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6 Attorneys for Defendant Intervenor
7 SHANTEAK HARRIS

8
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11
12 PEOPLE OF THE STATE OF
CALIFORNIA, by and through Dennis
13 Herrera, City Attorney for the City and
County of San Francisco,

14 Plaintiff,

15 vs.

16 OAKDALE MOB, a criminal street gang
17 sued as an unincorporated association; and
Does 1-500 inclusive,

18 Defendants.
19
20

Case No. CGC-06-456-517

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE COMPLAINT IN
INTERVENTION**

Hearing Date: December 22, 2006
Time: 9:30 a.m.
Dept: Dept. 301
Judge: Honorable Peter Busch

Complaint Filed: September 27, 2006
Trial Date: None yet

21 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:


22 PLEASE TAKE NOTICE that on December 22, 2006 at 9:30 a.m. or as soon thereafter as
23 this matter may be heard in Department 301 of this Court, located at 400 McAllister Street, 3rd
24 Floor, San Francisco, California, Proposed Defendant-Intervenor SHANTEAK HARRIS will
25 move for an order granting leave to file a Complaint in Intervention in this action to determine
26 whether the City and County of San Francisco's proposed preliminary injunction against the
27 Oakdale Mob should issue, and whether it is constitutional.
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1 This Motion will be made pursuant to the provisions of Section 387(a) of the California
2 Code of Civil Procedure on the grounds that Intervenor HARRIS has an interest in the subject of
3 the action and in the success of the Defendant. Additionally, or in the alternative, the Intervenor
4 claims an interest in the "property" that is the subject of this litigation under § 387(b) of the Code
5 of Civil Procedure because the disposition of the action may as a practical matter impair or
6 impede the proposed intervenors' ability to protect that interest in their right to be free from the
7 burdens of the probation-like injunction the Plaintiff is seeking.

8 Intervenor HARRIS hereby move for leave of court to intervene in this action by filing the
9 Complaint in Intervention attached to this Notice of Motion and Motion and incorporated by
10 reference herein.

11 This Motion will be made based on this Notice of Motion and Motion, the proposed
12 Complaint in Intervention, the Memorandum of Points and Authorities served and filed herewith,
13 and the declaration of DAMONE HALE in support thereof, on the papers and records and file
14 herein and on such oral and documentary evidence as may be presented at the hearing on the
15 Motion.

16 DATED: November 14, 2006

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19 DAMONE HALE
20 Attorneys for Defendant-Intervenor
21 SHANTEAK HARRIS
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COMPLAINT IN INTERVENTION

Hearing Date: December 22, 2006
Time: 9:30 a.m.
Dept: Dept. 301
Judge: Honorable Peter Busch

Complaint Filed: September 27, 2006
Trial Date: None yet

21 By leave of Court, Defendant-Intervenor SHANTEAK HARRIS hereby intervenes in this
22 Action, and joins with Defendant to oppose Plaintiff's claims. Intervenor alleges as follows:
23

24 1. On September 27, 2006, Plaintiff filed this action against Defendant Oakdale Mob, and
25 Does 1-500. Plaintiff did not name any individuals as defendants, although twenty-two
26 individuals were designated for service of process as alleged members of the Oakdale Mob, and
27 Plaintiff further alleges that there are eighty members of the alleged gang. Instead, Plaintiff
28

1 alleged that Defendant is an unincorporated association, and so provided notice to the Defendant
2 by serving three alleged members of the gang.

3 2. Defendant has not appeared in this action in any capacity.

4 3. Intervenors have a right to intervene in this litigation and have a substantial interest in
5 the success of Defendant under Code of Civil Procedure Sections 387 (a) and (b) in that as an
6 individual designated for service of process and discussed in Plaintiff's papers supporting their *Ex*
7 *Parte* Application for Order to Show Cause Re: Preliminary Gang Injunction, Intervenors believe
8 that they will be subject to the gang injunction should it issue. They are, thereby, threatened by
9 the potential loss of their personal liberty while in the area covered by the proposed injunction.

10 4. Intervenor HARRIS, at all times herein mentioned was a resident of the City of San
11 Francisco. Intervenor is currently employed and is assigned to work with other individuals
12 named as members of the Oakdale Mob. Moreover, Intervenor HARRIS works in the proposed
13 injunction area. Should the court issue a preliminary injunction Intervenor HARRIS would be
14 prohibited from working in the injunction area or associating with other named individuals.

15 5. Intervenor allege that there is not a gang called the Oakdale Mob, that there is not a
16 public nuisance, that the Oakdale Mob is not responsible for the alleged public nuisance, and that
17 he is not member of the Oakdale Mob.

18
19 WHEREFORE, Intervenors pray for judgment as follows:

- 20 1. For dismissal of Plaintiff's Complaint with prejudice;
- 21 2. For denial of Plaintiff's *Ex Parte* Application for Order to Show Cause Re:
22 Preliminary Gang Injunction;
- 23 3. For the denial of any permanent injunction;
- 24 4. For attorneys' fees;
- 25 5. For costs of suit; and

26 For any such relief as the Court deems just.
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DATED: November 14, 2006



DAMONE HALE
Attorney for Defendant-Intervenor
SHANTEAK HARRIS

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14 Plaintiff,

15 vs.

16 OAKDALE MOB, a criminal street gang
17 sued as an unincorporated association; and
Does 1-500 inclusive,

18 Defendants.
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Case No. CGC-06-456-517

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR LEAVE TO FILE
COMPLAINT IN INTERVENTION**

Hearing Date: December 22, 2006
Time: 9:30 a.m.
Dept: Dept. 301
Judge: Honorable Peter Busch

Complaint Filed: September 27, 2006
Trial Date: None yet

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1 **I. INTRODUCTION**

2 Pursuant to the provisions of Section 387 of the California Code of Civil Procedure,
3 Proposed Defendant-Intervenor SHANTEAK HARRIS submits this Memorandum of Points and
4 Authorities in Support of their Motion for Leave of Court to Intervene in the above-captioned
5 matter.

6 Intervenor HARRIS is a member of the Bayview Hunters Point community who seeks to
7 intervene to reject Plaintiff's claims because he has a direct interest in the matter in litigation,
8 namely, he has been accused of being a member of the Oakdale Mob in Plaintiff's papers seeking
9 a preliminary injunction. If he is not permitted to intervene and challenge the motion for a
10 preliminary injunction he risks being bound by it, and ultimately, perhaps, by a permanent
11 injunction, both of which could subject him to ongoing probation-like restrictions without being
12 charged or convicted of a crime. Intervenor is now subject to the temporary restraining order
13 issued by the above-entitled court. Moreover, Intervenor HARRIS has been named and is opined
14 to be a member of the Oakdale Mob. See Broberg Declaration (88:1-28, 89:1-28, 90:1-28.)

15 Intervention is particularly essential in this case, where no one has appeared to defend the
16 alleged gang. Without this intervention, Plaintiff's motion would go completely unopposed.
17 Intervenor's interests cannot be adequately protected by a Defendant who has not appeared.

18 **II. FACTUAL AND PROCEDURAL BACKGROUND**

19 This Action was filed on September 27, 2006 by Plaintiff, the People of the State of
20 California, by and through Dennis J. Herrera, as the City Attorney for the City and County of San
21 Francisco, seeking an injunction against the Oakdale Mob, which Plaintiff alleges is a criminal
22 street gang, and up to 500 Doe defendants. Plaintiff did not name any individuals as defendants,
23 although twenty-two individuals were designated for service of process as alleged members of the
24 Oakdale Mob, and Plaintiff further alleges that there are eighty members of the alleged gang.
25 People's Memorandum of Points and Authorities in Support of Plaintiff's *Ex Parte* Application
26 for Order to Show Cause re: Preliminary Gang Injunction, Exh. B. Instead, Plaintiff alleged that
27 Defendant is an unincorporated association, and so provided notice to the Defendant by serving
28 three alleged members of the gang.

1 Defendant Oakdale Mob has not appeared in any capacity, either by answering or
2 demurring to the Complaint, or appearing to challenge the Order to Show Cause re: Preliminary
3 Injunction (“preliminary injunction motion”) on October 30, 2006. At the October 30 hearing
4 this Court, concerned about the constitutional and other implications of issuing a preliminary
5 injunction, instead issued a temporary restraining order that was more limited in scope than the
6 preliminary injunction sought by Plaintiff. The Court set the hearing date on the preliminary
7 injunction for November 22, 2006. Intervenors propose that the Court, for purposes of judicial
8 efficiency and fairness to all parties concerned, continue the November 22 hearing so as to use its
9 precious judicial resources to consider both the motion to intervene and the preliminary injunction
10 motion at the same time. All parties have been notified and none of the parties are opposed to a
11 continuance. See Declaration of Damone Hale, Esq. in Support of *Ex Parte* Motion to Continue
12 November 22, 2006 Hearing on the preliminary injunction motion. Plaintiff, and potentially,
13 Defendant, will want time to respond to this motion and Plaintiff will benefit from additional time
14 to prepare for the hearing on the preliminary injunction motion. Moreover, because a temporary
15 restraining order will remain in effect until the hearing on the preliminary injunction motion,
16 Plaintiff will not be prejudiced by such a continuance.

17 **III. ARGUMENT**

18 Applicant is entitled to intervene under both California Code of Civil Procedure Sections
19 387(a) and 387 (b) in this action. First, this Motion is timely made. Second, Intervenors have an
20 interest in the subject of this action and also have an interest in the “property” that is the subject
21 of this litigation because the outcome of the action may as a practical matter impair or impede
22 Applicants’ ability to protect that interest. Third, Intervenors have an interest in the success of
23 the Defendant (who has not yet appeared to challenge this action) and Applicants’ involvement in
24 the case will neither enlarge the issues nor adversely affect the ability of Plaintiff and Defendant
25 to conduct their own lawsuit.

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1 **A. Applicants Are Entitled to Intervention as a Matter of Right Pursuant to C.C.P. §**
2 **387(b).**

3 California Code of Civil Procedure Section 387(b) provides that:

4 [I]f the person seeking intervention claims an interest relating to
5 the property or transaction which is the subject of the action and
6 that person is so situated that the disposition of the action would
7 impede that person's ability to protect that interest, unless that
8 person's interest is adequately represented by existing parties, the
9 court shall, upon timely application, permit that person to intervene.

10 C.C.P. § 387(b).

11 The purpose behind intervention is to "promote" fairness" by allowing "all parties" who
12 may be affected by the outcome of the litigation to participate. *Lincoln National Life Ins. Co. v.*
13 *Board of Equalization*, 30 Cal. App. 4th 1411, 1423 (1004) (intervention proper where party has
14 an interest and intervention would neither expand the scope of litigation nor infringe upon the
15 original parties' rights to litigate the case.) For that reason, courts must liberally construe the
16 intervention statute in favor of intervention. *Simpson Redwood Co. v. State of California*, 196
17 Cal. App. 3d 1192, 1200 (1987).

18 **1. Applicant Has A Direct Interest in the "Property" That is the Subject of This**
19 **Litigation Which They Can Only Protect Through Intervention.**

20 California Courts have recognized the significant rights at stake in the context of civil
21 gang injunctions.

22 We conclude that the importance of the interests affected by the
23 [gang] injunction in this case requires that the finding of facts
24 necessary to justify its issuance be proved by clear and convincing
25 evidence....**The interests involve more than a mere dispute over**
26 **property or money.** The need for a standard of proof allowing a
27 greater confidence in the decision reached arises not because the
28 personal activities enjoined are sublime or grand but rather because
they are commonplace, and ordinary."

People v. Englebrecht, 88 Cal. App. 4th 1236, 1256 (2001) (emphasis added).

The purpose of intervention is to protect the interests of non-parties who may be affected
by a judgment. *Rominger v. County of Trinity*, 147 Cal. App. 3d 655, 660 (1983) (granting
intervention by public interest organization whose members would be affected by the outcome of
the litigation.). In this case, Applicants are certainly affected by this litigation. If an injunction
issues, Applicants will be served with it, and then be bound by it, making them subject to criminal

1 contempt if they are found to be violating it. They would, thereby, be specifically restricted by
2 such an injunction. It is this interest in their own personal freedom that makes intervention as a
3 matter of right proper in this case.

4 Should Plaintiff prevail in this litigation, the Defendant, as well as its alleged members,
5 may be permanently enjoined from associating with each other in the area covered by the
6 injunction, as well as facing other significant limitations on their freedoms. These concerns
7 should compel the court to grant intervention as a matter of right. "The government, in any guise,
8 should not undertake such restrictions without good reason and without firmly establishing the
9 facts making such restrictions necessary." *Id.* The best way judge whether there is indeed "good
10 reason" for such restrictions is through an adversarial proceeding in which all those who have a
11 direct interest in the outcome are allowed to intervene to challenge the need for such restrictions.

12 **2. Applicant's Interests Cannot Be Fully Represented by Defendant.**

13 Defendant has yet to appear in any capacity in this action. Applicants therefore believe
14 that Defendant is unable to adequately protect Applicants' interests because it is not even
15 protecting its own interests.

16 Even if Defendant were to appear, it would be unable to fully represent Applicants.
17 Defendant, while of course challenging the issuance of any injunction, would not necessarily have
18 any interest in proving that *Applicants* are not members of the alleged gang. Applicants, on the
19 other hand, have a direct personal stake in protecting their own liberty interests. Defendant does
20 not have such a personal interest and, therefore, cannot seek to protect those interests the way that
21 Applicants can and will if allowed to intervene.

22 **3. Proposed Intervenor's Application is Timely Made.**

23 Parties seeking to intervene must make a "timely" application. C.C.P. § 387. Intervention
24 has been found timely at any instance where otherwise appropriate, even after the court has issued
25 a judgment. *See Mallick v. Superior Court*, 89 Cal. App. 3d 434, 437 (1979) (leave to intervene
26 granted even after judgment had been rendered because "intervention is possible, if otherwise
27 appropriate, at any time").

1 As discussed above, this matter is in the beginning stages of litigation. The Complaint
2 was served on September 27, 2006, and Defendant has yet to make an appearance. The hearing
3 on Plaintiff's preliminary injunction motion is currently scheduled for November 22, 2006. No
4 discovery has been done and this Court has issued a temporary restraining order, so any minor
5 delay in the proceedings will not prejudice Plaintiff.

6 **B. The Court Should Grant Permissive Intervention Under C.C.P. § 387(a).**

7 Section 387 (a) of the California Code of Civil Procedure states in relevant part:
8 Upon timely application, any person, who has an interest in the
9 matter of litigation, or in the success of either of the parties, or an
interest against both, may intervene in the action or proceeding.

10 C.C.P. § 387 (a).

11
12 If intervention is not granted under C.C.P. § 387 (b), it is surely proper here given the
13 Courts obligation to liberally construe § 387 (a). *See Lincoln National Life Ins. Co.*, 30 Cal. App.
14 4th at 1423; *Simpson Redwood Co.*, 196 Cal. App. 3d at 1201 (error to deny intervention because
15 proposed intervenors reputation could be adversely affected by outcome of litigation). When, as
16 here, Applicants have filed a timely motion for leave to intervene; have both a direct and a
17 personal interest in the matter being litigated; have an interest in the success of the Defendant in
18 this case; and will neither impermissibly enlarge the issues nor adversely affect the original
19 parties' ability to litigate the case, intervention should be granted.

20 As discussed above, Applicants can easily satisfy the permissive intervention requirement
21 that proposed intervenors have "an interest in the matter in litigation, or in the success of either
22 parties, or an interest against both," C.C.P. § 387(a). It is abundantly clear that Applicants have a
23 personal stake in their own freedom of movement and personal liberty. *See People v.*
24 *Engbrecht, supra*, 88 Cal. App. 4th at 1256.

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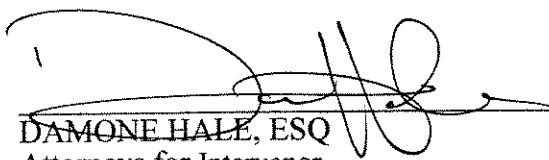
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IV. CONCLUSION

For the foregoing reasons, Applicants respectfully request that the Court grant leave of Court for Intervenors to participate in the above-captioned matter as defendant-intervenors pursuant to C.C.P. § 387.

DATED: November 13, 2006



DAMONE HALE, ESQ
Attorneys for Intervenor
SHANTEAK HARRIS

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sued as an unincorporated association; and
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19 Defendants.

Case No. CGC-06-456-517

**DECLARATION OF SHANTEAK HARRIS
IN SUPPORT OF MOTION FOR LEAVE TO
FILE COMPLAINT IN INTERVENTION
[CCP, § 387]**

Date: December 22, 2006
Time: 9:30 a.m.
Dept: Dept. 301
Judge: Honorable Peter Busch

Date Action Filed: September 27, 2006
Trial Date: None set

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22 **DECLARATION OF SHANTEAK HARRIS**

23 I, SHANTEAK HARRIS, declare under penalty of perjury as follows:

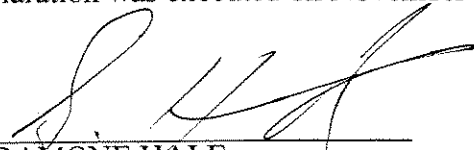
24 1. I am the proposed Intervenor in the above-captioned matter.

25 2. The Plaintiff, the People of the State of California, *ex rel.* Dennis J. Herrera, as the
26 City Attorney for the City and County of San Francisco, filed a motion seeking an injunction
27 against the Oakdale Mob, which Plaintiff alleges is a criminal street gang, and up to 500 Doe
28 defendants. On October 30, 2006, the Court denied the motion and issued a Temporary

1 Restraining Order ("TRO"). Intervenor HARRIS is subject to the TRO as well as the proposed
2 preliminary injunction. In addition Intervenor HARRIS is employed and assigned to work in the
3 proposed injunction area. Intervenor HARRIS duties and responsibilities required him to work
4 with individuals alleged to be Oakdale Mob members. The requested injunction would prohibit
5 Intervenor HARRIS from such employment. Intervenor HARRIS has a significant interest in the
6 litigation.

7 3. Intervenor HARRIS because of his above stated interests and the potential
8 curtailment of his civil rights supports the motion for leave to file a complaint in Intervention.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct, and that this declaration was executed on November 14, 2006.

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13 DAMONE HALE
14 Attorney for Defendant-Intervenor
15 SHANTEAK HARRIS
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