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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
18

19 UNITED STATES *ex rel.* NGUYEN, *et al.*,)

20 Plaintiffs,)

21 v.)

22 CITY AND COUNTY OF SAN FRANCISCO)
and the SAN FRANCISCO AIRPORT)
23 COMMISSION,)

24 Defendants.)

No. C 09-3934 SC

UNITED STATES' NOTICE OF
ELECTION TO DECLINE
INTERVENTION; [~~PROPOSED~~]
ORDER

FILED UNDER SEAL

25
26 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States hereby
27 notifies the Court of its decision not to intervene in this action.

28 Although the United States declines to intervene, we respectfully refer the Court to 31

1 U.S.C. § 3730(b)(1), which allows the relator to bring an action in the name of the United
2 States; providing, however, that the “action may be dismissed only if the court and the
3 Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.*
4 The United States Court of Appeals for the Ninth Circuit has held that, notwithstanding this
5 language, the United States only has the right to a hearing when it objects to a settlement or
6 dismissal of the action. U.S. ex rel. Green v. Northrop Corp., 59 F.3d 953, 959 (9th Cir.
7 1995); U.S. ex rel. Killingsworth v. Northrop Corp., 25 F.3d 715, 723-25 (9th Cir. 1994).

8 Therefore, the United States requests that, should either the relator or the defendant
9 propose that this action be dismissed, settled, or otherwise discontinued, this Court provide the
10 United States with notice and an opportunity to be heard before ruling or granting its approval.

11 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all
12 pleadings filed in this action be served upon the United States. The United States also
13 requests that orders issued by the Court be sent to the Government's counsel. The United
14 States reserves its rights to order any deposition transcripts, and to intervene in this action, for
15 good cause, at a later date. The United States also reserves its right to move to dismiss the
16 action pursuant to 31 U.S.C. § 3730(c)(2)(A).

17 Finally, the United States requests that the applications and stipulations filed by the United
18 States with the Court during the seal period remain under seal and not be made public or
19 served upon the defendant.

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that she is an employee of the Office of the United States
3 Attorney for the Northern District of California and is a person of such age and discretion to be
4 competent to serve papers. The undersigned further certifies that she is causing a copy of the
5 following:

6 **UNITED STATES' NOTICE OF ELECTION TO DECLINE INTERVENTION;
7 [PROPOSED] ORDER**

8 United States ex rel. Nguyen, et al., v. City and County of San Francisco and the San Francisco
9 Airport Commission
C 09-3934 SC

10 to be served this date upon each of the persons indicated below at the address shown:

11 Jeffrey P. Lendrum, Esq.
12 LENDRUM LAW FIRM
13 A Professional Corporation
401 West "A" Street, Suite 2330
San Diego, CA 92101

14
15 **BY FIRST CLASS MAIL** by placing a true copy thereof in a sealed envelope
16 with postage thereon fully prepaid in the designated area for outgoing U.S. mail in
accordance with this office's practice.

17 **CERTIFIED MAIL (#)** by placing such envelope(s) with postage thereon fully
18 prepaid in the designated area for outgoing U.S. mail in accordance with this
office's practice.

19 **BY PERSONAL SERVICE (BY MESSENGER):** I caused such envelope to be
20 delivered by hand to the person or offices of each addressee above.

21 **BY FACSIMILE (FAX):** I caused each such document to be sent by facsimile to
22 the person or offices of each addressee above.

23 **BY E-MAIL:** I caused each such document to be sent by e-mail to the person or
24 offices of each address above.

25 **BY FEDERAL EXPRESS**

26 I declare under penalty of perjury under the laws of the State of California that the foregoing
27 is true and correct. Executed April 29, 2010 at San Francisco, California.

28

KATHYTERRY
Legal Assistant

[PROPOSED] ORDER

1
2 1. All sealed contents of the Court's file in this action shall remain under seal and not
3 be made public or served upon the defendant, except for the Complaint, this Order, and the
4 accompanying United States' Notice of Election to Decline Intervention, which are hereby
5 unsealed.

6 2. Unless the relator voluntarily dismisses this action pursuant to Rule 41(a) of the
7 Federal Rules of Civil Procedure, he shall serve the Complaint, this Order and the
8 accompanying Notice of Election to Decline Intervention upon the defendant.

9 3. The seal is lifted as to all matters occurring in this action after the date of this
10 Order.

11 4. The parties shall serve all pleadings and motions filed in this action, including
12 supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3).
13 The United States may order any deposition transcripts and is entitled to intervene in this
14 action, for good cause, at any time.

15 5. All orders of this Court shall be sent to the United States.

16 6. Should the relators or the defendant propose that this action be dismissed, settled,
17 or otherwise discontinued, the Court will provide the United States with notice and an
18 opportunity to be heard before ruling or granting its approval.

19
20 IT IS SO ORDERED.

21 Dated: May 5/10

22 
23 SAMUEL CONTI
24 United States District Judge
25
26
27
28