand Preliminary
Injunction
(Doc. No. 115).**

On January 29, 2018, Plaintiffs Youth Justice Coalition, Peter Arellano ("Arellano"), and Jose Reza ("Reza") for themselves and on behalf of a class of similarly-situated individuals (collectively "Plaintiffs") filed a Motion to Expand the Preliminary Injunctions Entered on Behalf of Plaintiffs Arellano and Reza to the Entire Class ("Motion"). (Doc. No. 115).

On February 5, 2018, Defendant City of Los Angeles ("the City") filed an Opposition to Plaintiffs' Motion. (Doc. No. 116). On February 12, 2018, Plaintiffs filed their reply in support of their Motion. (Doc. No. 123.)

After considering all papers filed in support of and in opposition to the Motion, and the parties' arguments at the February 26, 2018 hearing, the Court GRANTS the Plaintiffs' Motion as detailed below.

United States District Court
Central District of California

I. BACKGROUND

A. Los Angeles Gang Injunctions

For thirty years, prosecutors in Southern California have used public nuisance law to obtain civil injunctions prohibiting suspected gang members from participating in a variety of activities. At issue in this case are the approximately forty-six gang injunctions issued by the City. These injunctions restrict both criminal gang activities and otherwise lawful activities that purportedly constitute a gang nuisance within a defined geographical area. Plaintiffs allege that the City's issuance and enforcement of these gang injunctions violate the procedural due process protections in the United States Constitution and the California Constitution. The City contends that the gang injunctions are an effective means of reducing gang-related crime, and disputes Plaintiffs' allegations that its policies and procedures are unlawful.

Plaintiffs Peter Arellano and Jose Reza were made subject to two such gang injunctions. Arellano was subject to the injunction issued in People v. Big Top Locos, Case No. BC511444 (L.A. Sup. Ct. 2013) and Reza was subject to the injunction issued in People v. Big Hazard, Case No. BC335749 (L.A. Sup. Ct. 2005). Neither was a party to their respective underlying civil actions, and both allege that they were not given meaningful notice or opportunity to contest the City's allegations of active gang membership before enforcement of the injunction against them. Plaintiff Youth Justice Coalition is a non-profit organization located in Los Angeles,

1 California that works with communities affected by mass incarceration and
2 over-policing.

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4 **B. The Court Issued Preliminary Injunctions for Plaintiff Arellano.**

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6 On September 7, 2017, the Court granted Peter Arellano’s Motion for a
7 Preliminary Injunction to stop the City from enforcing the Echo Park
8 Injunction against him. (Doc. No. 106).¹ The Court found that Arellano was
9 likely to succeed in proving (1) that the City’s procedures for enforcing the
10 Echo Park Injunction interfered with Arellano’s liberty interests “including
11 rights of free movement, association, and speech” (Doc. No. 106 at 16); and
12 (2) the City’s procedures were insufficient to afford Arellano due process.
13 (Doc. No. 106 at 18-25). The Court also found that for the same reasons
14 Arellano had demonstrated a likelihood of success on the merits, he had
15 also demonstrated a likelihood of irreparable harm. (Doc. No. 106 at 25-
16 26). Finally, the Court determined that the balance of the equities and the
17 public interest both weighed in favor of granting an injunction as to Arellano.
18 (Doc. No. 1-6 at 26-27).

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¹ On November 14, 2016 Plaintiff Reza moved for a preliminary injunction
23 similar to the one sought by Plaintiff Arellano. (Doc. No. 28). The City filed a
24 statement of non-opposition to Reza’s motion, noting that while “the stated
25 legal basis for Reza’s motion [was] flawed,” it would not oppose Reza’s mo-
26 tion for the “limited factual reason” that it did not believe that Reza’s current
gang participation was “more than nominal, passive, inactive, or purely tech-
nical.” (Doc. No. 39 at 2-3). The Court granted Reza’s motion for a prelimi-
nary injunction. (Doc. No. 68).

C. The Court Certified a Class.

1
2 On January 4, 2018, the Court certified the following stipulated class
3 pursuant to Fed. R. civ. P. 23(a) and 23(b)(2):

4 “All persons, past and future, whom an authorized
5 agent of the City of Los Angeles has notified, whether by
6 personal service or otherwise, that they are subject to a
7 Los Angeles Gang Injunction and who (a) were not
8 named as individual civil defendants, or who were not
9 substituted in as Doe defendants, in the civil nuisance
10 abatement action to obtain that injunction, and (b) who do
11 not have contempt proceedings for violation of such an
12 injunction currently pending against them.”

13
14 (Doc. No. 114 at 3). The Court also adopted the parties’ stipulated
15 definition for “Los Angeles Gang Injunction” as follows:

16 “An injunction obtained by the People of the State of
17 California represented by the Los Angeles City Attorney’s
18 Office, against a criminal street gang and its members as
19 defined in Section 186.22 of the California Penal Code,
20 pursuant to a nuisance abatement action, including, but
21 not limited to, a common law nuisance abatement action
22 or those brought pursuant to Section 3479 of the Califor-
23 nia Civil Code.”

24 (Doc. No. 114 at 4).
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1 **D. By January 19, 2018 the City Revised Guidelines Regarding the**
2 **Service and Enforcement of Los Angeles Gang Injunctions.**

3 On September 14, 2017, the Los Angeles Police Department, Office of
4 Operations, issued “Operations Order No. 5,” which contained the City’s
5 revised guidelines regarding the enforcement and service of the Los
6 Angeles Gang Injunctions. (Doc. No. 127-1). These guidelines include a
7 “Forbearance Period” for future-served individuals where a Los Angeles
8 Gang injunction will not be enforced for 30 days after service. (Doc. No.
9 127-1 at 3-4). The Forbearance Period contemplates allowing “the served
10 individual an opportunity to submit a Removal Petition or to go to civil court
11 to challenge whether the served individual is an active member of the
12 enjoined gang.” (Doc. No. 127-1 at 3). The revised guidelines also contain
13 a sunset provision, where the Los Angeles Gang Injunction would expire five
14 years after service (as long as the served person is not re-served). (Doc.
15 No. 127-1).

16 In opposition to Plaintiff’s Motion, the City has outlined its new policy for
17 adjudicating active gang membership when requested by served individuals.
18 (Doc. No. 127 at 5, ¶12). Upon written request by any person served with a
19 Los Angeles Gang Injunction, the City has committed to filing a motion with
20 the Superior Court requesting an adjudication regarding that person’s active
21 gang membership. (Id. at ¶12). The City mailed letters to those previously
22 served with Los Angeles Gang Injunctions explaining the City’s policy
23 changes by January 19, 2018. (Id. at ¶14; Doc. No. 128 at 4, ¶14).

E. Plaintiffs Now Move to Expand Arellano’s Preliminary Injunction to the Entire Class.

Plaintiff now moves to expand the preliminary injunction granted to Arellano to the entire class. (Doc. No. 115).² Plaintiff argues that the same grounds for granting Arellano an injunction also apply to these class members. (*Id.*) The City opposes, arguing that the City’s revised policies regarding the Los Angeles Gang Injunctions renders the Court’s analysis in granting a preliminary injunction as to Arellano inapplicable to the present Motion. (Doc. No. 116).

II. EVIDENTIARY ISSUE

The City objects to the January 29, 2018 declaration of Melanie Ochoa, filed in support of Plaintiffs’ Motion. (Doc. No. 119). Ms. Ochoa’s declaration summarizes a December 5, 2017 teleconference with the City’s counsel regarding the City’s revisions to the gang injunction policies in this case. (See Doc. No. 115-1 at 3-4, ¶¶2-5). The City argues that the description of the City’s counsel’s statements included in this declaration constitutes inadmissible hearsay. (Doc. No. 119 at 2). Plaintiffs argue that these statements are not hearsay since, pursuant to Fed. R. Evid. 801(d)(2)(C), they are “offered against an opposing party and . . . [were] made by a person whom the party authorized to make a statement on the subject.” The Court agrees with Plaintiffs. The declaration is offered in support of Plaintiff’s Motion, and thus against the City. The statements at issue related to the City’s policies directly at issue in this litigation, and they were made by the City’s counsel, who is authorized to make statements on

² See Section IV.A below.

1 such topics. Accordingly, the Court finds that these statements can be
2 properly considered in support of Plaintiffs' Motion. United States v. Bonds,
3 608 F.3d 495, 503 (9th Cir. 2010) (“[L]awyers have implied authority to
4 speak outside of court on matters related to the litigation.”) (citing Hanson v.
5 Waller, 888 F.2d 806, 814 (11th Cir.1989)); see also, Herb Reed
6 Enterprises, LLC v. Florida Entm’t Mgmt., Inc., 736 F.3d 1239, 1250 n.5 (9th
7 Cir. 2013) (“Due to the urgency of obtaining a preliminary injunction at a
8 point when there has been limited factual development, the rules of
9 evidence do not apply strictly to preliminary injunction proceedings.”);
10 Republic of the Philippines v. Marcos, 862 F.2d 1355, 1363 (9th Cir. 1988)
11 (“It was within the discretion of the district court to accept . . . hearsay for
12 purposes of deciding whether to issue the preliminary injunction.”). The
13 Court OVERRULES the City’s evidentiary objection.

14 15 III. LEGAL STANDARD

16 “A preliminary injunction is an extraordinary and drastic remedy” and “is
17 never awarded as of right.” Munaf v. Green, 553 U.S. 674, 689-90 (2007)
18 (citations omitted). Typically, “[a] plaintiff seeking a preliminary injunction
19 must establish that he is likely to succeed on the merits, that he is likely to
20 suffer irreparable harm in the absence of preliminary relief, that the balance
21 of equities tips in his favor, and that an injunction is in the public interest.”
22 Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

23
24 Under the Ninth Circuit’s “sliding scale” approach, however, “serious
25 questions going to the merits and a hardship balance that tips sharply
26 toward the plaintiff can support the issuance of an injunction, assuming the

1 other two elements of the Winter test are also met.” Alliance for the Wild
2 Rockies v. Cottrell, 632 F.3d 1127, 1132 (9th Cir. 2011). The “sliding scale”
3 approach allows “district courts to preserve the status quo where difficult
4 legal questions require more deliberate investigation.” Greene v. Wells
5 Fargo Bank, N.A., No. C 15-00048 JSW, 2015 WL 3945996, at *1 (N.D. Cal.
6 June 26, 2015); see also Leiva-Perez v. Holder, 640 F.3d 962, 971 (9th Cir.
7 2011) (holding that, under the “sliding scale” approach, a petitioner had
8 “made a sufficiently strong showing of likely success on the merits” where
9 he presented “a case which raises serious legal questions, or has a
10 reasonable probability or fair prospect of success”).

11 12 IV. ANALYSIS

13 14 A. Scope of the Injunction

15 “Injunctive relief . . . must be tailored to remedy the specific harm
16 alleged.” Lamb–Weston, Inc. v. McCain Foods, Ltd., 941 F.2d 970, 974 (9th
17 Cir. 1991). “An overbroad injunction is an abuse of discretion.” Id.

18
19 Plaintiffs move to expand the Arellano and Reza Preliminary Injunctions
20 to “the entire class of similarly situated individuals.” (Doc. No. 115 at 3).
21 While the certified class includes “[a]ll persons, past and future,” Plaintiffs
22 indicate that they do not seek an expansion of the preliminary injunction to
23 those who will be served by Los Angeles Gang Injunctions in the future.
24 (See Doc. No. 123 at 8 (“Whether this new process for *future-served*
25 individuals would satisfy the Constitution’s requirements of procedural due
26 process is not relevant to *this* Motion, however, because the City is very

1 clear that the procedures laid out in its Operations Order will *not apply at all*
2 to any present member of the roughly 1,500-person class certified by the
3 Court. Its terms therefore are irrelevant in determining whether a
4 preliminary injunction should be extended to them.”) (emphasis in original);
5 Doc. No. 115 at 18 (“[E]ach of the class members was subjected to the
6 same deficient procedure prior to being made subject to enforcement of a
7 Los Angeles Gang Injunction.”)). Accordingly, the Court construes Plaintiffs’
8 Motion as seeking to extend the preliminary-injunction to class members
9 who were served with Los Angeles Gang Injunctions before the City’s
10 adoption of its new pre-deprivation procedures on January 19, 2018.

11
12 As discussed below, the Court has determined that Plaintiffs are likely to
13 establish that the City did not provide sufficient due process for class
14 members who were served with Los Angeles Gang Injunctions before
15 January 19, 2018, and that continued enforcement of the Los Angeles Gang
16 Injunctions against these class members is likely to result in irreparable
17 injury, and the balance of the equities weigh in their favor. Accordingly, the
18 Court finds that expanding the scope of the Preliminary Injunctions to class
19 members served with Los Angeles Gang Injunctions before January 19,
20 2018 is reasonable.

21 22 **B. Likelihood of Success**

23 Courts “analyze a procedural due process claim in two steps. The first
24 asks whether there exists a liberty or property interest which has been
25 interfered with by the State; the second examines whether the procedures
26 attendant upon that deprivation were constitutionally sufficient.” United

1 States v. Juvenile Male, 670 F.3d 999, 1013 (9th Cir. 2012). As discussed
2 below, the Court finds that Plaintiffs have established a likelihood of success
3 on the merits.

4
5 **1. Interference with a Liberty or Property Interest**

6 In its September 7, 2017 order granting a preliminary injunction to
7 Arellano, the Court determined that the Echo Park Injunction “profoundly
8 implicates liberty interests protected by the Due Process Clause, including
9 rights of free movement, association, and speech, and that [the City’s]
10 conduct interferes with those protected liberty interests.” (Doc. No. 106 at
11 16 (quoting Vasquez v. Rackauckas, 734 F.3d 1025, 1042 (9th Cir. 2013))).

12 In its January 4, 2018 order, the Court found that Arellano was a typical
13 class member, because he had allegedly suffered the same or similar due
14 process injury as the proposed class. (Doc. No. 114 at 11). The Court also
15 found that the Los Angeles Gang Injunctions (which includes the Echo Park
16 Injunction) were “substantially similar” in that they “enjoin[] certain people
17 from associating with allegedly ‘known’ gang members in public areas or in
18 public view . . . [and] the majority . . .enjoin many similar, non-criminal
19 activities.” (Doc. No. 114 at 8-9). Plaintiff argues that the effect of these
20 orders requires a finding that the same liberty interests that the Court found
21 persuasive in granting the Arellano preliminary injunction are also implicated
22 by the Los Angeles Gang Injunctions. The City does not contest that the
23 same liberty interests are implicated.
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1 For these reasons, the Court finds that Plaintiffs have carried their
2 burden to show the existence of a liberty interest with which the City's
3 conduct interferes.

4
5 **2. Constitutional Sufficiency of the City's Procedures**

6 Mathews v. Eldridge, 424 U.S. 319 (1976) identifies various factors for
7 the Court to evaluate the constitutional sufficiency of the City's procedures:

8 [F]irst, the private interest that will be affected by the
9 official action; second, the risk of an erroneous depriva-
10 tion of such interest through the procedures used, and
11 the probable value, if any, of additional or substitute pro-
12 cedural safeguards; and finally, the Government's inter-
13 est, including the function involved and the fiscal and
14 administrative burdens that the additional or substitute
15 procedural requirement would entail.

16 Id. at 334-35; Id. (“[D]ue process is flexible and calls for such procedural
17 protections as the particular situation demands.”) (quoting Morrissey v.
18 Brewer, 408 U.S. 471, 481 (1972)).

19 For the reasons discussed below, the Court finds that Plaintiffs have
20 established that all of the Mathews factors weigh in their favor.

21
22 **a. Private Interest**

23 The Court previously held that Arellano's private interest was “truly
24 weighty,” since the Echo Park Gang Injunction prevented Arellano from
25 participating in a wide variety of non-criminal activities with anyone the City
26

1 deemed an active gang participant. (Doc. No. 106 at 19-20). For the same
2 reason, Plaintiff has demonstrated that the Los Angeles Gang Injunctions
3 each contain the same “do not associate” provision that implicates these
4 same private interests. (Doc. No. 115 at 16; Doc. No. at 4-6, ¶¶6-11). The
5 City does not contest this.³ Accordingly, the Court finds that the Los
6 Angeles Gang Injunctions “impose significant restrictions on Plaintiffs’
7 liberty” and implicate interests that are “truly weighty.” (Doc. No. 106 at 20;
8 see also, Vasquez, 734 F.3d at 1045).

9
10 **b. Risk of Erroneous Deprivation**

11 In Vasquez, the Ninth Circuit found that “[d]etermining whether an
12 individual is an active gang member presents a considerable risk of error.”
13 Id. at 1046. The court noted that the “informal structure of gangs, the often
14 fleeting nature of gang membership, and the lack of objective criteria in
15 making the assessment,” and found it problematic that Orange County’s
16 process of assessing gang membership was an entirely “unilateral” and
17 “one-sided.” Id. at 1046-48.

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21 ³ The City indicates that its new policy includes a automatic five-year sunset
22 provision that would apply to all Plaintiffs. (Doc. No. 116 at 10; Doc. No. 127 at 4,
23 ¶9(c)). In Vasquez, the Ninth Circuit held that the “possible length of wrongful
24 deprivation is an important factor in assessing the impact of official action on the
25 private interests.” 734 F.3d 1025, 1045 (9th Cir. 2013) (internal quotation marks
26 removed). For the same reason as discussed in the Court’s order granting a
preliminary injunction for Plaintiff Arellano, the Court finds that this sunset
provision “does little to lessen the significance of the private interests at issue”
because “[f]ive years is a long time to be prevented from freely associating with
family members and friends in public.” (Doc. No. 106 at 19-20).

1 As in Vasquez, the City in this case makes its initial determination of
2 active gang membership unilaterally and without input from alleged
3 members. See Doc. No. 20-1 at 15, 49-50 (describing procedures used to
4 determine active gang membership); Doc. No. 20-2 at 94-95 (same).⁴ As
5 noted in Vasquez, “fairness can rarely be obtained by secret, one-sided
6 determination of facts decisive of rights.” Am.-Arab Anti-Discrimination
7 Comm. v. Reno, 70 F.3d 1045, 1069 (9th Cir. 1995) (quoting Joint Anti-
8 Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 170 (1951) (Frankfurter,
9 J., concurring)). On September 7, 2017, the Court found that Arellano has
10 shown that he is likely to establish that the risk of erroneous deprivation
11 under the City’s current procedures was considerable and the City’s removal
12 procedures did not adequately remedy the lack of pre-deprivation process.
13 (Doc. No. 106 at 20-24).

14
15 The City argues that procedures it has adopted after the Court granted
16 Arellano’s preliminary injunction change the Court’s due process analysis by
17 reducing the risk of erroneous deprivation. (Doc. No. 116 at 11). The City
18 asserts that a class member already served with a Los Angeles Gang
19 Injunction will be able to obtain a hearing before the Superior Court by
20 notifying the City in writing that she wishes to contest the applicability of the
21 gang injunction. The City would file a motion with the Superior Court
22 seeking an adjudication of active gang membership. This motion would
23 include the evidence it has supporting a determination that the served

24
25 ⁴ The City’s revised policies relate to the service and enforcement of the Los
26 Angeles Gang Injunctions. The City does not assert that it has changed the
policy by which it makes the initial determination of gang membership.

1 person should be subject to the Los Angeles Gang Injunction. The City
2 argues that this post-deprivation remedy obviates the need to expand the
3 Arellano preliminary injunction because it addresses the concerns the Court
4 had with the policies governing the Echo Park Injunction. (Doc. No. 116 at
5 14-16).⁵

6
7 The City is correct that its revised policy has remedied several aspects
8 of the Echo Park Injunction that raised the risk of erroneous deprivation.
9 (See Doc. No. 116 at 14-15). But while the revised policy is an
10 improvement, it still places the burden on a class member to contest the
11 applicability of the Los Angeles Gang Injunction in Superior Court. Similar
12 to the City's former "opt-out" policy, a class member served with a Los
13 Angeles Gang Injunction before January 19, 2018 would still have to obtain
14 an order from the Superior Court to be free of the Los Angeles Gang
15 Injunction.⁶ Since it is apparent that the City's default policy for such a
16 request is to contest the adjudication of gang membership in Superior Court
17 (Doc. No. 127 at 5-6, ¶12),⁷ an affected class member would still have to

18 ⁵ The City also highlights the pre-deprivation procedures that it adopted by
19 January 19, 2018 will affect future-served class members. As discussed
20 above in Section IV.A, however, the Court has construed Plaintiffs' Motion to
21 expand the preliminary injunction only to those class members served with
22 the Los Angeles Gang Injunctions before January 19, 2018. Accordingly,
such pre-deprivation policy changes are not relevant for the purposes of resolving the Motion.

23 ⁶ Counsel for the City explained at the February 26, 2018 hearing that the 30
24 day forbearance period only applies to future-served individuals. Therefore,
25 those already served with a Los Angeles Gang Injunction would be subject to
the injunction unless and until the superior court issued a final order denying
the City's motion for gang adjudication.

26 ⁷ The revised policy removes the formal protections contained in the "opt-out"
process where the City would not to contest a motion for adjudication of ac-

1 face an adversarial, costly process to obtain removal from a Los Angeles
2 Gang Injunction.

3
4 The City's revised policy also contemplates re-service of a Los Angeles
5 Gang Injunction after the Superior Court issues an order regarding active
6 gang membership in favor of the class member. The City maintains that "an
7 individual may not be re-served unless there is new or additional evidence
8 that establishes beyond a reasonable doubt that an individual is an active
9 gang member." (Doc. No. 116 at 15). This determination is likely to include
10 the same type of evidence the City previously indicated would justify re-
11 service under the City's prior policy, however, including association with
12 friends and family members who have gang affiliations. Accordingly, even if
13 a class member obtained an order from the Superior Court finding that he or
14 she was not an active gang member, the class member "would still be
15 effectively prevented from associating with friends and family members" the
16 City deemed to be gang members. (See Doc. No. 106 at 22).

17
18 For these reasons, the Court finds that the risk of erroneous deprivation
19 weighs slightly in favor of expanding the preliminary injunction.

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22 tive gang membership under certain circumstances. Although the City sug-
23 gests that "it is possible that in some instances" it would not file a motion for
24 an adjudication of active gang membership and "notify the individual that he
25 or she is no longer subject to enforcement of the gang injunction." (Doc. No.
26 116 at 15 n. 6). It is not clear what criteria the City would use to make this de-
termination or if the City could re-serve an individual after making this deter-
mination, however. As Plaintiffs point out, the City has "always retained the
ability to remove individuals unilaterally" and "does not represent a change in
the City's policy." (Doc. No. 123 at 13).

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c. Government’s Interest

As the Court held in its September 7, 2017 order, “[i]n assessing the government interest at stake, the question is ‘not whether [the City] has a significant interest in combating gang violence . . . but rather whether they have a significant interest in failing to provide [additional] process.’” (Doc. No. 106 at 24 (quoting Vasquez, 734 F.3d at 1052)).

The City argues that “the administrative and fiscal burdens associated with mandating post-deprivation process for a single named plaintiff (Arellano)” are different from the “burdens associated with mandating pre-deprivation process for approximately 1,450 individuals.” (Doc. No. 116 at 23).

The Court disagrees. This argument is not persuasive in light of the City’s revised policy. If it was too great a fiscal or administrative burden for the City or the Superior Court to bear, the City could not commit to filing motions in Superior Court to adjudicate gang membership for any of the class members. Furthermore, the fact that the City’s revised policy includes pre-deprivation process for all future-served people is compelling evidence that it could have offered the existing class members a similar process before they were subject to the Los Angeles Gang Injunctions. The Court recognizes that these burdens may be greater since so many people have already been subjected to a Los Angeles Gang Injunction, but the scale of this problem is entirely due to the City’s failure to implement its revised policies earlier.

1
2 Nor is the Court persuaded by the City's suggestion that being forced to
3 provide additional process for those currently subject to a Los Angeles Gang
4 Injunction would pose a risk to public safety. (Doc. No. 116 at 23 ("A class-
5 wide injunction preventing enforcement of over one thousand persons with
6 gang injunctions also would have a significantly larger impact on public
7 safety than the impact this Court considered when entering the Arellano
8 Order.")). The City is not precluded from enforcing existing criminal laws or
9 seeking a preliminary injunction against any particular class members that
10 the City deems to be a risk to public safety.

11
12 For these reasons, the Court finds that the City has not established an
13 administrative, fiscal, or other substantial burden that would prevent it from
14 providing suspected gang members with additional process.

15
16 **C. Likelihood of Irreparable Harm**

17
18 Plaintiff must also demonstrate a likelihood of "irreparable harm in the
19 absence of preliminary relief." Winter, 555 U.S. at 20.

20
21 Just as with Arellano, because class members served with Los Angeles
22 Gang Injunctions before January 19, 2018 have "succeeded in
23 demonstrating a likelihood of success on the merits (i.e., that their [due
24 process and] First Amendment rights are being violated), they have also
25 succeeded in demonstrating a likelihood of irreparable harm." Occupy
26 Fresno v. Cty. of Fresno, 835 F. Supp. 2d 849, 870 (E.D. Cal. 2011); see

1 also Elrod v. Burns, 427 U.S. 347, 373 (1976) (“The loss of First Amendment
2 freedoms, for even minimal periods of time, unquestionably constitutes
3 irreparable injury.”). The fact that these class members have not yet availed
4 themselves of the City’s new post-deprivation process is of little probative
5 value. Arc of Cal. v. Douglas, 757 F.3d 975, 990 (9th Cir. 2014) (“Although a
6 plaintiff’s failure to seek [a remedy] can imply the lack of need for speedy
7 action . . . , such tardiness is not particularly probative in the context of
8 ongoing, worsening injuries.”) (citation omitted).

9
10 **D. Balance of Equities and Public Interest**

11
12 The final two Winter factors that Plaintiff must establish are that the
13 “balance of equities tips in his favor, and that an injunction is in the public
14 interest.” See Winter, 555 U.S. at 20. The relevant question is not whether
15 the City has an interest in combating gang violence, but whether the City’s
16 interest in quickly and efficiently serving class members with a gang
17 injunction outweighs class members’ interest in having due process before
18 being subjected to such an injunction. Vasquez, 734 F.3d at 1052.

19
20 The City argues that this Motion involves “very different burdens
21 under a very different gang injunction policy” compared to those assessed
22 by the Court when granting the Arellano preliminary injunction. (Doc. No.
23 116 at 243). The City argues that if is forced to adjudicate motions as to
24 1,450 previously-served class members, it will cause a fiscal and
25 administrative burden on The City and the Los Angeles Superior Court. (Id.)
26 The City also argues that an expanded preliminary injunction “would have a

1 significantly larger impact on public safety than the impact this Court
2 considered when entering the Arellano Order.” (Doc. No. 116 at 23).

3
4 As discussed above, these arguments are not persuasive in light of
5 the City’s revised policy. The City has offered each of the existing class
6 members the opportunity to have the Superior Court adjudicate their
7 individual, active gang status by submitting a request in writing. The City
8 cannot both argue that it will adjudicate active gang status for any class
9 member who requests it while arguing that it lacks the resources to honor
10 such requests.

11
12 The City’s argument that suspending enforcement of a Los Angeles
13 Gang Injunction for these class members would endanger public safety is
14 also unpersuasive. The City retains the ability to enforce existing criminal
15 laws, and may seek a preliminary injunction against any particular class
16 members that the City deems to be a risk to public safety. Furthermore, the
17 suggestion that every individual subject to a Los Angeles Gang Injunction
18 necessarily poses an immediate threat to public safety is undercut by the
19 City’s new policy that contemplates an automatic suspension of the Los
20 Angeles Gang Injunction for 30 days for any future-served class member
21 who submits a written request. As the Court found when entering the
22 Arellano Preliminary Injunction, “the risks posed by gang violence” do not
23 “create a public interest in allowing the continued use of constitutionally
24 inadequate procedures.” (Doc. No. 106 at 26).

1 It stands to reason that the burdens facing the City are likely to be
2 greater if the preliminary injunction is extended to the approximately 1,450
3 people already served with a Los Angeles Gang Injunction than the burdens
4 considered by the Court when issuing the preliminary injunction for Plaintiff
5 Arellano. On the other side of the balance, however, is the greater
6 aggregate interest of the 1,450 people who were also not provided due
7 process before being subjected to a Los Angeles Gang Injunction.

8
9 The Court finds that the balance of the equities tips in favor of
10 expanding the preliminary injunction. Just as with Arellano, Plaintiffs have
11 established that the City's unilateral procedures for determining gang
12 membership for class members served with Los Angeles Gang Injunctions
13 before January 19, 2018 include a considerable risk of erroneous
14 deprivation. The Court finds that the additional burdens identified by the
15 City do not outweigh Plaintiffs' interest in having due process being fore
16 being subjected to a Los Angeles Gang Injunction.

17
18 **E. Issuance of Bond**

19
20 Typically, a plaintiff may not be granted a preliminary injunction
21 without first posting security "in an amount that the court considers proper to
22 pay the costs and damages sustained by any party found to have been
23 wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Among other
24 things, this requirement both discourages "parties from requesting
25 injunctions based on tenuous legal grounds" and "assures district court
26 judges that defendants will receive compensation for their damages in

1 cases where it is later determined a party was wrongfully enjoined.”
2 Nintendo of America, Inc. v. Lewis Galoob Toys, Inc., 16 F.3d 1032, 1037
3 (9th Cir. 1994). “The district court retains discretion ‘as to the amount of
4 security required, if any.” Diaz v. Brewer, 656 F.3d 1008, 1015 (9th Cir.
5 2011) (citing Johnson v. Couturier, 572 F.3d 1067, 1086 (9th Cir. 2009)
6 (emphasis in original)).

7
8 Neither the City nor Plaintiffs have briefed whether the Court should
9 require a security in this case or what type of a payment would be
10 appropriate to protect the City’s interests. Nevertheless, Plaintiff’s motion is
11 not based on “tenuous legal grounds,” and the City’s status as an
12 institutional defendant lessens the need for an assurance of compensation
13 in case the Court’s decision to enter an injunction turns out to be wrong.
14 Accordingly, the Court finds that a bond is not necessary here. See Elliott v.
15 Kiesewetter, 98 F.3d 47, 60 (3d Cir. 1996) (“Where the balance of . . .
16 equities weighs overwhelmingly in favor of the party seeking the injunction,
17 a district court has the discretion to waive the Rule 65(c) bond
18 requirement.”).

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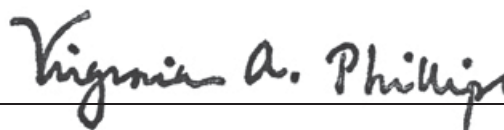
26

V. CONCLUSION

For the reasons stated above, the Court GRANTS Plaintiffs' Motion to the extent that it seeks to extend the Arellano Preliminary Injunction to class members served with a Los Angeles Gang Injunction before January 19, 2018.

IT IS SO ORDERED.

Dated: 3/15/18



Virginia A. Phillips

Chief United States District Judge

United States District Court
Central District of California

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