

No. 13-9876

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT, DIVISION 3

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GRANDLANDS CIRCUS, INC.,  
*Appellant/Cross-Respondent*

vs.

HOBBS COUNTY ANIMAL SAFETY DEPARTMENT  
*Respondent,*

CHRIS SAMUELSON & MARA'S HOPE WILDLIFE SANCTUARY  
*Appellant*

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On appeal from the Superior Court of Hobbs County

Case No. CV-2014-TCS-81013(EMH)  
The Honorable Ellis M. Heiberg

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BRIEF FOR RESPONDENT

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Competition Team Number 15

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES ..... iii**

**STATEMENT OF THE ISSUES ..... 1**

**STATEMENT OF THE CASE..... 1**

**STATEMENT OF THE FACTS..... 2**

**SUMMARY OF THE ARGUMENT..... 5**

**ARGUMENT..... 7**

**I. THE SUPERIOR COURT ABUSED ITS DISCRETION IN DENYING CHRIS SAMUELSON AND MARA’S HOPE’S MOTION TO INTERVENE. ....7**

**A. Mara’s Hope and Chris Samuelson have a direct and immediate interest in the outcome of the litigation.....8**

1. Mara’s Hope could suffer harm to its reputation as an animal refuge as well as a potential loss of funding as a direct result of the outcome of this litigation. .... 8

2. Mara’s Hope initiated the complaint with Hobbs County and has a direct interest in seeing the complaint acted upon.....12

3. Chris Samuelson has substantially the same interest as Mara’s Hope in the outcome of the litigation. ....13

**B. Allowing Mara’s Hope and Chris Samuelson to intervene will not enlarge the scope of litigation because they filed the initial complaint that determined the scope of litigation in the first place. .... 14**

**C. California has a strong public policy to allow animal welfare groups act upon the behalf of animals, and Mara’s Hope and Chris Samuelson will not infringe on the Circus’s rights. .... 15**

**II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE CIRCUS’S MOTION FOR INJUNCTIVE RELIEF..... 16**

**A. The Circus is unlikely to succeed on the merits because it has violated four separate conditions of its permit. .... 17**

1. The Circus failed to disclose to the Department that West Edmond County had refused to reissue its permit. ....19

2. The Circus failed to be in compliance with the California Penal Code §§ 596.5 and 597t.....20

a. The Circus failed to be in compliance with California Penal Code § 597t by confining the elephants in a very small space without an adequate exercise area. ....20

b. The Circus failed to be in compliance with California Penal Code § 596.5 by maintaining the elephants in a generally abusive condition.....	22
3. The Circus failed to utilize appropriate transport vehicles.....	24
4. The Circus failed to make available medical records.....	25
<b>B. The harm the Department and interveners will suffer if injunctive relief is granted is greater than the purely speculative and minimal interim harm the Circus will suffer if injunctive relief is not granted.....</b>	<b>25</b>
1. The Department and the interveners will suffer considerable harm if the relief is granted, since permit revocation is the only adequate remedy available. ....	26
2. The interim harm to the Circus if the relief is not granted is minimal at best.....	27
<b>CONCLUSION .....</b>	<b>29</b>

**TABLE OF AUTHORITIES**

**CALIFORNIA SUPREME COURT CASES**

*Abelleira v. District Court of Appeal*, 17 Cal.2d 280 (1941) ..... 13

*Adams v. Dep't of Motor Vehicles*, 11 Cal.3d 146 (1974) ..... 16

*Cohen v. Bd. of Supervisors*, 40 Cal.3d 277 (1985). ..... 17

*Flannery v. Prentice*, 26 Cal.4th 572 (2001) ..... 18

*Fukuda v. City of Angels*, 20 Cal. 4th 805, (1999) ..... 18, 19

*People v. Superior Court (Good)*, 17 Cal.3d 732, (1976) ..... 8

*Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348 (1983) ..... 7

**CALIFORNIA COURTS OF APPEAL CASES**

*Abrams v. St. John's Hosp. & Health Ctr.*, 25 Cal.App.4th 628 (1994)..... 26

*Animal Legal Defense Fund v. Mendes*, 160 Cal.App.4th 136, 142 (2008)..... 15

*Best Friends Animal Soc’y v. Macerich Westside Pavilion Prop. LLC*, 193 Cal.App.4th (2011). ..... 17, 26

*City and County of San Francisco v. State*, 128 Cal.App.4th 1030 (2005)..... 9, 10, 12

*City of Malibu v. California Coastal Com’n*, 128 Cal.App.4th 897 (2005)..... 7

*Concord Communities v. City of Concord*, 91 Cal.App.4th 1407 (2001) ..... 8

*Fireman’s Fund Ins. Co. v. Gerlach*, 56 Cal.App.3d 299 (1976)..... 8

*Gualala Festivals Comm. v. California Coastal Comm'n*, 183 Cal.App.4th 60 (2010)..... 18, 20, 25

*In re Reed*, 171 Cal.App.4th 1071 (2009) ..... 23

*Kuperstein v. Superior Court*, 204 Cal.App.3d 598 (1988)..... 14

*Nutro Products, Inc. v. Cole Grain Co.*, 3 Cal.App.4th 860 (1992)..... 27

*Park Area Neighbors v. Town of Fairfax*, 29 Cal.App.4th 1442 (1994) ..... 13

*People ex rel. Rominger v. County of Trinity*, 147 Cal.App.3d 655 (1983)..... passim

*People v. Speegle*, 53 Cal.App.4th 1405 (1997)..... 21, 23

*Simpson Redwood Co. v. State of California*, 196 Cal.App.3d 1192 (1987)..... 9, 10, 11

*US Ecology, Inc. v. State of California*, 92 Cal.App.4th 113 (2001) ..... 7

*Vaughn v. Bd. of Police Comm'rs of City of Los Angeles*, 59 Cal.App.2d 771 (1943) ..... 18

*Vincent Petroleum Corp. v. Culver City*, 43 Cal.App.2d 511 (1941)..... 27

*W. Electroplating Co. v. Henness*, 172 Cal.App.2d 278 (1959)..... 27

*Zubarau v. City of Palmdale*, 192 Cal. App. 4th 289 (2011) ..... 18

**STATUTES**

California Penal Code § 596.5 ..... passim

California Penal Code § 597 ..... passim

West’s Ann. Cal. Code Civ. Proc. § 387 (2013)..... 7

West’s Ann.Cal.Corp.Code § 10400 (2012)..... 15

**OTHER AUTHORITIES**

*Grandlands Circus, Inc. v. Hobbs County Animal Safety Department, and DOES 1 through 50, inclusive,*  
Case No. CV-2014-TCS-81013 (2013) (memorandum opinion) ..... passim  
Exhibit 1..... passim  
Hobbs Cnty. Mun. Code §. 63.14 ..... 12, 18, 19  
*Webster’s Third New Int’l Dictionary* (2002) ..... 23, 24

## **STATEMENT OF THE ISSUES**

1. Whether the Superior Court abused its discretion when it denied Chris Samuelson and Mara's Hope's motion for leave to intervene.
2. Whether the Superior Court abused its discretion when it denied the Circus's motion for a preliminary mandatory intervention.

## **STATEMENT OF THE CASE**

Mara's Hope Wildlife Sanctuary (Mara's Hope) and Chris Samuelson filed an administrative complaint with the Hobbs County Animal Safety Department (Department) on September 24, 2013, alleging that Grandlands Circus (Circus) violated the conditions of its Performing Animal Permit and seeking revocation of the permit. After notifying the Circus, that it would hold an evidentiary hearing, the Department conducted a hearing on September 27, 2013. On October 7, the Department formally revoked the Circus's permit, finding that it violated Hobbs County Municipal Code § 63.14, subdivisions (A)(i)-(iii), and California Penal Code §§ 596.5 and 597t. The Circus filed action against the Hobbs County Animal Safety Department on October 11, 2013, in Superior Court for the State of California, County of Hobbs, seeking relief in the nature of mandamus and money damages resulting from the alleged lost profits it would suffer if it had to cancel its performances. Mara's Hope and Chris Samuelson subsequently filed a motion to intervene in the action under California Code of Civil Procedure § 387. The Honorable Ellis M. Heiberg denied Mara's Hope and Chris Samuelson motion to intervene and denied the Circus's motion for a preliminary injunction. *Grandlands Circus, Inc. v. Hobbs County Animal Safety Department, and DOES 1 through 50,*

*inclusive*, Case No. CV-2014-TCS-81013 (2013) (memorandum opinion). The Circus appealed the Superior Court's denial of its motion for a preliminary mandatory injunction, and Mara's Hope and Chris Samuelson appealed the Superior Court's denial of the motion to intervene. In the interest of conserving judicial resources, both actions have been consolidated for hearing.

### **STATEMENT OF THE FACTS**

The Hobbs County Animal Safety Department (Department) serves Hobbs County by ensuring that the animals within Hobbs County are treated humanely and kept in safe living conditions. As part of its protection of animals, the Department issues Performing Animal Permits that specify certain conditions the permittee must meet, such as providing adequate transportation for performing animals and compliance with the California Penal Code's animal safety requirements. R. at 4.

Grandlands Circus (Circus) held a Performing Animal Permit until October 7, 2013, when the Department decided to revoke the Circus's permit for failing to comply with the conditions of its permit. R. at 7. The Circus travels extensively throughout the United States, performing in 22 cities and counties in 2013 alone. R. at 3. As part of its performance, the Circus uses animal performers including lions, tigers, horses, and most notably, elephants. R. at 3. The Circus's most recent visit to Hobbs County ran from September 6, 2013, through September 22, 2013. R. at 2. Before its permit was revoked, the Circus was scheduled to perform the following April in Hobbs County. R. at 2.

The mistreatment of elephants that resulted in a permit revocation was first brought to the Department's attention by Mara's Hope Wildlife Sanctuary (Mara's Hope) and Chris Samuelson (Samuelson). R. at 6. Mara's Hope, located in Hobb's County, is a

privately-funded sanctuary that rescues captive animals that have been discarded by private owners, zoos, or the entertainment industry. R. at 4. It also takes in animals from facilities shut down due to animal abuse or public safety concerns. R. at 4. In addition to its work as a sanctuary for abused and abandoned animals, Mara's Hope is dedicated to educating the public about the harms of keeping wild and exotic animals in captivity, and advocating for the protection of wildlife in the United States and elsewhere. R. at 4. Its educational and advocacy mission is vital to the continuing success of Mara's Hope. Forty percent of the Sanctuary's donations come from donors who subscribe to its "education and outreach" e-mail list. R. at 5. Without the support it receives from donors who support Mara's Hope's mission to educate the public and advocate for wildlife, it would be extremely difficult, if not impossible, for Mara's Hope to function as an organization.

Chris Samuelson co-founded and serves as the Director of Education and Outreach for Mara's Hope and is a resident of Hobbs County. R. at 4. Mr. Samuelson has an extensive background in wildlife conservation. He holds a Bachelor of Science degree in zoology and a Master of Fine Arts degree in photography from California University. R. at 4. From 1989 to 1992, Mr. Samuelson gained field experience by working as a freelance photographer of wildlife in East Africa. R. at 4. After returning to the United States in 1992, he worked at the Pranayama Animal Sanctuary as an animal caregiver for retired chimpanzees that were used in research or the entertainment industry. R. at 4. He co-founded Mara's Hope in 1997. R. at 4.

Mara's Hope and Chris Samuelson filed an administrative complaint with the Department on September 24, 2013, after extensive investigation into the Circus's



treatment of its elephants. R. at 6. In April 2012, Mr. Samuelson's assistant at Mara's Hope, Penny Hall, visited the Circus with her family. R. at 5. Ms. Hall thereafter informed Mr. Samuelson of her concern about the well-being of the animals. R. at 5. Ms. Hall noticed that the animals forced to perform in the circus were thin and tired compared to the animals she helped care for at Mara's Hope. R. at 5. She also informed Mr. Samuelson that the Circus used to visit her hometown in West Edmond, Texas, in the past, but she was unaware why the visits had stopped. R. at 5.

As the director of an advocacy group dedicated to protecting wildlife in the United States, Mr. Samuelson was troubled by the Circus's treatment of its animal performers. After carefully deliberating the situation for a few days, Ms. Hall directed her brother—a law student at the University of West Edmond—to obtain more information about the Circus and its reasons for no longer visiting West Edmond. R. at 5. Her brother was able to obtain information through a Freedom of Information Act Request after a several month wait. R. at 5. Ms. Hall's brother received a copy of a veterinarian's report that was prepared for West Edmond Animal Care and Control in June 2011 while the Circus was visiting West Edmond. The report focused exclusively on the Circus elephants (it is not clear what the health of the other animals is) which indicated that the older elephants suffer from arthritis and clearly were not in a state to perform. Exhibit 1. The report also noted that the elephants were forced to live in living areas that were less than the minimum size requirements recommended by the American Zoological Association, and were exhibiting non-stereotypic behaviors such as swaying from side to side. Exhibit 1. After receiving this troubling information, Mr. Samuelson confirmed with West Edmond Animal Care and Control that the Circus had applied for a

new permit in January 2012, but had been refused a new permit based upon the treatment of elephants outlined in the veterinary report. R. at 5-6.

Based upon this information, Mr. Samuelson prepared an administrative complaint and filed it with the Department on September 24, 2013 in his name and in the name of Mara's Hope. R. at 6. The complaint outlined how the Circus was violating Hobbs County respecting Performing Animal Permits, and it requested that the Department immediately revoke the permit to prevent further harm to the elephants employed by the Circus. R. at 6. After a hearing, the Department ruled that the Circus had violated the terms of its permit and revoked the Circus's permit. R. at 7.

### **SUMMARY OF THE ARGUMENT**

Hobbs County has created in its municipal code a permit scheme designed to protect the health and wellbeing of captive wild animals. In doing so, it has made a clear policy choice that such animals need and deserve such protection. Despite this clear intent, the Circus wishes this court to maintain its status quo of mistreating its elephants. This Court should not allow the Circus to use procedural tools to subvert Hobbs County's authority and purpose.

First, the Circus is attempting to prevent Samuelson and Mara's Hope Wildlife Sanctuary from intervening in this case, despite the fact that these parties have a legitimate interest and would serve an important purpose in this case. The Superior Court abused its discretion in denying Mara's Hope and Chris Samuelson's motion to intervene. Both interveners have a direct interest in the outcome of this case, as each is dedicated to and funded by donors. If this court were to rule for the Circus in this matter, each

intervener would suffer direct harm to both reputation and funding. Allowing these parties to intervene would not enlarge the issues in the case, but would instead allow a legitimate beneficiary of the Hobbs County Code to assist in protecting the public interest. Mara's Hope and Samuelson's interest in intervening outweighs the Circus's interest in litigating the case alone because California has made a clear policy choice to allow third party groups to protect animals in similar cases.

Second, the Circus seeks a preliminary injunction which would allow it to continue mistreating elephants in Hobbs County until the merits of the case can be decided. Allowing such an injunction despite of Hobbs County's interest in protecting wild animals in its jurisdiction is impermissible. First, the Circus is not likely to win on the merits given its numerous violations of its permit conditions. Moreover, the Circus has several options available to make up for its alleged lost profits. By contrast, the only remedy for the harm against the Department as a result of the Circus abusing captive wild animals within its jurisdiction except to stop such abuse.

Given the importance of protecting captive wild animals that is reflected in the Hobbs County Municipal Code, this court should not allow the Circus to use procedural tools to circumvent the Code's worthy goals. First, since Mara's Hope and Samuelson are direct beneficiaries of the ordinance with a direct interest in the litigation, this court should allow them to intervene. Second, since the Department is likely to succeed on the merits of this case, and stands to lose much more than the Circus, this court should affirm the Superior Court's decision to deny the injunction.

## ARGUMENT

### I. THE SUPERIOR COURT ABUSED ITS DISCRETION IN DENYING CHRIS SAMUELSON AND MARA'S HOPE'S MOTION TO INTERVENE.

California Code of Civil Procedure § 387 states “any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding.” West’s Ann. Cal. Code Civ. Proc. § 387 (2013). Courts have interpreted Code of Civil Procedure § 387 to mean that a third party may intervene in an action if (1) the party has a direct and immediate interest in the action; (2) the intervention will not enlarge the issues in the litigation; and (3) the reasons for the intervention outweigh any opposition by the parties presently in the action. *US Ecology, Inc. v. State of California*, 92 Cal.App.4th 113, 139 (2001). California Code of Civil Procedure § 387 should be liberally construed in favor of intervention, but a trial court does possess discretion in determining whether to permit intervention. *City of Malibu v. California Coastal Com’n*, 128 Cal.App.4th 897, 902 (2005). However, this discretion is not unlimited. As the Supreme Court of California noted, “[t]he discretion of a trial judge is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown.” *Westside Community for Independent Living, Inc. v. Obledo*, 33 Cal.3d 348, 355 (1983).

The Superior Court abused its discretion in denying Mara’s Hope and Chris Samuelson’s motion to intervene because both parties fulfill the three elements identified in determining whether intervention is proper. Legal discretion should be exercised “in conformity with the spirit of the law and in a manner to subserve and not to impede or

defeat the ends of substantial justice.” *Concord Communities v. City of Concord*, 91 Cal.App.4th 1407, 1417 (2001). By allowing Mara’s Hope and Chris Samuelson to intervene, this Court would allow justice to be carried out and their direct interest in this litigation to be protected.

**A. Mara’s Hope and Chris Samuelson have a direct and immediate interest in the outcome of the litigation.**

Mara’s Hope has a direct and immediate interest in the outcome of the litigation due to the organizational mission and sources of funding, as well as Mara’s Hope’s initial administrative complaint. It is well settled that a would-be intervener’s interest in the underlying action must be direct and not consequential. *People v. Superior Court (Good)*, 17 Cal.3d 732, 736 (1976). The degree of directness of the interest articulated in California Code of Civil Procedure is essentially a moving target, and courts have noted the difficulty in determining when the interest moves from “consequential” to “direct.” *Fireman’s Fund Ins. Co. v. Gerlach*, 56 Cal.App.3d 299, 302 (1976). But courts are in agreement that in order for an interest to be direct and immediate, it is not necessary for the intervener to have a pecuniary interest in the litigation. *People ex rel. Rominger v. County of Trinity*, 147 Cal.App.3d 655, 661 (1983). Nor is it necessary for the intervener have a specific legal or equitable interest in the subject matter of the litigation in order to have a direct and immediate interest. *Id.*

1. *Mara’s Hope could suffer harm to its reputation as an animal refuge as well as a potential loss of funding as a direct result of the outcome of this litigation.*

Mara’s Hope has an organizational interest in preserving its reputation as an animal refuge and maintaining funding from its private donors. *Simpson Redwood Co. v. State of California (Simpson Redwood)* provides a useful example of an organization

intervening due to the organization's direct interest in the subject matter of the litigation. 196 Cal.App.3d 1192 (1987). In that case, Save-the-Redwoods League, an organization formed to protect old growth redwood forests, was granted leave to intervene by the Court of Appeal, First District, in a dispute over the boundaries of land owned by a timber company. *Id.* The *Simpson Redwood* court did not find just one factor dispositive in determining the organization had a direct and immediate interest. However, the court did give significant weight to the purpose of the organization and the harm that the organization itself would suffer if it were not able to intervene to protect its own interests:

The League was formed and continues to exist for the purpose of conserving lands such as those in dispute here in their natural state, and *has so represented itself to members and donors*. If property acquired by donation in an effort to create and preserve a park is privately exploited, *the impact upon appellant's reputation might well translate into loss of future support and contributions*. (Emphasis added).

*Id.* at 1201. The court identified other factors that lent to the direct and immediate interest of the organization, such as its role in the creation of the park in dispute, but the court was quick to note that intervention cannot be based solely on the organization's contribution to the creation of the park, especially since it no longer held a legal or equitable interest in the property in dispute. *Id.* Additionally, the fact that the organization's members used the park was not enough on its own to justify intervention. *Id.* at 1200.

In a subsequent opinion, the Court of Appeal, First District, came to the opposite conclusion—determining that a change in an organization's reputation or drop in fundraising would be consequential, which is distinguishable from Mara's Hope and Save-the-Redwoods League's situation in two ways. *City and County of San Francisco v. State*, 128 Cal.App.4th 1030 (2005). The court denied the Proposition 22 Legal Defense

and Education Fund’s (Fund) appeal of the trial court’s denial of its motion to intervene in the City and County of San Francisco’s challenge of Proposition 22, which defined marriage in California as between a man and a woman. *Id.* at 1033. First, the court ruled that damage to Fund’s reputation would be “amorphous” likely due to the politically-motivated harms that the Fund claimed it would suffer from in the first place. *Id.* at 1042. Whereas Save-the-Redwoods League was a conservation group dedicated to protecting old growth redwood forests, the Fund was created a year after Proposition 22 had already passed, and its interest was in “enforcing and defending Proposition 22 and California’s marriage statutes.” *Id.* at 1034. Secondly, the court mistakenly distinguished *Simpson Redwood*. The court stated that: “*Simpson Redwood* is distinguishable because the proposed intervener had a clear interest in the piece of property that was the subject of the quiet title action.” *Id.* at 1042. While it is true that Save-the-Redwood League had a present right to control development of the property, that was certainly not the dispositive factor in determining its direct and immediate interest. In *Simpson Redwood*, the court introduces the organization’s property interest by stating “[y]et another factor which favors a finding of appellant’s direct interest in the subject litigation is its present right to control development of the property.” *Simpson Redwood*, 196 Cal.App.3d at 1201. (Emphasis added). The court in *City and County of San Francisco* characterizes Save-the-Redwoods League’s interest in the property as the sole reason for having a direct interest in the litigation, when this is clearly not the case.

The effect of *Simpson Redwood* and *City and County of San Francisco* is that harm to the reputation and funding of an organization dedicated to tangible interests is a factor—though not the sole factor—of finding a direct and immediate interest in the

outcome of the litigation. The differing nature of the two organizations in *Simpson Redwood* and *City and County of San Francisco* speak to the two different results. In *City and County of San Francisco*, the court described the fundamental nature of the Fund's interest as "philosophical or political." *City and County of San Francisco*, 128 Cal.App.4th at 1039. In contrast, the conservation group in *Simpson Redwood* had many members who used the forest in dispute and was dedicated to protecting a tangible interest, i.e., the old growth redwood forests. *Simpson Redwood*, 196 Cal.App.3d at 1200. It was this tangible interest that led the court to find that the Save-the-Redwoods League had a direct and immediate interest in the outcome of the litigation due in part to the strong possibility of harm to the organization's reputation and funding. *Id.* at 1201.

The harm that Mara's Hope could suffer is similar to that of Save-the-Redwoods League in *Simpson Redwood*, and that possibility of harm should weigh strongly in favor of Mara's Hope having a direct and immediate interest in the outcome of the litigation. Mara's Hope is a privately funded sanctuary dedicated to providing a home for abandoned or abused animals. R. at 4. But it also does much more, and one of Mara's Hope's missions is to "educate the public about the harms of keeping wild and exotic animals in captivity, and to advocate for protection of wildlife in the United States and elsewhere." *Id.* Mara's Hope's dedication to education and outreach is vital to the success of the organization. A full forty percent of Mara's Hope's funding comes from donors who subscribe to its "education and outreach" e-mail list. R. at 5.

The outcome of the litigation between Hobbs County and the Circus would directly affect Mara's Hope's reputation as an advocate and educator for protecting wildlife and has a strong possibility of affecting funding received from donors interested



in education and outreach. By failing to stop the Circus from requiring elephants to perform and live under harmful conditions, Mara's Hope would certainly be failing as an advocate for wildlife. And funding would be put in jeopardy as well. Mara's Hope is dedicated to a tangible interest that is distinguishable from the holding in *City and County of San Francisco*. These reasons weigh strongly in favor of Mara's Hope having a direct and immediate interest in the outcome of the litigation.

2. *Mara's Hope initiated the complaint with Hobbs County and has a direct interest in seeing the complaint acted upon.*

Hobbs County Municipal Code Section 63.14 requires any person in Hobbs County exhibiting an animal in a circus to obtain a Performing Animal permit. Hobbs Cnty. Mun. Code § 63.14. The Department has the sole authority to issue a Performing Animal Permit. *Id.* Municipal Code Section 63.14 contains a process for revoking or suspending a permit, including a hearing by the Department. Hobbs Cnty. Mun. Code § 63.14(B)(i). Additionally, Municipal Code Section 63.14 allows for a complaint to be filed with the Department against a permittee. Hobbs Cnty. Mun. Code § 63.14(B)(ii).

Mara's Hope has a direct and immediate interest in the outcome of the litigation because it filed the initial administrative complaint with the Department. Without the administrative complaint submitted by Mara's Hope, the Department would never have investigated and subsequently revoked the Circus's permit. R. at 6. Mara's Hope created an interest in the outcome of this litigation by filing a complaint with the Department, and the legal outcome of this litigation will directly affect that interest.

The doctrine of exhaustion of administrative remedies is helpful in explaining why Mara's Hope should be allowed to intervene. This doctrine essentially states that all available administrative remedies must be exhausted before the courts will act. *See*

*Abelleira v. District Court of Appeal*, 17 Cal.2d 280 (1941). While it is true that the Hobbs County Municipal Code likely does not give Mara's Hope a legal cause of action to bring suit under, it is not necessary for an intervener to have a specific legal interest in the subject matter of the litigation. *Rominger*, 147 Cal.App.3d at 661. By denying Mara's Hope's motion to intervene, the trial court has raised serious questions of fairness. The point of the doctrine of exhaustion of administrative remedies is to allow agencies with expertise to make a decision within their area of expertise and to conserve judicial resources. *Park Area Neighbors v. Town of Fairfax*, 29 Cal.App.4th 1442, 1447 (1994). Mara's Hope followed the administrative procedure, but once the matter was removed to the courts, the trial court attempted to exclude Mara's Hope from the proceedings. This is not in keeping with the spirit of exhaustion of administrative remedies, which allows for judicial review by a party after all administrative remedies are exhausted. Mara's Hope identified a problem in its community that directly affected its interest of advocating for wildlife welfare and educating the public about the dangers of keeping wild animals in captivity, and Mara's Hope pursued the only remedy that was available to it. It is categorically unfair to deny Mara's Hope the ability to protect that interest in the courts.

3. *Chris Samuelson has substantially the same interest as Mara's Hope in the outcome of the litigation.*

Chris Samuelson has a substantially similar direct and immediate interest as Mara's Hope in the outcome of the litigation. As the Director of Education and Outreach for Mara's Hope, it is his job to educate the public about the dangers of keeping wild animals in captivity and to advocate for the protection of wildlife. R. at 4. His educational expertise and experience as a wildlife photographer in Africa make him

uniquely qualified and create a direct interest in the outcome of this litigation. R. at 4. Like Mara's Hope, Chris Samuelson has an interest in preserving the reputation of Mara's Hope as an advocacy and educational organization, and he is also concerned about the funding received by donors who are interested in Mara's Hope's outreach and education efforts. Additionally, without the complaint filed by Chris Samuelson on the behalf of himself and Mara's Hope, the Department would never have investigated and subsequently revoked the Circus's permit. R. at 6. The same issues of fairness in the administrative proceedings outlined above for Mara's Hope equally apply to Chris Samuelson.

**B. Allowing Mara's Hope and Chris Samuelson to intervene will not enlarge the scope of litigation because they filed the initial complaint that determined the scope of litigation in the first place.**

Mara's Hope and Chris Samuelson will not enlarge the scope of litigation because the administrative complaint filed by the parties pertains to the exact issue that is being litigated. It is well settled that an intervener under California Code of Civil Procedure § 387 cannot enlarge the scope of litigation. *Rominger*, 147 Cal.App.3d at 661. Intervention by Mara's Hope and Chris Samuelson will not prevent the Circus from conducting the lawsuit "on [its] own terms" by enlarging the scope of the litigation. *Kuperstein v. Superior Court*, 204 Cal.App.3d 598, 601 (1988). In this case, the Department was working from the information and complaint provided by Mara's Hope and Chris Samuelson. R. at 6. The Circus cannot point to any legal allegations made by Mara's Hope and Chris Samuelson that pertain to the morality of keeping animals in captivity. In fact, the only legal claims being made by Mara's Hope and Chris Samuelson are the exact claims brought forward by the Department. R. at 7. And the

trial court's concerns over allowing any person concerned about animals to intervene is not founded here. R. at 9. Mara's Hope and Chris Samuelson are not random parties—rather, they have been involved in the case since its inception.

**C. California has a strong public policy to allow animal welfare groups act upon the behalf of animals, and Mara's Hope and Chris Samuelson will not infringe on the Circus's rights.**

The final factor in determining whether intervention is proper is whether reasons for intervention are outweighed by the rights of the original parties to conduct their lawsuit on their own terms. *Rominger*, 147 Cal.App.3d at 661. California has made a clear policy choice to protect of the safety of animals in captivity by codifying nonprofit societies dedicated to animal welfare in the California Corporate Code. West's Ann.Cal.Corp.Code § 10400 (2012). Additionally, the Department, as a public entity, is acting upon the complaint of Mara's Hope and Chris Samuelson, and Mara's Hope and Chris Samuelson's interest in representing their own interests in court is not outweighed by any interest the Circus might have in litigating against the Department alone.

Since 1905, California has authorized the formation of corporations for the prevention of cruelty to animals. *Animal Legal Defense Fund v. Mendes*, 160 Cal.App.4th 136, 142 (2008). Such corporations may bring a complaint against any person for a violation of any law relating to or affecting animals. West's Ann.Cal.Corp.Code § 10404 (2012). While Mara's Hope is not organized as a humane society under Corp. Code § 10400, California has clearly made a policy decision to protect animals and recognize the interest third party organizations have in protecting animals. Therefore, any interest the Circus might have in litigating on its own is outweighed by the strong public policy to allow third party organizations to protect animals.

The Department is representing the public's interest—specifically, Mara's Hope and Chris Samuelson's concerns over animal welfare as expressed in their administrative complaint—and Mara's Hope and Chris Samuelson's interests as beneficiaries of the county ordinance outweigh any interest the Circus might have. An analogous situation played out in *People ex rel. Rominger v. County of Trinity*: an environmental group moved to intervene in a dispute between the State and a county over the application of pesticides. *Rominger*, 147 Cal.App.3d at 658. The Court of Appeal concluded that the environmental group's interest as the direct beneficiaries of the ordinance created an interest that outweighed the interest of the county and State. *Id.* at 665. The court also gave weight to the fact that the litigation was not over a private action—it was between two public entities over ordinances designed to protect the public's interest. *Id.* The same principle is at play in the case at hand. The Department is acting under an ordinance designed to protect the public's safety from potentially dangerous captive animals and the public's interest in protecting captive animals. R. at 15. And Mara's Hope and Chris Samuelson are direct beneficiaries of the ordinance—without it, it is conceivable that animals would enter the sanctuary at a much higher rate due to a lack of protection. Therefore, Mara's Hope and Chris Samuelson's interest in the litigation outweighs the Circus's interest in litigating the case with the Department on its own. Accordingly, this court should find that the Superior Court abused its discretion when it denied Mara's Hope and Samuelson's motion for leave to intervene.

## **II. THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE CIRCUS'S MOTION FOR INJUNCTIVE RELIEF.**

California courts have recognized that a preliminary injunction is an extraordinary remedy. *Adams v. Dep't of Motor Vehicles*, 11 Cal.3d 146, 156 (1974). As such, it is only

granted where a plaintiff is (1) likely to succeed on the merits, and (2) likely to suffer greater interim harm in the absence of relief than the defendant would if the relief were granted. *Best Friends Animal Soc’y v. Macerich Westside Pavilion Prop. LLC*, 193 Cal.App.4th 168 (2011). Trial courts have discretion as to whether or not to issue preliminary injunctions. *Cohen v. Bd. of Supervisors*, 40 Cal.3d 277, 286 (1985). To overturn a trial court’s decision on a preliminary injunction, an appellate court must find that the trial court erred with respect to *both* factors, not just one. *Id.* at 287.

In this case, the Superior Court properly found that both factors weigh against issuing the injunction. First, the Circus is unlikely to succeed on the merits because the Department acted well within its discretion when it revoked the permit. Second, given that permit revocation is the only adequate remedy available to the Department, the harm to the Department by granting the injunction is greater than the purely speculative and minimal harm the Circus would suffer in the absence of the injunction. Because the Superior Court did not abuse its discretion in finding for the Department on either of these factors, let alone both, this Court should affirm the Superior Court’s denial of preliminary injunctive relief.

**A. The Circus is unlikely to succeed on the merits because it has violated four separate conditions of its permit.**

The first of the two factors courts use to determine whether to issue a preliminary injunction is whether the plaintiff is likely to succeed on the merits. *Best Friends Animal Soc’y*, 193 Cal.App.4th 168. In this case, the Hobbs County Municipal Code §63.14(B) gives the Department the discretion to revoke a permit for exhibiting wild animals after a hearing is conducted. Administrative decisions to revoke permits go to the trial court

with a “strong presumption of correctness.” *Vaughn v. Bd. of Police Comm'rs of City of Los Angeles*, 59 Cal.App.2d 771,778 (1943). The burden thus rests on the Circus to show that the administrative decision is supported by substantial evidence. *Fukuda v. City of Angels*, 20 Cal.4th 805, 816-17 (1999). Moreover, the administrative decision in this case was based the Department’s reading of its own governing Code, which is entitled to “great weight.” *Gualala Festivals Comm. v. California Coastal Comm'n*, 183 Cal.App.4th 60, 66 (2010).

Local ordinances like the Hobbs County Municipal Code are subject to the same statutory construction rules that are applicable to statutes. *Zubarau v. City of Palmdale*, 192 Cal.App.4th 289, 305 (2011). Thus, words in the Code are to be given their plain and commonsense meaning. *Flannery v. Prentice*, 26 Cal.4th 572, 577 (2001). In this case, the Hobbs County Municipal Code sets out seven “conditions” that permit holders are responsible for meeting. Hobbs Cnty. Mun. Code § 63.14(A). By the plain meaning of the word “conditions,” failing to meet any one of the conditions is enough to justify permit revocation—yet, the Circus is in violation of four of them. First, the Circus failed to disclose the fact that another county had declined to reissue a permit, in violation of §63.14(A)(iii). Second, the Circus was not in compliance with the requirements of California Penal Code § 596.5 and § 597t as required by § 63.14(A)(vii). Third, the Circus failed to utilize appropriate transport vehicles, as required by § 63.14(A)(ii). Finally, the Circus failed to make available medical records and health certificates for the elephants as required by § 63.14(A)(i). Given that a fair hearing was provided, and that there was ample evidence to support all four of these permit violations, the Department certainly did not act contrary to the weight of evidence or outside its “reasonable and

sound discretion” in this case. *Fukuda*, 20 Cal.4th at 816-17; Hobbs Cnty. Mun. Code § 63.14(B)(iv). Therefore, this Court should affirm the Superior Court’s finding that the Circus is unlikely to succeed on the merits in this case.

*1. The Circus failed to disclose to the Department that West Edmond County had refused to reissue its permit.*

Hobbs County requires that permit holders specify permits previously held in other counties that have been revoked. Hobbs Cnty. Mun. Code § 63.14(A)(iii). Courts construe statutory language like that at issue in this provision in context, “considering the nature and purpose of the statutory enactment.” *Goodman v. Williams*, 107 Cal.App.4th 294 (2003). Furthermore, interpretations that would frustrate the purpose of the law are to be avoided. *Id.* Allowing the Circus to circumvent this condition of its permit on the grounds that it only withheld a failure to reissue a permit, rather than a “revocation,” would be contrary to the purpose of the provision. The Circus’s failure to disclose the fact that West Edmond refused to reissue its permit amounts to a violation of Hobbs County Municipal Code § 63.14(A)(iii) because the refusal was the equivalent of a revocation.

In this case, it is clear from the language of the provision and its role in the statute that its purpose is to inform the County of previous transgressions relevant to the issuance of a permit. The reasons for West Edmond County’s refusal to re-issue the permit were clearly material to Hobbs County. Many of the factors that led West Edmond County to refuse to reissue the permit are the very things that Hobbs County explicitly prohibits in its municipal code. For that reason, the refusal to renew was akin to a revocation.

A simple matter of timing should not allow the Circus to hide information relevant to its permit, especially given the relationship between the reasons for the refusal



in West Edmond and the conditions on its permit in Hobbs County. The Circus has violated the clear purpose of the provision, and the Department's interpretation that a failure to reissue is akin to a revocation is entitled to "great weight." *Gualala Festivals Comm.* 183 Cal.App.4th at 66. Although the municipal code does use the word "revoked," it also requires permittees to disclose the reasons for the revocation. This requirement indicates that the purpose of the provision is to ensure that the permittee has not violated any *other* section of the Code in other counties. Since the Circus knew that the reasons West Edmond refused to reissue the permit were relevant to the other conditions of its permit in Hobbs County, it should have disclosed them.

2. *The Circus failed to be in compliance with the California Penal Code §§ 596.5 and 597t.*

Hobbs County has explicitly incorporated the State of California's Penal Code regarding treatment of animals, requiring permittees to be in compliance with Penal Code §§ 596.5 and 597. Hobbs County Municipal Code Section 63.14. The Department acted well within its discretion in finding sufficient evidence to amount to noncompliance with both sections of the Penal Code, and therefore noncompliance with the Circus's permit conditions. There is ample evidence in the West Edmond veterinary report to show that the Circus was maintaining its elephants in a generally abusive condition in violation of California Penal Code § 596.5, and was failing to provide them with adequate space and exercise area as required by § 597t.

a. *The Circus failed to be in compliance with California Penal Code § 597t by confining the elephants in a very small space without an adequate exercise area.*

The requirements of California Penal Code § 597t, which are incorporated into the Hobbs County Code as a condition on its permits, establish that “every person who keeps an animal confined in an enclosed area shall provide it with an adequate exercise area.” Although “adequate exercise area” is somewhat vague, courts have recognized that an objective standard of reasonableness is used in interpreting California’s animal protection statutes. *People v. Speegle*, 53 Cal.App.4th 1405, 1411 (1997). In this case, the American Zoo and Aquarium Association (AZA) Standards for Elephant Management and Care are instructive on what is an objectively reasonable exercise space for elephants in particular. Exhibit 1. These standards indicate that elephants require *at least* 400 sq. ft. per elephant, yet the Circus provides only 350 sq. ft. Given that the Circus’s elephants remained tethered when in this space, they certainly are not provided with an adequate exercise area, and are not free to “move about and lie down without restriction”. Exhibit 1. The Circus contended below that 50 sq. ft. is a minor difference from the recommended space, but such an argument ignores the fact that the AZA guidelines say that 400 sq. ft. is the *minimum* space required, indicating that is the *least* space available that would still allow elephants to exercise adequately.

The Circus should not be able to violate the spirit of § 597t by slyly storing its animals in vehicles at all times so as to avoid the legislature’s clear choice to require adequate exercise areas for animals. The exceptions provided for animals “in transit, in a vehicle, or in the immediate control of a person” apply to conditions which are temporary. The exception allows for an animal to be transported in a vehicle temporarily to another location, as it can be difficult to provide large amounts of space in a vehicle on the road. Likewise, when an animal is temporarily in the immediate control of a person,

that person can prevent the animal from becoming entangled. Those kinds of temporary situations are quite unlike the current one, in which the elephants are being stowed in transportation cars at all times they are not performing. Just because the transportation cars in which the elephants are housed may double as vehicles does not mean that the Circus should be allowed to ignore exercise areas altogether. The California legislature has specifically provided for animals to have adequate exercise area. It defies reason to think that in providing an exception for vehicles it meant that animals permanently stowed in vehicles do not need exercise.

The Department did not abuse its discretion to revoke the Circus's permit when it found that the Circus had violated California Penal Code § 597t and therefore a condition of its permit. Neither did the Superior Court abuse its discretion when it agreed with the Department.

*b. The Circus failed to be in compliance with California Penal Code § 596.5 by maintaining the elephants in a generally abusive condition*

In addition to the failure to provide adequate exercise space, the Circus is also maintaining its elephants in a generally abusive condition. California Penal Code § 596.5 states that

“It shall be a misdemeanor for any owner or manager of an elephant to engage in abusive behavior towards the elephant, which behavior shall include the discipline of the elephant by any of the following methods: (a) deprivation of food, water, or rest; (b) use of electricity; (c) physical punishment resulting in damage, scarring, scarring, or breakage of skin; (d) insertion of any instrument into any bodily orifice; (e) use of martingales; (f) use of block and tackle. ”

Cal. Pen. Code § 596.5. Although the record does not indicate that the Circus engaged in any of the behaviors set out in the list that followed, the use of the words “shall include”

indicates that the list is intended to be illustrative rather than exclusive. *In re Reed*, 171 Cal.App.4th 1071, 1084 (2009).

Using an objective standard of reasonableness (*Speegle*, 53 Cal.App.4th at 1411), there is ample evidence that the elephants were being abused. Webster's Dictionary defines the word "abuse" as, "to use or treat so as to injure, hurt, or damage," and specifically provides the example of an overworked horse. *Webster's Third New Int'l Dictionary* 8 (2002). The elephants were being tethered for extended periods of time in an inadequately sized space and being forced to perform even when it would worsen their existing medical conditions. Exhibit 1. Furthermore, it is clear that this abuse was having an effect on the elephants, as they were exhibiting signs of severe stress, such as swaying from side to side (which in turn was also causing more health problems such as nail cracks). *Id.*

The Department did not abuse its discretion when it determined after a fair hearing that the Circus was violating Cal. Penal Code § 596.5 and therefore a condition of its permit. The abuse the Circus elephants are subject to is similar to the illustrated example of "deprivation of food, water, or rest." Cal. Pen. Code § 596.5(a). It is clear that the California legislature intended to protect elephants' basic health needs. Protecting injured or ailing elephants from engaging in behaviors that would exacerbate existing medical conditions certainly qualifies as a basic health need. Likewise, being confined and tethered for long periods of time in a small space can have serious health effects on elephants, as the minimum space guidelines in the AZA document point out. Exhibit 1. This abuse is at least as egregious as some of the other illustrated examples in the statute

since it, like the illustrated examples, causes significant physical distress to the elephants and has the potential to result in long-term negative effects.

3. *The Circus failed to utilize appropriate transport vehicles.*

Section 63.14(A)(ii) of the Hobbs County Municipal Code requires permittees to “utilize appropriate transport vehicles and transfer cages when moving them to the exhibition location.” The use of the word “appropriate” in this provision, coupled with the discretion accorded the Department in § 63.14 (B)(iv), gives the Department the authority to decide what makes a transportation vehicle “appropriate.” Here, given the small size of the space in the cars, the length of some of the journeys, and the physical and apparent psychological condition of the elephants, the Department rightly found the transportation cars to be inadequate.

The Superior Court erred when it ignored the Department’s sound exercise of discretion as well as the plain meaning of the word “vehicle” to hold that it did not apply to “transportation containers” that are actually used to transport the elephants. R. at 13. The fact that the Circus keeps the elephants in the transportation containers even when not in transport does not make the containers any less of a vehicle. The Circus cannot call these same containers vehicles for purposes of the California Penal Code, and then turn around and say they are *not* vehicles for purposes of this section of the municipal code. The dictionary defines a vehicle as “a means of carrying or transporting something” and provides cars as an example. *Webster’s Third New Int’l Dictionary* 2538 (2002). The “transportation containers,” interchangeably referred to as “transportation cars” in the West Edmond Report, are certainly used to transport and carry the elephants from one location to another. Exhibit 1. Just because the Circus also uses these containers as

storage for the elephants when they are not performing does not mean the “containers” are not still cars. Given the plain meaning of the word “vehicle,” the Department did not abuse its discretion when it found after a hearing that the Circus had failed to utilize appropriate transport vehicles.

4. *The Circus failed to make available medical records.*

Section 63.14(A)(i) of the Hobbs County Municipal Code required the Circus to make available medical records and health certificates, which it failed to do. The provision uses the word “make,” which is a verb tending to connote some sort of action. If the provision had said “*have* available,” the case would be different, yet the Code explicitly uses the “make,” indicating some affirmative action on the part of the Circus. Nevertheless, the Circus contended below that it can have “ma[de] available” these records by simply doing nothing. This interpretation is contrary to the plain language of the statute, and was an abuse of discretion on the part of the Superior Court.

The Circus need only have violated a single condition of the statute to justify permit revocation, yet it has violated four. Moreover, the Circus had a fair hearing before the revocation after which the Department exercised its reasonable and sound discretion to revoke the permit. Given that the Department’s reading of its own statute is entitled to “great weight” (*Gualala Festivals Comm.* 183 Cal.App.4th at 66), the Superior Court was correct in finding that the Circus was unlikely to succeed on the merits of its case.

**B. The harm the Department and interveners will suffer if injunctive relief is granted is greater than the purely speculative and minimal interim harm the Circus will suffer if injunctive relief is not granted.**

The second factor courts examine in deciding whether the extraordinary remedy of an injunction is proper is the degree of the interim harm to the plaintiff as compared to the

harm to the defendant. *Best Friends Animal Soc’y*, 193 Cal.App.4th 168 (2011). In evaluating this prong, courts consider the inadequacy of other remedies available, the degree of irreparable harm, and the necessity of preserving the status quo. *Abrams v. St. John's Hosp. & Health Ctr.*, 25 Cal.App.4th 628, 635 (1994).

1. *The Department and the interveners will suffer considerable harm if the relief is granted, since permit revocation is the only adequate remedy available.*

Permit revocation is the only remedy the Department has to prevent mistreatment of animals within its jurisdiction. The requirement that persons keeping non-domestic animals require a permit, as well as the conditions imposed on the permit, make it clear that the purpose behind Hobbs County Municipal Code § 63.14 is to protect such animals from mistreatment within the county. The adoption of California’s requirements for animal treatment, the requirement of appropriate medical records, and the requirement that the permittee not have been cited for USDA Animal Welfare Act Regulation violations all exist to make sure performing animals in Hobbs County are not mistreated. By adopting this Code, Hobbs County has made a policy choice that mistreatment of non-domestic animals kept, maintained, or exhibited within its jurisdiction is not acceptable. Revoking or refusing permits to those who would mistreat animals is the only remedy available to the Department that would stop wild animal keepers from mistreating those animals within its jurisdiction.

Likewise, the interveners will suffer considerable harm if the injunction is issued and the permit is reissued. The purpose of Mara’s Hope and of Samuelson as its Director of Education and Outreach in intervening in this case is to stop the elephants of the Circus from being mistreated within Hobbs County. Nothing will stop the mistreatment of the elephants by the Circus except revoking the permit and disallowing the Circus

from performing there. For the Department, Mara's Hope, and Samuelson, permit revocation is the only adequate remedy at law. With respect to the harm to the Department, the Superior Court did not abuse its discretion when it found that the Department would be significantly harmed due to the unavailability of other remedies.

2. *The interim harm to the Circus if the relief is not granted is minimal at best.*

For a preliminary injunction to issue, the harm or injury must be threatened as opposed to complete. *Vincent Petroleum Corp. v. Culver City*, 43 Cal.App.2d 511, 515 (1941). Furthermore, due to the extraordinary nature of this remedy, courts require a clear showing that the threatened harm is substantial and irreparable. *W. Electroplating Co. v. Henness*, 172 Cal.App.2d 278, 283 (1959).

In this case, the injury of permit revocation has already been completed, and thus a preliminary injunction should not issue due to a lack of interim harm. Nevertheless, the Circus argues that the speculative lost profits represent a threatened injury. Although the Circus is correct that prospective lost profits *can* be enough to establish interim harm (*See Nutro Products, Inc. v. Cole Grain Co.*, 3 Cal.App.4th 860, 867 (1992)), the lost profits in this case are simply too minimal and speculative to amount to substantial and irreparable harm.

The Circus's harm is not "irreparable" because it has several options available to it to mitigate or minimize the lost profits from not being able to perform in Hobbs County in April 2014. R. at 7. First, the Circus could simply move the date of the performance to after the permit is reissued in June 2014. Although the Circus claims that this date change would push the performance too close to its September performance and therefore reduce



viewership, it ignores the possibility that it could simply shift its performances to a June/November schedule.

Alternatively, Gall Springs has offered to host the Circus in April 2014. R. at 7. The Circus contends that since the population is less than half that of Hobbs County, it will not be sufficient to make up the lost profits. However, given the fact that the Circus has never performed there before, it could conceivably have greater attendance than it would in Hobbs County where it has performed numerous times. Even if attendance were lower than it would have been in Hobbs County, performing in Gall Springs and then returning to Hobbs County the following September on its regular schedule could potentially make up the difference. The Circus has already admitted that gaps between performances have an impact on attendance. If the Circus goes to Gall Springs in April and returns to Hobbs county once the permit is reissued, the year lag between Hobbs County performances could result in an increase in attendance that would make up for the lost profits.

In either case, the harm to the Circus is not likely irreparable, and certainly does not amount to the kind of substantial interim harm that would justify the extraordinary remedy of a preliminary injunction. When this is compared to the harm to the Department and to the interveners of forcing the reissuance the permit, it is clear that the Superior Court did not abuse its discretion in finding that the balance of harms weighed against issuing the injunction. Accordingly, this court should affirm the lower court's refusal to issue a mandatory preliminary injunction.

## **CONCLUSION**

For all the aforementioned reasons, this court should reverse the Superior Court's denial of Mara's Hope and Chris Samuelson's motion for leave to intervene, and affirm the Superior Court's denial of a mandatory preliminary injunction.

Respectfully Submitted,

Competition Team Number 15