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9 Attorneys for the Plaintiff

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)
 13 Plaintiff,)
 14 v.)
 15 CITY OF ARCATA and CITY OF EUREKA,)
 16 Defendants.)
 17 VOTE YES ON MEASURES F AND J)
 18 COMMITTEE,)
 19 Applicant for Intervention.)

Case No. C 08-5725 SBA

Order Granting Motion to Dismiss the Counterclaims

Date: June 9, 2009
 Time: 1:00 p.m.
 Location: Courtroom 3, Oakland

20 CITY OF ARCATA and CITY OF EUREKA,)
 21 Counterclaim Plaintiffs,)
 22 UNITED STATES OF AMERICA; ROBERT S.)
 23 GATES, in his official capacity as United States)
 24 Secretary of Defense; DAVID S. CHU, in his)
 official capacity as United States Under Secretary)
 25 of Defense for Personnel and Readiness; and)
 DOES 1 through 10, inclusive,)
 26 Counterclaim Defendants.)

1 This matter is before the Court on the motion of the plaintiff, the United States of
2 America, to dismiss the counterclaims asserted against it by the defendants, the City of
3 Arcata and the City of Eureka. The United States argues that the Cities lack standing to
4 raise the claims asserted in the counterclaims. Upon consideration of the plaintiff's
5 motion and the papers in support thereof and in opposition thereto, the Court has
6 determined that the United States is entitled to the relief that it requests.

7 The counterclaims assert that military recruiting efforts conducted by employees or
8 agents of the federal government violate a series of constitutional rights held by the cities'
9 residents. The counterclaims, however, do not assert that the Cities themselves have
10 suffered any injury that was caused by the federal government's purported constitutional
11 violations.

12 In order for the Cities to meet their burden to show that they have Article III
13 standing to pursue the counterclaims, they must show, *inter alia*, that they have suffered
14 an injury-in-fact, that is, the "invasion of a legally protected interest that is (a) concrete
15 and particularized and (b) actual or imminent, not conjectural or hypothetical."
16 *Preminger v. Peake*, 552 F.3d 757, 763 (9th Cir. 2008). The Cities do not allege that they
17 have suffered any particularized injury.

18 Instead, the Cities rely on allegations of "media reports of abuses by military
19 recruiters around the country," Counterclaim ¶ 12, and "a belief that a 16-year old Eureka
20 girl walking on the street was accosted and harassed by military recruiters who initiated
21 communications with her while driving by in a vehicle." [Id. ¶ 12]. A city may have
22 standing to redress violations of proprietary interest. *City of Sausalito v. O'Neill*, 386
23 F.3d 1186 (9th Cir. 2004) (e. g. proprietary interests in land-use and health regulations,
24 revenue collection and taxation, protection of natural resources, habitats of endangered
25 species). However, the interest alleged here – the proprietary interest in protecting the
26 youth of Arcata and Eureka – is not a recognized proprietary interest for the purpose of
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1 demonstrating Article III standing. The counterclaims thus do not present a case or
2 controversy, and this Court lacks jurisdiction over the counterclaims.

3 The Court accordingly ORDERS that the motion to dismiss the counterclaims is
4 granted; and further ORDERS that the counterclaims asserted by the City of Arcata and
5 the City of Eureka are dismissed for lack of subject matter jurisdiction.

6 IT IS SO ORDERED.

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8 Dated: 6/17/09

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10 
11 THE HON. SAUNDRA BROWN ARMSTRONG
12 United States District Judge
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