

Property Abatements— The Other Gang Injunction Project T.O.U.G.H.



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Ms. Liora Forman-Echols has been a prosecutor with the Los Angeles City Attorney's Office for ten years. She is currently assigned to Project T.O.U.G.H., where she has prosecuted narcotics and gang nuisance abatement actions against property owners and gang members throughout the city. Ms. Forman-Echols has embraced T.O.U.G.H.'s philosophy of pushing the boundaries of nuisance remedies to abate problem gang properties. One of her greatest accomplishments is seeing the residents of Project T.O.U.G.H. neighborhoods reclaim their streets.

How Project T.O.U.G.H. Helps Reduce Gang Crime in the City of Los Angeles

According to the Los Angeles Police Department, in the City of Los Angeles, approximately 60 percent of crimes occur at 10 percent of the properties—a statistic that is probably not exclusive to Los Angeles. The purpose of property abatements is to target the properties where people are repeatedly arrested but where criminal activities nonetheless persist. When these 10 percent of properties are connected to gang activity—which is increasingly the case—a nuisance property abatement action is initiated by prosecutors assigned to Project T.O.U.G.H. (Taking Out Urban Gang Headquarters), a specialized unit of the criminal branch of the Los Angeles City Attorney's Office. The nuisance abatement action improves conditions at the property so that criminals will not be able to use the property anymore. Gang property abatements are a critical, but sometimes overlooked, weapon in law enforcement's arsenal against gangs.

Community members who work, live, or go to school in gang-plagued areas often are aware of private properties in their neighborhoods that are used by gangs to engage in criminal activity. For gang members, these properties are essential to their survival because they provide a safe haven to sell drugs and engage in other criminal activity. Further, the properties help to solidify the gang's control over the neighborhood by becoming the hangout or headquarters for the gang.

Not only do community members know about these gang locations, law enforcement often does as well—making arrest after arrest and securing multiple search warrants in an effort to stop the problems there. While arrests and search warrants are typically a highly effective way to stop criminal activity, this is not necessarily the case at entrenched gang locations. Gang members highly value these locations, and when one person is arrested, another is frequently willing to quickly fill the void and resume the criminal activity.

When local or federal law enforcement officers or agents determine that arrests will not stop criminal gang activity at a private property, they refer the property to Project T.O.U.G.H. prosecutors for nuisance abatement. Additionally, community members may refer cases anonymously by contacting the City Attorney's Office.

What Is Project T.O.U.G.H.?

Begun in 2007, Project T.O.U.G.H. is an innovative, cutting-edge property abatement program which significantly curtails gang activity in Los Angeles neighborhoods. Prosecutors assigned to T.O.U.G.H. target the properties where gang members regularly commit crimes. Although attorneys assigned to T.O.U.G.H. are criminal prosecutors, they use civil lawsuits to abate

gang activity at private properties. There are several benefits to this: (1) by going to civil court, injunctive relief abating the nuisance can be obtained—a highly effective way to deal with the problems; (2) the defendants do not have a right to a jury trial or a court-appointed attorney; and (3) the burden of proof in civil court is a preponderance of the evidence, rather than the heightened beyond-a-reasonable-doubt standard used in criminal proceedings.

Gang Property Abatements Versus Gang Injunctions

Both gang injunctions and gang property abatements are nuisance abatement actions. However, they seek very different remedies. A gang injunction is a lawsuit against an entire gang.¹ A gang property abatement focuses on a specific property and targets the property owners and specific gang members who are creating or allowing the nuisance there. A gang injunction focuses on an entire geographic area (called a safety zone) within which the gang's activities are restricted. Among other things, gang injunctions typically prohibit two or more gang members from associating in public in the safety zone. Gang property abatements target a specific property—regardless of whether it sits in an actual safety zone—and seek to stop criminal activity from occurring there.

As gangs continue to terrorize our communities and budget cuts reduce law enforcement resources, Project T.O.U.G.H. presents a useful and cost-effective tool to all law enforcement agencies combating gangs in the City of Los Angeles, including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Immigration and Customs Enforcement (ICE), and Los Angeles Police Department (LAPD).²

Gang Property Abatements

A gang property abatement is a civil lawsuit initiated by the City Attorney's Office in the name of the People of the State of California that seeks to abate recurring criminal activity at a private property. The property owner—who is legally responsible for abating the nuisance at the property—and gang members who are using the property to engage in criminal activity are named as defendants. Negligent property managers and tenants who are "friendly" to the gang members may also be named as defendants. A gang property abatement can be brought at any type of privately owned property. This includes single-family dwellings, hotels, motels, apartment buildings, bars, and other commercial locations.

The owner and the gang members are sued because they have either directly or indirectly caused or permitted a public nuisance to exist on the property. The gang members do not have to be property owners, managers, or tenants to be named as defendants. In essence, the City Attorney's Office files

the abatement action to stop, or greatly reduce, the criminal activity at the property. In most instances, the abatement of the nuisance at the property has a ripple effect, positively improving the surrounding neighborhood.

Case Study: Drew-Estara



The Drew-Estara neighborhood is a small, densely populated area in northeast Los Angeles that has been controlled by the volatile Avenues criminal street gang for decades. The unique geography of the neighborhood, secluded and insulated by a variety of geographic barriers, lends itself to the Avenues' multigenerational stronghold on the area. There are no established businesses, churches, transit lines, or major transportation routes through Drew-Estara. It is very dense, packed tightly with apartment buildings and some single-family dwellings. Some of these apartment buildings were controlled by the Avenues gang and were used to facilitate narcotics sales and served as meeting places for gang members.

On June 25, 2008, a ten-month investigation of the gang in the Drew-Estrada area led by HIDTA 50³ and LAPD's Narcotics Abatement Unit (NAU), and supported by ATF and the Glendale Police Department, culminated in a 70-defendant federal indictment, 14 state prosecutions, and the filing of 7 gang property abatements involving 10 properties in the neighborhood.⁴

As of this printing, almost all of the property owners have agreed to comprehensive injunctions to abate the criminal activity at their properties. The injunctions contain a list of physical improvements and new management practices. As a result of this multiagency investigation, a year after the takedown violence and property crime are down over 40 percent in the neighborhood. Narcotics activity has also dropped significantly.

Once a lawsuit is filed, the City Attorney's Office seeks a preliminary injunction against the property owner, gang members, gang associates, and/or property managers. The injunction against the owner requires that he make comprehensive physical improvements to the property (such as surveillance

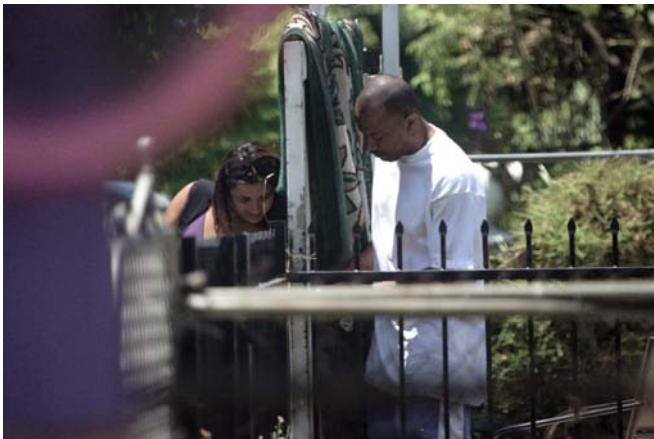
systems, gates, lighting) and alter the management practices (such as better tenant screening, new managers, evictions). Against the gang member defendants, a stay away order is sought which prevents them from returning to the property.⁵

Gang locations handled by Project T.O.U.G.H. prosecutors frequently have a history of narcotics sales, shootings, and other acts of gang violence. Additionally, gambling, drinking in public, loud parties, and other well-established nuisance activities are typically found at these locations. All criminal activities of the gang are documented and used as part of the abatement process.

Causes of Action

Depending on the facts of the case, there are up to three legal theories, commonly referred to as causes of action, which form the basis of the lawsuit. All of these are brought by the City Attorney's Office in the name of the People of the State of California: (1) Narcotics Abatement, Health and Safety Code Section 11570, et seq.; (2) General Public Nuisance, Civil Code Section 3479; and (3) Unfair Competition Law, Business and Professions Code, Section 17200, et seq.

Narcotics Abatement Law



The Narcotics Abatement Law prohibits any property from being used to sell, store, serve, or manufacture narcotics.⁶ It authorizes the city attorney, on behalf of the State of California, to obtain a broad injunction against the property owner and others engaged in narcotics activity at the property to abate the nuisance.⁷ In certain circumstances, the court can order the property owner to live on the property and/or close down the property for one year.⁸ A lawsuit under the Narcotics Abatement Law is given precedence over nearly all other lawsuits on the court's calendar.⁹ The statute also expressly allows the nuisance to be proved by the reputation of the property in the community.¹⁰ Further, knowledge of the nuisance is not necessary to establish liability of the property owner.¹¹ The city attorney may recover attorneys' fees and law enforcement costs of investigation.¹² Additionally, a penalty of up to \$25,000 per defendant may be assessed by the court.¹³ This statute is used by Project T.O.U.G.H. prosecutors when gang members and/or their associates are using a property for narcotics sales.

General Public Nuisance Law

The General Public Nuisance Statute defines a nuisance as anything that is injurious to health, indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.¹⁴ The definition also includes the sale of narcotics. The city attorney is expressly authorized to file a public nuisance lawsuit on behalf of the State of California and obtain injunctive relief.¹⁵ This statute is used by Project T.O.U.G.H. prosecutors to document for the court all criminal activity (not just narcotics) occurring at and directly connected to a gang property that constitutes the nuisance. This may include drive-by and other shootings, fights, gambling, drinking alcoholic beverages in public, loud noise, and any other offensive activity conducted by the gang at or connected to the property.¹⁶ Unlike the Narcotics Abatement Statute, the General Public Nuisance Statute does not authorize recovery of any costs or attorneys' fees.¹⁷ However, like the Narcotics Abatement Statute, an owner's knowledge is not necessary to establish liability.¹⁸

Unlawful Business Practices

The Unlawful Business Practices Statute (commonly referred to as the Unfair Competition Law or UCL) seeks to enjoin, redress, and punish, among other things, unlawful, unfair, and fraudulent business acts and practices.¹⁹ Unlike the narcotics abatement and general public nuisance causes of action, which are primarily property based, unlawful activity alleged under a UCL cause of action does not have to be connected to the physical property. Virtually any violation of law—local, state, federal, civil or criminal, statutory, regulatory, or common law—is actionable under the “unlawful” prong of 17200.²⁰ Frequently, T.O.U.G.H. prosecutors use violations of the Narcotics Abatement and/or the General Public Nuisance Statutes as the basis for the UCL cause of action.²¹ In addition to broad injunctive relief²² and the potential appointment of a receiver to manage the property,²³ civil penalties of up to \$2,500 for each act of unlawful competition²⁴ are available under the UCL. Operating rental housing in a way that violates any laws, including nuisance abatement statutes, is an unlawful business practice that subjects the property owner to liability under the UCL. Unlawful business practices also include using any legitimate business, such as a barber shop or tattoo parlor, for an illegal purpose such as narcotics sales.

Case Study: People v. Pantoja

People v. Pantoja—On October 24, 2007, an Unlawful Business Practices lawsuit (B&P Section 17200) was filed against two 18th Street Gang shot callers who owned Unicos Tattoos, a tattoo parlor used as a cover for narcotics trafficking for the 18th Street gang. The complaint was filed in tandem with multicount federal indictments against more than 20 gang members and was part of a multiagency operation involving the City Attorney's Office, LAPD, U.S. Attorney's Office, and the FBI. Unicos Tattoos was closed as a result of the lawsuit, and a legitimate business took over the retail space.

How Are Cases Handled?

Once a location has been identified, the T.O.U.G.H. prosecutors order all LAPD arrest and crime reports connected to the property for at least the last three years. Additionally, if the assigned prosecutor is aware that there is an ongoing federal investigation relating to the gang that is operating at the property, all investigative notes involving the property are requested from the federal agency. Once these documents have been requested, a T.O.U.G.H. paralegal assigned to the case starts ordering all property ownership records. If there is a business operating at the property, all records relating to the operation of the business are also ordered.

The Investigating Officer

Every nuisance abatement case should have an investigating officer (I/O) assigned. The role of the I/O is to be the expert about the current status of the criminal activity at the location and the history, or community reputation, of the location. An officer who is an expert on the location helps explain to the court the reasons why there is a nuisance there and why certain injunctive terms are being sought and are justified. The I/O is really the eyes and ears of the prosecutor in the community. The prosecutor may know much (if not all) of what the I/O knows, but he certainly does not want to be a witness in his own case. When an injunction is sought in the nuisance abatement action, the I/O puts all of his knowledge about the property into a declaration for the judge. Typically, the I/O acquires this information from making arrests at the property, reviewing all crime and arrest reports, meeting with members of the community who are knowledgeable about the location, interviewing gang members and informants about the location, and conducting covert surveillance of the property. In most jurisdictions, an officer or detective is assigned to every felony. It only makes sense that an officer or detective should be assigned to a location where there have been multiple felonies.

Opening a Case

As soon as all LAPD reports and/or federal investigative notes are received, they are analyzed to determine whether a nuisance exists at the property.²⁵ The prosecutor reviewing this evidence is looking for a pattern of criminal activity connected to the property. There is no magic number of criminal incidents that triggers the location being opened for handling. A number of factors are considered together, such as the size of the location, the type of location, the length of time the activity has been occurring, and the type and extent of the activity. Once all of these factors are evaluated and prosecutors determine that they have sufficient evidence to support a lawsuit, a case is opened for handling by T.O.U.G.H.

Once the property is opened for handling, prosecutors start drafting the pleadings (legal paperwork). While the pleadings are being drafted, the prosecutors start identifying which people connected to the unlawful activity at the property should be named as defendants. This is a critical step because it can be more difficult to abate the nuisance if the appropriate persons are not named as defendants. The following groups of potential defendants are evaluated:

- Property owners: Any and all individuals or entities who currently have an ownership interest in the property are always named as defendants in the lawsuit. The law holds the property owner responsible for the activity on the property; therefore, the owner is a necessary party to the lawsuit.²⁶ It may also be appropriate to name prior owners, if the change in ownership was recent and the nuisance occurred under their ownership.
- Gang members: Gang members using the property to facilitate their criminal activity, whether or not they are tenants, are named as defendants. In some instances, in which numerous gang members are using the property for criminal activity, it may not be expedient to name all of them as defendants.²⁷ In those situations, those who live at the property and those committing the worst offenses at the property are named as defendants.
- Gang member associates: Tenants who are not members of the gang, but who directly or indirectly assist gang members with their criminal activity, are commonly referred to as “friendlies” and may be named as defendants, if their activity can be linked to the property.
- Property managers: Property managers who are negligent in their duties may be named as defendants.

As the pleadings are being drafted and defendants are being identified, prosecutors determine when the lawsuit will be filed with the court. If there is no federal investigation, then the lawsuit is simply filed when all of the pleadings establishing the nuisance have been drafted. However, T.O.U.G.H. projects frequently involve ongoing federal investigations and, in almost all instances, the lawsuits are not filed until federal indictments are issued against the members of the gang. This is necessary when the evidentiary basis of the nuisance lawsuit, in whole or in part, relates to the federal investigation. Filing before the indictments would jeopardize the investigation by prematurely disclosing confidential information. Additionally, by sequencing the filing of the lawsuits with the issuance of indictments and the arrests of the gang members, the abatements and the overall takedown have a much greater impact on the gang.

Filing Requirements

At the time the lawsuit is filed, prosecutors must be able to establish a pattern of criminal activity amounting to a nuisance at the property. The last documented criminal act at the property should occur within approximately two to three months of filing. This is necessary because the only real defense against a nuisance abatement lawsuit is that the nuisance was abated prior to the time of filing.²⁸ Accordingly, the closer to the time of filing the criminal activity amounting to a nuisance is established, the easier it is to negate this defense.

Depending on the facts of the case and the remedy sought, the time it takes to prepare the abatement lawsuit can vary greatly. A very simple abatement, for example, a single-family dwelling, can be prepared in approximately two weeks. A complicated abatement, for example, a large apartment building, may take up to two months to prepare. Considering that most T.O.U.G.H. locations have been problems for years and that without abatement they will continue to be problems for years to come, the time preparing the lawsuit is time well spent.

After the lawsuit is filed, the defendants are served with the legal pleadings. At that point, prosecutors seek an injunction from the court to stop the criminal activity from occurring at the property.²⁹ The terms of the injunction are very fact specific and therefore vary from case to case. Prosecutors consider such factors as the type of criminal activity, the extent of the activity, the duration of the activity, and the physical layout of the property when drafting the injunction.

Further, the terms of the injunction do not apply uniformly to each defendant. For example, an injunction against the property owner may require, among other items, hiring a professional on-site property manager; requiring the owner to reside in the building until the nuisance is abated; posting armed security guards on-site; installing high-intensity lighting, fencing, and updated electronic entry systems; evicting problem tenants; and maintaining the property. Clearly, these terms would be of no use against a gang member defendant. A term that is typically sought against gang member defendants is a stay away order from the property and the area surrounding the property.³⁰ If a tenant who is not a gang member but is “friendly” to the gang is named in the lawsuit, his eviction will be sought. If property managers have been named as defendants, the injunction will seek to terminate their employment.

Once the preliminary injunction is obtained from the court, the property is monitored for criminal activity for a period ranging from 6 to 18 months. In the vast majority of cases, the implementation of this preliminary injunction will abate the nuisance. If it is clear that the nuisance has been abated, the case is often resolved with the property owner agreeing to a stipulated judgment, including a permanent injunction mirroring the preliminary injunction and a monetary

settlement.³¹ When the case is completely resolved against the property owner, the court often issues a permanent injunction against all gang member defendants, prohibiting them from being on or near the property.³²

Case Study: 69th and Main

One of the cases that laid the groundwork for Project T.O.U.G.H. was the abatement of three apartment buildings located at 6901–6909 South Main Street (commonly referred to as 69th and Main). For more than 20 years, these buildings were used as the headquarters for the violent and territorial 69 East Coast Crips. As a result, there was a wide range of criminal activity occurring there, including shootings, drug dealing, and robberies. For example, between June 21, 2000, and September 21, 2004, LAPD made 18 narcotics arrests at the properties, documented 13 drive-by shootings resulting in the shooting of nine persons, including two children, and recovered 17 firearms. Of course, these were just the crimes actually reported to the police. Not only were residents in the community terrorized by the gang members at the apartments, but school children attending the middle school across the street were regularly victimized by members of the gang who were “hanging out” at the property.



Believing that there was no remedy short of immediate closure that would stop the rampant gang activity at the apartments, abatement prosecutors filed suit against the property owners and requested that the court close down the buildings immediately. After hearing from all of the parties, the court ordered the buildings to be closed. Tenants who were not direct participants in the criminal activity received relocation money. Before the closure order took effect, LAPD officers who conducted a simultaneous undercover abatement investigation at the property—in which guns and drugs were purchased from gang members there—executed search warrants at the property and arrested numerous gang members and their associates.

Following the closure of the buildings, the Community Redevelopment Agency (CRA) for the City of Los Angeles purchased two of the three buildings. The CRA subsequently demolished them and plan to build townhomes for qualified, first-time homeowners. The third building will be used as a computer center for children.

Since the closure in 2005, there has been no crime at the property. Further, in the six months following the closure, there was a 24 percent reduction in crime in the entire surrounding neighborhood.

At times, closure of a gang property may be the only way to effectively abate the nuisance. If the nuisance is not abated during the monitoring period, a trial is held and closure of the property may be sought from the court.³³ Occasionally, in extreme circumstances, prosecutors may seek closure of a property immediately upon the filing of the abatement action.³⁴ Under any circumstances, in accordance with local and state law, if a closure order is issued by the court, all tenants who are not involved in the criminal activity receive relocation money from the property owner.

Evictions

When there is not enough evidence to bring an abatement lawsuit, Project T.O.U.G.H. prosecutors will evaluate whether gang members and/or associates can be evicted under existing laws. Los Angeles Municipal Code Section 47.50 requires landlords to evict tenants arrested for narcotics offenses, gang-related crime, or threats and/or acts of violence within 1,000 feet of their residences. California Health and Safety Code Section 11571.1 authorizes the City Attorney to bring an unlawful detainer action on behalf of a property owner against any tenant arrested for a narcotics offense occurring on the property. Additionally, California Civil Code Section 3485 requires landlords to evict tenants who illegally possess or use a firearm or ammunition.

Post-Takedown Efforts

T.O.U.G.H. prosecutors work closely with other partners after a takedown occurs to “hold the ground.” This is a notable distinction from most multiagency gang investigations which lack a post-takedown plan to ensure that gains are sustained.

Partnering with the City Attorney’s Neighborhood Prosecutor Program, communities are organized and engaged in a process to reclaim their neighborhood. Some of these efforts include community organization, crime prevention programs, neighborhood watches, job and health fairs, and school partnerships. Additionally, neighborhood prosecutors vertically prosecute quality-of-life crimes in the neighborhood.

Case Study: Ghost Town/Cruces

The Los Angeles City Attorney's Office, LAPD, ATF, the U.S. Attorney's Office, and the Los Angeles District Attorney's Office worked together to target and dismantle the East Side Pain (ESP) criminal street gang—a multigenerational gang that sold drugs and dominated the "Ghost Town" neighborhood of Wilmington for more than 30 years (the area is also known as Cruces). Ghost Town is a small, densely populated, 12-block neighborhood of mostly single-family homes, several apartment buildings, and commercial property.

In what has become a national model for local and federal cooperation to fight gang and drug strongholds, extensive coordination was used to build cases against gang members *and* to target problem gang properties. This investigation culminated on July 31, 2007, with the arrest of 44 gang members and their associates on the same day that abatement attorneys filed five gang property abatement lawsuits and the U.S. Attorney's Office filed five real property forfeiture lawsuits. The two attorneys who handled the federal prosecutions of the gang members and the asset forfeiture lawsuits were Deputy City Attorneys in the Los Angeles City Attorney's Office cross-designated as Special Assistant United States Attorneys (SAUSAs). During the course of the investigation, LAPD officers and ATF agents purchased large quantities of narcotics and numerous handguns, shotguns, and assault rifles from gang members and their associates.

Since the takedown, crime is down approximately 50 percent in the neighborhood. The City Attorney's Office has focused on delivering resources and community outreach. This "hold the ground" strategy includes creating and developing proactive and long-term partnerships with community groups. Led by the City Attorney's Office, LAPD, local political entities, and government agencies are working to improve the quality of life in the neighborhood through enforcement of public safety laws, environmental enhancement, and community empowerment. The neighborhood prosecutor for the area has diligently worked to organize the residents and stakeholders in this community and has repeatedly met with residents, property owners, businesses, and community-based organizations to teach them how to organize and tap into needed city services. Further, the neighborhood prosecutor has helped area stakeholders prioritize their needs and seek resources so that ultimately they can carry on these efforts on their own.

Conclusion

The primary objective of Project T.O.U.G.H. is to improve the quality of life for people living in gang-plagued neighborhoods in Los Angeles. Project T.O.U.G.H. eliminates gang headquarters and hangouts in conjunction with and as a complement to comprehensive local and federal law enforcement investigations. Including property abatements in the fight against gangs greatly enhances the effectiveness of the investigation.

Footnotes

¹See *People ex rel Gallo v. Acuna* (1997) 14 Cal. 4th 1090, *cert. denied*, 521 U.S. 1121.

² While Project T.O.U.G.H. operates within the City of Los Angeles, as further explained herein, T.O.U.G.H. prosecutors utilize state laws. Thus, many other prosecutorial offices within the state of California may file comparable abatement actions. Similarly, prosecutors in other states can utilize the nuisance laws of their states.

³ HIDTA/SCDTF Group 50 is composed of DEA, LAPD, IRS, ICE, City of Ontario Police Department, Riverside Police Department and Riverside County Sheriff's Department, San Bernardino Sheriff's Department, and the U.S. Attorney's Office. HIDTA (High-Intensity Drug Trafficking Area) is a federal program that helps improve the effectiveness and efficiency of drug control efforts by facilitating cooperation between drug control organizations through resource and information sharing, collocating, and implementing joint initiatives. The mission of HIDTA squads is to attack, disrupt, and dismantle major drug-trafficking and money-laundering organizations. SCDTF (Southern California Drug Task Force) is an enforcement initiative under the HIDTA program. The Los Angeles HIDTA area includes four counties (Los Angeles, Riverside, Orange, and San Bernardino), covering 32,341 square miles with a population of approximately 17 million.

⁴ Nine of these properties are on the same street.

⁵ A gang member defendant served with a stay away order can be arrested for violation of Penal Code Section 166(a)(4), a misdemeanor, and prosecuted accordingly.

⁶ Section 11570 of the California Health and Safety Code states that drug houses are nuisances which shall be abated. Specifically, the section provides: "Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in the division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented"

⁷ Health and Safety Code §§ 11571, 11573, and 11573.5(f)(1).

⁸ Health and Safety Code §§ 11573.5 and 11581.

⁹ Health and Safety Code § 11575.

¹⁰ Health and Safety Code § 11575.5.

¹¹ Health and Safety Code §§ 11570 and 11571. Please note that there are very few published court opinions interpreting the Narcotics Abatement Law. Accordingly, it is helpful to review the many published cases under Penal Code Section 11225 et seq. (the Red Light Abatement law), on which the Narcotics Abatement Law was modeled. The plain language of the Narcotics Abatement Law and these Red Light Abatement Law cases make clear that knowledge of the owner is not a prerequisite to obtaining an injunction to abate the nuisance. See *The People v. Bayside Land Company* (1920) 48

Cal. App. 257, 261. Also see *Lew v. Superior Court* (1993) 20 Cal. App. 4th 866, where neighbors of a 36-unit complex sued the owner under the Narcotics Abatement Law. The court stated that Health and Safety Code Section 11570 “does not require that the unlawful activity which makes the building a nuisance be conducted by the owner of the building, a tenant of the building, or a person entering with permission” (*Id.*, at 871).

¹² Civ. Code § 3496. Also, see *City of Oakland v. McCullough* (1996) 46 Cal. App. 4th 1, where the court found that overhead expenses can be included in the People’s recovery of the costs of investigation and attorneys’ fees. The People are entitled to recover an hourly rate for their attorney that reflects the reasonable market rate for legal services in the community. (See *Serrano v. Priest* [1977] 20 Cal. 3d 25; *Press v. Lucky Stores, Inc.* [1983] 34 Cal. 3d 311; *PLCM Group v. Drexler* [2000] 22 Cal. 4th 1084; *Serrano v. Unruh* [1982] 32 Cal. 3d 621; and *Napier v. Thirty or More Federal Agents*, 855 F.2d 1080 [3rd Cir. 1988].)

¹³ Health and Safety Code § 11581(b)(2).

¹⁴ Civ. Code § 3479.

¹⁵ Code of Civ. Proc. § 731.

¹⁶ If there are sufficient nonnarcotics-type crimes linked to the property, a general public nuisance cause of action should be alleged. Adding the public nuisance cause of action allows into evidence all of these activities that would not be admissible under the Narcotics Abatement Law. Accordingly, the judge is able to get a more comprehensive picture of the nuisance activities at the property: loitering, gang graffiti, drinking, etc.

¹⁷ However, the court’s power in fashioning appropriate remedies for any equitable action, including nuisance, is broad. “Equitable relief is designed to be flexible and expanding, and the theory that for every wrong there is a remedy may be invoked by equity courts to justify the invention of new methods of relief for new types of wrongs.” (See 13 Witkin, Summary of California Law, 10th ed., Equity § 3; see also Civ. Code §3523; *Southern Pac. Co. v. Robinson* [1901] 132 Cal. 408, 412 [there were no fixed rules limiting the power of equity in dealing with subject matters coming generally within its jurisdiction, and . . . the chancellor should not be cramped in the exercise of his powers by fixed and rigid rules of law].)

¹⁸ Under general nuisance principles, where “a building or other property is so used as to make it a nuisance under the statute, the nuisance may be abated . . . notwithstanding that the owner had no knowledge that it was used for the unlawful purpose constituting a nuisance.” (*People ex rel. Bradford v. Barbieri* (1917) 33 Cal. App. 770779; see also *Sturges v. Charles L. Harney, Inc.* [1958] 165 Cal. App. 2d 306 318 [“a nuisance and liability therefor may exist without negligence”]; *People v. McCadden* [1920] 48 Cal. App. 790 792 [judgment is supported on findings that nuisance was conducted and maintained on the premises, regardless of the knowledge of the owner thereof, is sufficient; “such knowledge on the part of the owner . . . is unnecessary”]; *People v. Peterson* (1920) 45 Cal. App. 457, 460 [“it was not necessary . . . for the trial court to find either, that the [defendants] threatened, and unless restrained, would continue to maintain, aid, and abet, the nuisance, or that they knew the building was used in violation of the act. . . . The existence of the nuisance was the ultimate fact in this case,

and having been found, supports the judgment"].) This is because "the object of the act is not to punish; its purpose is to effect a reformation of the property itself." (*People v. Bayside Land Co.* (1920) 48 Cal. App. 257, 261.)

¹⁹ Bus. and Prof. Code § 17200. See also *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal. App. 4th 508 ("As used in Bus. and Prof. Code § 17200 et seq., unfair competition shall mean and include any unlawful, unfair, or fraudulent business act or practice. Written in the disjunctive, this language establishes three varieties of unfair competition.")

²⁰ It is not necessary that the predicate law provide for civil enforcement. As the California Supreme Court explained, Section 17200 "borrows violations of other laws and treats them as unlawful practices independently actionable under Section 17200 et seq." (*South Bay Chevrolet v. General Motors Acceptance Corp.* [1999] 72 Cal. App. 4th 861, 880.)

²¹ Bus. and Prof. Code § 17204 authorizes California prosecutors to commence UCL actions: These UCL actions "shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or any district attorney or by a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or a city attorney of a city, or city and county, having a population in excess of 750,000, or by a city attorney in a city and county and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor in the name of the People of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation, or association, or by any person who has suffered injury in fact and has lost money or property as a result of the unfair competition."

²² Bus. and Prof. Code § 17203.

²³ *Id.*

²⁴ Bus. and Prof. Code § 17206(a). See 17206(c), which sets forth the mandatory apportionment of all collected civil penalties.

²⁵ While reviewing the actual documented criminal activity at the property is not the only factor considered when determining whether a nuisance exists at the property, it is an important first step.

²⁶ "Whenever there is reason to believe that a nuisance as described in Section 11570 is kept, maintained or exists . . . the city attorney . . . may maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it **and** the owner, lessee or agent of the building or place upon which the nuisance exists from directly or indirectly maintaining or permitting the nuisance." (Health and Safety Code § 11571; emphasis added.) See also note 17, above.

²⁷ Evaluate service of process issues thoroughly and well before filing. Consider the difficulty of serving the legal paperwork on multiple gang member defendants, some of whom may be in custody, others who may be out, and still others who are on the run and difficult to track down.

²⁸ There is a statutory presumption that “a thing continues to exist as long as is usual with things of that nature.” Civ. Code § 3547. Once the People make a showing that nuisance activity has occurred on the property, the burden is on the defense to demonstrate that the nuisance has been abated. *People ex rel Hicks v. Sarong Gals* (1974) 42 Cal. App. 3d 556, 562.

²⁹ While a noticed motion for preliminary injunction can be brought, it is often quicker and more effective to make an ex parte application for the same within one to two weeks of filing. Be mindful of the numerous local and state rules—both substantive and procedural—governing ex partes and preliminary injunctions; i.e., Rules 3.1150 (injunctions) and 3.1200 (ex parte applications) of the California Rules of Court. Also, consider that in some jurisdictions, like Los Angeles, an ex parte application for a preliminary injunction has to be made before the writs and receivers judge rather than the trial judge—who would hear a noticed motion for preliminary injunction.

³⁰ Stay away orders generally range from 150 feet to 500 feet, depending on the facts and the strength of the evidence. In drafting a broad stay away order, be aware of the potential constitutional arguments against the same.

³¹ The vast majority of property owners stipulate to a preliminary injunction after reviewing the evidence submitted to the court by the City Attorney’s Office.

³² More often than not, gang member defendants never respond to the lawsuit resulting in a default judgment against them.

³³ Health and Safety Code Sections 11573.5(b), 11581(a), and (b)(1) permit the closure of a property in only two situations: (1) if a previous injunction does not abate the nuisance (closing for up to one year pending trial); and (2) if the existence of the nuisance is established at the time of trial (closing the property for a period of one year). Civ. Code § 3479 is silent as to the closure of properties. Thus, if the facts and evidence warrant, closure can be sought under the general nuisance laws without the restrictions contained in the narcotics abatement law.

³⁴ *Id.*