



NATIONAL
ANIMAL LAW
COMPETITIONS

2014
APPELLATE MOOT COURT COMPETITION
MEMORANDUM OPINION

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF HOBBS**

Grandlands Circus, Inc.

Plaintiff,

vs.

Hobbs County Animal Safety
Department, and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. CV-2014-TCS-81013 (EMH)

MEMORANDUM OPINION

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I. INTRODUCTION

1. Grandlands Circus (also referred to herein as “Circus”) filed this action against the Hobbs County Animal Safety Department (“Department”) on October 11, 2013, seeking relief in the nature of mandamus and money damages resulting from lost profits the Circus alleges it will suffer if forced to cancel future performances pending the outcome of this litigation. The Grandlands Circus performances in Hobbs County take place twice per year in April and September. The Department issued Grandlands Circus a 12-month Performing Animal Permit in June 2013, and the Circus completed its most recent visit to Hobbs County in September 2013. This most recent visit ran from September 6, 2013, through September 22, 2013. On October 7, shortly after the Circus completed its September 2013 performance, the Department revoked the 12-month permit issued to the Circus, pursuant to the revocation provisions of Hobbs County Municipal Code § 63.14, and the Department has refused to consider re-issuance until June 2014 when all annual permits are issued by the Department. Its permit having been revoked, and with permits issued by the Department only in June of each year, Grandlands Circus will be unable to perform any exhibitions that include animals in in Hobbs County in April 2014 unless this Court intervenes.

2. With respect to its mandamus claim, the Circus seeks an order compelling the Department to re-issue the 12-month Performing Animal Permit that was revoked by the Department on October 7, 2013. The Circus does not challenge the constitutionality of the ordinance as written, but argues that it was applied in an arbitrary and capricious manner and that its permit was revoked without adequate cause. At trial, which is set to begin on May 19, 2014, the Circus also will seek lost profit damages resulting from cancelled performances unless this Court enters some form of provisional remedy that allows the Circus’s performances to continue as scheduled in April 2014.

3. Separately, the Circus has filed a motion for a preliminary mandatory injunction, seeking an order compelling the Department to re-issue its permit pending the outcome of this action, which the Department has opposed. As mentioned, per its internal procedures, the Department issues 12-month Performing Animal Permits, as well as other types of permits, in

1 June of each year. The Department will not be issuing new Performing Animal Permits until
2 after the Circus's next scheduled performance in Hobbs County in April 2014. The Circus
3 contends that, due to other scheduled performances, it cannot re-schedule its Hobbs County visit
4 for a date after June 2014. The Circus also contends that, even if it could reschedule its April
5 2014 performance to a later month, the schedule change would make its first performance of the
6 year too close in time to its September performance to maintain the attendance levels it would
7 otherwise expect during the two visits, causing it to lose profits in any event. According to the
8 Circus, the only way for it to avoid lost profits is for the Department to re-issue the permit
9 pending the outcome of this litigation, so that it can perform as scheduled in April 2014. The
10 Circus also contends that the permit revocation will impact its ability to book performances in
11 other venues that, like Hobbs County, require it to disclose any permit revocations. In other
12 words, the Circus contends that it cannot simply take its show to another venue outside of
13 Hobbs County.

14 4. In addition to the Circus's motion for injunctive relief, Chris Samuelson, an
15 individual, and Mara's Hope Wildlife Sanctuary filed a motion for leave to file a complaint in
16 intervention in this action under California Code of Civil Procedure § 387, which the Circus has
17 opposed. The motion for leave to intervene also was fully briefed and consolidated for hearing
18 at the same time as the Circus's motion for injunctive relief.

19 5. Both motions came on for hearing before this Court on October 28, 2013. For the
20 reasons set forth below, the motion for leave to intervene filed by Chris Samuelson and Mara's
21 Hope Wildlife Sanctuary is DENIED in its entirety. For the reasons set forth below, the Court
22 DENIES the Circus's motion for a preliminary mandatory injunction.

23 **II. FACTUAL BACKGROUND**

24 **A. The Parties**

25 6. Plaintiff is Grandlands Circus, Inc. ("Circus"), which was established in 1962 and
26 operates a traveling circus. In 2013, the Circus put on shows in 22 cities and counties in the
27 United States. The Circus uses a combination of human acrobatic performances and animal
28 performances. Its animal performers currently consist of lions, tigers, elephants, and horses. As

1 mentioned, it received a Performing Animal Permit from the Department most recently in June
2 2013.

3 7. Defendant is the Hobbs County Animal Safety Department (“Department”), which
4 is the governing body of Hobbs County charged with issuing Performing Animal Permits within
5 the County. Hobbs County has issued a 12-month Performing Animal Permit to the Circus each
6 June for the past seven years. In Hobbs County, the Circus performs twice per day, with each
7 show being approximately ninety (90) minutes long. The Circus’s September 2013 visit to
8 Hobbs County lasted 17 days (September 6-22, 2013), and earned the Circus approximately
9 \$95,200 in net revenue during the visit.

10 8. Chris Samuelson (“Samuelson”) is an individual, a resident of Hobbs County, and
11 the Director of Education and Outreach for Mara’s Hope Wildlife Sanctuary (also referred to
12 herein as “Mara’s Hope” or “Sanctuary”). He holds a Bachelor of Science degree in zoology
13 and a Master of Fine Arts degree in photography from California University. From 1989
14 through 1992, Samuelson worked as a freelance photographer of wildlife in East Africa. Upon
15 his return in 1992, he began working at the Pranayama Animal Sanctuary as an animal caregiver
16 for retired chimpanzees that previously were used in research and/or entertainment. In 1997, he
17 co-founded Mara’s Hope Wildlife Sanctuary where he serves as an animal caregiver and
18 Director of Education and Outreach.

19 9. Mara’s Hope, also located in Hobbs County, is a privately-funded sanctuary that
20 rescues captive animals that have been discarded by private owners, zoos, or the entertainment
21 industry. It also has taken in animals from facilities that were shut down due to animal abuse or
22 public safety concerns. At any given time, the Sanctuary houses between 25-50 animals in total,
23 including African lions, black bears, mountain lions, serval cats, ostriches, and horses. The
24 Sanctuary has no elephants. Mara’s Hope’s website states as one of its missions: “Endeavoring
25 to educate the public about the harms of keeping wild and exotic animals in captivity, and to
26 advocate for protection of wildlife in the United States and elsewhere.” Mara’s Hope’s
27 Education and Outreach Center allows any interested person to subscribe to an e-mail
28 distribution list. Subscribers receive a quarterly newsletter that states the Sanctuary’s missions

1 and provides updates on the work that Mara’s Hope is doing, both at the Sanctuary and in its
2 advocacy efforts. Its website also states that forty (40) percent of the Sanctuary’s donations
3 come from donors who subscribe to its “education and outreach” e-mail distribution list.

4 **B. History Of The Dispute And The Proceeding Before The Department**

5 10. The following facts are described in a complaint that was filed with the
6 Department on September 24, 2013, by Samuelson and Mara’s Hope, which is part of the record
7 in this action.

8 11. In April 2012, Samuelson’s assistant, Penny Hall (a freshman at California
9 University), visited the Grandlands Circus for the first time with her family, who were visiting
10 Ms. Hall in Hobbs County. When Ms. Hall returned to work at the Sanctuary, she told
11 Samuelson (who never has attended Grandlands Circus in any location) that she was concerned
12 about the well-being of the animals, and that they seemed tired and thin compared to the animals
13 she was used to seeing at the Sanctuary. She also told Samuelson that Grandlands Circus had
14 visited her hometown of West Edmond, Texas in the past, but no longer visits West Edmond,
15 although she did not know why the visits had ceased.

16 12. After discussing the situation over the next few days, Ms. Hall convinced her
17 brother (a law student at the University of West Edmond) to try to find out more information
18 about why the Circus was no longer coming to their hometown of West Edmond. Through a
19 Freedom of Information Act Request to West Edmond, and after several months of waiting for a
20 response, Ms. Hall’s brother was able to obtain a copy of a veterinarian’s report that was
21 prepared for West Edmond Animal Care and Control in June 2011 while the Circus was visiting
22 West Edmond. Samuelson received the report from Ms. Hall on September 18, 2013, while the
23 Circus was still in Hobbs County. The report, which focused exclusively on the Grandlands
24 Circus elephants, was ultimately submitted as Exhibit 1 to the administrative complaint filed by
25 Samuelson and Mara’s Hope (as discussed below), and is attached to this Memorandum as the
26 same exhibit number.¹ By making a phone call to West Edmond Animal Care and Control,

27 ¹ The qualifications of the evaluator to render this opinion and the authenticity or accuracy of
28 the guidelines attached to the report are not being challenged here.

1 Samuelson was able to confirm that Grandlands Circus had applied for a new annual permit in
2 January 2012, after completion of the aforementioned veterinarian report, but West Edmond
3 Animal Care and Control had refused to issue a new permit.

4 13. With this information and the veterinarian report in hand, Samuelson prepared an
5 administrative complaint and filed it with the Department on September 24, 2013 (just after the
6 Circus completed its September performances), in his name and the name of Mara's Hope. The
7 administrative complaint alleged that the Circus was violating the Hobbs County ordinance
8 respecting Performing Animal Permits, and demanded that the permit issued to Grandlands
9 Circus be revoked. As mentioned, the June 2011 West Edmond report was submitted as an
10 exhibit in support of the administrative complaint filed with the Department.

11 14. The Hobbs County ordinance regarding the issuance of Performing Animal
12 Permits is Section 63.14 of the Hobbs County Municipal Code. It requires that, among other
13 things, an applicant be in compliance with California Penal Code § 597, et seq., irrespective of
14 whether the applicant has ever been the subject of criminal charges under the California Penal
15 Code or any other law. The full text of the ordinance is attached hereto as Exhibit 2.

16 15. The Department promptly notified Grandlands Circus that it would hold an
17 evidentiary hearing on September 27, 2013, while the Circus and its personnel were still in close
18 enough proximity to Hobbs County to attend an in-person hearing. As set forth in the notice,
19 the adequacy of which is not in question here, the Department would consider, among other
20 things: (1) whether the concerns identified in the 2011 West Edmond report also are applicable
21 to the Hobbs County performances; (2) whether Grandlands Circus was in violation of the
22 requirements and/or prohibitions of California Penal Code § 597, et seq., irrespective of any
23 criminal charges; (3) whether Grandlands Circus would be willing to remediate any identified
24 violations to the satisfaction of the Department; and (4) whether the Grandlands Circus permit
25 ultimately should be revoked.

26 16. Grandlands Circus could have requested one continuance of the hearing as a
27 matter of course but it opted not to request such a continuance. Circus personnel attended the
28 hearing in person, as did Samuelson. At the hearing before the Department, the Circus denied

1 the overall findings and conclusions contained in the 2011 West Edmond report, but did
2 stipulate that the information contained in the medical records, the measurements regarding the
3 transportation cars, and the noted duration of tethered travel time and time spent in the
4 transportation cars generally are accurate. The Circus also conceded that it had not supplied the
5 Department with any medical records in connection with its June 2013 Performing Animal
6 Permit application. No veterinarians or experts testified on behalf of any party during the
7 hearing held by the Department.

8 17. During the hearing, Grandlands Circus offered to not perform the three oldest
9 elephants when in Hobbs County, but would not agree to any other concessions. Additionally,
10 the Circus argued that it will lose its April 2014 income if the permit is revoked; the Circus
11 testified that the only other venue available to it in April 2014 is in Gall Springs, California,
12 which has a population of less than half that of Hobbs County; Gall Springs has never hosted the
13 Grandlands Circus in the past, but has indicated that it would be willing to host the Circus in
14 April 2014.

15 18. On October 7, 2013, the Department made its decision to revoke the Grandlands
16 Circus permit. The Department issued its decision in writing that same day, indicating that it had
17 found the Circus to be in violation of Hobbs County Municipal Code § 63.14, subdivisions
18 (A)(i)-(iii), and California Penal Code §§ 596.5 and 597t. This lawsuit followed.²

19 III. Analysis

20 A. Sanctuary and Samuelson's Motion for Leave To Intervene

21 19. Shortly after the Circus filed suit against the Department, Mara's Hope Wildlife
22 Sanctuary and Samuelson filed a motion for leave to file a complaint in intervention, arguing
23 that their interests are aligned with the interests of the Department, and that they have an interest
24 in the outcome of the litigation as residents of Hobbs County and as an organization and
25 individual that seek to protect animals, including wild animals like those exhibited in the Circus.

26 _____
27 ² Exhaustion of remedies and other pre-filing requirements are not at issue here. The Court
28 previously determined that that the Circus adequately exhausted its administrative remedies
and satisfied all pre-filing requirements, including the requirements set forth in California
Government Code Section 945.4.

1 The motion requests that both applicants be granted leave to intervene, but also requests that the
2 Court consider their individual positions vis-à-vis intervention independently, in the event the
3 Court believes only one applicant has demonstrated adequate grounds to intervene.

4 20. In opposition, the Circus argues that Mara’s Hope and Samuelson are in no way
5 uniquely situated with respect to the issues in this litigation, and that they (together or
6 separately) have no direct and immediate interest in the litigation. The Circus further argues
7 that the would-be intervenors would not have standing to sue the Circus directly and, thus, they
8 should not be permitted to intervene here. Circus argues that Samuelson has never attended one
9 of its performances and has no particular interest in the issues presented in this litigation or in
10 seeing the Circus’s permit revoked. Circus further argues that Mara’s Hope does not provide
11 sanctuary to elephants and, as the permit revocation was prompted by a report on the condition
12 of the Circus elephants, Mara’s Hope also has no requisite interest in the subject matter of the
13 dispute.

14 21. Circus further argues that, given Mara’s Hope and Samuelson’s lack of any direct
15 interest in the dispute, their intervention in this action would unnecessarily expand the issues in
16 the case to involve a general moral and ethical debate regarding the exhibition of animals in
17 entertainment, which it contends are issues tangential to the issues that should be considered
18 here.

19 22. California Code of Civil Procedure § 387 governs when a motion for leave to
20 intervene will be granted. There are essentially two forms of intervention available to a
21 potentially interested party: (1) intervention as a matter of right; and (2) permissive
22 intervention. While Mara’s Hope Sanctuary and Samuelson did not limit their motion to one
23 form of intervention, this Court sees no basis for even considering intervention as a matter of
24 right on the facts set forth herein.

25 23. In order to adequately demonstrate that permissive intervention should be granted,
26 a hopeful party must show three things: (1) a direct and immediate interest in the outcome of the
27 litigation; (2) that no new issues will be presented as a result of the intervention; and (3) perhaps
28 most importantly, that the purposes served in allowing the non-party to intervene will outweigh

1 the original party's interest in conducting its own lawsuit on its own terms. (See generally
2 *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873; *Fireman's Fund*
3 *Ins. Co v. Gerlach* (1976) 56 Cal.App.3d 299 (re interest in the litigation); *U.S. Ecology, Inc. v.*
4 *State of Calif.* (2001) 92 Cal.App.4th 113 (re interest in the litigation); *Kuperstein v. Superior*
5 *Court* (1988) 204 Cal.App.3d 598 (re presentation of new issues); *People v. Trinity County*
6 (1983) 147 Cal.App.3d 655 (re balance of interests).)

7 24. The Court finds the Circus's arguments to be persuasive on this issue. While an
8 intervenor need not have a pecuniary interest in the outcome of the litigation, allowing Mara's
9 Hope and/or Samuelson to intervene in this action would effectively swallow the requisite
10 showing required for permissive intervention by allowing virtually anyone with any interest in
11 animal-related issues to intervene in an action. Neither Mara's Hope nor Samuelson have a
12 personal complaint against the Circus and, as the Circus points out, Mara's Hope does not house
13 elephants, which are the focal point of the dispute. It appears to this Court that the only
14 ostensible interest of Mara's Hope and Samuelson in the litigation (whether considered jointly
15 or separately) relates to the practice of animals performing in circuses or related activities
16 generally. As such, their intervention would result in a broader consideration of the moral and
17 ethical issues relating to performing animals, which this Court believes is not a necessary or
18 proper consideration in resolving this dispute.

19 25. For these reasons, the motion for leave to intervene is DENIED.

20 **B. Circus's Motion For Mandatory Injunctive Relief**

21 26. Circus also has filed a motion for a preliminary mandatory injunction, seeking an
22 order compelling the Department to re-issue the revoked permit so that it can make its April
23 2014 visit to Hobbs County and perform as scheduled prior to the May 2014 trial on this
24 dispute. In support of its motion, the Circus argues that (1) the Department will be unable to
25 show that the Circus has violated the strictures of the Hobbs County Municipal Code and/or the
26 California Penal Code in any way that justifies revocation of its permit; (2) Circus will prevail
27 in the action such that it will be able to obtain a permit from the Department when the action is
28 resolved; (3) before this action can be resolved on the merits, the Circus will lose the income it

1 would have received during the April 2014 visit; and (4) due to the uncertainty associated with
2 this litigation, the Circus is unable to secure other adequate performance venues in place of the
3 Hobbs County venue. For these reasons, the Circus contends that its permit should be re-issued
4 until this matter is resolved on the merits.

5 27. In ruling on a motion for preliminary injunction, the Court must consider two
6 interrelated factors. The first factor is the likelihood that the plaintiff will prevail on the merits
7 at trial. The second is the interim harm that the plaintiff is likely to sustain if the injunction were
8 denied as compared to the harm that the defendant is likely to suffer if the preliminary
9 injunction were issued. (See *Best Friends Animal Society v. Macerich Westside Pavilion*
10 *Property, LLC* (2011) 193 Cal.App.4th 168.)

11 28. Circus argues that the Department’s decision was arbitrary and capricious and,
12 even under its own municipal scheme, not supported by the factual record. Circus argues that
13 the 2011 West Edmond report does not demonstrate any of the circumstances that justify permit
14 revocation under Hobbs County’s Municipal Code § 63.14. In support of this argument, the
15 Circus points out that it has been inspected by the United States Department of Agriculture’s
16 Animal and Plant Health Inspection Service (“APHIS”) and has no reported violations of the
17 Animal Welfare Act. Circus also points out that no other city, county, or state has revoked a
18 permit issued to Grandlands Circus in the past three years. Circus cites *Salsedo v. California*
19 *Department of Parks and Recreation* (2009) 175 Cal.App.4th 1510, for the proposition that
20 mandatory injunctive relief is properly granted where a revoking agency cannot show a
21 likelihood of success on the underlying merits.

22 29. The Department argues that it acted well within its discretion in revoking the
23 permit because the Circus is violating multiple provisions of the Hobbs County Municipal Code
24 and certain provisions of the California Penal Code, including but not limited to §§ 596.5 and
25 597t (which are referenced in the Hobbs County permit ordinance). The Department argues
26 that, in such circumstances, it had discretion to revoke the permit. (*Vaughn v. Board of Police*
27 *Commissioners* (1943) 59 Cal.App.2d 771, 775.) More specifically, the Department contends
28 that Grandlands Circus improperly withheld the fact that another municipality had investigated

1 the Circus and thereafter refused to issue a new annual permit, which refusal the Department
2 contends is akin to a revocation. Department also contends that the Circus is in violation of the
3 Hobbs County Municipal Code in that, among other things, it does not provide adequate
4 transportation space for its elephants, it did not provide requisite medical records to the
5 Department during its June 2013 permit application process (including verification regarding
6 tuberculosis screening and results), the elephants are tethered for too many hours at a time, and
7 the elephants are required to perform for the Circus despite adverse health effects, which the
8 Department contends satisfies the statutory meaning of “abusive” as used in the California Penal
9 Code (sections referenced below). Finally, the Department argues that injunctive relief should
10 be granted only where the purported injury is *threatened* and that, because the permit already
11 has been revoked, the purported “injury” has been completed here. (See *Vincent Petroleum*
12 *Corp. v. Culver City* (1941) 43 Cal.App.2d 511.)

13 30. In response to these specific contentions, the Circus responds that the
14 transportation cars provide adequate space of a square footage that is very close to that
15 recommended by the Association of Zoos and Aquariums (“AZA”) Standards for Elephant
16 Management and Care, that the records indicate the Circus’s elephants receive prompt
17 veterinary care and treatment for any signs of tuberculosis (and that, in any event, the
18 Department easily could have requested additional information rather than resulting to the
19 extreme measure of revoking the permit outright), that the elephants are tethered only as is
20 necessary for their safety during transportation and for public safety, and that the elephants
21 receive analgesics to address any discomfort they may be experiencing. In addition, the Circus
22 points out that it agreed to not perform the three oldest elephants while in Hobbs County. The
23 Circus contends that, on balance, the evidence does not set forth adequate grounds justifying
24 revocation of its permit in light of the harm that it will suffer as a result.

25 31. The Penal Code provisions cited in Hobbs County’s Municipal Code § 63.14
26 (Exhibit 2) provide as follows:

27 California Penal Code § 596.5: “It shall be a misdemeanor for any owner or manager of
28 an elephant to engage in abusive behavior towards the elephant, which behavior shall

1 include the discipline of the elephant by any of the following methods: (a) Deprivation of
2 food, water, or rest; (b) Use of electricity; (c) Physical punishment resulting in damage,
3 scarring, or breakage of skin; (d) Insertion of any instrument into any bodily orifice; (e)
4 Use of martingales; (f) Use of block and tackle.”

5 California Penal Code § 597t: “Every person who keeps an animal confined in an
6 enclosed area shall provide it with an adequate exercise area. If the animal is restricted
7 by a leash, rope, or chain, the leash, rope, or chain shall be affixed in such a manner that
8 it will prevent the animal from becoming entangled or injured and permit the animal's
9 access to adequate shelter, food, and water. Violation of this section constitutes a
10 misdemeanor. This section shall not apply to an animal which is in transit, in a vehicle, or
11 in the immediate control of a person.”

12 32. As a preliminary matter, the Court finds that the Circus properly has stated its
13 request for injunctive relief in this mandamus action, at least as a matter of procedure. While
14 the Department is correct that, in general, injunctive relief lies only to prevent a threatened
15 injury, there still is opportunity to address the prospective threatened harm, as the Circus is not
16 scheduled to perform until April 2014.

17 33. Each of the two substantive requirements for a preliminary injunction will be
18 addressed in turn.

19 **1. Likelihood of Success on the Merits**

20 34. Whether the Circus is likely to succeed on the merits depends ultimately on
21 whether the Department will be able to demonstrate that it acted within its discretion in finding
22 a violation of Hobbs County Municipal Code § 63.14, or any of the California Penal Code
23 sections cited therein.

24 35. This Court finds that the Circus is unlikely to succeed on the merits in this action.

25 36. The Hobbs County Municipal Code not only establishes its own baseline
26 requirements for the treatment of performing animals within its jurisdiction, but it also embraces
27 the State of California's requirements for the treatment of animals, as reflected in the California
28 Penal Code. When interpreting California's animal protection statutes, courts are to use an

1 objective definition of what it means to “deprive” an animal, cause it to “suffer,” provide an
2 animal with adequate space, etc. (See, e.g., *People v. Speegle* (1997) 53 Cal.App.4th 1405.)

3 37. This Court finds that, with respect to the Circus’s alleged violations of the Hobbs
4 County Municipal Code, the Department acted within its discretion in finding that the Circus
5 violated Municipal Code § 63.14, subdivision A(iii), and in revoking the Circus’s permit as a
6 result. The Circus should have disclosed that its West Edmond permit was not re-issued
7 following preparation of the 2011 West Edmond veterinarian report. West Edmond’s refusal to
8 re-issue the permit was, as the Department points out, akin to a revocation. The disclosure
9 requirement set forth in the Hobbs County Municipal Code exists, at least in part, to alert the
10 Department that there may be cause for concern and to investigate a particular company or
11 performance and, as a result, is a critical part of the statutory scheme with which the Circus did
12 not comply.

13 38. However, the Court finds that the Department had no factual basis for finding a
14 violation of Hobbs County Municipal Code § 63.14, subdivisions A(i) and A(ii). The
15 Department would have (or should have) known immediately whether it received the medical
16 records required to be produced under subdivision A(i) and, if it had not received the requisite
17 records, it easily could have requested them from the Circus. Had the Department requested the
18 records and the Circus refused to comply, or if the records had evidenced cause for concern
19 upon production, those events might justify revocation. As it stands, however, revocation on the
20 current factual record under this subdivision would be unreasonable and an unnecessarily harsh
21 remedy. With respect to subdivision A(ii), the provision requires only that the transport *vehicles*
22 be reasonable; the record before this Court concerns only the size of the transportation
23 containers, which the Court finds to be a separate issue.

24 39. With respect to the Circus’s alleged violations of California Penal Code §§ 596.5
25 and 597t, the Court finds that the Department had a reasonable basis for finding that the Circus
26 was in violation of Penal Code § 597t, but not § 596.5.

27 40. With respect to California Penal Code § 597t, the Circus stipulated that the
28 transportation car measurements and the duration of confinement specified in the 2011 West

1 Edmond report are accurate. This means that the Circus elephants are confined in a space that is
2 50 square feet short of the recommended space per elephant for extended periods of time, and
3 tethered without an adequate exercise area. Given the Circus’s stipulation, the Court finds it
4 unlikely that the Circus will be able to demonstrate at trial that it did not violate California Penal
5 Code § 597t and, thus, that its permit was not properly revoked.

6 41. In contrast, the Department’s finding of a violation of Penal Code § 596.5 is
7 unsupported by the record, as there is no evidence supporting a conclusion that the elephants
8 were being disciplined at any time by Grandlands Circus, as specified in the statute. To the
9 extent that the Department argues more generally that the elephants are maintained in an
10 “abusive” condition by being required to perform despite adverse health effects, the Court finds
11 no evidence supporting permit revocation on any such basis. To the contrary, the 2011 West
12 Edmond report supports a different conclusion; it noted that the two youngest elephants were in
13 an adequate physical condition and, as noted above, the Circus offered to not perform the three
14 oldest elephants when in Hobbs County.

15 42. In sum, although we do not agree with all of the Department’s conclusions, we
16 find it unlikely that the Circus will ultimately succeed on the merits in this action because the
17 record supports the Department’s conclusion that the Circus was in violation of Municipal Code
18 § 63.14, subdivision A(iii) and the requirements and prohibitions set forth in California Penal
19 Code § 597t, each violation justifying revocation.

20 **2. Likelihood of Suffering Irreparable Harm in the Absence of Injunctive Relief**

21 43. Even with the above findings, injunctive relief still may be appropriate if the
22 harm to the Circus in the absence of the requested injunctive relief significantly outweighs the
23 harm that the Department will suffer if the relief is granted. In essence, this prong of the test
24 requires the Court to balance the respective equities.

25 44. In addition to the arguments set forth above, the Circus argues here that the
26 revocation remedy is unreasonably harsh, even if the above-listed violations are occurring. It
27 argues that the violations, if any, are *de minimus*, impact only the elephants and not the many
28 other animals that are exhibited by the Circus and that, on balance, the harm the Circus will

1 suffer outweighs any harm to the Department that will result while this matter is pending.

2 45. The answer to this question is a close call. However, on balance, the Court finds
3 that the equities tip in favor of the Department.

4 46. First, the Department is charged with protecting the animals and people within its
5 jurisdiction and does so, in part, by ensuring that the Hobbs County local ordinances pertaining
6 to animals are enforced. While permit revocation may be a harsh remedy, it is the only remedy
7 that effectively addresses the violations discussed above. Moreover, as the record demonstrates,
8 the Department is subject to complaints by its citizens if it fails to enforce the Hobbs County
9 ordinances and, undoubtedly, would be subject to protracted litigation if a citizen were to be
10 harmed as a result of lax enforcement.

11 47. We are sensitive to the Circus's argument that it will lose income from the April
12 performances in Hobbs County, and may possibly lose bookings in other venues if injunctive
13 relief is not granted. However, no specific dollar value has been presented to the Court for
14 consideration. More importantly, to obtain relief in equity, one also must do equity. Had the
15 Circus been willing to rectify the violations for which there is supporting evidence in the record,
16 as discussed herein, perhaps the balance of equities would weigh in favor of a different
17 outcome. As it stands, the economic harm that may befall the Circus must give way to the
18 Department's need and obligation to enforce its own local regulations.³

19 **IV. CONCLUSION**

20 48. For the reasons set forth herein, the Court enters the following orders:

21 49. Samuelson and Mara's Hope's Motion for Leave to Intervene is DENIED as to
22 both applicants; and

23 50. Circus's motion for a preliminary injunction is DENIED.

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27 ³ Because Samuelson and Mara's Hope's motion for leave to intervene has been denied, the
28 Court has not considered their interest, if any, in balancing the equities.

1 IT IS SO ORDERED.

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/S/
Honorable Ellis M. Heiberg
JUDGE OF THE SUPERIOR COURT