Case No. 13-9876

In the Court of Appeal of the State of California
First Appellate District, Division 3

Grandlands Circus, Inc.,
Appellant/Cross-Respondent,

v.

Hobbs County Animal Safety Department,
Respondent,

Chris Samuelson & Mara's Hope Wildlife Sanctuary,
Appellants.

APPEAL FROM THE SUPERIOR COURT OF HOBBS COUNTY
CASE NO. CV-2014-TCS-81013 (EMH)
THE HONORABLE ELLIS M. HEIBERG, PRESIDING

BRIEF FOR APPELLANTS

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January 17, 2014

LEWIS AND CLARK LAW SCHOOL
NATIONAL ANIMAL LAW MOOT COURT COMPETITION

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STATEMENT OF ISSUES

I. Did the trial court abuse its discretion in denying Christopher Samuelson's and Mara's Hope Wildlife Sanctuary's motion for leave to intervene, where they lack a direct and immediate interest in the litigation, permitting their intervention would enlarge the issues in this case, and the original parties' interest in litigating this case on their own terms outweighs the purposes served by intervention?

II. Did the trial court abuse its discretion in denying Grandlands Circus's motion for a preliminary mandatory injunctive relief where Grandlands Circus has a possibility of succeeding on the merits at trial and it was disproportionately harmed by the trial court's decision denying the motion for injunction?

STATEMENT OF THE CASE

On October 7, 2013, the Hobbs County Animal Safety Department (Department) revoked the Grandlands Circus, Inc.'s (Grandlands) Performing Animal Permit (Permit) following an administrative hearing in which Grandlands presented evidence that it had not violated local or state law.

Grandlands then filed an action in the Hobbs County Superior Court against the Department, alleging that the Department's revocation of the permit was arbitrary and capricious because there was no cause to find that Grandlands had violated the law. Grandlands also filed a motion for a mandatory preliminary injunction against the Department so it could proceed with its already-scheduled April 2014 performances pending the outcome of the trial, scheduled for May 2014. Appellees Chris Samuelson (Samuelson) and Mara's Hope Wildlife Sanctuary (Mara's Hope) (together, Petitioners) filed a motion in the Superior Court to intervene on behalf of the Department in that action.

The trial court denied both Grandlands' motion for a preliminary injunction and Petitioners' motion for leave to intervene. Both Grandlands and Petitioners now appeal that decision in this Court.

STATEMENT OF FACTS

Grandlands is a traveling circus that uses both human and animal performers and has been operating successfully since 1962. *Grandlands Circus, Inc. v. Hobbs Cnty. Animal Safety Dept.*, No. CV-2014-TCS-81013 (EMH) (Hobbs Cnty. Super. Ct.) (hereinafter, Mem. Op.) 3:25–28. In 2013, Grandlands put on shows in twenty-two cities and counties across the United States. Mem. Op. 3:27. Grandlands' performances include a variety of animals, including lions, tigers, elephants, and horses. *Id.* at 3:28. In Hobbs County (County), Grandlands performs ninety-minute shows, twice a day during its stay. *Id.* at 4:6–7.

County law vests the Department with the authority to issue permits for "the keeping, maintaining, or exhibiting of any wild, exotic, dangerous or non-domestic animal or reptile within Hobbs County." Hobbs Cnty. Mun. Code § 63.14 (hereinafter HCMC § 63.14). Permits for the exhibition of animals in a circus are issued on a yearly basis. Mem. Op. 4:5. Grandlands has been operating with a permit in the County for the past seven years without incident. *Id*. at 4:5–6. The Department typically issues permits every June, which allows Grandlands to perform in September and April, before reapplying for the next year's permit the following June. *Id*. at 4:2–3. Grandlands' most recent trip to the County in September 2013 lasted seventeen days and earned $95,200 in net revenue. *Id*. at 4:7–9.

Samuelson and Mara's Hope moved to act as interveners in this case. Samuelson is a resident of the County, and is the co-founder (since 1997), animal caregiver, and Director of Education and Outreach for Mara's Hope. *Id*. at 4:10–12. From 1989 to 1992, Samuelson

worked as freelance photographer of wildlife in East Africa. *Id*. at 4:13–14. Samuelson worked for the Pranayama Animal Sanctuary as animal caregiver for retired research and entertainment chimpanzees from 1992 to 1997. *Id*. at 4:14–16. Samuelson has never attended a Grandlands Circus performance. *Id*. at 5:11. Samuelson's assistant, Penny Hall (Hall), is the only employee of Mara's Hope on record that has attended a Grandlands performance. *Id*. at 5:8.

Mara's Hope, located in the County, is a privately funded rescue for captive animals that have been discarded by private owners, zoos, entertainment studios, or were confiscated from animal abuse. *Id*. at 4:19–21. Mara's Hope houses animals, including African lions, black bears, mountain lions, several cats, ostriches, and horses. *Id*. at 4:22–23. Mara's Hope does not house any elephants. *Id*. at 4:24. Mara's Hope's website states that its mission 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*. at 4:24–26. Mara's Hope receives forty-percent of its funding through its "education and outreach" email distribution list. *Id*. at 5:2–3.

The timeline of events in this case is important to understanding why Grandlands filed, and why this Court should grant, its motion for a preliminary injunction. In June 2013, the Department issued Grandlands a 12-month Permit, which licenses Grandlands to perform exotic animals during its September 2013 and April 2014 shows in the County. *Id*. at 2:7–9. Grandlands performed as scheduled from September 6–22, 2013. *Id*. at 2:9. On September 18, 2013, Samuelson received a copy of a report from West Edmund Animal Care and Control located in West Edmund, Texas (West Edmond Report) from Hall. *Id*. at 5:8, 22–24. The West Edmond Report was prepared more than two years before Samuelson obtained the copy, and focuses solely on the elephant performers in the Circus. *Id*. at 5:21–24. Following the West

Edmond Report, Grandlands reapplied for a permit to perform in West Edmond in January 2012, but the West Edmond Animal Care and Control declined to issue one. *Id*. at 6:1–3. However, there is no evidence in the record that the decision not to re-issue the permit was actually a response to the West Edmond Report. *Id*. Samuelson and Mara's Hope filed an administrative complaint regarding the Grandlands elephants with the Department on September 24, 2013. *Id*. at 6:4–6. The complaint alleged, based on the West Edmond Report, that Grandlands violated HCMC section 63.14, and demanded that Grandlands' Permit be revoked. *Id*. at 6:6–9.

In response, the Department convened an evidentiary hearing on September 27, 2013 to determine whether Grandlands was in violation of the Permit by violating HCMC section 63.14 or the California Penal Code, whether Grandlands would be willing to remedy any violations, and whether the Permit should be revoked. *Id*. at 6:16–25. Grandlands does not contest the adequacy of the notice or the administrative hearing. *Id*. at 6:18–19.

At the hearing, Grandlands agreed that the medical information on the elephants, the dimensions of the travel containers used to hold the elephants while in transit, and the duration of the time in which the elephants are in transit were generally correct, but Grandlands contested the other findings and overall conclusions of the West Edmond Report. *Id*. at 6:28–7:4. Grandlands noted that it had not given the Department copies of its 2013 medical records, which the Department could "easily have requested" from Grandlands upon discovering the omission. *Id*. at 7:4–6, 13:17. No veterinary experts testified for either Grandlands or the Department. *Id*. at 7:6–8.

As a concession to the Department and Mara's Hope, Grandlands offered not to perform its three oldest elephants. *Id*. at 7:8–9. Grandlands also stated that if the Department revoked the Permit, Grandlands would not be able to put on its scheduled performances in April 2014 and

would lose substantial income as a result. *Id*. at 7:9–10. Grandlands also testified that there was a possibility that it could perform elsewhere in April, but the alternate venue in Gall Springs would play to a much smaller potential audience (Gall Springs has only half the population of the County) and Grandlands had no history of performing there. *Id*. at 7:10–14.

On October 7, 2013, the Department revoked the Permit, finding Grandlands in violation of HCMC section 63.14 and the California Penal Code. *Id*. at 7:15–18. Grandlands filed suit against the Department on October 11, 2013. *Id*. at 7:18. In addition to the action challenging the Department's findings and decision to revoke the Permit, Grandlands also filed a motion for a mandatory preliminary injunction, which would allow it to continue with its April 2014 performances and avoid substantial reputational and financial harm before the May 2014 trial date. *Id*. at 9:21–24. Petitioners filed a motion for leave to intervene in the action on the side of the Department. *Id*. at 7:21–23.

SUMMARY OF ARGUMENT

This Court should affirm the trial court's denial of Petitioners' motion to intervene because the decision was well within the broad discretion of the trial court. The trial court's decision was based on three factual findings supported by the record. First, Petitioners did not allege the required direct and immediate interest in the litigation, such that the court's final judgment would directly affect them. Second, the trial court correctly found that permitting intervention would enlarge the issues in this case—the only interest that Petitioners have here is in the broader moral and ethical debate about whether exotic animals should be kept in captivity. Third, the balance of the interests in this case weigh in favor of denying intervention: the original parties have a strong interest in litigating this matter on their own terms, while the purposes served by intervention are minimal.

In addition to upholding the trial court's denial of the Petitioners' motion to intervene, this Court should reverse the trial court's denial of a motion for a preliminary injunction because Grandlands meets both elements necessary under California law: Grandlands will suffer a disproportionate, irreparable harm if the injunction is denied, and Grandlands has demonstrated a possibility that it will succeed on the merits of its action at trial.

To determine the second element, whether Grandlands has a possibility of succeeding at trial, this Court must look at Grandlands' underlying claim: the Department acted arbitrarily and capriciously when it revoked Grandlands' permit because Grandlands has not violated County or State law. The trial court abused its discretion when it agreed with the Department's arguments, without the support of substantial evidence. Therefore, the trial court's decision should be overturned, and this Court should order a mandatory injunction against the Department until the full trial in May 2014.

STANDARD OF REVIEW

This Court reviews the trial court's order denying Petitioners' motion to intervene for abuse of discretion, and this Court should affirm the trial court's judgment unless it has resulted in a miscarriage of justice. Cal. Code Civ. P. § 387(a) (West 2013); *City & Cnty. of San Francisco v. State*, 128 Cal. App. 4th 1030, 1036 (2005) (citing *Denham v. Super. Ct.*, 2 Cal. 3d 557, 566 (1970)).

This Court also reviews the trial court's denial of Grandlands' motion for preliminary injunction for an abuse of discretion. *Best Friends Animal Soc'y v. Macerich Westside Pavilion Prop. LLC*, 193 Cal. App. 4th 168, 174 (2011). The trial court must exercise its discretion "in favor of the party most likely to be injured." *Id.* When this Court reviews the trial court's assessment of a plaintiff's likelihood of success on the merits of their claim, if this assessment

depends on *legal* questions like statutory meaning, appellate review is *de novo*. *Costa Mesa City Employees' Assn. v. City of Costa Mesa*, 209 Cal. App. 4th 298, 306 (2012); *see Thomsen v. City of Escondido*, 49 Cal. App. 4th 884, 890 (1996) (court ruling issues involving interpretation of the terms of a legislative enactment reviewed *de novo*). The task of the Court of Appeal is to ensure that the trial court's factual determinations, whether express or implied, are supported by substantial evidence. *Yu v. Univ. of La Verne*, 196 Cal. App. 4th 779, 787 (2011).

ARGUMENT

Grandlands respectfully requests this Court to affirm the trial court's denial of Petitioners' motion to intervene and reverse the trial court's denial of Grandlands' motion for injunctive relief. Intervention is not warranted here because Petitioners are bystanders to this litigation who lack a direct and immediate interest in this case. Petitioners' only interest in this case stems from a desire to engage in a broader debate about keeping exotic animals in captivity. However well intentioned and meritorious Petitioners' claims are regarding that debate, this is not the appropriate forum to air these concerns. This case is an administrative law case, where the only question is whether the agency acted in an arbitrary and capricious manner in revoking a permit. Petitioners' ends are better served by the political process, and in the court of public opinion.

On the second issue, the Court should reverse the trial court's decision on Grandlands' motion for injunction because the balance of the harms in this case requires injunctive relief. This case is about an agency with nothing to lose, which acted in a reactionary and impulsive manner, based on disputed conclusions contained in an outdated report that was prepared in a different jurisdiction. The Department acted arbitrarily and capriciously in revoking the permit without substantial evidence and the trial court abused its discretion when it failed to intervene

and protect Grandlands, the party that will bear the undue burden of the harm in this case. Without injunctive relief, Grandlands is without any recourse to prevent irreparable financial and reputational harm, and this is contrary to the law.

I. The Trial Court Acted Well Within Its Discretion in Denying Petitioners' Motion for Leave to Intervene.

The Court should affirm the trial court's order denying the Petitioners' motion to intervene because the trial court correctly found, based on the facts before it, that intervention was not warranted. The decision whether to grant permissive intervention to a third party is a factual one, and thus "is generally left to the sound discretion of the trial court." *City & Cnty. of San Fran. v. State of Cal.*, 128 Cal. App. 4th 1030, 1036 (2005). Under California Code of Civil Procedure section 387(a), the party seeking permissive intervention has the burden to show: (1) that it has a direct and immediate interest in the outcome of the litigation; (2) that intervention will not enlarge the issues in the litigation; and (3) that the purposes served in allowing intervention outweigh the original party's interest in conducting its own lawsuit on its own terms. *Id*.

The trial court did not abuse its discretion when it found Petitioners did not discharge their burden under section 387(a). First, Petitioners did not demonstrate the requisite direct and immediate interest in the litigation to warrant permissive intervention[1] because neither Samuelson nor Mara's Hope[2] will be affected by the outcome of this litigation. Second, the trial

[1] The trial court correctly found that there was "no basis for even considering intervention as a matter of right[.]" Mem. Op. 8:23–24. However, even if there were a basis for intervention as a statutory right, the trial court would have been within its discretion in denying Petitioners' motion because Petitioners' interest in this litigation is adequately represented by the Department. Cal. Code Civ. P. § 387(b); *see also Royal Indem. Co v. United Enters., Inc.*, 162 Cal. App. 4th 194, 203 (2008) ("[A]s a practical matter, we note that if permissive intervention is not appropriate in this context, most likely, mandatory intervention would also not be proper.").

[2] Mara's Hope cannot demonstrate that itself as an organization has a direct and immediate interest, nor can it show the requisite interest on behalf of any of its members because it has not demonstrated that any

court did not abuse its discretion in finding that allowing Petitioners to intervene in this case would introduce an ethical debate about whether exotic animals should be kept in captivity that would swallow the actual issues in this case. Third, to the extent that the Petitioners can assert any facts in favor of permitting intervention, it does not outweigh the interest of the original parties in litigating this case regarding the revocation of Grandlands' exhibition permit on their own terms.

A. Petitioners have not alleged a direct and immediate interest in this litigation.

The trial court correctly found that Petitioners failed to demonstrate that they had a direct, immediate, or particularized interest in this litigation because Samuelson has never attended a Circus performance in the County and Mara's Hope does not provide sanctuary to elephants. Mem. Op. 8:8–10. In order to demonstrate the requisite direct or immediate interest, the proposed intervener must stand to gain or lose by direct operation of the judgment. *Compare U.S. Ecology Inc. v. State of Cal.*, 92 Cal. App. 4th 113, 139–40 (2001) (proposed interveners demonstrated direct and immediate interest in site that was subject of nuclear waste disposal permitting litigation because of longstanding history of participating in litigation to protect the site) *with City & Cnty. of San Fran.*, 128 Cal. App. 4th at 1033 (proposed interveners did not demonstrate direct and immediate interest in case challenging legality of state statute defining marriage in California as between a man and a woman because judgment would have no effect on their right to marry a person of the opposite sex).

Absent a showing that the proposed interveners would stand to gain or lose as a direct result of the judgment, a general interest in the subject of litigation is insufficient to establish the requisite interest. *Simpson Redwood Co. v. State of Cal.*, 196 Cal. App. 3d 1192, 1200–01 (1987) (even if conservation group's members frequently used the park that was subject of quiet

title action, that fact alone would not justify intervention) (citing *People ex rel. Rominger v. Cnty. of Trinity*, 147 Cal. App. 3d 655, 662 (1983)). Similarly, where the proposed interveners stand on the same ground as the public with regard to the asserted interest, then that interest is indirect and inconsequential and intervention should be denied. *Socialist Workers etc. Cmte. v. Brown*, 53 Cal. App. 3d 879, 892 (1975).

The individual Petitioners in this case, Samuelson and Mara's Hope, have never attended the Grandlands Circus; only assistant Hall has attended a Grandlands Circus performance in the County in 2012. Mem. Op. 5:8–9. Petitioners do not plan to attend Grandlands' performances in April 2014, or at any point in the future.[3] Samuelson's interest purportedly lies in his professional experience as a freelance wildlife photographer and animal caregiver in sanctuaries for exotic animals. *Id*. at 4:14–18. However, Samuelson does not aver that he has ever worked directly with elephants. Similarly, Mara's Hope provides sanctuary for other species of exotic animals, but does not provide sanctuary for any elephants. *Id*. at 4:20–24. Petitioners have no particularized interest in any of Grandlands' elephants, their only interest in this case lies in their broad-sweeping mission statement: "Endeavoring 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*. at 4:24–26.

Based on these facts, the trial court did not abuse its discretion in finding that Petitioners do not have a direct and immediate interest in the litigation because (1) they will not be bound or affected by the outcome of this case, and (2) their asserted interest is general and inconsequential.

[3] Therefore, Petitioners cannot assert any future interest tied to the April 2014 Grandlands performances that are the subject of the permit revocation proceedings and this lawsuit.

1. Petitioners lack a direct interest in the litigation because their rights will not be affected by judgment in this action.

Petitioners do not have the requisite interest in this litigation because a judgment in this case will not affect them. The intervener must demonstrate a direct and immediate interest in the litigation, in that they stand to gain or lose by the "direct legal operation and effect of the judgment." *City & Cnty of San Fran.*, 128 Cal. App. 4th at 1037 (citations omitted). *City and County of San Francisco* involved a challenge to a California statute defining marriage as between a man and a woman. *Id*. at 1033. The court found that the interveners, supporters of the law, lacked a direct and immediate interest in the lawsuit because the judgment would have no impact on the interveners' right to marry. *Id*. at 1039 ("Specifically, the Fund does not claim a ruling about the constitutionality of denying marriage licenses to same-sex couples will impair or invalidate the existing marriages of its members, or affect the rights of its members to marry persons of their choice in the future."). As the California Supreme Court stated in *Jersey Maid Milk Products, Co. v. Brock*:

> This judgment would in no way be binding upon the interveners as long as they are not parties to said action, and they will be as free to pursue their business after the rendition of said judgment, as they were before. They, therefore, would not gain or lose by the direct operation of the judgment.

13 Cal. 2d 661, 663 (1939). Even a genuine familiarity or relationship with the subject of the litigation, without an actual interest in the outcome, is insufficient grounds for intervention. *Simpson Redwood Co.*, 196 Cal. App. 3 at 1200–01 (1987) ("That appellant [interveners] are frequent users of the Park, will not, standing alone, justify intervention.").

Here, similar to the proponents of the law defining marriage as between a man and a woman in *City and County of San Francisco*, a ruling in this matter will not affect the ability of Petitioners to provide sanctuary to exotic animals or advocate against keeping exotic animals in

captivity. 138 Cal. App. 4th at 1039. As in *Jersey Maid Milk Products*, the judgment in this case will only be binding on Grandlands and the Department—even if Petitioners were permitted to become parties to this action, neither the injunction nor the Permit would apply to them. Unlike in *U.S. Ecology*, Petitioners have not alleged a history of litigating to protect elephants or other exotic animals from being exhibited in the County.[4] *See* 92 Cal. App. 4th at 139–40 (trial court had reasonable basis to allow organizations to intervene in case involving a proposed nuclear waste disposal facility where organizations had a history of involvement in litigation involving the site at issue in the case). Therefore, the trial court did not abuse its discretion in finding that Petitioners lack a direct and immediate interest in this litigation.

2. Petitioners' indirect and inconsequential interest in the enforcement of the law is insufficient to justify intervention in this case.

Petitioners' interest in this case is general, indirect, and inconsequential; therefore the trial court did not abuse its discretion in denying Petitioners' motion to intervene. A "general political interest," "support of a statute," and an interest in upholding and enforcing the law are all insufficient to warrant intervention. *Rominger*, 147 Cal. App. 3d at 662 (finding that environmental group had sufficient interest to intervene in case challenging validity of pesticide spraying ordinance, but specifically rejecting argument that "mere support of a statute" or "general political interest" enforcing environmental laws warrants intervention); *Socialist Workers*, 53 Cal. App. 3d at 892 (stating that, where the proposed intervener's asserted interest in a particular case is in the validity of a law, their interest is the same as that of "all of the people of California" and thus is "indirect and inconsequential."). Additionally, where the named party would adequately represent the intervener's asserted interests, this fact weighs against intervention. *U.S. Ecology*, 92 Cal. App. 4th at 140.

[4] In Grandlands' seven years performing in the County, there is no record of Petitioners filing a complaint or taking similar action regarding any of Grandlands' animals, until this year.

An organization's "general and historical preference" for a particular issue is insufficient, standing alone, to justify intervention. *Simpson*, 196 Cal. App. 3d at 1201 (stating that frequent use of a park that was subject of dispute by intervening organization's members and "general and historical preference" for preservation was insufficient to support standing). However, the court in *Simpson* did find intervention warranted in part because the organization was formed for the purpose of conserving areas such as the park in dispute, and that it might lose future support from its members and donors if it failed to intervene to protect the park from private development. *Id*. at 1201.

Here, similar *Socialist Workers* and *Rominger*, Petitioners' interest is a general interest in the enforcement of HCMC section 63.14. With regard to this interest, Petitioners are similarly situated to all of the citizens of the County. *See Socialist Workers*, 53 Cal. App. 3d at 852 ("Regarding the validity of the [challenged] act on its fact, petitioners stand in the same position as that of all of the people in California; therefore, petitioners have only an indirect and inconsequential interest."). All citizens share an interest in having a government agency take care to enforce the laws of the County. However, there is no reason to think that the Department, which the County fully vested with the authority to administer the Permits, would not adequately represent this interest. *Cf. U.S. Ecology*, 92 Cal. App. 4th at 140 ("[T]here was evidence showing that the [intervener] Organizations had interests in defending these claims that would not be adequately represented by the named defendants[.]"). Unlike in *Rominger*, where the Sierra Club was found to have a sufficiently direct and immediate interest to justify intervention, Petitioners here have not demonstrated "specific harm" either to Samuelson, Mara's Hope, or

any of its individual members, and Petitioners have not alleged that they are "among the persons that the ordinances were specifically designed to benefit and protect."[5] 147 Cal. App. 3d at 663.

Petitioners' interest in the treatment of elephants and other exotic animals, alone, does not warrant intervention. This interest is similar to the "general and historical" interest that was deemed insufficient in *Simpson Redwood Company*. *See Simpson*, 196 Cal. App. 3d at 1200–01. To the extent that Petitioners' rely on *Simpson* for the proposition that a direct and immediate interest is shown where the organization's failure to intervene in a dispute related to its organizational purpose may harm its reputation with its members and donors, resulting in a loss to future support, this reliance is misplaced. *Simpson* is distinguishable from the instant case. First, the organization in *Simpson*, Save-the-Redwoods League, was specifically formed to conserve old-growth redwood forests, such as the parcel of land at issue in the case. *Id*. at 1197. Second, the risk of reputational harm to the League as a result of the judgment in *Simpson* was great because the organization had originally purchased with donor funds the land that was in dispute, and had donated the land to the State for the purpose of contributing to the state park system. *Id*. at 1198. Here, Mara's Hope's organizational purpose is not as narrowly tailored as the League's, and the risk that its failure to intervene in this case will harm its reputation among its members is relatively small.

Therefore, Petitioners have failed their burden of asserting a direct or immediate interest that would be affected by the outcome of this litigation. As a result, the denial of intervention is

[5] Exactly *whom* HCMC section 63.14 is intended to benefit and protect warrants some discussion. As the court said in *Rominger*, "[w]here a statute exists specifically to protect the public from a hazard to its health and welfare that would allegedly occur without such statute, members of the public have a substantial interest in the protection and benefit provided by such statute." 147 Cal. App. 3d at 663. Because section 63.14 expressly omits any language stating a purpose to protect *human* public health and welfare, a reasonable construction of the statute is that it is intended to protect captive exotic animals. Therefore, Petitioners, having no direct interest in any captive elephants, could not argue that section 63.14 is specifically designed to protect them.

warranted and the court need not address the two remaining requirements of section 387. *City & Cnty. of San Fran.*, 128 Cal. App. 4th at 1044 ("Having decided the Fund lacked a sufficiently direct and immediate interest to permit intervention, we need not address the parties' arguments regarding whether intervention would improperly enlarge the issues in the litigation and whether the rights of the original parties outweigh the reasons for intervention."). Nonetheless, Petitioners have not demonstrated that these two remaining requirements are satisfied.

B. Allowing Petitioners to intervene will enlarge the issues in this case.

Petitioners cannot satisfy the second requirement of permissive intervention because their involvement would present new issues in this litigation. The intervener has the burden of showing that its intervention will not enlarge the issues in the action. Cal. Code Civ. P. § 387(a); *City & Cnty. of San Fran.*, 128 Cal. App. 4th at 1036. The trial court found that permitting intervention would raise issues of a moral and ethical nature, which would swallow the primary issue between the principal parties, which is whether the Department improperly revoked the Permit. Mem. Op. 9:16–18. Because Petitioners are not directly involved in the exhibition or caretaking of elephants, nor are they customers or attendees of the circus, their only interest in this litigation is as stated in the mission statement of Mara's Hope: "to educate the public about the harms of keeping wild and exotic animals in captivity[.]" However, the keeping of exotic animals captivity, as a moral or ethical matter, is not at issue in this case. This forum is not necessary or even practical for Petitioners to further their organizational mission.

To the extent that Petitioners argue that their issue in this case is whether California Penal Code sections 596.5 and 597, *et seq.* were violated, and therefore intervention would not raise new issues, this argument must fail. Petitioners, as private citizens, lack standing to enforce animal cruelty laws. *Animal Legal Defense Fund v. Mendes*, 160 Cal. App. 4th 136, 142 (2008)

(finding animal rights organization lacked standing to enforce California Penal Code section 597(t) where statutory scheme "deputiz[ed]" humane officers to aid in the enforcement of anticruelty laws, stating, "we think it clear that the Legislature did not intend to create a private right of action in other private entities no matter how well-intentioned the goals of such entities."). This case also involves a statutory scheme vesting authority in public officials to enforce penal code sections 596.5 and 597 *et seq.* through its permitting process. The reasoning of *Mendes* applies here as well: where the County has vested authority in the Department to regulate the private ownership and exhibition of captive animals, the County did not intend to create a private right of action for citizens or private organizations to enforce these laws.

Therefore, the trial court did not abuse its discretion in denying intervention in order to prevent the enlargement of issues in this case.

C. The purposes served in allowing Petitioners to intervene are minimal, and do not outweigh the original parties' interest in conducting the lawsuit on their own terms.

Petitioners also cannot satisfy the third requirement for permissive intervention under California Code of Civil Procedure section 387. The proposed intervener must show that the purposes served in allowing the non-party to intervene will outweigh the original party's interest in conducting its own lawsuit on its own terms. *City & Cnty. of San Fran.*, 128 Cal. App. 4th at 1036. The trial court's discretion in determining whether to permit intervention by a third party is so broad that even when a party could show a direct interest in the outcome of the litigation, the trial court may still deny intervention if it finds that the interests of the original litigants outweigh the intervener's concerns. *See People v. Super. Ct. (Good)*, 17 Cal. 3d 732, 736–37 (1976).

Here, the reasons for intervention are minimal. Permitting intervention will not prevent multiple lawsuits because Petitioners have no private cause of action against Grandlands, nor do they have standing to enforce state or local laws against Grandlands. *Cf. Simpson*, 196 Cal. App. 3d at 1203 (finding permitting intervention would further the purposes of section 387 because if intervention were denied, proposed interveners would be forced to bring a separate action). Permitting intervention also would not serve to protect any rights of the Petitioners that would not adequately represented by the Department. *See U.S. Ecology*, 92 Cal App. 4th at 130–40 (trial court did not abuse discretion in permitting intervention where judgment would affect interests of interveners and there was evidence that named parties would not adequately represent those interests). Petitioners have not demonstrated that they have any interest that will be directly impacted by judgment in this case, other than a general interest in the enforcement of HCMC section 63.14, which is adequately represented by the Department.

In contrast, the original parties' interest in conducting this lawsuit on their own terms is great. This litigation is about the interpretation and application of HCMC section 63.14, which vests authority to issue permits in the Department (and in no one else), and expressly *provides for* the exhibition of "any wild, exotic, dangerous or non-domestic animal or reptile" by a permit-holder in the County. The validity of this permitting scheme is not at issue, thus neither is the question of whether exotic animals should be kept in captivity. The original parties have a strong interest in litigating this case limited to the issues presented by the permitting statute. Therefore, the reasons for intervention do not outweigh the original parties' interest in litigating this case on their own terms.

Furthermore, the trial court's decision should be upheld under the abuse of discretion standard because there is no evidence that denying intervention will result in injustice. *See City*

& Cnty. of San Fran., 128 Cal. App. 4th at 1036. Petitioners are not without a voice in this matter if they are denied intervention. Petitioners could have had the opportunity to file an amicus brief in this appeal. *See id.* at 1044 ("Finally, it is important to note that even though the Fund does not enjoy the status of a party in these consolidated cases, it may have the opportunity to present its views on the validity of California's marriage statutes through amicus curiae briefs."). Moreover, the proper role of citizens in the regulation of private ownership of exotic animals is to proffer administrative complaints to the Department; and the Department may hold an evidentiary hearing if it finds merit in the complaint. Finally, the most appropriate venue for Petitioners' concerns regarding the keeping of elephants and other exotic animals in captivity is through the political process. If Petitioners oppose the keeping of exotic animals in captivity, they may use the legislature—and not the courts—to pursue these goals.

For the foregoing reasons, the decision of the trial court denying Petitioners' motion to intervene should be affirmed.

II. The Trial Court Erred When it Denied Grandlands' Motion for Preliminary Injunction.

This Court should reverse the lower court's order denying the preliminary injunction against the Department for two reasons. First, Grandlands has established that it will suffer irreparable financial and reputational harm by the denial of the injunction, while the Department has not shown *any* harm it would suffer if the injunction were granted, leaving the burden solely on Grandlands. Furthermore, the timeline of events in this case makes it such that without an injunction, any victory had by Grandlands at trial, after suffering these irreparable losses, would be meaningless as the remedy would be to reissue a permit for performance dates that had already passed. Second, the trial court erred in its interpretation of California Penal Code

sections 596.5 and 597, and thus erred when it determined that Grandlands would not likely succeed in challenging the Department's revocation of its permit at trial.

Local governments do not exercise unlimited discretion in the matter of revoking permits. *Trans-Oceanic Oil Corp. v. City of Santa Barbara*, 85 Cal. App. 2d 776, 783 (1948). Injunctions are appropriate in the permit revocation context, where, as here, the plaintiff challenges the issuing authority's actions as arbitrary, unreasonable, or not in accordance with the law. *See Vaughn v. Bd. of Police Comm'rs of City of Los Angeles*, 59 Cal. App. 2d 771, 778 (1943) (finding an injunction should be denied where no showing is made that a board acted capriciously or fraudulently in revoking a permit); *Vincent Petroleum Corp. v. Culver City*, 43 Cal. App. 2d 511, 516 (1941).

Under California law, trial courts consider two interrelated questions in deciding whether to issue a preliminary injunction: (1) are the plaintiffs likely to suffer greater injury from a denial of the injunction than the defendants are likely to suffer from the granting of the injunction; and (2) whether there is a possibility that the plaintiffs will prevail on the merits. *Butt v. State of Cal.*, 4 Cal. 4th 668, 678 (1992) (stating the test to be whether there is "at least some possibility that the plaintiff would ultimately prevail on the merits of the claim"); *see Costa Mesa City Employees' Assn.*, 209 Cal. App. 4th at 310 (finding that contract documents provided enough evidence to determine that there was "some possibility" of success on a claim, and thus injunction was proper). Courts weigh these elements on a sliding scale, where a greater degree of one can outweigh a lesser amount of the other. *Butt*, 4 Cal. 4th at 678. Additionally, in weighing the impact of an injunction upon the parties, the court should consider whether the defendant in the action had any other remedies available to it that would have caused less interim

harm to the plaintiff. *Sahlolbei v. Providence Healthcare, Inc.*, 112 Cal. App. 4th 1137, 1159 (2003).

A. Grandlands will suffer irreparable harm if the injunction is denied.

If this Court upholds the order denying Grandlands' motion for a preliminary injunction, Grandlands will suffer irreparable reputational and financial harm, while the Department would lose nothing if it were enjoined from revoking Grandlands' permit until the matter is settled. In *Robbins*, the California Supreme Court stated that "[i]f the denial of an injunction would result in great harm to the plaintiff, and the defendants would suffer little harm if it were granted, then it is an abuse of discretion to fail to grant the preliminary injunction." *Robbins*, 38 Cal. 3d. at 205–06 (discretion must be exercised in favor of party most likely to be injured).

Many courts have found loss of business, employment, and income to meet the standard of irreparable harm necessary to justify an injunction. *See*, *e.g.*, *Costa Mesa City Employees' Assn.*, 209 Cal. App. 4th at 306 (job loss qualifies as irreparable harm or injury); *Riviello v. Journeymen Barbers, Hairdressers & Cosmetologists' Int'l Union of Am., Local No. 148*, 88 Cal. App. 2d 499, 510 (1948) (finding loss of business pending resolving union-worker dispute to satisfy irreparable harm for injunction). In *Rivello*, the plaintiffs operated a barbershop that employed unionized workers. The defendants threatened to withdraw from plaintiffs' barber shop its union card, to withdraw its union employees, and to picket unless plaintiffs agreed to sign an agreement that would compel them to become non-active members of the union. *Riviello*, 88 Cal.App.2d at 500–01. The Court of Appeal found that under such conditions, the trial court abused its discretion when it denied the plaintiffs' motion for an injunction against the defendant union while the legality of the union's tactics was pending challenge:

> Moreover, it is obvious that the parties 'most likely to be injured' are the plaintiffs. Withdrawal of the union card and picketing would ruin plaintiffs'

> business, while, if the injunction is granted, the defendant union will only . . . suffer but slight damage, if any, if it is granted. There were no equities to balance. All the equities are in favor of plaintiffs. Under such circumstances, it must be held that it was an abuse of discretion to deny the application for the preliminary injunction.

Id. at 510.

Like the plaintiffs in *Riviello*, here, Grandlands is the only party that will suffer if the injunction is denied. Should this Court uphold the trial court's decision, Grandlands will not be able to move forward with its scheduled performances in April 2014, which could cost Grandlands up to $95,000, estimated from the revenue from last September's performances. Mem. Op 4:7–9. In addition to the harm that this will cause Grandlands as a corporation, it also harms Grandlands' employees, who will be unable to work during those dates if the show does not go on. This type of financial harm meets the standard for injunctive relief. *See Bullock v. City & Cnty. of San Francisco*, 221 Cal. App. 3d 1072, 1102 (1990) *("*[P]laintiff presented uncontradicted evidence that the injunction would and was destroying his business . . . [t]hese consequences qualify as irreparable injuries to plaintiff. In addition, plaintiff made an unchallenged showing that the injunction would cause unemployment for the staff . . .") (citation omitted).

In evaluating the Grandlands' financial loss claim, the trial court noted that the revenue loss had not yet been specified at the time of the hearing, and used this as a supporting reason for denying the injunction. Mem. Op. 15:13–14. This was an erroneous conclusion that does not conform with settled law—though an amount of monetary loss is uncertain, the harm can be threatened and still meet standard for injunction. *Costa Mesa City Employees' Assn.*, 209 Cal. App. 4th at 305. Additionally, whether Grandlands could move their performance to another county, Mem. Op. at 7:10–14, does not matter in this inquiry and is also erroneous—courts are

not obliged to consider whether Grandlands could have mitigated the harm resulting from denial of the injunction. *See Butt*, 4 Cal. 4th at 693 (striking down State's claim that plaintiffs did not establish that the harm they suffered was unforeseeable or that it could not be ameliorated in some other way).

Beyond the pecuniary losses from the denial of the injunction and the Department's wrongful revocation of Grandlands' permit, Grandlands will suffer irreparable harm to its reputation because of the trial court's denial of the injunction. Mem. Op. 3:9–13. Other counties in which Grandlands performs require that Grandlands notify them if they have had any permits revoked by other state or local governments. *Id.* The denial of the injunction would effectively require that Grandlands disclose the permit revocation, however wrong it might have been, to any other governments pending the outcome of the trial. This would likely cause other entities to revoke Grandlands' permits to perform, resulting in even more financial and reputational harms. Furthermore, there may be some jurisdictions where Grandlands performs that would require it to disclose *any* administrative action against it, even those short of revocation, which could jeopardize its ability to book performances in the future.

Contrary to the great financial and reputational losses that Grandlands will suffer, like the Defendant County in *Robbins* that could not demonstrate any harm from the granting of an injunction, the Department here cannot show (nor does the trial court discuss) *any* injury that it would suffer if the injunction were granted. Mem. Op. 15:2–10. The trial court only states that the Department has an interest in enforcing its own laws—this is not in question here, as Grandlands is not arguing that the Department must be enjoined from ever addressing violations of HCMC section 63.14. Rather, Grandlands argues that revocation was arbitrary and capricious *in this case* and the revocation should be put on hold while a trial court considers this argument.

As there is no evidence in the record that the Department would be injured, such injury is minimal and speculative, and the injunction should be granted in favor of Grandlands.

To illustrate this point, this Court should consider two scenarios—Scenario A, where the injunction is denied, and Scenario B, where the injunction is granted. A quick look at the possible outcomes shows the Department is in exactly the same position regardless of whether the Court grants the injunction. In Scenario A (the current reality following the trial court's ruling), the injunction is denied and the Department has to defend its actions at trial. If the Department wins at trial, the result is that it can refuse to reissue Grandlands' permits in June 2014. If the Department loses at trial, it can still refuse to reissue the permits in June 2014, if it finds sufficient evidence. Furthermore, a victory for Grandlands at trial, without an injunction, would mean nothing to Grandlands—the remedy would be an order for the Department to reinstate its permit for performance dates that would have already passed. In such a scenario, California courts have a long history of ordering that an injunction be granted. *See Porter v. Jennings*, 89 Cal. 440, 445 (1891) ("To sustain respondents in this appeal would deprive appellant of all benefit which would accrue to him should he finally succeed in his cause, and would be a complete denial of the relief sought by the complainant. The injunction prayed for is not merely ancillary to other relief; it is itself the principal relief desired, and its denial is equivalent to dismissal of the action.")

In Scenario B, the injunction is granted and Grandlands does not suffer intermediate financial or reputational harms. If the Department wins at trial, they have grounds to refuse to reissue the permits in June 2014, just as in Scenario A. Essentially, the harm to the Department is *de minimis* in either Scenario A or Scenario B. The only real difference in the scenarios is the amount of harm suffered by Grandlands in the process if the court does not grant the injunction.

Furthermore, the Department had other remedies available to it that would have been less harmful to Grandlands than revoking its permit. For example, the trial court noted that there were solutions to some of the alleged violations of HCMC section 63.14 that the Department could have easily implemented. Mem. Op. 13:13–19 (medical records could have easily been requested). Like the defendant hospital in *Sahlolbei v. Providence Healthcare, Inc.*, which could have taken a number of less severe interim steps to rectify issues with a physician at the hospital rather than taking the extreme step of revoking his privileges, here the Department could have sought other, less harmful remedies to any alleged violations of State or County law, rather than revoking the Grandlands' permit. *Sahlolbei*, 112 Cal. App. 4th at 1159 (requiring injunction on part of plaintiff that bore the greatest weight of harm).

On balance, it is Grandlands that bears all of the weight of injury from the trial court's decision, where the Department had nothing to lose. Though the trial court has broad discretionary powers to grant or deny a request for a preliminary injunction, it has "no discretion to act capriciously." *Robbins*, 38 Cal. 3d at 205. Per the *Robbins* court's analysis, it was an abuse of discretion to fail to grant the preliminary injunction because the trial court's discretion should have been exercised in favor of the party with the most to lose—Grandlands Circus. *Id.* at 205–06.

B. Grandlands has a strong possibility of succeeding on the merits of its case at trial.

As noted above, the second consideration in the injunction inquiry is whether Grandlands has some possibility of succeeding on the merits of their claim at trial. *Butt*, 4 Cal. 4th at 678. The trial court should be reversed because it misapplied both the HCMC and the California Penal Code in reaching its decision, and Grandlands has not actually violated either statute. Questions of statutory interpretation are reviewed *de novo* and the Court of Appeal must ensure that the

trial court's factual determinations, whether express or implied, are supported by substantial evidence. *Costa Mesa City Employees' Assn.*, 209 Cal. App. 4th at 306; *Yu*, 196 Cal. App. 4th at 787 (emphasis added); *see Bullock*, 221 Cal. App. 3d at 1094 ("[W]hen the matter is solely a question of a violation of law the standard of review is not abuse of discretion but whether statutory or constitutional law was correctly interpreted and applied by the trial court.")

The trial court found that Grandlands was not likely to prevail on two of its claims against the Department—however, based on the plain language of the HCMC and the California Penal Code, it is clear that Grandlands did not violate either law, therefore, there could not have been substantial evidence to support the trial court's findings and its conclusions were arbitrary and capricious. A careful reading of the statutes shows Grandlands has *at least* a possibility of succeeding on all of its claims against the Department and thus, is entitled to injunctive relief.

In *Butt*, a plaintiff group of parents whose children attended California public schools filed a class action injunction against the State to compel the State to fund the district's last six weeks of school. The district ran out of money and announced that without State funding it would be forced to close its doors and students would miss the last six weeks of school, contrary to the Constitutional guarantee for public education under California law. *Id.* The State argued that the situation had been avoidable and the principle of local control over the education system required that the district's students absorb the consequences of the district's mismanagement. *Id.* at 688. The California Supreme Court agreed with the trial court, which expressly found that there was a some possibility that plaintiffs would succeed on the merits of their case because the plaintiffs presented significant evidence that they would experience irreparable harm if the state did not intervene, and that the state had a duty to ensure the continued public education of the students. *Id.* at 678–79, 688. The Court based that decision on the plain language of the

California Constitution, which guarantees basic equality in education, in addition to the imbalance in harms that would result. *Id.* at 692.

Similar to the plain language requirement that the State act in *Butt*, here, the plain language of both the HCMC section 63.14 and the California Penal Code is key. A plain reading of both statutes illustrates that Grandlands *did not* violate either law, and thus Grandlands has a strong possibility of succeeding on the merits of its challenge at trial.

1. Grandlands did not violate section 63.14 of the Hobbs County Municipal Code.

The trial court analyzed whether Grandlands was likely to prevail against the Department at trial, where it would argue that the Department acted arbitrarily and capriciously in finding that Grandlands violated HCMC section 63.14. The trial court correctly found that Grandlands would prevail on two of its claims, but erred in its analysis of section (iii) because it misread the plain language of the statute. Accordingly, the trial court abused its discretion and should be reversed.

a. Section 63.14 does not require that Grandlands *provide* medical records, only that they are *available*.

The trial court was correct when it found no factual basis for finding a violation of section (i), based on the language of the statute. Mem. Op. 13:21. Statutory interpretation must begin with the plain language of the Ordinance. *In re Dannenberg*, 34 Cal. 4th 1061, 1081 (2005). The Court should give meaning to each word in statute and construe those words to give effect to the purpose of the law. *See MacIsaac v. Waste Mgmt. Collection & Recycling, Inc.*, 134 Cal. App. 4th 1076, 1082–83 (2005). HCMC section 63.14 reads, in part: "Permit applicants and permit holders must meet the following conditions: (i.) *Make available* medical records and health certificates for all animals, including proof [that the elephants do not have tuberculosis]."

HCMC § 63.14(A)(i) (emphasis added). The statute uses the words *make available*—it does not state that Grandlands *must provide* copies to the Department with its permit application. The County could have used other language making it mandatory for Grandlands to provide it with copies of the records but it did not—the rules of statutory construction require that the court not read language into the statute that does not exist. *See MacIsaac*, 134 Cal. App. 4th 1082–83. Therefore, the trial court properly found Grandlands was likely to succeed on this claim.

b. Grandlands did not violate the statute's vague requirements for transportation.

The trial court also correctly found that the Department was not likely to demonstrate that Grandlands had violated HCMC section 63.14 (ii) because the language within the statute does not specify whether any transportation containers are included in the restriction. Further support for the court's finding is that the statute only says that Grandlands must utilize *appropriate* transfer vehicles and cages. HCMC § 63.14. The statute does not say what it means for transfer vehicles and cages to be appropriate or by what standard the court would begin to measure this. Accordingly, Grandlands is likely to succeed in its challenge to the Department's findings with regard to section 63.14 (ii).

c. Grandlands has not had any permits revoked.

Though the trial court was correct in finding Grandlands was likely to prevail on sections (i) and (ii) of HCMC section 63.14, it erred in its analysis of section (iii). There is not substantial evidence that indicates that Grandlands violated the disclosure requirements of the statute, and the trial court's determination was arbitrary and capricious. As this is a matter of statutory interpretation, this Court must review the trial court's interpretations of law *de novo*, and in so doing this Court should find that Grandlands did not violate the plain language of section (iii).

As mentioned above, statutory interpretation must begin with the plain language of the statute. *In re Dannenberg*, 34 Cal. 4th 1081.

HCMC section 63.14 (iii) says Grandlands must disclose whether it has had any permits *revoked* and the reason for such *revocation*. The trial court read beyond the plain meaning of the term "revocation" to expand the meaning to also include whether a local government had ever declined to *reissue* Grandlands a permit. This expansion of the terms *revoke* and *revocation* to include *reissuing*, without any express statutory language or evidence of legislative intent, is a violation of the basic tenets of statutory construction:

> Because statutory language generally provide[s] the most reliable indicator of that intent, we turn to the words themselves, giving them their "usual and ordinary meanings" and construing them in context . . . If the language contains no ambiguity, we presume the [legislative body] meant what it said, and the plain meaning of the statute governs.
>
> *In re Dannenberg*, 34 Cal. 4th at 1081.

The County was free to write this statute as it pleased—if it had intended for exhibitions to disclose any revocations or instances in which a permit had not been reissued, it was free to do write the statute to reflect that desire. Furthermore, there are many reasons why a municipal government might not reissue a permit that have nothing to do with the conditions of the animals—perhaps the exhibition has outgrown the County's facilities or the County has issued a blanket policy against live animal exhibitions. There is no indication in the language of HCMC section 63.14 that the Department is concerned with the myriad reasons that a permit might not be *reissued*—rather it clearly only involves conscious decisions to *revoke* an existing permit. Absent any indication that was the intention of the County to include issuance in this section of the statute, the trial court's interpretation cannot stand. The trial court erred when it considered reissuance and revocation to be analogous and thus, this Court should find that based on the plain

language of HCMC section 63.14, Grandlands has a possibility of succeeding on this claim at trial.

2. Grandlands did not violate the California Penal Code.

The trial court correctly determined that Grandlands had not violated California Penal Code section 596.5, the animal abuse section of the statute, but was incorrect when it found Grandlands had likely violated section 597(t)'s confinement requirements. Section 597(t) specifically exempts from its space and tethering requirements any elephants that are in transit, in a vehicle, or in the immediate control of a person. Cal. Penal Code § 597(t). During the hearing before the Department, Grandlands stipulated that the facts surrounding the transportation vehicles and duration in the 2011 West Edmond Report were *generally* true, but the overall conclusions are in dispute and the report itself is at least two years old, meaning that it is unlikely that all the circumstances are exactly the same now. Mem. Op. 6:28–7:4.

Nevertheless, the transportation container size and duration of transit and/or tethering are the very same aspects of elephant care that are exempted from section 597(t). The trial court cited the duration of the time the elephants are in their transportation containers as part of the violation of section 597(t), however the periods of time in the West Edmond report specifically reference the amount of time spent travelling between destinations, which is exempt under the statute. *See* Exhibit 1. The trial court also cited the size of the transportation cars as being inadequate and thus in violation of the statute. However this was also incorrect— 597(t) exempts any periods in which the elephants are in transit or in a vehicle. Cal. Penal Code § 597(t). As the transportation containers cited in the West Edmonds Report are often *in transit*, and might be considered vehicles (the report calls them "transportation cars," *see* Exhibit 1), it was an error to determine that Grandlands violated section 597(t). At the very least it is

ambiguous whether the transportation cars themselves are considered transportation vehicles and the trial court should have allowed Grandlands to present evidence as to why the statute should be read this way, as is customary when statutory terms are ambiguous, rather than simply assuming the statute incorporates a meaning other than what the plain language dictates. *In re Dannenberg*, 34 Cal. 4th at 1081 (If "the statutory language is susceptible of more than one reasonable construction, we can look to legislative history and to rules or maxims of construction . . .") (citation omitted).

Considering the plain language of the HCMC and California Penal Code section 597, the facts here do not show that there is substantial evidence that Grandlands has violated either statute. Therefore, Grandlands is likely to prevail on these claims at trial and the trial court's decision was arbitrary and capricious. Given the disproportionate harm the denial of the injunction inflicts upon Grandlands and the strong possibility that it would succeed at trial, this Court should find that the trial court abused its discretion and grant Grandlands' motion for a preliminary injunction.

PRAYER FOR RELIEF

For the above reasons, the trial court's order denying the Petitioners' Motion for Leave to Intervene should be **UPHELD** and the order denying Grandlands' Motion for Preliminry Injunction should be **REVERSED**.

Respectfully submitted,

Team 20
Counsel for Appellant
January 17, 2014