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11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

15  
 16 **SAN DIEGO COUNTY LODGING  
 ASSOCIATION, CALIFORNIA  
 17 EMPLOYMENT LAW COUNCIL,**

18 Plaintiffs,

19 v.

21 **THE CITY OF SAN DIEGO,**

22 Defendant.

Case No. 3:20-cv-02151-WQH-MDD  
**MOTION FOR LEAVE TO FILE AN  
 23 AMICUS CURIAE BRIEF**

Judge: Hon. William Q. Hayes  
 Court Room: 14B (14<sup>th</sup> Flr)

**NO ORAL ARGUMENT UNLESS  
 24 REQUESTED BY THE COURT**

1 The State of California respectfully moves, pursuant to this Court’s inherent  
2 authority, for leave to file the brief attached hereto as **Exhibit A**, as amicus curiae  
3 in support of defendant the City of San Diego and defendant-intervenor UNITE  
4 HERE Local 30’s (collectively “Defendants”) oppositions to plaintiff San Diego  
5 County Lodging Association’s motion for summary judgment, which seeks to strike  
6 down the City of San Diego’s Worker Recall and Retention Ordinance (the  
7 “Ordinance”). San Diego Municipal Code §§ 311.0103 *et. seq.*

8 **I. IDENTITY OF AMICUS CURIAE**

9 The California Attorney General is the State’s chief law officer. In that  
10 capacity, the Attorney General represents the State of California.

11 **II. MOVANT’S INTEREST**

12 California has a substantial interest in preserving the right of local authorities  
13 to enact necessary legislation to mitigate the harsh economic effects of the  
14 unprecedented COVID-19 pandemic. Mass unemployment during the pandemic  
15 has devastated the State’s low-wage workforce, particularly those employed in the  
16 leisure and hospitality industry. Prolonged unemployment harms the State by  
17 impeding economic recovery, increasing reliance on government benefits, and  
18 harming public health. As such, the State supports the authority of the City of San  
19 Diego, and other municipalities, to enact right-to-recall ordinances as appropriate  
20 and reasonable responses to a once-in-a-century pandemic. These local ordinances  
21 are critical to revitalizing the State’s economy and protecting low-wage workers.

22 The State’s interest in this case is underscored by the fact that California has  
23 enacted a similar state statute, Senate Bill 93 (SB 93, Cal. Lab. Code § 2810.8),  
24 which creates a right to recall for workers in specific industries, including  
25 hospitality, across the state. The Governor has described this law as keeping  
26 California “moving in the right direction” as the state reopens by ensuring that  
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1 workers displaced by the pandemic can return to their jobs.<sup>1</sup> Further, SB 93  
2 expressly allows for the adoption of local recall ordinances like that adopted by the  
3 city of San Diego. Cal. Lab. Code § 2810.8(f).<sup>2</sup> The Attorney General of  
4 California, as the State’s chief law officer, has a duty to administer and defend the  
5 State’s laws and has an interest in ensuring that SB 93 and substantially similar  
6 local ordinances are not overturned.

7 The State further has a substantial interest in ensuring that its large service and  
8 hospitality economy returns to its pre-pandemic role in creating jobs and economic  
9 growth for all Californians. Right-to-recall ordinances, such as that passed by the  
10 City of San Diego, are key to ensuring that this recovery is equitable and just for  
11 those workers most affected by the pandemic.

### 12 **III. PROPOSED AMICUS BRIEF’S RELEVANCE AND AID TO THE** 13 **COURT**

14 “District courts frequently welcome amicus briefs from non-parties . . . if the  
15 amicus has unique information or perspective that can help the court beyond the  
16 help that the lawyers from the parties are able to provide.” *Sonoma Falls*  
17 *Developers, L.L.C. v. Nev. Gold & Casinos, Inc.* 272 F. Supp. 2d 919, 925 (N.D.  
18 Cal. 2003) (quotations omitted). In addition, participation of amicus curiae may be  
19 appropriate where legal issues in a case have potential ramifications beyond the  
20 parties directly involved. *Id.*

21 The State’s amicus summarizes its interest in and history of regulating at-will  
22 employment relationships in order to advance its overarching public policy of  
23 protecting workers. Numerous state laws place conditions and restraints on  
24 California’s at-will employment statute, including long-accepted prohibitions

25 <sup>1</sup> Press Release, Governor Newsom Signs Legislation Supporting Workers  
26 Displaced by the COVID-19 Pandemic (Apr. 16, 2021), available at  
<https://bit.ly/3s1yYLt>.

27 <sup>2</sup> Cal. Lab. Code §2810.8(f) (“Nothing in this section shall prohibit a local  
28 government agency from enacting ordinances that impose greater standards than, or  
establish additional enforcement provisions to, those prescribed by this section.”)

1 against discriminatory hiring and discharge; laws that prevent retaliatory  
2 termination; and laws which impose severe penalties for mass layoffs that are not  
3 preceded by adequate notice. This background will provide the Court with  
4 information relevant to determining the proper scope and interpretation of the  
5 State’s at-will employment law and will clarify that the State’s presumption of at-  
6 will employment does not preempt the Ordinance

7       Additionally, the brief will provide support for Defendants’ argument that the  
8 Ordinance advances a significant and legitimate public purpose by providing the  
9 Court with data illustrating the harm prolonged unemployment has on low-wage  
10 workers, their families and the State as a whole. Without reemployment, these  
11 workers are likely to suffer long-term wage suppression and job instability. Recall  
12 ordinances diminish these harms and additionally help revitalize local economies  
13 and aid in the State’s economic recovery. The State’s position on such issues is  
14 relevant and pertinent to the Court’s consideration of whether the Ordinance is a  
15 reasonable and appropriate response to the COVID-19 pandemic. *See Sveen v.*  
16 *Melin* 138 S. Ct. 1815, 1821–1822 (2018).

17       The State has an interest in the proper interpretation of its at-will employment  
18 presumption and in the preservation of the police powers of the State’s political  
19 subdivisions to respond to the COVID-19 pandemic using measures that protect  
20 low-wage workers. The State’s amicus brief is thus relevant to the disposition of  
21 the issues before the Court as it demonstrates that the Ordinance does not conflict  
22 with the State’s at-will employment presumption and serves a legitimate and  
23 significant public purpose.

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**CONCLUSION**

For the foregoing reasons, the State of California requests that its motion be granted and its brief filed.

Dated: August 12, 2021

Respectfully submitted,

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## Exhibit A

(Brief of Amicus Curiae State of California in Opposition to Plaintiff's Motion for Summary Judgment)

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3:20-cv-02151-WQH-MDD

**BRIEF OF AMICUS CURIAE**  
**STATE OF CALIFORNIA IN**  
**OPPOSITION TO PLAINTIFF'S**  
**MOTION FOR SUMMARY**  
**JUDGMENT**

Judge: Hon. William Q. Hayes  
 Court Room: 14B (14<sup>th</sup> Flr)

**NO ORAL ARGUMENT UNLESS**  
**REQUESTED BY THE COURT**

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**INTRODUCTION AND STATEMENT OF INTEREST**

The State of California respectfully submits this brief as amicus curiae in support of defendant the City of San Diego and defendant-intervenor UNITE HERE Local 30’s (collectively “Defendants”) oppositions to the motion for summary judgment filed by plaintiff San Diego County Lodging Association (SDCLA). SDCLA challenges the City of San Diego’s COVID-19 Worker Recall and Retention Ordinance (the “Ordinance”), which grants recall and retention rights to hospitality and building-services employees.

The State has a substantial interest in this litigation. Mass unemployment during the COVID-19 pandemic has devastated California’s low-wage workforce. In addition to the negative impact on workers and their families, prolonged unemployment harms the State by impeding economic recovery and harming public health. The State’s strong interest in mitigating such harms is evidenced by its recent passage in April 2021 of Senate Bill 93 (SB 93), a similar statewide right-to-recall law, which expressly permits local governments to enact their own recall measures. *See* Cal. Lab. Code § 2810.8(f).

The State’s brief addresses California’s long history of regulating the employment relationship in favor of protecting workers. Right-to-recall laws are wholly consistent with these policies and present no conflict with at-will employment, which is already heavily regulated. The State also broadly supports local recall laws as an appropriate means to mitigate the devastating economic impact of the pandemic on key industries. Such laws serve a significant public purpose by increasing economic security for low-wage workers, helping to revitalize the State’s economy and ensuring a fair and equitable recovery for all Californians.

In this extraordinary time of uncertainty, the State supports worker recall laws as a means of offering some economic security to California’s workers, and



1 thus affirms the authority of local jurisdictions, like San Diego, to adopt such laws  
2 to facilitate reemployment in California’s hardest hit industries.

### 3 ARGUMENT

#### 4 A. RIGHT-TO-RECALL LAWS ARE CONSISTENT WITH THE STATE’S PUBLIC 5 POLICY FAVORING STRONG PROTECTIONS FOR WORKERS AND 6 EXISTING LIMITATIONS ON AT-WILL EMPLOYMENT

7 The State broadly supports right-to-recall laws as wholly consistent with the  
8 State’s “strong public policy favoring protection of workers’ general welfare and  
9 society’s interest in a stable job market.” *Gould v. Md. Sound Industries, Inc.*, 31  
10 Cal. App. 4th 1137, 1148 (Cal. Ct. App. 1995); *see also Rahimi v. Mid Atl. Prof’ls,*  
11 *Inc.* 2018 U.S. Dist. LEXIS 109462, at \*17 (S.D. Cal. June 29, 2018). Worker  
12 recall laws promote workers’ welfare at the most fundamental level: by restoring  
13 jobs lost as a result of the pandemic. *See Sanders v. Parker Drilling Co.*, 911 F.2d  
14 191, 197 (9th Cir. 1990) (“job security is the most fundamental employment right  
15 possessed by American workers”) (Reinhardt, J., concurring).

16 The State’s overarching public policy is manifest in the panoply of laws that  
17 govern conditions of employment, including laws limiting employer discretion in  
18 personnel decisions. Employers’ actions vis-à-vis their employees have long been  
19 restrained by both common law and statutory rights circumscribing Labor Code  
20 section 2922’s presumption of at-will employment.<sup>1</sup> For example, the *Tameny*  
21 cause of action—prohibiting adverse employment actions, including wrongful  
22 termination, in violation of public policy—was created as an extension of a long  
23 history of courts declaring contracts unenforceable when they were contrary to  
24 public policy. *See Ambrosino v. Metrop. Life Ins. Co.*, 899 F. Supp. 438, 446 (N.D.  
25 Cal. 1995) (citing to *Kreamer v. Earl*, 91 Cal. 112, 118 (1891), in which the  
26 California Supreme Court declined to enforce an otherwise valid contract that was

27 <sup>1</sup> Further, as Defendants correctly argue, right-of-recall laws have no impact on  
28 employment contracts, at-will or otherwise. Right-of-recall laws do not change the  
at-will nature of hired employees; they simply grant preference to previously laid  
off employees to return to their jobs (which may continue to be on an at-will basis).

1 counter to the public interest). Further, California’s employment anti-  
2 discrimination provisions in the Fair Employment and Housing Act, which  
3 constrain at-will employment, have been in place since 1959, five years prior to the  
4 enactment of Title VII.

5 There are currently well over thirty statewide laws that condition at-will  
6 employment.<sup>2</sup> There are additionally dozens of similar local laws existing in  
7 municipalities throughout California.<sup>3</sup> These laws promote fair employment  
8 practices by, for example, prohibiting discriminatory hiring or firing; protecting  
9 whistleblowers from retaliation; and imposing severe penalties for mass layoffs that  
10 are not preceded by adequate notice.

11 Notably, courts have held that the multitude of existing regulations and  
12 restraints imposed upon the employment relationship do not create any conflict or  
13 inconsistency with Labor Code section 2922. Instead, courts have repeatedly  
14 emphasized that at-will employment is subject to a myriad of limitations stemming  
15 from statute and public policy and that Labor Code section 2922 does not grant  
16 employers unlimited discretion to terminate at-will. *Shapiro v. Wells Fargo Realty*  
17 *Advisors*, 152 Cal. App. 3d 467, 475 (Cal. Ct. App. 1984); *see also Burton v. Sec.*  
18 *Pac. Nat. Bank*, 197 Cal. App. 3d 972, 977 (Cal. Ct. App. 1988) (“Recognizing  
19 present day economic realities and the reasonable expectations of the parties, recent  
20 courts developed legal theories which limit the employer’s absolute right to  
21 terminate an ‘at-will employee.’”).

22 Right-to-recall laws like the Ordinance and SB 93 fit squarely within the  
23 existing regulatory framework.<sup>4</sup> *See Campanelli v. Allstate Life Ins. Co.*, 322 F.3d

24 \_\_\_\_\_  
25 <sup>2</sup> *See* Unite Here Local 30 Opp. to MSJ, Ex. 8 (ECF No. 36-1).

26 <sup>3</sup> *See id.* at Ex. 9.

27 <sup>4</sup> In fact, recall and retention laws are already included within the broad framework  
28 of regulations limiting employers’ discretion in personnel decisions in various  
industries, including the following examples: the Displaced Janitor Opportunity

1 1086, 1098 (9th Cir. 2003) (where an area is already highly regulated, further  
2 regulations can be reasonably expected). Like other regulations, these laws  
3 promote the protection of workers’ livelihoods. For example, the Ordinance was  
4 passed to address job and economic insecurity experienced by workers due to the  
5 COVID-19 pandemic by ensuring fair employment practices and reinstatement to  
6 previous jobs. San Diego Muni. Code §§ 311.0101 *et. seq.*<sup>5</sup>

7 These goals are echoed in the policy reasons underlying the passage of the  
8 statewide worker recall law. In introducing the predecessor legislation to SB 93,  
9 Assemblymembers Ash Kalra and Lorena Gonzalez stated:

10 Right of recall and retention will guarantee that laid-off workers will  
11 have a shot at getting back their same job on the same career ladder  
12 once their employer begins re-hiring. This is not only important to  
13 protect workers from discrimination or attempts to cut wages, but it is  
14 also critical to the state’s economic recovery... These workers...  
should be able to go back to their jobs when the crisis has ended and be  
part of our state’s economic recovery.

15 Authors’ Comments, Legis. Bill Hist. CA A.B. 3216 (Oct. 10, 2020). Governor  
16 Newsom further noted that SB 93 helps promote equity “by assuring hospitality and

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19 Act, which requires the re-hiring and retention of a predecessor’s employees for 60  
20 days when a business changes hands (Cal. Lab. Code §§ 1060 *et seq.*); the  
21 Grocery Worker Retention Law, which requires a successor grocery employer to  
22 retain eligible workers for a 90-day transitional period and then to consider offering  
23 continued employment to those workers (Cal. Lab. Code §§ 2500 *et seq.*); and bid  
preferences for public transit and solid waste contracts for bidders who retain  
employees of the prior contractor for a specified period. (Cal. Lab. Code §§ 1070 *et*  
*seq.*).

24 <sup>5</sup> Similarly, San Francisco Supervisor Gordon Mar reasoned that these laws are  
25 “based on a clear, simple, and moral idea: businesses should rehire, not replace,  
26 their laid-off workers.” Press Release, San Francisco Supervisor Gordon Mar,  
27 Board of Supervisors Finally Passes Right to Re-Employment for Laid-Off  
Workers (Apr. 6, 2020), available at <https://bit.ly/3fEDFpe>.

1 other workers displaced by the pandemic are prioritized to return to their  
2 workplace.”<sup>6</sup>

3 These rationales reflect the collective consensus that worker recall laws are  
4 fundamentally rooted in principles of fairness: workers who lost their jobs during  
5 the pandemic deserve to have the same opportunities reinstated when possible. For  
6 the foregoing reasons, right-to-recall laws are consistent with the State’s strong  
7 public policy favoring the protection of workers, and do not present any conflict  
8 with Labor Code section 2922.

9 **B. THE STATE SUPPORTS LOCAL LAWS THAT MITIGATE THE ECONOMIC**  
10 **IMPACT OF AN UNPRECEDENTED PUBLIC HEALTH CRISIS ON WORKERS**  
11 **AT THE MARGINS**

12 The COVID-19 pandemic “has caused an unprecedented spike in  
13 unemployment at national, state, and local levels, the likes of which the country has  
14 not seen since the Great Depression...”<sup>7</sup> The impact on California “has been  
15 especially acute.”<sup>8</sup> Unemployment rates have skyrocketed across the state.  
16 Between March 14 and July 18, 2020, Californians filed approximately 8.7 million  
17 claims for unemployment insurance.<sup>9</sup> In April and May 2020, the statewide  
18 unemployment rate was above 16%.<sup>10</sup> California’s low-wage workers in key

19 <sup>6</sup> Press Release, Governor Newsom Signs Legislation Supporting Workers  
20 Displaced by the COVID-19 Pandemic (Apr. 16, 2021), available at  
21 <https://bit.ly/3s1yYLt>.

22 <sup>7</sup> *Legislative Findings of San Francisco Board of Supervisors*, San Francisco Right  
23 to Reemployment Following Layoff Due to COVID-19 Pandemic, Ordinance No.  
24 46-21, at 3 (Apr. 6, 2021) (hereinafter “SF Ord. Findings”), available at  
25 <https://bit.ly/3jI7N4p>

26 <sup>8</sup> *Id.*

27 <sup>9</sup> Annie Vainshtein, *What to Know About California Employment Benefits Under*  
28 *Biden*, S.F. CHRON., Jan. 20, 2021, available at <https://bit.ly/3yx9BDC>.

<sup>10</sup> Employment Development Department, *California Labor Market Top Statistics*,

1 service industries have been among the hardest hit. Nationally, in April 2020  
2 unemployment in the leisure and hospitality industry was a staggering 39.3  
3 percent<sup>11</sup> with high rates of unemployment persisting throughout the pandemic.<sup>12</sup>  
4 Nearly 40% of all jobs lost during the pandemic in California have been in the  
5 hospitality industry.<sup>13</sup> Janitorial and building services workers throughout the State  
6 have similarly experienced staggering rates of unemployment.<sup>14</sup>

7 Workers in California's service and hospitality industries are overwhelmingly  
8 people of color, women, and immigrants who tend to receive low wages.<sup>15</sup> Each of

9 \_\_\_\_\_  
10 Labor Market Information, <https://bit.ly/3iuxGFz> (last visited Aug. 7, 2021).

11 <sup>11</sup> Molly Kindler & Martha Ross, *Reopening America: Low-Wage Workers Have*  
12 *Suffered Badly From COVID-19 So Policymakers Should Focus on Equity*,  
13 BROOKINGS INST., June 23, 2020, available at <https://brook.gs/3Agd3CQ>.

14 <sup>12</sup> Ten months into the pandemic over 16% of the leisure and hospitality sector's  
15 labor force remained unemployed. U.S. Bureau of Labor Statistics, *Labor Force*  
16 *Statistics from the Current Population Survey, Dec. 2020*, <https://bit.ly/2X1oqjP>  
(last visited Aug. 7, 2021).

17 <sup>13</sup> Grace Dean, *California hospitality workers laid off during the pandemic must get*  
18 *priority access to jobs with former employers, a new law says*, BUSINESS INSIDER,  
19 Apr. 19, 2021, available at <https://bit.ly/31BPTmy>.

20 <sup>14</sup> Paul Hayes, et al., *Janitors: The Pandemic's Unseen Essential Workers*,  
21 MAINTENANCE COOPERATION TRUST FUND 1, 19-20 (Apr. 2021), available at  
22 <https://bit.ly/37ppikr>, (finding more than half of janitors surveyed had lost their jobs  
23 or had their hours reduced during the first six months of the pandemic (19% and  
24 35% respectively)).

25 <sup>15</sup> For example, 53% of hotel workers in California are immigrants and 57% are  
26 women. Annette Bernhardt et al., *Industries at Direct Risk of Job Loss from*  
27 *COVID-19 in California: A Profile of Front-Line Job and Worker Characteristics*  
28 UC BERKELEY LABOR CENTER, Apr. 10, 2020, available at <https://bit.ly/3ClfqX7>;  
see also Ratna Sinroja et al., *Misclassification in California: A Snapshot of the*  
*Janitorial Services, Construction, and Trucking Industries*, UC BERKELEY LABOR  
CENTER, 1, 7 (Mar. 11, 2019), available at <https://bit.ly/3yyjGQy>, (noting that in

1 these demographics has suffered disproportionately during the pandemic<sup>16</sup> and face  
 2 steep barriers to economic recovery post-pandemic.<sup>17</sup> Further, once laid off,  
 3 workers face job instability and long periods of unemployment due to the stigma of  
 4 unemployment.<sup>18</sup> In passing SB 93, the State legislature recognized right-to-recall  
 5 laws as reasonable measures to mitigate the harsh impacts of the COVID-19  
 6 pandemic on these already-vulnerable workers.

7 The effects of long-term job loss can have other far-reaching consequences on  
 8 low-wage workers and their families already living at the margins. These include  
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11 California, approximately 80% of janitorial workers are Latinx and nearly half live  
 12 in low-income or poverty-level households).

13 <sup>16</sup> Sylvia A. Allegretto & Bryce Liedtke, INSTITUTE FOR RESEARCH ON LABOR AND  
 14 EMPLOYMENT, UNIVERSITY OF CALIFORNIA, BERKELEY, WORKERS AND THE  
 15 COVID-19 RECESSION: TRENDS IN UI CLAIMS & BENEFITS, JOBS, AND  
 16 UNEMPLOYMENT 1, 3 (Aug. 18, 2020), available at <https://bit.ly/2VxYSuk>, (since  
 17 mid-March 2020, 64.8% of Latinx and 55.6% of Black households in California  
 18 have reported a loss of employment income); *see also* Leonardo Castañeda,  
 19 *Coronavirus: Black and Latinx Women in California Have Lost Work at Three*  
 20 *Times the Rate of White Men*, MERCURY NEWS, July 13, 2020, available at  
 21 <https://bayareane.ws/3Alhj45>.

22 <sup>17</sup> *See e.g.* Sarah Bohn et al., PUBLIC POLICY INSTITUTE OF CALIFORNIA, INCOME  
 23 INEQUALITY AND ECONOMIC OPPORTUNITY IN CALIFORNIA 1, 21 (Dec. 2020),  
 24 available at <https://bit.ly/2VCKvVv>, (finding the length of time for low-income  
 25 families to recover after a recession to be systematically longer than higher income  
 26 families).

27 <sup>18</sup> Declaration of Teresa Ghilarducci (ECF No. 36-2) (hereafter Ghilarducci Decl.)  
 28 at ¶ 3; *see also e.g.* Tiffany M. Trzebiatowski et. al, *Unemployed Needn't Apply:  
 Unemployment Status, Legislation, and Interview Requests*, 46 J. MGMT. 1380, 1398  
 (2020) (finding that “longterm unemployed applicants were less likely to receive an  
 interview request than short-term unemployed applicants” in the absence of anti-  
 discrimination protections for the unemployed).

1 long-term wage suppression,<sup>19</sup> higher mortality rates, and worse health outcomes.<sup>20</sup>  
2 Further, job loss impedes the educational progress of children of unemployed  
3 parents, resulting in further wage suppression.<sup>21</sup> Layoffs can additionally result in  
4 the loss of private health insurance benefits leaving workers and their families  
5 without coverage during an unprecedented health crisis.<sup>22</sup> Right-to-recall laws help  
6 diminish these harms by keeping workers attached to their previously held jobs.

7 The State has a further interest in reducing unemployment to revitalize local  
8 economies and speed the State's economic recovery. Mass unemployment hampers  
9 the State's economic recovery by decreasing consumer spending and lowering tax  
10 revenue.<sup>23</sup> It also poses a risk to public health by increasing the demand for and

11 \_\_\_\_\_  
12 <sup>19</sup> Ghilarducci Decl., ¶ 3; see also e.g. Marta Lachowska et al., *Sources of Displaced*  
13 *Workers' Long-Term Earnings Losses* 1, 18 (Nat'l Bureau of Econ. Research,  
14 Working Paper No. 24217, June 2019), available at <https://bit.ly/37sw8Wg>,  
15 (finding that five years after displacement during the Great Recession displaced  
16 workers' earnings averaged more than \$2,000 less per quarter than the earnings of  
comparable non-displaced workers, translating to approximately 15% lost  
earnings).

17 <sup>20</sup> See e.g. Jennifer R. Pharr et al., *The Impact of Unemployment on Mental and*  
18 *Physical Health, Access to Health Care and Health Risk Behaviors*,  
INTERNATIONAL SCHOLARLY RESEARCH NOTICES 1, 6 (Dec. 2011), available at  
19 <https://bit.ly/3fDgNq7>, (finding that "[u]nemployed participants had significantly  
20 worse perceived mental health profiles, were more likely to delay health care  
21 services due to cost, and were less likely to have access to health care").

22 <sup>21</sup> SF Ord. Findings, *supra* at 6; see also e.g. Caren A. Arbeit, University of  
23 Minnesota, *Is Timing Everything? Parental Unemployment and Children's*  
24 *Educational Attainment* 1, 5-6 (Minnesota Population Center, Working Paper No.  
25 2013-12, Nov. 2013), available at <https://bit.ly/3fGOp6u>, (finding that in the short-  
term, parental unemployment causes delays in children's educational progress and  
in the longer term is associated with a decreased likelihood of college attendance).

26 <sup>22</sup> SF Ord. Findings, *supra* at 5.

27 <sup>23</sup> Austin Nichols et al., THE URBAN INSTITUTE, CONSEQUENCES OF LONG-TERM  
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1 reliance on public benefits,<sup>24</sup> which are already strained by the pandemic.<sup>25</sup>  
 2 Reemployment of workers can reduce these impacts by helping to decrease the  
 3 unemployment rate more quickly.<sup>26</sup> For these reasons, the State has recognized  
 4 right-to-recall laws as critical to its economic recovery.

5 Right-to-recall laws serve the State’s legitimate and significant public policy  
 6 goals. The adoption of SB 93 has made the State’s support for such laws as  
 7 reasonable and appropriate responses to a once-in-a century pandemic  
 8 unambiguous. Local ordinances like San Diego’s ensure these principles of  
 9 fairness and equity are implemented at a local level and targeted at the industries  
 10 and workers most in need at this critical moment in the State’s recovery.

### 11 CONCLUSION

12 For the foregoing reasons, the State respectfully supports the request that this  
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14 \_\_\_\_\_  
 15 UNEMPLOYMENT 1, 4 (2013), available at <https://urbn.is/3xr4x25>, (citing to study in  
 16 the Journal of Public Economics finding that “families with an unemployed worker  
 17 have consumption 16% lower after six months of unemployment, but 24% lower if  
 18 the sole worker in the family became unemployed, relative to those who do not lose  
 19 employment.”); *see also* Peter Ganong & Pascal J. Noel, *Consumer Spending*  
 20 *During Unemployment: Positive And Normative Implications* 2383, 2384 (Nat’l  
 21 Bureau Econ. Research Working Paper No. 25417, 2019), available at  
 22 <https://bit.ly/3xwplFJ>, (finding that consumer “spending is highly sensitive to  
 23 income, both at the onset of unemployment and even at the large and predictable  
 24 decrease in income arising from the exhaustion of unemployment insurance”).

25 <sup>24</sup> Unemployed workers become more likely to leave the labor force and retire,  
 26 enroll in disability programs, or become discouraged workers. Nichols et al., *supra*  
 27 note 23, at 8.

28 <sup>25</sup>In June 2020, unemployment payments accounted for 15.6% of all wages and  
 salaries in the U.S.; by contrast, before the economic fallout of the virus,  
 unemployment insurance benefits were negligible—just 0.27% in February.  
 Allegretto & Liedtke, *supra* note 16, at 7.

<sup>26</sup> Ghilarducci Decl., ¶¶ 3-5.



1 Court deny SDCLA’s motion for summary judgment.

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3 Dated: August 12, 2021

Respectfully submitted,

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s/ Mana Barari  
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## CERTIFICATE OF SERVICE

Case Name: San Diego County Lodging  
Association, California  
Employment Law Council v. The  
City of San Diego

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No. 3:20-cv-02151-WQH-MDD

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I hereby certify that on August 12, 2021, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF; and**

**BRIEF OF AMICUS CURIAE STATE OF CALIFORNIA IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 12, 2021, at San Diego, California.

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C. Scott  
Declarant



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Signature