

FILED

AUG 16 2010

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DEPUTY, SANTA CRUZ COUNTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CRUZ

COPY

PEOPLE OF THE STATE OF  
CALIFORNIA,

NO. CV162526

Plaintiff,

STATEMENT OF DECISION

vs.

ANNA GALEEN RICHARDSON and  
MIGUEL ANGEL DELEON,

Defendants.

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This case came on regularly for hearing on June 14, June 15, June 18 and August 12, 2010, in Department 4, the Honorable Timothy R. Volkmann presiding. Plaintiff was represented by the City Attorney for the City of Santa Cruz, Susan Barisone. Jonathan Che Gettleman and Elizabeth Cavallero represented Anna Richardson, and Mark Briscoe served as counsel for Miguel DeLeon. Testimony was taken from approximately twenty witnesses. All parties provided briefs, the Court has reviewed and considered all the evidence, as well as the applicable law, and hereby rules as follows:

The initial issue is whether the Plaintiff has satisfied its burden of proof that the actions of the Defendants constitute a nuisance. Pursuant to Civil Code § 3479, a nuisance

1 is, "Anything which is . . . indecent or offensive to the senses, or an obstruction to the free  
2 use of property, or unlawfully obstructs the free passage or use, in the customary manner,  
3 of . . . any public park, street, or highway . . .". A public nuisance is defined in Civil  
4 Code § 3480 as, ". . . one which affects at the same time an entire community or  
5 neighborhood, or any considerable number of persons, although the extent of the annoyance  
6 or damage inflicted upon individuals may be unequal." As in this situation, a civil action to  
7 abate a public nuisance may be brought by the City Attorney, in the name of the people of  
8 the state. (*People v. Robin*, 56 Cal.App.2d, 885) (1943) (California Code of Civil Procedure  
9 Section 731).  
10  
11

12 Acts or conduct which qualify as public nuisances may be enjoined as civil wrongs  
13 and are evaluated based upon their inherent tendency to injure or interfere with the  
14 community's exercise and enjoyment of rights common to the public (*People ex. Rel. Gallo*  
15 *v. Acuna* 14 Cal. 4<sup>th</sup> 1090) (1997).  
16

17 In this matter, the Court finds that the Plaintiff has satisfied its burden of proof that  
18 the Defendants have engaged in a series of actions that qualify as public nuisances. These  
19 include blocking doorways, blocking entranceways (both resulting in employees and the  
20 general public being constrained in their ability to freely use those facilities), erecting  
21 barriers at the Town Clock and public park (resulting in the public not being able to freely  
22 pass through those areas), spreading out personal items in a manner that blocks the usage  
23 of handicap ramps (thereby constraining the ability of employees and customers from  
24 using those facilities), positioning themselves in main entrances to private businesses, at  
25 loading docks, and in thoroughfares to private businesses (all with the result of serving as  
26 an annoyance to the employees and members of the community who wish to freely use  
27 those businesses), erecting structures comprised of their personal property with the result  
28 of restricting the property owner's ability and that of the general public to freely use and

1 pass through those locations, and storing personal items on the property of others without  
2 their permission. Testimony was offered as to these acts occurring at numerous locations,  
3 in downtown Santa Cruz, involving several different businesses, on many occasions, since  
4 2008. In addition to the examples of obstructing the free usage of property within the  
5 downtown Santa Cruz City community and the obstructing of the free passage or use of a  
6 public park, public square, and streets, there was testimony as to the loud, belligerent,  
7 aggressive attitude of the Defendants if law enforcement and/or private citizens requested  
8 that the Defendants cease these activities. Witnesses offered testimony as to being  
9 intimidated by the responses of the Defendants to the point that they would feel compelled  
10 to contact law enforcement. Taking all of this testimony into account, the Plaintiff has  
11 satisfied its burden of proof, pursuant to California Code of Civil Procedure Sections 3479  
12 and 3480 that the actions of the Defendants constitute public nuisances.

13 As to the defenses outlined on behalf of the Defendants: 1) That the conduct  
14 complained of is not substantial or unreasonable – This Court disagrees. The conduct  
15 involves many locations, over a time frame of months/years, and has impacted a large  
16 enough number of community citizens to satisfy the statutes previously cited. As to the  
17 reasonableness of this conduct, the Court is not persuaded. The Court is to evaluate  
18 whether persons viewing the conduct from an objective and impartial perspective would  
19 consider the actions unreasonable (*Gallo*, at page 1092). This Court finds such an  
20 evaluation would result in such a conclusion. 2) That the acts complained of are not  
21 ongoing. – Any lessening of the nuisance activity that has occurred over the past several  
22 months is most likely related to the existence of a preliminary injunction. The past  
23 behavior of the Defendants leads this Court to conclude that these acts would continue  
24 without the presence of an injunction going forward, 3) That there should be a balancing of  
25 the respective harm to each party, if this injunction is granted or denied – With the  
26 consistency, number and varying locales involved in the acts cited above, and the  
27 significant number of community citizens and law enforcement personnel who came  
28 forward to describe the adverse impact of the actions of the Defendants, this balancing falls

1 in favor of the Plaintiff. 4) Necessity defense – The Defendants cite In re Eichhorn (69Cal.  
2 App. 4th 382) (1998) for the proposition that this defense should apply. The Eichhorn  
3 opinion recognized the defense of necessity concerning no available sleeping  
4 accommodations for one cited for violating an anti-camping ordinance. In that case,  
5 despite testimony from Mr. Eichhorn and three other witnesses as to the lack of available  
6 shelter, the trial court refused to allow a necessity defense to go to the jury. The reviewing  
7 Court granted the Defendant's Writ of Habeas Corpus and remanded the matter to the trial  
8 court for further proceedings. The Plaintiff cites the case of Tobe v. City of Santa Ana (9  
9 Cal.4<sup>th</sup> 1069) (1995) which upheld a city ordinance banning camping. In this matter, the  
10 Court received testimony concerning the necessity defense. Testimony was provided by  
11 Linda LeMaster and Paul Brindel as to the lack of available shelter. The Court does not  
12 find the Defendant's arguments to be persuasive. Unlike the Eichhorn matter, no  
13 persuasive testimony was submitted specifically relating to the actions or inactions of these  
14 Defendants. Neither Ms. LeMaster, nor Mr. Brindel had anything other than a casual  
15 knowledge of the Defendants. Additionally, the testimony offered by the Plaintiff's  
16 witnesses describe a series of actions qualifying as public nuisances while the Defendants  
17 have failed to establish they acted: a) to prevent a significant evil, b) with no adequate  
18 alternative, c) without creating a greater danger than the one avoided, d) with a good faith  
19 belief in the necessity, e) with such belief being objectively reasonable, and f) under  
20 circumstances where he/she did not substantially contribute to the emergency (Eichhorn, at  
21 page 384). 5) Cruel and unusual punishment – This issue was fully discussed in the Tobe  
22 opinion (Tobe, at page 1070) and was rejected by the Supreme Court, as the potential  
23 punishment is based upon the proscribed conduct, not the status of potential violators. It is  
24 rejected, in this ruling, based upon the evidence previously cited. 6) Inability to comply –  
25 Testimony offered as to the number, types, locales and timing of the examples of the  
26 Defendants committing various public nuisances confirmed that an inability to comply  
27 defense is not meritorious. The Defendants were not compelled by their circumstances to  
28 intentionally and unreasonably block doorways, entrances, thoroughfares, public streets,

1 and parks. The *Eichhorn* opinion does not support the defense argument based upon the  
2 facts presented in this case. 7) Unclean hands – This defense requires unconscionable, bad  
3 faith or inequitable conduct by the City of Santa Cruz (*Mendoza v. Ruezga* (190 Cal. App.  
4 4<sup>th</sup> 270) (2008). The defense made no such showing. The *Tobe* opinion also held that  
5 there is no fundamental right to camp on public property (*Tobe*, at page 1108). 8)  
6 Constitutional challenges – Constitutional challenges were made to the anti-camping ban in  
7 the *Tobe* litigation. The California Supreme Court found no merit to those arguments. The  
8 City of Santa Cruz possesses the right to attempt to enjoin a public nuisance. A permanent  
9 injunction is an appropriate method to abate such nuisances (California Code of Civil  
10 Procedure Section 526, California Civil Code Section 3369). Furthermore, the Plaintiff  
11 possesses the right and, indeed, the duty to regulate its streets and public property (*Tobe*, at  
12 page 1109). These arguments, as a result, must fail, 9) Lastly, there appears to be a  
13 constant thread through the Defendants’ arguments to the respect that they are powerless to  
14 adjust their conduct in light of their circumstances. If the Court was to accept that  
15 argument, it would, potentially, allow anyone to act in anyway they deem fit, despite the  
16 obvious adverse impact of such behavior to the community of the City of Santa Cruz. That  
17 position is neither the law, nor is it persuasive from a reasonable person’s standard. The  
18 testimony in this case does not support the contention that these Defendants are helpless  
19 victims to their circumstances. Rather, the testimony supports the conclusion that the  
20 Defendants have made a series of decisions intending to exercise what they perceive to be  
21 a right to act in whatever way they see fit, without concern for the impact upon a  
22 significant portion of the Santa Cruz community. As such, this Court finds the following:

23 IT IS ORDERED that Defendants Anna Galeen Richardson and Miguel Angel  
24 DeLeon shall while in downtown Santa Cruz on Pacific Avenue, North Pacific Avenue  
25 (including the parking lots of Wachovia Bank, 1551 Pacific Avenue and Bank of the West,  
26 2020 North Pacific Avenue), in Scope Park, in the Town Clock Plaza, on Front Street  
27 between Spruce Street and Water Street (including the Post Office, the Veteran’s Memorial  
28 Building and Bunny’s Shoes), on River Street between Water Street and Madrone Street, in

1 the Front/River Street public parking garage and in San Lorenzo Park: a) Be prohibited  
2 from setting up a campsite. For purposes of this order, "setting up a campsite" means  
3 establishing or maintaining outdoors or in, on, or under any structure not intended for  
4 human occupancy at any time during the day, or night, a temporary or permanent place for  
5 cooking or sleeping, by setting up any bedding, sleeping bag, blanket, mattress, hammock,  
6 or other sleeping equipment or by setting up any cooking equipment, b) Prohibited from  
7 storing personal belongings on public property, or business property, unless the property  
8 owner has provided written permission for such storage, c) Prohibited from sleeping  
9 outdoors between the hours of 11:00p.m. and 8:00a.m., d) Prohibited from setting up  
10 bedding at any time, e) Prohibited from sitting, standing, or lying on public monuments,  
11 berms, or planters, f) Prohibited from bathing in public fountains, g) Prohibited from  
12 constructing and/or maintaining their property in a manner which blocks the access of  
13 individuals to entranceways, doorways, thoroughfares, and loading docks or prevents  
14 individuals from free passage through streets, public parks, and/or public squares, and h)  
15 Prohibited from remaining on a business premises after being requested to leave the  
16 premises by any representative of the business, or by a representative of law enforcement.

17 This decision is submitted pursuant to California Rule of Court 3.1590.

18 IT IS SO ORDERED.

19  
20 DATED: 8/16/2010

21   
22 TIMOTHY R. VOLKMANN  
23 Judge of the Superior Court  
24  
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1 SUPERIOR COURT OF CALIFORNIA

2 COUNTY OF SANTA CRUZ

3  
4 PEOPLE OF THE STATE OF  
CALIFORNIA,

NO. CV162526

5 Plaintiff,

*Certificate of Mailing*

6  
7 vs.

8 ANNA GALEEN RICHARDSON and  
9 MIGUEL ANGEL DELEON,

10 Defendants.

11  
12 I, ALEX CALVO, Clerk of the Superior Court of the State of California for the County  
13 of Santa Cruz, and not a party to the within action, hereby certify that on **August 18, 2010**, I  
14 served copies of the attached STATEMENT OF DECISION by depositing the enclosed in  
sealed envelopes with the postage thereon fully prepaid, in the United States Post Office at  
Santa Cruz, California, addressed as follows:

15  
16 Susan Barisone, Esq.  
17 ATCHISON BARISONE ET AL  
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Jonathan Che Gettleman, Esq.  
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GETTLEMAN  
223 River Street, Suite D  
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19  
20 DATED: 8/18/10

ALEX CALVO, Clerk

21  
22  
23 By   
Deputy Clerk