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OF ORIGINAL FILED
Los Angeles Superior Court

SEP - 7 2006

John A. Clarke, Executive Officer/Clerk
By _____ Deputy

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

10 HAROLD P. STURGEON,

11 Plaintiff,

12 v.

13
14 WILLIAM J. BRATTON, in his official
15 capacity as Chief of Police of the Los
16 Angeles Police Department, and JOHN
17 MACK, in his official capacity as President
18 of the Board of Police Commissioners, and
19 SHELLEY FREEMAN, in her official
20 capacity as a member of the Board of Police
21 Commissioners, and ALAN J. SKOBIN, in
22 his official capacity as a member of the Board
23 of Police Commissioners, and ANDREA
24 ORDIN, in her capacity as a member of the
25 Board of Police Commissioners, and
26 ANTHONY PACHECO, in his official
27 capacity as a member of the Board of Police
28 Commissioners,

Defendants.

Case No. BC351646

**PLAINTIFF'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR LEAVE
TO FILE COMPLAINT IN
INTERVENTION**

DATE: September 20, 2006
TIME: 8:30 a.m.
PLACE: Department 58
JUDGE: Honorable Rolf M. Treu

ACTION FILED: May 1, 2006
TRIAL DATE: None Set

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1 Plaintiff Harold P. Sturgeon, by counsel, respectfully submits this opposition to the
2 Motion for Leave to File Complaint in Intervention submitted by Break the Cycle, Los
3 Jornaleros, El Comité de Jornaleros, and El Instituto de Educación Popular del Sur de California
4 (hereinafter “Proposed Intervenors”) and in response thereto states as follows:

5 **I. INTRODUCTION.**

6 Plaintiff, a taxpayer and resident of the City of Los Angeles, brings this action to
7 challenge the use of taxpayer funds and taxpayer-financed resources on Special Order 40, a set of
8 policies, practices, and procedures that severely restrict the ability of officers of the Los Angeles
9 Police Department (“LAPD”) to communicate and exchange information with federal
10 immigration officials. Plaintiff opposes intervention because Proposed Intervenors possess
11 neither a statutory right to intervene nor the type of interest in the “property or transaction” at
12 issue in this lawsuit that would satisfy the requirements of mandatory intervention under
13 California Code of Civil Procedure § 387(b). Plaintiff also opposes intervention because any
14 interests Proposed Intervenors possess are indirect and speculative, not direct and immediate, and
15 because intervention will unduly complicate and expand the adjudication of Plaintiff’s claims.
16 Plaintiff does not, however, oppose the participation of Proposed Intervenors in this matter at an
17 appropriate time and in an appropriate manner in an *amicus curiae* capacity.

18 **II. DISCUSSION.**

19 **A. Mandatory Intervention Under Cal. Civ. Proc. § 387(b).**

20 California law distinguishes between mandatory and permissive intervention. Mandatory
21 intervention is authorized in the following limited circumstances: (1) where a provision of law
22 confers an unconditional right to intervene; or (2) a person seeking to intervene claims an interest
23 relating to the property or transaction which is the subject of the action and is so situated that the
24 disposition of the action may as a practical matter impair or impede that person’s ability to
25 protect that interest, unless the person’s interest is adequately represented by existing parties.
26 Cal. Civ. Proc. § 387(b).

1 Proposed Intervenors do not claim that any provision of law confers on them an
2 unconditional right to intervene. Nor do they identify any “property” interest that entitles them to
3 intervene as a matter of right. This lawsuit clearly does not arise from any dispute over an
4 interest in property, real or personal. Instead, Proposed Intervenors misconstrue this lawsuit as
5 arising from a “transaction” in which they claim to have an interest. The Court should reject
6 Proposed Intervenors’ attempt to fit a square peg into a round hole.

7 This lawsuit simply does not arise from a “transaction.” Proposed Intervenors’ quotation
8 of the dictionary definition of the word “transaction” only confirms this to be the case. This
9 lawsuit does not involve any “[a]ct of transacting or conducting any business; negotiation;
10 management; proceeding; that which is done; an affair.” Memorandum of Points and Authorities
11 and Declarations in Support of Motion for Leave to File Complaint in Intervention (“Memo”) at
12 6, citing *Black’s Law Dictionary*. Nor does it involve any “selling, leasing, borrowing,
13 mortgaging, or lending.” *Id.* Proposed Intervenors’ reference to “[s]omething which has taken
14 place, whereby a cause of action has arisen” (*id.*), is too vague to mean anything. It certainly
15 would not appear to apply to a set of police policies, practices, and procedures. Moreover,
16 Proposed Intervenors ignore the remainder of the definition, which states: “It must therefore
17 consist of an act or agreement, or several acts or agreements having some connection with each
18 other in which more than one person is concerned, and by which the legal relations of such
19 persons between themselves are altered.” *Black’s Law Dictionary*, 1668 (4th ed. 1968). As
20 Special Order 40 is an internally established set of policies, practices and procedures, there is no
21 other “person” or party giving rise to a “transaction.”¹

22 What is at issue -- and what gives Plaintiff standing to bring this lawsuit -- is the LAPD’s
23 use of taxpayer funds and taxpayer-financed resources to “enforce, maintain, or otherwise carry
24 out the provisions of Special Order 40.” Complaint at para. 1. Plaintiff seeks a declaration that
25 Special Order 40 violates 8 U.S.C. § 1373, among other provisions of law, and an injunction
26

27 ¹ For convenience, Plaintiff’s references to “Special Order 40” shall also include the
28 policies, practices, and procedures arising thereunder, as implemented by the LAPD.

1 prohibiting LAPD officials from using any additional taxpayer funds or taxpayer-financed
2 resources on Special Order 40. *Id.* Despite Plaintiff's clear statement of the issue raised by this
3 lawsuit, Proposed Intervenors fail to cite a single case in which a legal challenge to the use of
4 taxpayer funds or taxpayer financed resources to enforce, maintain, or otherwise carry out an
5 official government policy gave rise to mandatory intervention under the "transaction" provision
6 of Cal. Code Civ. Proc. § 387(b).

7 Nor do Proposed Intervenors claim to be taxpayers. In fact, at least two proposed
8 intervenors, Los Jornaleros and El Komite de Jornaleros, claim to have no assets at all. Lopez
9 Declaration at para. 9; Garces Declaration at para. 9. Proposed Intervenors certainly can make no
10 claim to be LAPD officials charged with determining how to use taxpayer funds and taxpayer
11 financed resources. They clearly are not a party to any "transaction" at issue in this lawsuit.

12 It is only by ignoring the "taxpayer" nature of Plaintiff's lawsuit and characterizing
13 themselves as "beneficiaries" of Special Order 40 that Proposed Intervenors claim to have any
14 interest in this matter at all. Again, however, Proposed Intervenors fail to cite a single case in
15 which a self-described "beneficiary" of a challenged use of taxpayer funds or taxpayer-financed
16 resources was allowed to intervene in a lawsuit as a matter of right because it had an interest in a
17 "transaction" that was the subject of the lawsuit..

18 In fact, Proposed Intervenors cite only one California case in which mandatory
19 intervention was at issue.² In that case, *California Physicians' Serv. v. Superior Court*, 102 Cal.
20 App. 3d 91 (1980), the Court rejected a health insurer's motion to intervene as a matter of right
21 in a pending medical malpractice lawsuit brought by one of its insured against a doctor, hospital,
22 and other third-party tortfeasors. The Court found that, because the insurer had no legally
23 protected right of subrogation against its insured, it was merely a creditor of the insured and had
24 no right to intervene under Cal. Civ. Proc. § 387(b). 102 Cal. App. 3d at 96-97. If a health

25
26 ² Two other California cases cited by Proposed Intervenors in purported support of their
27 mandatory intervention argument, *People ex rel. Rominger v. County of Trinity*, 147 Cal. App. 3d
28 655 (1983) and *Simpson Redwood Co. v. State of California*, 196 Cal. App. 3d 1192 (1987)
involved permissive intervention, not mandatory intervention, and therefore are inapposite.

1 insurer that has a binding contract with an insured lacks a legally sufficient “transaction” interest
2 to intervene as a matter of right in a medical malpractice action, then certainly Proposed
3 Intervenors, who offer nothing more than their self-described status as “beneficiaries” of Special
4 Order 40, do not have a legally sufficient interest to intervene as a matter of right in this action.

5 In contrast, in *Hodge v. Kirkpatrick Development, Inc.*, 130 Cal. App. 4th 540 (2005), the
6 Court granted a subrogated insurer’s motion to intervene as a matter of right under Cal. Civ.
7 Proc. § 387(b):

8 State Farm has subrogation rights by operation of law and under the terms of the
9 Policy. State Farm is not merely a creditor; rather, State Farm has stepped into the
10 Hodges’ shoes and, to the extent it has made payments under the Policy, has the
same rights as the Hodges against the various defendants and tortfeasors in the
construction defect lawsuit.

11 *Id.* at 550. Proposed Intervenors offer nothing close to the type of concrete, well-recognized,
12 lawful interest asserted by the proposed intervenor in *Hodge*.

13 Far from demonstrating any such concrete, well-recognized, lawful interest in a
14 “transaction” that is the subject of a lawsuit, Proposed Intervenors’ interests apparently lie in
15 seeing that undocumented aliens remain undetected by federal immigration officials, helping
16 undocumented aliens to secure employment despite the fact that federal law prohibits the hiring
17 of persons not authorized to work in the United States, and avoiding harassment and abuse of
18 undocumented aliens by police officers. Memo at 2-4; 8 U.S.C. § 1324a. Each of the Proposed
19 Intervenors admits that they provide some form of assistance to undocumented aliens and that
20 their members include undocumented aliens who fear discovery of their illegal immigration
21 status. Aronoff Declaration at paras. 7-11; Lopez Declaration at paras. 11-12; Amanda Garces
22 Declaration at paras. 11-12; Declaration of Raul Anorve at paras. 4, 5, 17. Los Jornaleros and El
23 Comite de Jornaleros admit that their members lack legal immigration status but nonetheless
24 seek unlawful employment in the United States. Lopez Declaration at para. 12; Garces
25 Declaration at para. 12. IDEPSCA admits that more than half of its members are undocumented
26 aliens and that it provides a variety of benefits and services to them, including assistance in
27 securing unlawful employment, English language and computer classes, health screening, and
28

1 informational workshops. Anorve Declaration at paras. 4, 5, 7-11, 15-18. Proposed Intervenors
2 boldly assert that undocumented aliens' search for unlawful employment "would be forced
3 further into the shadows; congregation on a street corner or at a job center would pose a great risk
4 of detection by police." Memo at 7. They also assert that undocumented aliens would be
5 "extremely hesitant to seek help to get out of a violent situation at home for fear of deportation."
6 *Id.* Clearly, assisting undocumented aliens to remain undetected by federal immigration officials
7 and helping undocumented aliens to secure unlawful employment do not constitute proper,
8 lawful interests. Proposed Intervenors should not be allowed to use this Court and its process to
9 help undocumented aliens violate the law, and granting them intervenor status to do so would
10 turn the law on its head. Because Proposed Intervenors fail to demonstrate any proper or lawful
11 interests in a "transaction" giving rise to this lawsuit, it necessarily follows that the disposition of
12 this lawsuit will not impede or impair Proposed Intervenors' ability to protect any such proper or
13 lawful interest.

14 With respect to Proposed Intervenors' assertions about avoiding harassment or abuse of
15 undocumented workers by police, it simply is too speculative for Proposed Intervenors to assert
16 that, unless they are allowed to intervene as a matter of right in this lawsuit, undocumented aliens
17 will be harassed and victimized because of their immigration status. There is no guarantee that
18 the continuation of Special Order will prevent police harassment, as Proposed Intervenors'
19 citation to a recent survey by the UCLA Center for the Study of Urban Poverty demonstrates.
20 Memo at 12 n.3. Moreover, there is a huge gulf between the entry of a judgment declaring that
21 the LAPD cannot restrict its officers' ability to communicate with federal immigration officials,
22 as 8 U.S.C. § 1373 requires, and Proposed Intervenors' hyperbolic assertions about police raids
23 and abuse and exploitation by officers of the LAPD. Anorve Declaration at paras. 15, 17-18;
24 Memo at 2-4. The disposition of this lawsuit will not affect any such interests in any meaningful
25 way.

26 Moreover, to the extent Proposed Intervenors and their members are concerned about
27 improper police conduct, it must be noted that all aliens, even aliens not lawfully in the United
28

1 States, are entitled to the protections of the Fourteenth Amendment. *Zadvydas v. Davis*, 533 U.S.
2 678, 693 (2001) (“Once an alien enters the country, the legal circumstance changes, for the *Due*
3 *Process Clause* applies to all ‘persons’ within the United States, including aliens, whether their
4 presence here is lawful, unlawful, temporary, or permanent.”). They also are entitled to at least
5 some of the protections of the Fourth Amendment. *See INS v. Lopez-Mendoza*, 468 U.S. 1032
6 (1984) (assuming that the Fourth Amendment applies to illegal aliens in the United States);
7 *Gonzales v. City of Peoria*, 722 F.2d 468, 477 (9th Cir. 1983) (local police officers who make
8 arrests for violations of the criminal provisions of federal immigration laws must comply with
9 “all arrest requirements imposed by the federal constitution”); *People v. Sanchez*, 195 Cal. App.
10 3d 42, 46 (1987) (authority to arrest for violations of federal immigration laws is “subject to the
11 search and seizure requirements of the Fourth Amendment”); *People v. Barajas*, 81 Cal. App. 3d
12 999, 1006 (1978) (the legality of an arrest by local officers for violation of federal immigration
13 laws “is determined by the law of arrest of the state in which it occurs, unless such law conflicts
14 with the federal Constitution.”). These constitutional provisions provide ample -- and far more
15 direct -- protection against abusive police practices than any judgment this Court may issue
16 regarding Special Order 40’s restrictions on the free and open communication between LAPD
17 officers and federal immigration officials. Clearly, disposition of this action will not impede or
18 impair any proper, lawful interests Proposed Intervenors and their members might possess.

19 Finally, Proposed Intervenors have failed to demonstrate that Defendants would not
20 protect any proper, lawful interests adequately. In fact, Proposed Intervenors admit that their
21 “defenses and claims are no doubt generally aligned with Defendants.” Memo at 7. While
22 Proposed Intervenors assert that they can “speak directly” to the benefits of Special Order 40
23 (Memo at 8), it surely makes no difference to the ultimate disposition of this lawsuit whether
24 Proposed Intervenors “speak directly” to these purported benefits or if Defendants articulate them
25 on their behalf. Proposed Intervenors have failed to demonstrate that they are entitled to
26 intervene in this lawsuit as a matter of right.

1 **B. Permissive Intervention Under Cal. Civ. Proc. § 387(a).**

2 Proposed Intervenor also have failed to demonstrate that they are entitled to permissive
3 intervention under Cal. Civ. Proc. § 387(a). A trial court has the discretion to permit a nonparty
4 to intervene in an on-going lawsuit where the following factors are met:

5 (1) the proper procedures have been followed; (2) the nonparty has a direct and
6 immediate interest in the action; (3) the intervention will not enlarge the issues in
7 the litigation; and (4) the reasons for the intervention outweigh any opposition by
8 the parties presently in the action.

9 *City and County of San Francisco v. State of California*, 128 Cal. App. 4th 1030, 1036 (2005).

10 “The permissive intervention statute balances the interests of others who will be affected by the
11 judgment against the interests of the original parties in pursuing their litigation unburdened by
12 others.” *Id.* The decision whether to allow intervention is best determined based on the
13 particular facts in each case and is generally left to the sound discretion of the trial court. *Id.*

14 **1. Proposed Intervenor’s Purported Interest Is At
15 Best Indirect And Consequential And Will Not
16 Be Determined In This Action.**

17 To support permissive intervention, it is well settled that the proposed intervenor’s
18 interest in the litigation must be direct rather than consequential, and it must be an interest that is
19 capable of determination in the action. *City and County of San Francisco*, 128 Cal. App. 4th at
20 1037. The requirement of a direct and immediate interest means that the interest must be of such
21 a direct and immediate nature that the moving party will either gain or lose by the direct legal
22 operation and effect of the judgment. *Id.* (internal quotations and citations omitted). A person
23 has a direct interest justifying intervention in on-going litigation where the judgment in the action
24 *of itself* will add to or detract from the person’s legal rights without reference to any rights and
25 duties not involved in the litigation. *Id.* (emphasis original) (internal quotations and citations
26 omitted). Conversely, an interest is consequential and thus insufficient for intervention when the
27 action in which intervention is sought does not directly affect it, although the results of the action
28 may indirectly benefit or harm its owner. *Id.* (internal quotations and citations omitted).

 Proposed Intervenor’s stated interest in this action, to the extent that their interest should
even be recognized by this Court, is neither direct nor immediate, but instead is indirect and

1 consequential. Proposed Intervenor do not even attempt to argue that they have a direct interest
2 in how taxpayer funds or taxpayer financed resources are used or whether LAPD officers should
3 be allowed to communicate freely and openly with federal immigration officials, as 8 U.S.C. §
4 1373 requires. Rather, the interests of Proposed Intervenor and their members apparently lie in
5 seeing that undocumented aliens remain undetected by federal immigration officials, helping
6 undocumented aliens to secure employment in violation of federal law, and avoiding harassment
7 or abuse of undocumented aliens by police officers. But forcing undocumented aliens “further
8 into the shadows,” whether to avoid detection by federal immigration officials or to seek
9 unlawful employment, will not be a direct result of any judgment in Plaintiff’s favor in this case.
10 Rather, it is the direct result of the aliens’ own undocumented status. Similarly, if undocumented
11 aliens are subjected to improper police behavior, it will be the direct result of the actions of the
12 officers involved, not any judgment entered by this Court. Such interests are too indirect and too
13 consequential to warrant permissive intervention under Cal. Civ. Proc. § 387(a).³

14 In addition, a judgment in Plaintiff’s favor will only prevent the LAPD from continuing
15 to expend taxpayer funds and taxpayer financed resources to enforce, maintain, or otherwise
16 carry out policies, practices, and procedures that restrict the free and open communication
17 between its officers and federal immigration officials, as 8 U.S.C. § 1373 requires. It will not
18 directly add to or detract from any legal rights of Proposed Intervenor or their members.
19 Proposed Intervenor will be able to continue to provide assistance, benefits, and counseling to
20 their members to the fullest extent allowed by law. If Proposed Intervenor’s members are
21 apprehended by federal immigration officials while attempting to secure employment or in some
22 other context, they will remain free to demonstrate that they are present lawfully in the United
23 States or should be allowed to remain in the United States. Likewise, in the unfortunate event

24 _____
25 ³ Also too indirect and consequential is the purported harm Break the Cycle claims it
26 would suffer if a judgment is entered in Plaintiff’s favor. Break the Cycle claims it would be
27 forced to divert or change how it uses its resources if Special Order 40 is enjoined. Aronoff
28 Declaration at paras. 11-13. Not only is this purported harm too speculative, but Break the Cycle
fails to demonstrate how any such judgment or injunction *of itself* will detract from *its* legal
rights. *City and County of San Francisco*, 128 Cal. App. 4th at 1037.

1 that Proposed Intervenors' members experience improper behavior by LAPD officers, they still
2 will have the opportunity to invoke any remedies the law allows them.

3 In an analogous situation, the Court in *City and County of San Francisco* denied
4 permissive intervention to an advocacy group that sought to intervene on the side of the
5 defendants in a legal challenge to Proposition 22. The proposed intervenor, Proposition 22 Legal
6 Defense and Education Fund (the "Fund"), purported to represent over 15,000 California
7 residents and taxpayers who supported and continued to support Proposition 22. The Court
8 denied permissive intervention, finding that the Fund failed to identify any way in which the
9 judgment in the case would, *of itself*, directly benefit or harm the legal rights of the Fund's
10 members. 128 Cal. App. 4th at 1038 (emphasis added). The Court declared:

11 Specifically, the Fund does not claim a ruling about the constitutionality of
12 denying marriage licences to same-sex couples will impair or invalidate the
13 existing marriages of its members, or affect the rights of its members to marry
14 persons of their choice in the future. Nor has the Fund identified any diminution
15 in legal rights, property rights or freedoms that an unfavorable judgment might
16 impose on the 15,000 financial contributors to the Fund who oppose same-sex
17 marriage or on the 4.6 million Californians who voted in favor of Proposition 22,
18 whom the Fund also purports to represent.

19 * * *

20 There is no doubt the Fund's members strongly believe marriage in California
21 should be permitted only between opposite-sex couples, and that they believed in
22 this principle strongly enough that they have expended energy and resources to
23 have it passed into law. However, because there is no evidence its members will
24 be directly harmed by an unfavorable judgment, the Fund's interest in defending
25 this principle is likewise indirect. California precedents make it clear such an
26 abstract interest is not an appropriate basis for intervention.

27 *Id.* at 1038-39. Likewise in this case, Proposed Intervenors have failed to demonstrate how an
28 adverse judgment in the case would, *of itself*, directly harm their legal rights or the legal rights of
their members.⁴ The harms alleged by Proposed Intervenors are indirect, consequential, and
speculative.

26 ⁴ Proposed Intervenors point to no provisions of law giving their undocumented alien
27 members and other undocumented aliens the right to avoid detection by federal immigration
28 officials or to secure employment if they are not authorized to work in the United States. Nor do
such provisions exist.

1 Similarly, in *City of Malibu v. California Coastal Commission*, 128 Cal. App. 4th 897
2 (2005), the Court denied landowners permission to intervene in a lawsuit brought by the City of
3 Malibu and the proposed intervenors' neighbor against the California Coastal Commission and
4 several other public agencies and officials regarding a proposed accessway across the neighbor's
5 property allowing public access to the beach. The proposed intervenors' home looked directly
6 upon and was less than twenty feet away from the proposed accessway. Nonetheless, the Court
7 denied both mandatory and permissive intervention, declaring that the proposed intervenors "can
8 only speculate that members of the public will trespass and litter on the portion of the beach that
9 [proposed intervenors] own and thereby ultimately affect the quiet enjoyment of their property."
10 128 Cal. App. 4th at 906. "[T]he possibility of what some ill-mannered citizens might do cannot
11 create an entitlement for landowners upon and down the Malibu coast to interject themselves into
12 every dispute regarding the right of public access to the beach." *Id.* Similarly here, Proposed
13 Intervenors merely speculate that, without Special Order 40, some rogue LAPD officer might
14 engage in unprofessional or abusive behavior towards an undocumented alien. Such speculation
15 does not entitle undocumented aliens and organizations who assist them to interject themselves
16 into a taxpayer lawsuit seeking compliance with a federal law that requires free and open
17 communication between local police officers and federal immigration officials.

18 Permissive intervention also was denied in *Socialist Workers 1974 California Campaign*
19 *Committee v. Brown*, 53 Cal. App. 3d 879 (1975). In that case, the non-profit organization
20 known as Common Cause sought to intervene in an action challenging the validity of Election
21 Code provisions requiring public disclosure of information regarding campaign contributors.
22 Common Cause asserted that it and its members had a direct interest in the public disclosure laws
23 because the organization was created "to work for the improvement of political and
24 governmental institutions and processes" at local, state, and federal levels. The Court concluded
25 that this "bare political interest" was not sufficient to support intervention, noting that a judgment
26 enjoining enforcement of the disclosure laws would not be binding upon Common Cause or its
27 members and that the organization and its members "will be as free to pursue their business after
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1 the rendition of said judgment as they were before.” 53 Cal. App. 3d at 891-92 (internal
2 quotations and citations omitted). Moreover, the Court also concluded that, despite Common
3 Cause’s organizational charter to improve government, the organization stood in the same
4 position as all Californians with respect to its purported interest in the validity of the disclosure
5 laws and that this political interest was too indirect and inconsequential to support intervention.
6 *Id.* As in *Socialist Workers 1974 California Campaign Committee*, Proposed Intervenors’ “bare
7 political interest” in the welfare of undocumented aliens does not support permissive intervention
8 in Plaintiff’s lawsuit, nor will a judgment in Plaintiff’s favor affect in any way the assertion by
9 Proposed Intervenors or their members of whatever legal rights they might possess. Proposed
10 Intervenors and their members will remain free to demonstrate whether they are lawfully present
11 in the United States or challenge any unfortunate instances of police misconduct they might
12 encounter.

13 Like Proposed Intervenors here, the proposed intervenors in *City and County of San*
14 *Francisco* attempted to rely heavily on the decisions in *Rominger* and *Simpson Redwood Co.*
15 The Court in *City and County of San Francisco* distinguished these cases easily, as this Court
16 should here. *City and County of San Francisco*, 128 Cal. App. 4th at 1040-43.

17 In *Rominger*, the Sierra Club attempted to intervene in a lawsuit brought by the State of
18 California against Trinity County, which had passed an ordinance banning the spraying of a
19 particular type of pesticide. The Sierra Club sought to intervene in order to support the ban and
20 demonstrated that, if the ban were lifted, it was highly likely that spraying would commence and
21 Sierra Club members who used forest land within the county would be exposed to the pesticide.
22 *Rominger*, 147 Cal. App. 3d at 661-63. Unlike in *Rominger*, it simply cannot be said Proposed
23 Intervenors have demonstrated that, if this Court enters a judgment in Plaintiff’s favor in this
24 action, it is “highly likely” any of Proposed Intervenors’ undocumented alien members will be
25 detected and deported and subjected to abuse and harassment at the hands of the LAPD. Nor
26 would any ruling in Plaintiff’s favor deprive or even affect the rights of Proposed Intervenors’
27 members to demonstrate to federal immigration officials whether they are present lawfully in the
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1 United States or should be allowed to remain in the United States, or prevent them from asserting
2 any remedies allowed by law to challenge any unfortunate instances of police misconduct they
3 might encounter.

4 In *Simpson Redwood Co.*, the owner of a piece of land bordering a state park brought suit
5 to quiet title and for declaratory relief against the State of California seeking to establish
6 ownership of parcels of redwood forest in the park, the boundaries of which were in dispute due
7 to a history of conflicting surveys. The donor of the parcels, a conservation organization, sought
8 to intervene, citing its prior ownership of the parcels and its donation of the parcels by deed
9 specifying that the land was to be used solely “for state park purposes.” 196 Cal. App. 3d at
10 1197-98. Proposed intervenors cannot point to any such clear, direct, and unmistakable interest
11 in Special Order 40 or its provenance. *Simpson Redwood Co.*, like *Rominger*, has no bearing on
12 this lawsuit.

13 Finally, Proposed Intervenors’ “interests” are not capable of being determined in this
14 action. All this action will determine is whether the LAPD is expending taxpayer funds and
15 taxpayer financed resources in a manner that is inconsistent with 8 U.S.C. § 1373’s requirement
16 of free and open communication between local police officers and federal immigration officials.
17 While this necessarily will entail a determination of whether and/or to what extent Special Order
18 40 conflicts with this federal statute, it will *not* adjudicate in any conclusive or binding manner
19 Proposed Intervenors’ purported interest in protecting undocumented aliens from detection,
20 assisting undocumented aliens in finding employment, or avoiding any abuse and harassment at
21 the hands of the LAPD.

22 **2. Intervention Will Enlarge, If Not Eclipse, The**
23 **Issues To Be Litigated.**

24 An intervenor is not permitted to “retard the principal suit, delay trial, or change the
25 position of the parties.” See *Save Oxnard Shores v. California Coastal Commission*, 179 Cal.
26 App. 3d 140, 150, 224 Cal. Rptr. 425, 432 (1986). Permitting intervention by Proposed
27 Intervenors unquestionably will enlarge what otherwise would be a relatively narrow set of issues
28

1 that must be litigated to decide this matter. Proposed Intervenor's participation in this lawsuit
2 may even eclipse this original set of issues altogether.

3 First, if intervention is permitted, Plaintiff will be compelled to challenge Proposed
4 Intervenor's standing. *See Timberidge Enterprises, Inc. v. City of Santa Rosa*, 86 Cal. App. 3d
5 873, 880 (1978). This will require a demurrer, dispositive motion, or perhaps even a trial.
6 Litigation of this issue may require discovery, and any such discovery will be above and beyond
7 that which is necessary to litigate Plaintiff's claims regarding Special Order 40.

8 Second, if intervention is permitted, Plaintiff also will be compelled to assert any and all
9 defenses that may be available, including but not limited to an unclean hands defense. Such
10 defenses also will require additional discovery above and beyond that which is necessary to
11 litigate Plaintiff's claims regarding Special Order 40. These defenses and related discovery will
12 be necessary for the full and fair adjudication of the additional issues that will arise if Proposed
13 Intervenor are allowed to participate as parties to this lawsuit.

14 Third, California courts have held that an intervenor's request for additional or different
15 relief necessarily enlarges the issues to be litigated (*see Bame v. City of Del Mar*, 86 Cal. App.
16 4th 1346, 1364 (2001)), and Proposed Intervenor's Complaint in Intervention seeks relief that is
17 different from, and in addition to, the relief sought by Defendants. Specifically, Proposed
18 Intervenor seek an award of attorneys fees, presumably from Plaintiff. If intervention is
19 allowed, Plaintiff will seek to strike Proposed Intervenor's fee request, and, if the request is not
20 stricken, Plaintiff will defend against such an award on all available grounds, including the First
21 Amendment. As Defendants have not sought any such relief, allowing Proposed Intervenor to
22 appear voluntarily in this action and to seek attorneys fees from Plaintiff undoubtedly will
23 enlarge the issues to be litigated.

24 Lastly, it appears that Proposed Intervenor intend to use this lawsuit as an opportunity to
25 argue against enforcement of federal immigration laws by local police officers. Memo at 10.
26 Plaintiff's lawsuit, however, does not seek an adjudication of whether local police officers should
27 or should not *enforce* federal immigration laws. Rather, this lawsuit concerns the ability of local
28

1 police officer to communicate freely and openly with federal immigration officials, as required
 2 by 8 U.S.C. § 1373. In this regard, allowing Proposed Intervenors to intervene in this lawsuit to
 3 argue about whether local police officer should or should not enforce federal immigration laws
 4 will further expand the relatively narrow set of issues raised by Plaintiff's Complaint.
 5 Intervention should be denied for this reason as well.

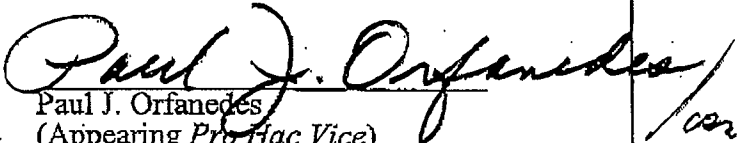
6 **3. The Reasons For Intervention Do Not Outweigh**
 7 **Plaintiff's Opposition.**

8 This particular portion of the permissive intervention analysis is grounded in the "rights
 9 of the original parties to litigate in their own way." *California Physicians' Service*, 102 Cal.
 10 App. 3d at 95. As demonstrated above, the stated interests of Proposed Intervenors and their
 11 members in this litigation include assisting undocumented aliens in remaining undetected by
 12 federal immigration officials and securing employment in violation of federal law. Plaintiff
 13 submits that these are neither proper nor lawful interests that should be protected by any court of
 14 law. While Plaintiff does not oppose participation by Proposed Intervenors in this lawsuit in an
 15 appropriate *amicus curiae* capacity, Plaintiff objects to Proposed Intervenors' attempt to join this
 16 litigation to facilitate or promote unlawful activity.

17 **III. CONCLUSION.**

18 For the foregoing reasons, Plaintiff respectfully requests that Proposed Intervenors'
 19 motion to intervene be denied.

20 Dated: September 7, 2006

21 By:  /cor

22 Paul J. Orfanedes
 23 (Appearing *Pro Hac Vice*)
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Attorneys for Plaintiff

PROOF OF SERVICE BY MAIL

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2540 Huntington Drive, Suite 201, San Marino, California 91108.

On September 7, 2006, I served the foregoing document described as:

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO MOTION FOR LEAVE TO FILE COMPLAINT IN
INTERVENTION**

by placing a true and correct copy thereof in a sealed envelope addressed as follows:

Rockard J. Delgadillo, City Attorney
Michael L. Claessens, Senior Assistant City Attorney
Vibiana M. Andrade, Deputy City Attorney
Paul L. Winnemore, Deputy City Attorney
City Hall East, 7th Floor
200 North Main Street
Los Angeles, CA 90012

Belinda Escobosa Helzer, Esq.
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Mark D. Rosenbaum, Esq.
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1616 Beverly Blvd.
Los Angeles, CA 900206

I caused such envelope to be deposited in the U.S. mail, with postage thereon fully prepaid, at San Marino, California. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at San Marino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing affidavit.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this declaration was executed on September 7, 2006 at San Marino, California.


CONSTANCE S. RUFFLEY