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,

vs.

HOBBS COUNTY ANIMAL SAFETY DEPARTMENT,

Respondent,

CHRIS SAMUELSON & MARA'S HOPE WILDLIFE SANCTUARY,

Appellant

BRIEF OF HOBBS' COUNTY ANIMAL SAFETY DEPARTMENT, RESPONDENT AND CRIS SAMUELSON AND MARA'S HOPE WILDLIFE SANCTUARY, APPELLANT

Appeal from the Superior Court of Hobbs County
Case No. CV-2014-TCS-81013 (EMH)
The Honorable Ellis M. Heiberg

Team Number 22

STATEMENT OF THE ISSUES

1. Did the Hobbs County Animal Safety Department act within its discretion when it revoked the Circus' Performing Animal Permit after learning that the Circus confined its elephants in inadequate space and forced them to perform rigorous routines while injured?

2. Did Chris Samuelson and Mara's Hope Wildlife Sanctuary meet the statutory requirements of § 387 of the California Code of Civil Procedure which governs party intervention, and therefore did the superior court abuse its discretion when it denied Samuelson and Mara's Hope's motion to intervene?

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STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On October 11, 2013, Grandlands Circus ("Circus") filed suit for mandamus and money damages with the Superior Court. Memorandum Opinion, *Grandlands Circus, Inc. v. Hobbs County Animal Safety Dept.*, No. CV-2014-TCS-81013, 1 (Superior Ct. Cal. 2014) ("Trial"). The Circus sought mandamus in order to have its Performing Animal Permit re-issued.

Simultaneously, the Circus filed for a preliminary mandatory injunction pending the outcome of the mandamus and damages proceedings. *Id*. The injunction would compel the same action as the requested mandamus: re-issuance of the permit. *Id*.

In response to these motions, Chris Samuelson and Mara's Hope Wildlife Sanctuary filed a motion for leave to file a complaint in intervention ("Motion") in this action.

On October 28, 2013, the Superior Court heard argument on the Circus' motion for injunctive relief, and Samuelson and Mara's Hope's motion to intervene. Trial 3. The Superior court denied both motions. *Id*.

The Circus and the intervenors appealed. This Court ordered briefing of both parties' appeals.

STATEMENT OF FACTS

On October 7, 2013, the Department revoked the Circus' Performing Animal Permit. Trial 1. The Department revoked the permit after learning that the Circus forces arthritic elephants to perform painful routines and travel for more than 24 hours at a stretch and confines its elephants in small spaces. *Id*. at 5-6. The Circus now demands that this court enjoin the Department from enforcing its decision to revoke the permit – in effect, the Circus demands to have its permit reinstated.

Chris Samuelson ("Samuelson") and Mara's Hope Wildlife Sanctuary ("Mara's Hope") brought the Circus' treatment of its elephants to the attention of the Department. *Id*. Samuelson has worked as an animal caregiver since 1992, and co-founded Mara's Hope in 1997. He now serves as animal caregiver and Director of Education and Outreach for Mara's Hope. *Id*. at 4.

Mara's Hope is a privately funded organization that cares for animals that have been discarded or abandoned when a facility is shut down. *Id*. Mara's Hope's public mission is "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*.

Through a Freedom of Information Act request, one of Mara's Hope's employees obtained a veterinarian's report documenting the Circus' treatment of its elephants. *Id*. at 5. This report was prepared for West Edmond Animal Care and Control during the Circus' 2011 visit to West Edmond. *Id*.

The report revealed that the Circus kept the elephants tethered for the duration of their 17-day stay in West Edmond. REPORT REGARDING CONDITION OF GRANDLANDS CIRCUS PERFORMING ELEPHANTS IN WEST EDMOND, TEXAS (2011) ("Report"). The elephants were only un-tethered for performances. *Id*. Even when they were un-tethered, the elephants were uncomfortable. *See id*. The veterinarian determined that the three oldest elephants suffered from arthritis and reported that they were visibly in pain during performances. *Id*. In addition to arthritis, one of the elephants suffered from "chronic severe nail bed abscesses." *Id*. Still all the elephants were forced to perform. *Id*.

After discovering this information, Samuelson filed an administrative complaint against the Circus on his own behalf and on behalf of Mara's Hope on September 24,

2013. Trial 6. Samuelson and Mara's Hope charged that the Circus had violated Hobbs County's ordinance on Performing Animal Permits and demanded that the Department revoke the circus' permit. *Id*. They attached the veterinarian's report to their complaint. *Id*.

On September 27, the Department held an evidentiary hearing to determine whether the Circus' permit should be revoked. *Id*. Samuelson attended the hearing. *Id*. In the hearing, the Circus conceded the information in the report about the space that elephants were confined in, the time they were confined during the visit to West Edmond, and the length of time they traveled. *Id* at 7. The Circus also offered not to perform the three oldest elephants in Hobbs County but refused to make any other concessions. *Id*.

Following the hearing, the Department revoked the Circus' permit leading to this litigation. *Id*.

SUMMARY OF ARGUMENT

Injunction

The Superior Court acted within its discretion when it denied the Circus' motion for a preliminary injunction.

Preliminary injunction is an extraordinary remedy that should be granted only when the moving party is likely to succeed on the merits at trial and will suffer irreparable harm in the interim if the injunction is not granted. Neither the likelihood of success requirement, nor the irreparable harm requirement is met in this case, so the Superior Court properly denied the Circus' motion for injunction.

The likelihood of success requirement is not met because the Department will likely prevail at trial, not the Circus. The Department acted appropriately when it revoked the Circus' permit. Under Hobbs County Municipal Code § 63.14 the Department must

revoke a Performing Animal Permit if the permit holder violates California animal cruelty law. So, the Department was compelled to revoke the Circus' permit when it learned that the Circus confines its elephants in inadequate space and forces them to perform while injured. The Circus' actions violate California animal cruelty law, which requires that owners who keep their animals confined provide them with adequate exercise space and prohibits all people from overworking animals. Confined Animals, Cal. Penal Code § 597t (2013), Cal. Penal Code § 597(b) (2012). The Department acted reasonably based on its legislative mandate, so the Circus is unlikely to prevail on the merits.

Even if the Circus were likely to prevail on the merits, a preliminary injunction would not be appropriate in this case because there is no need to prevent potential irreparable harm to the Circus. The Circus only stands to suffer a temporary economic setback while litigation is pending. In cases where the plaintiff will only suffer moderate economic harm, the plaintiff can be made whole by money damages following a judgment in his favor at trial. In such cases, there is no need to issue an injunction because the harm the plaintiff faces is not irreparable.

Intervention

The Respondents are entitled to intervene in this action according to case law interpreting § 387 of the California Code of Civil Procedure. This rule governs both permissive intervention under § 387(a) and mandatory intervention under § 387(b). Respondents meet the requirements of both subsections of the rule, and therefore the superior court wrongly denied the motion for leave to intervene.

The requirements for permissive intervention under § 387(a) are met because the motion is timely and because Samuelson and Mara's Hope both have a direct and

immediate interest in the matter in litigation—namely, the enforcement of the Hobbs County Ordinance and the outcome of ensuring legal treatment for wildlife held in captivity. The intervention of either party would not expand the issues in the case, or introduce additional facts to be litigated. The reasons for Respondents to intervene override any objections made by the Circus, which are merely speculative and tangential. Allowing Respondents to intervene would simply ensure that issues important to the public and the organization responsible for advocating on behalf of wildlife are given full consideration. It does this without creating duplicitous action or delay.

Additionally, Respondents possess the unconditional right to intervene in this suit under § 387(b). Samuelson has demonstrated his unique interest in the outcome of this case by working for over twenty years on the protection of wildlife in and around Hobbs County. His profession depends on the enforcement of the Ordinance, and the outcome of this litigation will in turn directly impede his livelihood. Mara's Hope also has the requisite interest in the case because it is a privately funded organization comprised of members donating money with the expectation that Mara's Hope will intervene in legal matters such as this. This is one of the primary purposes of the organization's existence. The Department will not suffer as a result of the litigation, but Mara's Hope will suffer adverse consequences if the Circus wins injunctive relief because it will be unable to carry on its essential mission.

The superior court only considered permissive intervention and limited its analysis to unfounded, illogical arguments. Respondents fulfilled each requirement of § 387(a) and (b), and the statutory purpose of intervention far outweighs the concerns of the Circus. The just and proper resolution of this issue is to allow Respondents to intervene.

ARGUMENT

Issue 1: Injunction

The Superior Court did not abuse its discretion in denying the Circus' request for a preliminary injunction.

The Circus bears the burden of showing that the Superior Court abused its discretion. "The party challenging an order granting or denying a preliminary injunction has the burden of making a clear showing of an abuse of discretion." *Jay Bharat, Inc. v. Minidis*, 84 Cal. Rptr. 3d 267, 272 (Cal. Ct. App. 2008) (internal citations and quotations omitted).

Here, there was no abuse of discretion, because the Superior Court acted reasonably and its opinion was firmly based on the evidence presented. "An abuse of discretion will be found only where the trial court's decision exceeds the bounds of reason or contravenes the uncontradicted evidence." *Id.* (internal citations and quotations omitted).

The trial court properly applied the two factors for deciding whether to issue a preliminary injunction.

"The first [factor] is the likelihood that the plaintiff will prevail on the merits at trial." *Best Friends Animal Soc. v. Macerich Westside Pavilion Property LLC*, 193 Cal. App. 4th 168, (Cal. Ct. App. 2011). Here, the Department will prevail on the merits because it properly revoked the Circus' permit after discovering that the Circus had violated state animal cruelty law.

"The second [factor] is the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued." *Id*. The preliminary injunction should only be

issued if it appears that the plaintiff will otherwise suffer irreparable harm. *Schwartz v. Arata*, 188 P. 313, 315 (Dist. Ct. App. 1920) . Here, the second factor also weighs against issuing the injunction because even in the unlikely case that the circus prevails on the merits, it will only suffer economic harm. *Id*. Any economic loss the Circus suffers while litigation is pending could be recovered in an action for damages, so it is not irreparable. *See id.*

I. The Department Acted Within its Discretion When it Revoked the Circus's Permit, So the Department Will Succeed on the Merits and the Injunction Should Be Denied.

A. The Department properly revoked the Circus' Permit for violations of California animal cruelty laws.

The Hobbs County Animal Safety Department is required to revoke a Performing Animal Permit ("Permit") whenever it determines that the permit-holder does not comply with state laws protecting animals – even if the permit holder has never been convicted of violating the state law. Hobbs County Municipal Code § 63.14(B)(iv) and Hobbs County Municipal Code § 63.14(A)(vii). So, when the Department determined that the Circus confines its elephants in inadequate space and continues to perform three arthritic elephants, it was obliged to revoke the Circus' permit.

i. The plain meaning of the statute compels the Department to revoke permits from violators of state animal cruelty law even if the offense has not been prosecuted.

The plain language of Hobbs County's Municipal Code compels the Department to revoke a Performing Animal Permit if the permit-holder violates state laws protecting animals. "[P]ermit holders must . . . be in compliance with the requirements and prohibitions set forth in the California Penal Code relating to animals . . . irrespective of

whether the applicant or permit holder has ever been charged with any criminal violation of such statutes." Hobbs County Municipal Code § 63.14(A)(vii).

The Code specifies that permit holders must comply with the provisions in Section 63.14(A) – so, when the Department learns of a violation it cannot allow the permit holder to continue performing. The Department, then, cannot allow the Circus to hold a permit if the Department learns that the Circus violates state animal law.

ii. The Circus violates state animal law because it confines its elephants without access to an adequate exercise area.

California law requires "[e]very person who keeps an animal confined in an enclosed area [to] provide it with an adequate exercise area." Confined Animals, Cal. Penal Code § 597t (2013). The Circus does not provide its elephants with adequate space. Not only are the elephants confined in inadequate spaces for long periods of time, they are further confined because they are kept tethered in those spaces. Report.

Elephants require a large amount of space. The American Zoo and Aquarium Association requires that members provide each elephant with 400 square feet of space. *Report*. During their seventeen-day visit to West Edmond, the circus kept the elephants confined in their transport cars which – even when the elephant is un-tethered – provide only 350 square feet per elephant. *Id*. The circus only allowed the elephants out of confinement to prepare for performances, perform, and cool down after performances. *Id*. So, the elephants were confined for more than two weeks in space that the American Zoo and Aquarium Association considers inadequate.

Not only were the elephants confined in an inadequate space during the duration of their two-and-a-half week visit to West Edmond, their movement was further restricted: the Circus kept them tethered within the transport cars, which were already too

small. *Id*. Even if the tethers were removed, the space provided by the Circus would have been inadequate. Adding tethers could only further restrict their range of motion.

This Circus confined the elephants in inadequate space and imposed this confinement for extended periods. The elephants were confined in the small cars and tethered for the duration of the 30 hour trip to West Edmond. *Id*.

The brief periods of forced exercise that the Circus allowed the elephants for performances does not alleviate the discomfort they suffered while confined. They were confined for long periods without any respite and only allowed out for forced activities – warm up, performance, and cool down. *Id*. The circus imprisoned the elephants – only allowing them adequate space for the brief periods during which un-tethering the elephants served the ends of the Circus.

Even if the Circus had rested the three oldest elephants, as it offered to do, this violation would not be remedied. The Circus does not provide adequate space for the elephants, so even when the elephants are not performing, they suffer in conditions that violate California animal cruelty law.

iii. The Circus violates state animal law because it overworks its elephants, causing long-term health problems.

In addition to the space requirements, California law provides that "[e]very person who . . . overworks . . . any animal" is "guilty of a crime." Cal. Penal Code § 597(b) (2012). The Circus made the elephants work through substantial pain rather than allowing them to recover from injuries. Report. By an objective standard, the Circus overworked the elephants – it should have retired three of the elephants that suffered from chronic pain.

Instead, the Circus made the animals perform for two-and-a-half weeks even though three of the elephants suffer from arthritis and should never be required to perform again. *Id*. In arthritic elephants, the joint cartilage is usually destroyed so that bone rubs against bone. *Id*. The condition only gets worse over time, so the elephants will continue to suffer as long as they travel and perform with the Circus. *See id*. In addition to arthritis, one of the elephants had "chronic severe nail bed abscesses." *Id*. The three arthritic were in visible pain when they performed. Despite their pain, the Circus put them through "forced, non-species typical behaviors that include rigorous and repetitive activities." *Id.*

Not only did the elephants have to perform injured, they had to make long journeys in discomfort as well. Immediately before arriving in West Edmond for performances, the elephants traveled thirty hours straight in their pained condition. *Id.* All five of the elephants were visibly uncomfortable when they arrived and the three older elephants were visibly pained by their performances. *Id.*

Courts use an objective standard to interpret what it means to overwork an animal. *See People v. Speegle*, 53 Cal. App. 4th 1405 (Cal. Ct. App. 1997). Surely, forcing arthritic animals with broken nails to travel for thirty hours in a box-car before performing "forced, non-species typical behaviors [including] rigorous and repetitive activities" constitutes overwork by an objective standard.

Even if the only the two younger elephants were forced to perform in Hobbs County, the Department would be compelled to revoke the Circus' permit. Under the Hobbs County ordinance, permit holders must "be in compliance" with California animal cruelty law. Hobbs County Municipal Code § 63.14(A)(vii). A circus that routinely overworks arthritic elephants can hardly be said to be in compliance with California law.

B. **The Department must be allowed to revoke permits held by violators of animal cruelty law, even if the violators have not been convicted of cruelty in court.**

The Department must be allowed to revoke permits even before the permit-holder is convicted of animal cruelty. If the Department could not revoke permits prior to conviction, the Department would be forced to implicitly condone animal abuse because animal abuse is very rarely prosecuted. As the code is written it encourages permitees to treat performing animals humanely – because they run the risk of losing their permit for arguable violations of anti-cruelty law. Granting an injunction in this case would undermine this salutary purpose of the Hobbs County ordinance.

Hobbs County's permit regulation allows the Department to act as a safety net, backing up poor enforcement of animal cruelty law. This is an important purpose because animal cruelty is rarely prosecuted. Jennifer H. Rackstraw, *Reaching for Justice: An Analysis of Self-Help Prosecution for Animal Crimes*, 9 ANIMAL LAW 243, 246 (2003). Animal cruelty is simply not a priority for most prosecutors' offices.

Several recent studies show that animal cruelty is rarely prosecuted – even after a complaint; that even when prosecutors choose to bring a case they struggle to convict; and that penalties for convictions of animal cruelty are typically light. *Id*. In one study, more than 80,000 complaints about animal abuse led to less than 200 convictions. *Id*.

Given the extent of under-enforcement, Hobbs County's permitting rules serve a valuable purpose. They encourage permitees to avoid even the appearance of impropriety. Permit holders know that they can have their permits revoked without criminal process if they abuse animals. This encourages them to avoid any activities that could be interpreted as abuse by the Department.

II. The Department May Suffer Substantial Harm If an Injunction is Granted but the Circus Will Not Suffer Irreparable Harm if the Preliminary Injunction is Not Granted, So the Injunction Should be Denied.

A preliminary injunction is an extraordinary remedy to be issued with "great caution" and only where it appears that the plaintiff will suffer irreparable injury if the injunction is not issued. *Schwartz*, 188 P. 315. In order to win a preliminary injunction, the plaintiff – in this case, the Circus – must show that it is likely to succeed on the merits at trial, and that it would suffer irreparable harm before the case is decided if an injunction is not issued.

A. The Department and all local licensing bodies will suffer substantial harm if this court allows the Circus to avoid reasonable regulation for the duration of potentially lengthy litigation.

Allowing the Circus to enjoin permit revocation in this case would undermine the authority of local governments throughout the state of California. If the Department cannot withdraw the permit now it could also be forced to grant a permit to the Circus during the next permitting cycle. In the end, the Department – and similar Departments all over the state – could be prevented from enforcing law for years while litigation slowly plays out.

If the Department cannot revoke the Circus' permit it cannot deny the Circus' next application either. The grounds for revoking and denying permits in the Hobbs County Municipal Code are identical: "permit applicants" and "permit holders" are both governed by all of the restrictions in section A. So, the Department might well be compelled to allow the Circus to continue to perform until litigation is resolved in favor of the Department.

This would do considerable harm to the Department, other similar departments, and the community. If licensees can enjoin enforcement of regulations while litigation is pending they can flout the law while litigation is pending.

Not only would this undermine the efficacy of local regulatory agencies, it would encourage private parties to draw out litigation against the government as long as possible. The longer the litigation goes on, the longer they can maintain their licenses.

In effect, an injunction in this case would give the Circus license to break the law with impunity. This court should not set that precedent.

B. **The Circus will not suffer irreparable harm because permit revocation is temporary and will only cause economic harm to the Circus.**

Irreparable harm occurs when the plaintiff cannot be made whole due to the injuries suffered while awaiting a final judgment. Douglas Laycock, *The Death of the Irreparable Injury Rule*, 104 Harv. Law Rev. 687, 703-714 (1990). Injunctions are appropriate when the plaintiff stands to lose trade secrets, patents and copyright infringement – where the harm can be truly irreparable. *Id.* In those cases, once the genie is out of the bottle there is no way to restore the status quo ante. Injunction makes sense in such cases: we should protect property that can never be reclaimed once it is misappropriated. Once a trade secret becomes public, it cannot be made secret again.

Here, the situation here is quite different. The Circus has not presented evidence that it will suffer anything other than financial setbacks in the absence of an injunction. Where the plaintiff only stands to suffer economic harm, and the defendant is "able to respond in damages for any injury which the plaintiff might suffer," there is no potential for irreparable injury. *Schwartz* 188 P. 315. This is a classic case for damages, not for an injunction. The Circus only stands to suffer economic injuries for which it can be made whole in the future.

C. **The Department will prevail on the merits, so a preliminary injunction is inappropriate even if the Circus might suffer harm in the interim.**

In deciding whether to issue an injunction, courts do not consider the irreparable harm factor in a vacuum. Rather, they consider it in conjunction with the 'likelihood of success' factor and employ a "sliding scale." *Earth Island Institute v. U.S. Forest Service,* 351 F.3d 1291, 1298 (9th Cir., 2003) . Under this analysis, "the required degree of irreparable harm increases as the probability of success decreases. If the plaintiff shows no chance of success on the merits, however, the injunction should not issue." *Id*. (internal citations and quotations omitted); *cf IT Corp. v. County of Imperial*, 672 P.2d 121, 127 (Cal. 1983). Here, the Circus is very unlikely to prevail on the merits. To do so, the Circus has the burden of showing that the Superior Court abused its discretion by allowing a local government agency to revoke a permit. Such an outcome is highly unlikely, especially here because there was substantial uncontraverted evidence to support the Department's decision. Since the odds that the Circus will succeed on the merits are very low, this court should require a very strong showing that irreparable harm would result in the absence of injunction.

Issue 2: Intervention

An order denying intervention may be appealed if the order "finally and adversely determines the right of the moving party to proceed in the action." *Noya v. A.W. Coulter Trucking*, 143 Cal. App. 4th 838, 841 (2006); *Hodge v. Kirkpatrick Develop.*, 130 Cal. App. 4th 540, 547 (2005). Here, Respondents were denied intervention finally and adversely, and without action by this Court they will be unable to proceed in the litigated action.

Appellants moved for intervention under California Code of Civil Procedure § 387 without specifying if it should be granted permissively or as a matter of right. Trial 3. The standard of review for denial of intervention as of right under §387(b) is *de novo*. *See Redevelopment Agency v. Commission on State Mandates*, 43 Cal. App. 4th 1188, 1197-98 (1996). If the Court finds that Appellants satisfied all the requirements of §387(b), then the superior court erred by issuing a denial. Appeals from the denial of "permissive" intervention motions under § 387(a) are reviewed under an abuse of discretion standard. *See Siena Court Homeowners Ass'n v. Green Valley Corp.*, 164 Cal. App. 4th 1416, 1428 (2008). Therefore, the Court should apply an "abuse of discretion" standard of review to the denial of Respondents' permissive intervention, and determine whether the superior court ruled in accordance with the applicable legal principles governing intervention. *See City of Sacramento v. Drew*, 207 Cal.App.3d 1287, 1297-98 (1989); *Bailey v. Taaffe*, 29 Cal., 422, 424 (1866).

Rule 24(a) of the Federal Rules of Civil Procedure governs intervention and is almost identical to the amended version of California's § 387(b). Federal courts have taken to a more liberal interpretation in terms of the type of interest, the burden of showing inadequate representation, and the degree of impairment required to warrant mandatory intervention. *See, Nuesse v. Camp*, 385 F. 2d 694, 699-702 (D.C. Cir. 1967); *Caterino v. Barry*, 922 F.2d 37, 42 n.4 (1990). This Court should follow the more liberal interpretation of the rule governing intervention because California law is not materially different than federal law.

I. Respondents Should be Granted Motion for Leave to Intervene Under § 387

Respondents, jointly and separately, are challenging the trial court's denial of their motion for leave to intervene ("Motion") in the case between the Circus and the

Department. The superior court denied the Motion without addressing mandatory intervention in § 387(b) of the California Code of Civil Procedure, which "confers an unconditional right to intervene." The unconditional right must be recognized if the movant "claims an interest relating to the property or transaction which is the subject of the action," and (2) "the disposition of the action may as a practical matter impair or impede that person's ability to protect that interest." The exception to this right is if the movant's interest "is adequately represented by existing parties." *Id.* The lower court irresponsibly dismissed the possibility of a right to intervene under § 387(b), and instead limited its analysis to Section 387(a), which states in relevant part:

> "Upon timely application, 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."

§ 387(a). For permissive intervention, movants are subject to judicial discretion and have the burden to submit a timely application that shows (1) where the proposed intervenors have a direct interest in the subject matter in litigation or its outcome, (2) that the intervention will not enlarge the issues in the litigation, and (3) the reasons for the intervention outweigh any opposition by the original parties. *Lindelli v. Town of San Anselmo*, 139 Cal. App. 4th 1499, 1504 (2006); *Truck Ins. Exchange v. Superior Court*, 60 Cal. App. 4th 342, 346 (1997).

When the right to intervene is not made unconditional by § 387(b), courts are required to exercise discretion to grant motions for permissive intervention and rely upon the facts of each particular case. *Simpson Redwood*, 196 Cal. App. 3d 1192, 1200. Ultimately, when considering permissive intervention under § 387(a), judicial discretion should be liberally construed in favor of intervention *City of Malibu v. Cal. Coastal Comm'n,*, 128 Cal. App. 4th 897, 902 (2005); *Simpson Redwood*, 196 Cal. App. 3d at

1200. In response to Respondents' Motion, the superior court not only overlooked the possibility for intervention as a matter of right, but also failed to liberally sway in favor intervention. For these reasons, Respondents appeal to this Court.

A. Both Samuelson and Mara's Hope Should be Permitted to Intervene Because They Meet Every Requirement of § 387(a)

A motion for intervention is timely if it is made "within a *reasonable time"* and the intervenor is not guilty of an unreasonable delay following knowledge of the suit. *Sanders v. Pac. Gas & Elec*., 53 Cal. App. 3d 661, 668 (1975). Movants Samuelson and Mara's Hope fully briefed and filed their petition on the same day that the Circus filed their motion for injunctive relief. Memorandum Opinion, 3:4, Grandlands Circus, Inc. v. Hobbs County Animal Safety Dept., No. 13-9876. Since the motion to intervene was filed early in the proceedings, and no party contested the timeliness of the motion, then the Respondents' motion is timely.

iv. Samuelson and Mara each have a direct and significant interest in matter in litigation—granting or revoking a permit to the Circus—and will each be immediately affected by the outcome of this case.

To support permissive intervention, an intervenor's interest must be direct rather than consequential, and it must be an interest that is capable of determination by the action being litigated. *San Francisco*, 128 Cal. App. 4th at 1037. This requirement means that the interest must be so direct and immediate that the moving party "will either gain or lose by the direct legal operation and effect of the judgment." *Jersey Maid Milk Products Co. v. Brock*, 13 Cal. 2d 661, 663 (1939). The purpose of intervention is to protect the interests of those who may be affected by judgment and to obviate delay and multiplicity of actions. *Baroldi v. Denni*, 197 Cal. App. 4th 472, 478 (1961). Movants are not required to show a specific legal, equitable, or pecuniary interest. *People ex rel.*

Rominger v. County of Trinity, 147 Cal. App. 3d 655, 661 (1983). Additionally, it is adequate for movants to show that there is "substantial probability" that the litigation will affect the direct interest—the effect need not be "inevitable." *Timberidge Enterps., Inc. v. City of Santa Rosa*, 86 Cal. App. 3d 873, 881 (1978).

v. Samuelson individually possesses the requisite interest

In a dispute over the enactment of a land-use ordinance, the court in *Heather Point v. County of Santa Cruz* permitted the intervention of a private couple whose home would be affected by the outcome of the litigation. Cal. App. Unpub., LEXIS 3002 (2013). In that case, the court found the requisite interest because the couple wished "to preserve the aesthetic, privacy and economic values of their property." *Heather Point Partners v Cty. of Santa Cruz*, 2011 CA App. Ct. Briefs LEXIS 5247, 21-22. Additionally, the couple was allowed to intervene because they maintained a "strong interest in preservation of the integrity of County land use regulations." *Id.*

Like the couple in *Heather Point*, Samuelson also has the requisite interest in the outcome of the litigation between the Circus and the Department. This is predicated on the fact that Samuelson is a concerned citizen of Hobbs County where the alleged animal abuse that violated the Department's ordinance is occurring. Trial 4. Analogous to the couple in *Heather Point* who intervened in the enforcement of land use regulations, Samuelson maintains a strong interest in the preservation of the integrity of Hobbs County ordinances pertaining to the protection of animals, and has clearly expressed his interest in the caregiving and protection of wild animals. *Id.* Samuelson has worked as an animal caretaker for over twenty years, long before he served as Director of Education and Outreach at Mara's Hope Wildlife Sanctuary. *Id.* Samuelson is responsible for uncovering the alleged violation of the Ordinance by the Circus, conducted research into

the violations in West Edmond, and took personal initiative to file an administrative complaint. *Id.* at 5, 6. In addition to Mara's Hope, Samuelson signed the complaint with his name, creating a separate individual interest in the matter. *Id.* at 6.

The Circus objects to Samuelson's intervention because he has never been to the circus and "has no particular interest in the issues presented in this litigation or in seeing the Circus's permit revoked." *Id*. at 8. Clearly this is inaccurate, given that Samuelson has dedicated his life's work towards the issue at the heart of this case. Similarly, the couple's petition to intervene in *Heather Point* was objected to on grounds that the interveners only had generalized concerns. However, this Court should follow the precedent set in *Heather Point* that granted permissive intervention to private citizens with genuine interest in the enforcement of ordinances and who will be directly affected by the outcome of litigation. Samuelson has a direct and personal interest in the outcome of the litigation. Specifically, Samuelson will be directly affected if the Ordinance is enforced, because he will have the opportunity to care for the elephants at risk. If the Ordinance is not enforced and the Circus is granted injunctive relief, then Samuelson will not be able to do his job or rely on the integrity on the Department to protect against the unjust treatment of animals in Hobbs County.

vi. Mara's Hope has sufficient interest in the subject matter in litigation, that is, whether the Court enforces the Ordinance.

Mara's Hope mission statement and purpose of the organization establishes its requisite interest. Regarding an action involving school desegregation, the court in *Bustop v. Superior Court* found that a nonprofit organization facially satisfied the interest requirement of § 387(a). 69 Cal. App. 3d 66, 71 (1977). The nonprofit was composed primarily of white parents opposed to mandatory busing of students in their school

district. *Id*. The court found the nonprofit had requisite interest in the matter in litigation because relocating students away from the proximity of their parents would have "a direct social, educational and economic impact on the students." *Id.* The court ultimately concluded that "[i]n the interest of fairness and to insure the maximum involvement by all responsible interested and affected persons, we believe that the proper exercise of discretion would have been to permit [Appellants], representing as [they] do a proper and legitimate interest, to participate in the lawsuit." *Id.* at 73 (The court also concluded that the intervention by the parent's organization would not lead to a proliferation of subsequent intervenors, and that the intervention would not necessitate any duplication of evidence or repetition of previously held proceedings.) *See also Simpson Redwood*, 196 Cal. App. 3d at 1192 (granting permissive intervention to a conservation group with the direct interest in maintaining the conservation deed restriction it had negotiated with the State).

The interests in this case are also similar to those in *Rominger v. County of Trinity,* where the Sierra Club was permitted to intervene alongside Trinity County to defend a pesticide ordinance benefitting the interests of its local members. The *Rominger* court found that (1) Trinity County's main interest was defending its jurisdiction to enact ordinances, (2) that the members of the Sierra Club were direct beneficiaries of the ordinances, and (3) the members had a direct interest in enforcing the ordinance out of concern for their own health and well-being. 147 Cal. App. 3d 655, 665 (1983). The court pointed to the fact that the ordinance was the only factor preventing the alleged harm against the members of the Sierra Club. *Id.* at 664. The *Rominger* court held that "Where a statute exists specifically to protect the public . . . members of the public have a substantial interest in the protection and benefit provided by such a statute." *Id*.

Respondent Mara's Hope petition to intervene in this case is like the nonprofit group of parents in *Bustop* who intervened to represent the social, educational and economic interests of minor children. Mara's Hope is intervening to represent the interests of animals held captive by Circus. Similar to the nonprofit in *Bustop* who indirectly advocated on behalf of students that were directly affected by the busing policy, Mara's Hope is indirectly advocating for the silent interests of animals that are directly affected by the ordinance in question. Granting the Circus a permit to continue the alleged mistreatment of its captured animals would have a direct impact on the animals, much like mandatory busing was said to directly impact the students in *Bustop*. Mara's Hope should be allowed to intervene and advocate for the future interests of the animals held in captivity, just as the organization in *Bustop* were allowed to intervene and advocate for the future interests of the children in their district.

Mara's Hope is also similar to the Sierra Club in *Rominger*, where the "interest is compelling enough that they should be permitted to intervene." *Id.* Like Trinity County in *Rominger,* the Department has only an administrative interest to enact its ordinance. Second, like the members of the Sierra Club in *Rominger*, members Mara's Hope are the direct beneficiaries of the ordinances. This is because the members give financial donations to ensure that Mara's Hope will advocate on behalf of captured wildlife treated illegally. Trial 4. As animals are obviously unable to represent their own interests, Mara's Hope acts as a trustee for the animals, who are in turn the true beneficiaries of the ordinance. Therefore, Mara's Hope possesses a direct interest stemming from the members own independent concerns for the health and well-being of the animals held under the Circus's captivity, demonstrated by their financial contributions. Additionally, enforcing this Ordinance is the only factor preventing the harm to the elephants in

captivity and the only way that Mara's Hope can fulfill its mission to "advocate for protection of wildlife." *Id*. Donors to Mara's Hope pay money in exchange for the expectation that Mara's Hope will fulfill this mission by intervening in litigated matters such as this. *Id*.

B. **Intervention will not improperly delay or enlarge the scope of litigation.**

Permissive intervention is proper if the intervenor does not seek to unduly delay the litigation or inject new factual issues. *See Simpson*, 196 Cal. App. 3d at 1202-03 ("Resolution of [intervenor's] issue will center upon essentially the same facts as those involved in the State's claims . . . . [W]e perceive no danger that the [intervenor's] issue will prolong, confuse or disrupt the present lawsuit."). Here, Respondents are seeking to intervene for the purpose of joining with the Department in defending against an injunction for the Circus. Permitting the Respondents to intervene does not raise additional legal or factual issues, so it will not enlarge the scope of litigation. According to the trial court, "While an intervenor need not have a pecuniary interest in the outcome of the litigation, allowing Mara's Hope and/or Samuelson to intervene in this action would effectively swallow the requisite showing required for permissive intervention by allowing virtually anyone with any interest in animal-related issues to intervene in an action." Trial 9. Clearly the fear is opening the floodgates to excessive intervention. However, Samuelson's employment is directly related to the subject matter of the lawsuit, and Mara's Hope is a privately funded organization operating in Hobbs County to accomplish the specialized purpose of advocating on behalf of captive wildlife. Respondents are both directly involved in the matter in litigation, because if the Department wins then Samuelson will be able to assume caretaking responsibility for the elephants in jeopardy, and Mara's Hope will have fulfilled its advocating obligation to its

donors. An average citizen of Hobbs County is not in such a position to be directly interested and an intervening party. Further, there is no such evidence of a bombardment of animal-lovers petitioning to intervene.

The lower court also expressed fear that "their intervention would result in a broader consideration of the moral and ethical issues relating to performing animals, which this Court believes is not a necessary or proper consideration in resolving this dispute." Trial 9. This statement is unfounded and speculative, as neither petitioning party has raised additional issues outside the scope of the original lawsuit. Notwithstanding that moral and ethical issues are the underpinnings of the Ordinance itself, this litigation revolves around a factual determination of whether the Circus violated the Ordinance and a balancing test weighing financial harm to the Circus. Because the lower court did not perform sufficient analysis to conclude that intervention would delay or expand the scope of litigation, the Appellants meet the burden of this second requirement and the lower court abused its discretion.

C. **The need to intervene outweighs any objections by the existing parties.**

The overriding interests of Samuelson and Mara's Hope to maintain lawful caretaking of captive wildlife outweigh any objection by an existing party against their intervention. The Department does not oppose the Respondents' motion to intervene, and the Circus has not provided the court with a compelling reason to deny the intervention. *See Lindelli v. Town of San Anselmo*, 139 Cal. App. 4th 1499, 1512 (2006) (citing *Truck Ins. Exchange v. Superior Court*, 60 Cal. App. 4th 342, 350-51 (1997), for the proposition that "frustrat[ion of] plaintiffs' attempt to obtain" their desired relief "does not justify denial of intervention")).

Respondents' interest in the outcome of this action is not consequential, general

or political. Instead, it is direct, immediate and significant. The superior court stated in its denial of the Motion that "neither Mara's Hope nor Samuelson have a personal complaint against the Circus." Trial 9. However, having a personal complaint is not a requirement according to the plain language of the statute. The lower court also argued against intervention because "Mara's Hope does not house elephants, which are the focal point of the dispute." *Id*. This reasoning is flawed because the focal point of the dispute is the violation of the Ordinance—which includes but is not limited to the protection of elephants. Likewise, the efforts of Mara's Hope privately funded organization is to rescue captive animals that are either discarded by companies like Circus, or taken from such companies that are shut down because of animal abuse. *Id*. Mara's Hope does not limit its interest to those animals currently residing in its sanctuary, and it is unreasonable to argue that elephants are outside the scope of Mara's Hope direct interest since they are wildlife commonly held captive for commercial purposes.

Finally, the superior court supports its denial in stating that "the only ostensible interest of Mara's Hope and Samuelson in the litigation (whether considered jointly or separately) relates to the practice of animals performing in circuses or related activities generally." Trial 9. Again, the court's reasoning is flawed because the interests of Mara's Hope and Samuelson are not specifically limited to circuses. Samuelson's interest is unique because he is professionally involved in the caretaking of animals held captive, and this litigation is of direct interest to him because it involves enforcing the only available ordinance governing the caretaking of animals held captive. That the case pertains to a circus is inconsequential. Similarly, Mara's Hope interest in the litigation is not limited to circus activities generally. Mara's Hope is involved in education and outreach, and advocating for the protection of wildlife that otherwise has no legal

representation.

The court in *Rominger* stated, "Any argument that the parties should be permitted to litigate without the 'interference' of the very people those ordinances were designed to protect is an unacceptable assertion of bureaucratic dominion and control to the exclusion of the citizenry." *Rominger* at 665. This Court should therefore recognize the sufficient interests of Respondents in this case.

D. **Respondents have shown that they meet all the requirements of § 387(b), and the superior court abused its discretion by denying intervention.**

It has been demonstrated that the Respondents' intervention "would [not] retard the principal suit, or require a reopening of the case for further evidence, or delay the trial of the action, or change the position of the original parties." *In re Marriage of Kerr*, 185 Cal. App. 3d 130, 134 (1986).

The lower court justified denying the Respondents' Motion on the unfounded fear of excessive moral and ethical arguments and the misperceived risk of flooding the court with other intervenors. These unduly speculative reasons cannot outweigh Respondents' compelling need to intervene, especially when Respondents have met all the statutory requirements. *See Bustop*, 69 Cal.App.3d at 69-70 (permitting the nonprofit to intervene despite opposition from plaintiffs *and* defendant where intervenors "facially" satisfied § 387 requirements). Allowing the Respondents to intervene would simply allow the silent interests of the animals held captive by the Circus to be heard and taken into account, and would ensure that the trial court will consider all pertinent implications of the Hobbs County Ordinance. Respondents have an undeniable interest in this litigation, and the Respondents' intervention therefore outweighs any objection that the Circus may have. Accordingly, this Court should reverse the trial court's denial with instructions to the trial court to grant the motion. *See Bustop*, 69 Cal.App.3d at 73 (appellate court reversed

denial of intervention, stating "we believe that the proper exercise of discretion would have been to permit [Appellants], representing as [they] do a proper and legitimate interest, to participate" in the lawsuit.); *Simpson Redwood*, 196 Cal.App.3d 1192, 1204 ("[f]or all of the foregoing reasons we conclude that the trial court's denial of the motion to intervene was an abuse of discretion"); *Rominger*, 147 Cal.App.3d at 665 ("[t]he trial court abused its discretion in sustaining the State's demurrer to the Sierra Club's complaint in intervention without leave to amend").

II. Respondents Have an Unconditional Right to Intervene Under § 387(b)

A. The superior court erred in denying intervention for Respondents because they meet the statutory criteria and the Department does not adequately protect their interests.

The superior court denied Respondents' right to intervene without presenting an argument or rationale. Both Mara's Hope and Samuelson meet the requirements put forth in § 387(b) and therefore this Court should find that the superior court's denial was made in error. For an undeniable right to intervene the movant must claim an interest relating to the subject matter of the action. The movant must be impaired or impeded by the disposition of the action. The court *shall* allow intervention unless the movant' interest "adequately represented by existing parties." § 387(b). There is no discretion to deny a motion if a party meets these qualifications. *See Cal. Physician's Serv. v. Super. Ct.* 102 Ca. App. 3d 91, 96 (1980).

An intervenor has a direct interest in the transaction that is the subject of the pending case, if the person stands to "gain or lose by the direct legal operation and effect of the judgment." *Fireman's Fund Ins. Co. v. Gerlach*, 56 Cal. App. 3d 299, 303 (1976). There is no requirement that the interest be substantial, as the California Supreme Court held that "[a]ny interest is sufficient." *Bechtel v. Axelrod*, 20 Cal. 2d 390, 392 (1942).

The court in *Rominger* stated that "where a statute exists specifically to protect the public…members of the public have a substantial interest in the protection and benefit provided by such statute." 147 Cal. App. 3d. at 663. The Ordinance at issue in this case serves the purpose of preventing unethical treatment of captive wildlife in its jurisdiction, and it does so for the public's health and welfare. *Rominger* further states "if a party brings an action to invalidate such statute, such action has an immediate and direct effect on the public's interest in protecting its health and welfare." *Id.* The Circus is challenging the validity of the Ordinance by moving for injunctive relief, and therefore members of the Hobbs County public, such as Samuelson, are immediately and directly affected by the outcome of the litigation. Additionally, the court in *Simac Design, Inc. v. Alciati* found that a group of voters were entitled to intervene because they campaigned for and sought to implement a provision to preserve open space in their community. Similarly, Mara's Hope has a history of outreach and advocacy for the type of protection granted to animals only through the existence of the Ordinance.

Section 387(b) provides that if the intervenor has an interest in the litigation that would be affected by its disposition, it should be allowed to intervene as of right "unless that person's interest is adequately represented by existing parties." Since Mara's Hope and Samuelson are interested in the ability to care for the animals currently in captivity, and since the Department's interest is merely administrative, the intervention is not precluded by the adequate representation exception. Therefore, the superior court erred in denying the Respondents' Motion.

B. **Whether by abuse of discretion or by error, the trial court wrongly denied Respondents' Motion under § 387.**

Much like the intervenors in *Bustop, Rominger,* and *Simpson Redwood,* Respondents have an undeniable interest in this litigation, and there is no dispute that

they would be immediately and directly affected by its outcome. As established by the California Supreme Court, "Justice may always be better served by the presence before the court of all of the interested parties." *Voyce v. Superior Court* (1942) 20 Cal.2d 479, 485-88. As shown above, Respondents filed a timely motion to intervene, they each have a direct interest in this lawsuit, their intervention will not enlarge the issues in the litigation, and the reasons for Respondents' intervention far outweigh the opposition. Therefore, the Respondents request that this Court reverse the trial court's denial of their motion for leave to intervene, with directions that the trial court grants intervention.

CONCLUSION

This Court should affirm the Superior Court's decision to deny the Circus' request for a preliminary injunction because the Circus is unlikely to prevail on the merits and does not face irreparable harm in the absence of an injunction. Additionally, this Court should reverse the Superior Court's decision to deny intervention for Samuelson and Mara's Hope, given that they have met the requirements set forth in § 387 of the California Code of Civil Procedure, providing for either mandatory or permissive intervention.