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PROPOSED INTERVENOR, PRO SE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF CALIFORNIA, et al., Defendants.	Case No.: 2:18-cv-00490-JAM-KJN **NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE; DECLARATION OF DANA T. BLACKMORE (INCLUDING [PROPOSED] COMPLAINT IN INTERVENTION; [PROPOSED] ORDER**
DANA T. BLACKMORE, Proposed Plaintiff In Intervention, v. STATE OF CALIFORNIA; EDMUND GERALD BROWN, JR., Governor of California, in his Official Capacity; and XAVIER BECERRA, Attorney General of California, in his Official Capacity, Proposed Defendants.	Date: **June 5, 2018** Time: **1:30 p.m.** Court: **Courtroom 6, 14th Floor** **United States District Court** **501 "I" Street** **Sacramento CA 95814**

A.

INTRODUCTION

By this motion, Proposed Intervenor seeks this Court's permission to intervene in the instant action originally filed by the UNITED STATES OF AMERICA (hereinafter "United States").

In this action, DANA T. BLACKMORE (hereafter "Proposed Intervenor"), seeks to join the United States as Plaintiff In Intervention to obtain from this Court a declaration

invalidating and preliminarily and permanently enjoining the enforcement of certain provisions of California law including GOVERNMENT CODE § 12526 (AB 103) and GOVERNMENT CODE § 7284.6 (SB 54 – the (which includes the "so-called" CALIFORNIA VALUES ACT) (hereafter, collectively "Injurious Provisions"). These Injurious Provisions are preempted by federal law and impermissibly discriminate against the United States, and therefore violate the SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION. They also interfere with the ability of local (and) state law enforcement entities to ensure public safety for their residents. As such, the interference of these Injurious Provisions directly negate the rights of citizens/residents of the State of California to receive public safety services and/or protections provided by local (and) state law enforcement officials.[1]

The United States has undoubted, preeminent authority to regulate immigration matters. This authority derives from the United States Constitution and numerous acts of Congress. California has no authority to enforce laws that obstruct or otherwise conflict with, or discriminate against, federal immigration enforcement efforts.

Proposed Intervenor, DANA T. BLACKMORE, is a resident of the State of California who travels throughout the entire State of California and has a right to receive services/protections provided by all local (and) State law enforcement entities within the State of California.

B.

STATEMENT OF FACTS

This lawsuit challenges the two California Injurious Provisions, which reflect a deliberate effort by California by and through and/or as a result of political ideology of its governmental agents, the Proposed Defendants to obstruct the United States' enforcement

[1] At the outset and as more fully set forth below, while many local law enforcement have expressed their objection to the Injurious Provisions, because of the Proposed Defendants' authority over state law enforcement entities such as the California Highway Patrol ("CHP"), any rights and/or obligations afforded to citizens/residents of the state of California have not been directly contemplated by pleadings currently on file and would never be able to be expressed unless Proposed Intervenor is allowed to intervene.

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of federal immigration law, to impede consultation and communication between federal law enforcement officials and state and local law enforcement entities.

The first statute, GOVERNMENT CODE § 12526 – Assembly Bill 103 (hereafter "AB 103"), creates an inspection and review scheme that requires the Attorney General of California to investigate the immigration enforcement efforts of federal agents and to inspect the local jail facilities being utilized for detention of immigration detainees. The second statute, GOVERNMENT CODE § 7284.6 – Senate Bill 54 (hereafter "SB 54"), which includes the ("so-called") CALIFORNIA VALUES ACT, limits the ability of state and local law enforcement officers to provide the United States with basis information about individuals who are in their custody and are subject to federal immigration custody, or to transfer such individuals to federal immigration custody. It also limits the ability of state and/or local jurisdictions to contract with federal authorities to detain illegal aliens pending immigration hearings.

The Injurious Provisions of state law at issue have the purpose and effect of making it more difficult for federal immigration officers to carry out their responsibilities in California and for local (and) state law enforcement entities (to fulfill the role Congress contemplated for them) to cooperate with federal officers to meet those obligations and responsibilities. The SUPREMACY CLAUSE does not allow California to obstruct the United States' ability to enforce laws that Congress has enacted or to take actions entrusted to it by THE CONSTITUTION. Accordingly, the Injurious Provisions at issue here are invalid.

C.

STATEMENT OF FACTS

Proposed Intervenor is seeking to intervene based on FEDERAL RULES OF CIVIL PROCEDURE, Rule 24 (a) (intervention as a matter of right) and (b) (permissive intervention).

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1. PROPOSED INTERVENOR SATISFIED THE FOUR-PART TEST FOR INTERVENTION AS A MATTER OF RIGHT

To intervene as a matter of right under FEDERAL RULE OF CIVIL PROCEDURE 24(a), the applicant for intervention must claim an interest, the protection of which may, as a practical matter, be impaired or impeded if the lawsuit proceeds in its absence. See FED. R. CIV. P. 24(a). Rule 24 "traditionally receives liberal construction in favor of applicants for intervention." See ***Arakaki v. Cayetano***, 324 F.3d 1078, 1083 (9th Cir. 2003) (citing ***Donnelly v. Glickman***, 159 F.3d 405, 409 (9th Cir.1998)). See also, ***Southwest Ctr. For Biological Diversity v. Berg***, 268 F.3d 810, 818 (9th Cir. 2001). In this regard, Courts are guided primarily by practical and equitable considerations. ***Id.***

The Ninth Circuit applies a four-part test, which includes the following: (1) the motion must be timely; (2) the applicant must claim a significantly protectable interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be adequately represented by the parties to the action. ***Sierra Club v. United States Envtl. Prot. Agency***, 995 F.2d 1478, 1481 (9th Cir. 1993); ***Arakaki***, 324 F.3d at 1083; ***Northwest Forest Resource Council v. Glickman***, 82 F.3d 825, 836 (9th Cir. 1996).

a. THE INSTANT MOTION IS TIMELY

Whether a motion to intervene is timely is determined by the following three factors: (1) the stage of the proceedings, (2) prejudice to other parties, and (3) the reason for and length of any delay. ***U.S. v. Alisal Water Corp.***, 370 F.3d 915, 921 (9th Cir. 2004); ***U.S. v. State of Or.***, 745 F.2d 550, 552 (9th Cir. 1984); ***Petrol Stops Northwest v. Continental Oil Co.***, 647 F.2d 1005, 1009 (9th Cir. 1981). "Timeliness is to be determined from all the circumstances. And it is to be determined by the court in the exercise of its sound discretion." ***National Ass'n for Advancement of Colored People v. New York***, U.S. 345, 365-66, 93 S. Ct. 2591, 2603 (1973).

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First, the proceeding is in the early stages; the complaint was filed March 6, 2018, less than two months ago; on the same day the United States filed a Motion for Preliminary Injunction. Only some basic preliminary matters have been raised with the court. Proposed Intervenor is seeking to intervene very early in the litigation, and the Defendant has not yet filed its Opposition to the Motion for Preliminary Injunction. Except for denying the Motion to Change Venue, the Court has not made any substantive rulings in the case. Furthermore, the Defendants have not yet filed an Answer to the Complaint. The Court's docket reveals that the parties have only engaged in limited expedited discovery. Courts have granted motions to intervene filed at much later stages of the proceedings and well after the case progressed beyond preliminary discovery. See, U. S. v. Carpenter, 298 F.3d 1122, 1125 (9th Cir. 2002) (holding that a motion to intervene was not untimely where the applicant filed its motion upon notice that settlement was contrary to their interest even though application was made "eighteen months after the complaint was filed, after six months of court-ordered mediation, and four days of settlement negotiations in front of the a magistrate").

Second, it is unclear what prejudice, if any, Proposed Defendants would claim from Proposed Intervenor's attempt to intervene in the lawsuit. Courts have held that "prejudice" generally refers only to the issue of timeliness; that is, the prejudice referred to is in relation to the harm that results to the rights of other parties only by the purported delay. ***Diaz v. Southern Drilling Corp.***, 427 F.2d 1118, 1125 (5th Cir. 1970). Since the proceedings are in the early stages, it is unlikely that nay prejudice would come to the parties by allowing Applicant to intervene in this matter. Prejudice is generally construed to mean serious delays or case resolutions before intervention is sought. Since Proposed Intervenor's intervention at this early stage will not delay resolution of the case, it is unlikely that intervention would result in prejudice to the existing parties.

Third, because the United States has only recently filed the Complaint, Proposed Intervenor did not delay in asserting this intervention. Proposed Intervenor moved in a

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timely manner to file this Motion before the Defendants have even filed their Opposition(s) to the Motion for Preliminary Injunction and prior to the Defendants filing their responsive pleading(s) and prior the due date for doing so. Because Proposed Intervenor has move quickly to assert her rights, and because no party will be prejudiced by delay, if any, Proposed Intervenor has satisfied the timeliness requirement of Rule 24(a).

b. THE PROPOSED INTERVENOR HAS SIGNIFICANT PROTECTABLE INTEREST IN THE SUBJECT OF THIS ACTION

For intervention, the Ninth Circuit requires that the movant have a significantly protectable interest. ***Arakaki***, 324 F.3d at 1084 (citing ***Sierra Club v. EPA***, 995 F.2d 1478, 1484 (9th Cir. 1993)). Such interest is "primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." ***County of Fresno v. Andrus***, 622 F.2d 436, 438 (9th Cir. 1980). To demonstrate this interest, "[n]o specific legal or equitable interest need be established." ***Northwest Forest Resource Council***, 82 F.3d at 837 (quoting Greene v. United States, 996 F.2d 973, 976 (9th Cir. 1993)). Instead, a prospective intervenor need only establish that (1) the interest asserted is protectable under some law, and (2) there is a relationship between the legally protected interest and the claim at issue. ***Arakaki***, 324 F.3d at 1084. "[A] party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation." ***California ex rel. Lockyer v. United States***, 450 F.3d 436, 441 (9th Cir. 2006).

Here, Proposed Intervenor has significant protectable interest in the Court finding AB 103 and SB 54 unconstitutional. First, Congress has prohibited any laws at the federal, state or local level that would restrict the ability of government entities to share information and cooperate with immigration authorities when it enacted § 1373(a) of Title 8 of THE U.S. CODE.

> "Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may

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> not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a)

This statute clearly places an expectation and/or obligation on local (and) state law enforcement entities to disclose information to federal immigration authorities. The Proposed Defendants may not alter these obligations that have been set forth by federal law. The Supremacy Clause of the Constitution mandates that "[t]his Constitution, and the Laws of the United States which shall be made in pursuance thereof... shall be the supreme Law of the Land...any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONS., art. VI, cl. 2. Pursuant to the Supremacy Clause of the United States. The "so-called" California Values Act attempts to restrict the local (and) State law enforcement entities' obligations under federal law as expressed by Congress in Title 8, § 1373 of the U.S. Code, by mandating that "a law enforcement official has the discretion to cooperate with immigration authorities... only... under" specified and limited circumstances that deviate from the requirements of federal law. Cal. Gov't Code § 7282.5. As such, the interference of the Injurious Provisions directly negate the rights of citizens/residents of the State of California (i.e. – the Proposed Intervenor) to receive public safety services and/or protections provided by local (and) state law enforcement officials.

Second, the Proposed Intervenor has a significant protectable interest in receiving all protections that all local (and) state law enforcement governmental entities/agencies are obligated to provide to citizens/residents of the State of California (i.e. – the Proposed Intervenor). Under the ("so-called") CALIFORNIA VALUES ACT, local (and) state law enforcement entities are unable to cooperate or communicate with federal immigration authorities in many instances placing the public at risk. (See for example, ¶¶ 4, 5 and 6 of the Peterson Declaration attached to the County of Orange, et al.'s Motion in Intervention).

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See also Blackmore Declaration attached as "***Exhibit 1***". The ("so-called") CALIFORNIA VALUES ACT, generally requires as a precursor to any cooperation or communication with the federal immigration authorities that the alien be convicted. (See for example, ¶¶ 10 and 11 of the Peterson Declaration attached to the County of Orange, et al.'s Motion in Intervention). This requirement places the public at great risk as evidenced by offenses that have been deemed so severe that Congress has directed the Attorney General to detain the alien based upon reasonable suspicion of committing that offense irrespective of a conviction. Terrorist activities, member of terrorist organization, association with terrorist organizations, and human trafficking are all offenses in which the U.S. Attorney General is directed to detain the alien if either the Attorney General, the Secretary of Homeland Security, or the Secretary of State knows or has reason to believe the alien is committing or has committed these offenses. 8 U.S.C. §§ 1182 (a)(3)(B); 1182(a)(2)(h); see also 8 U.S.C. § 1182(a)(2)(c) (controlled substance traffickers); 8 U.S.C. § 1182(a)(2)(i) (money laundering). Because the ("so-called") CALIFORNIA VALUES ACT generally requires a conviction, local (and) state law enforcement officials may not cooperate or communicate with federal immigration authorities when they know or have reason to know the alien is involved in these (dangerous) offenses, thus jeopardizing the citizen/residents of the State of California. (See for example, ¶¶ 3, 4, 10 and 11 of the Peterson Declaration attached to the County of Orange, et al.'s Motion in Intervention). See also Blackmore Declaration attached as "***Exhibit 1***".

In addition, Congress has provided a list of crimes that are deemed so severe that the Attorney General is directed to take the convicted alien into custody after the alien serves their state or local criminal offenses. 8 U.S.C. § 1226(c). An example of instances in which convicted aliens may not be reported under the ("so-called") CALIFORNIA VALUES ACT but would fall under 8 U.S.C. § 1226(c) would be non-felony drug offenses, non-felony human trafficking offenses, drug abusers and addicts, espionage, sabotage, treason and sedition, crimes of moral turpitude, foreign government officials who have committed particularly

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severe violations of religious freedom, aliens involved in serious criminal activity who have asserted immunity from prosecution, and engaging in prostitution. Furthermore, even under the exceptions listed under the ("so-called") CALIFORNIA VALUES ACT, Gov't Code § 7282.5(a)(3)(A)-(Z), if the individual is convicted of a misdemeanor for any of these crimes listed in (A)-(Z) and five years have passed, then local (including state) law enforcement shall not disclose or cooperate with immigration authorities. (See for example, ¶¶ 10 and 11 of the Peterson Declaration attached to the County of Orange, et al.'s Motion in Intervention). See also Blackmore Declaration attached as "***Exhibit 1***". Similarly, if the individual is convicted of a felony for any of these crimes and 15 years have passed, then local (including state) law enforcement shall not disclose or cooperate with immigration authorities. The federal statute does not have a time cut off for any of these types of crimes and/or convictions, making the exceptions provided in the ("so-called") CALIFORNIA VALUES ACT much narrower in its application (and dangerous to the well-being and lives of citizens/residents of the State of California (i.e. – the Proposed Intervenor). The Injurious Provisions do not take into account that a person who is still a danger to society may have served a prison term that coincides with the five-year or fifteen-year period, and may have recently been released with no track record of rehabilitation. It is the federal government who has the constitutional authority to determine whether a crime committed by a person present in the United States illegally should lead to deportation, not the State of California. But due to the ("so-called") CALIFORNIA VALUES ACT, the Defendants have interfered with the federal government's exercise of its authority; placed the local (and) state law enforcement entities in an untenable position and have negated the rights of citizens/residents of the State of California to receive public safety services and/or protections provided by local (and) state law enforcement officials.

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c. THE COURT'S RULING MIGHT IMPAIR THE CITIZEN/RESIDENT, PROPOSED INTERVENOR'S SIGNIFICANT PROTECTABLE INTEREST OF RECEIVING PUBLIC SAFETY/SECURITY

Where the district court's decision will result in "practical impairment," intervention is appropriate. Rule 24 only requires that the proposed intervenor shows that the disposition ***may*** harm its ability to protect its interest and need not show any actual or substantial impairment. FED. R. CIV. P. 24(a); ***Yniquez v. Arizona***, 939 F.2d 727, 735 (9th Cir. 1991).

If Proposed Intervenor is not allowed to intervene, the Court's ruling in this matter may, as a practical matter, impair or impede Proposed Intervenor's right and/or ability as a tax-paying citizen/resident of the State of California to receive (all) protections that all local (and) state law enforcement governmental agencies are obligated to provide.

d. THE EXISTING PARTIES WILL NOT ADEQUATELY REPRESENT ALL OF THE INTERESTS OF THE CITIZEN/RESIDENT PROPOSED INTERVENOR

Proposed Intervenor has the minimal burden of showing that its interest would not be adequately represented by any of the parties currently in this action. ***Arakaki***, 324 F.3d at 1986. The Ninth Circuit looks to the following factors in determining adequacy of representation: (1) whether the interest of a present party is such that it will undoubtedly make all the intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether the intervenor would offer any necessary elements to the proceedings that other parties would neglect. ***People of State of California v. Tahoe Reg'l Planning Agency***, 792 F.2d 775, 778 (9th Cir. 1986); ***Sagebrush Rebellion, Inc. v. Watt***, 713 F.2d 525, 528 (9th Cir. 1983); ***County Fresno v. Andrus***, 622 F.2d 436, 438-39 (9th Cir. 1980).

Proposed Intervenor's interests are not adequately represented in this case. First, Proposed Intervenor's interests in the case concern its status as a citizen/resident of the State of California and Proposed Intervenor is specifically joining the case to address the

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constitutional and public safety protections that it has a right to receive and that local (and) state law enforcement officials are obligated to provide.

To the knowledge of the Proposed Intervenor there is no other party to this suit that (directly) asserts the public safety peril to which the Injurious Provisions subjects citizens/residents of the State of California. To Proposed Intervenor's knowledge and as stated in Footnote 1 above, while many (local) law enforcement have expressed their objection to the Injurious Provisions, because of the Proposed Defendants' authority over state law enforcement entities such as the California Highway Patrol ("CHP"), such entities are not able to do so. As such, any rights and/or obligations afforded to citizens/residents of the state of California by State law enforcement entities are not represented in this lawsuit because those agencies are one-in-the same with the Proposed Defendants. If the Proposed Intervenor is not allowed to assert its own rights in this suit, they will not be addressed inasmuch as none of the pleadings currently on file directly express the interests of citizens/residents of the State of California.

Proposed Intervenor has made more than the required "minimal showing that representation of its interest may be interest may be inadequate." ***People of the State of California v. Tahoe Reg'l Planning Agency***, 792 F.2d at 778 (9th Cir. 1986); ***U.S. v. Stringfellow***, 783 F.2d 821, 827 (9th Cir. 1986). Because Proposed Intervenor has met the four factors for intervention as a matter of right under Federal Rules of Civil Procedure 24(a), the prerequisites have been met for the court to allow it to intervene in this case.

2. PROPOSED INTERVENOR MEETS THE REQUIREMENTS FOR PERMISSIVE INTERVENTION PURSUANT TO FED. R. CIV. P. 24(b)

In the alternative, Proposed Intervenor seeks permissive intervention under Rule 24(b). Rule 24(b)(2) gives courts discretion to allow intervention when the applicants' claim has a common question of law or fact within the main action, so long as there is no undue prejudice to the parties. Specifically, the Court may grant permissive intervention if

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three conditions are met: (1) movant must show an independent ground for jurisdiction; (2) motion must be timely; and (3) movant's claim or defense and the main action must have a question of law and fact in common. ***U.S. v. City of Los Angeles***, 288 F.3d 391, 403 (9th Cir. 2002); ***Venegas v. Skaggs***, 867 F.3d 527 (9th Cir. 1989).

Rule 24 reflects a broad and flexible policy of adding a party or allowing intervention whenever necessitated by the interest of justice and/or judicial efficiency. Hence, the Supreme Court has regularly granted motions to intervene. See e.g., ***Hunt v. Cromartie***, 525 U.S. 946 (1998). Additionally, "the existence of a common question is liberally construed." ***Bureerong v. Uvawas***, 167 F.R.D. 83, 85 (C.D. Cal. 1996). Once the conditions for permissive intervention are met, it is up to the court to decide whether or not intervention is appropriate. "A district court's discretion in this regard is broad." ***Spangler v. Pasadena City Board of Educ.***, 552 F.2d 1326, 1329 (9th Cir. 1977). The District court is vested with discretion to determine the fairest and most efficient method of handling the case. ***Venegas***, 867 F.3d 527.

Proposed Intervenor meets the initial three conditions for permissive intervention. First, Proposed Intervenor's grounds for subject matter jurisdiction are based on federal question jurisdiction. Second, Proposed Intervenor's motion is timely. Supra § 1(a). Allowing Proposed Intervenor to intervene would neither delay nor prejudice the existing parties since the case is still in its infancy.

Third, permissive intervention is allowed, with the court's discretion, when the intervenor has a claim or defense that shares with the main action a common question of law or fact. The rule itself does not specify any particular interest that will suffice for permissive intervention and, as the Supreme Court has stated, it "plainly dispenses with any requirement that the intervenor shall have direct personal or pecuniary interest in the subject litigation." SEC v. U.S. Realty & Improvement Co., 310 U.S. 434, 459 (1940). In this case, Proposed Intervenor's claims do share with the main action a common question of law or fact.

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Specifically, the constitutionality of the Injurious Provisions directly affect public safety services afforded to the Proposed Intervenor by affected parties to this suit. Proposed Intervenors share an interest with the federal government in determining whether the Injurious Provisions are preempted by federal law under the Supremacy Clause. Additionally, Proposed Intervenor shares common questions of fact with parties to the main action, such as the impact that the state Injurious Provisions have citizens/residents of the state of California. As stated above, the Court has wide discretion in determining if this requirement is met.

Additionally, "judicial economy is a relevant consideration in deciding a motion for permissive intervention." Venegas v. Skaggs, 867 F.2d 527, 531 (9th Cir. 1989). The issues relevant to both Proposed Intervenor and to the federal government share common questions of law and fact, and this Court would be in the best position to rule.

WHEREFORE, Proposed Intervenor, DANA T. BLACKMORE prays the Court will grant this Motion allowing it to file its Complaint in Intervention.

Respectfully submitted,

Dated: April 23, 2018

By: _____

Dana T. Blackmore
PLAINTIFF IN INTERVENION, PRO SE

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EXHIBIT 1

DECLARATION OF DANA T. BLACKMORE IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AND [PROPOSED] COMPLAINT IN INTERVENTION

I, DANA T. BLACKMORE, declare as follows:

1. I am the Proposed Intervenor. I have personal knowledge of the facts stated herein and if called as a witness I can and would competently testify thereto.

2. Attached as Exhibit 1 to this declaration is a true and correct copy of the proposed Complaint in Intervention of DANA T. BLACKMORE, which I would propose to file should the Court permit me to intervene as a party plaintiff in this action.

I DECLARE under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that if called as a witness I could competently testify thereto.

Executed this 22nd day of April, 2018, at Los Angeles, California.

By: _____

Dana T. Blackmore
PLAINTIFF IN INTERVENION,
PRO SE

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