

1 Richard G. McCracken, SBN 062058

2 Andrew J. Kahn, SBN 228589

3 Paul L. More, SBN 243492

4 Yuval M. Miller, SBN 243492

5 DAVIS, COWELL & BOWE, LLP

6 595 Market Street, Suite 1400

7 San Francisco, CA 94105

8 Tel: (415) 597-7200

9 Fax: (415) 597-7201

10 *Attorneys for Intervenor UNITE HERE Local 11*

11 Michael N. Feuer, City Attorney, SBN 111529

12 James P. Clark, Chief Deputy City Attorney, SBN 647780

13 Thomas H. Peters, Chief Assistant City Attorney, SBN 163388

14 Ronald S. Whitaker, Managing Assistant City Attorney, SBN 110160

15 Sara Ugaz, Deputy City Attorney, SBN 239031

16 OFFICE OF THE LOS ANGELES CITY ATTORNEY

17 200 North Main Street, City Hall East, Room 916

18 Los Angeles, CA 90012

19 Tel: (213) 473-6878

20 Fax: (213) 473-6818

21 *Attorneys for Defendant City of Los Angeles*

22 **UNITED STATES DISTRICT COURT**

23 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

24 AMERICAN HOTEL & LODGING
25 ASSOCIATION and ASIAN AMERICAN
26 HOTEL OWNERS ASSOCIATION,

27 Plaintiffs,

28 vs.

CITY OF LOS ANGELES,

Defendant.

Case No.: 2:14-CV-09603-AB-SS

**JOINT SUPPLEMENTAL BRIEF IN
OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Date: April 6, 2015

Time: 10:00 a.m.

Location: Courtroom 4, 2nd Floor
312 N. Spring Street,
Los Angeles, CA 90012

Judge: Honorable Andre Birotte, Jr.

Complaint Filed: December 16, 2014

1 UNITE HERE LOCAL 11.

2 Intervenor-Defendant.

1 Defendant City of Los Angeles and Intervenor-Defendant UNITE HERE Local 11
2 respectfully submit this supplemental brief, notifying the Court of the Second Circuit
3 Court of Appeal’s decision in *Concerned Home Care Providers, Inc. v. Cuomo*, No. 13-
4 3790-CV, 2015 WL 1381380 (2d Cir. Mar. 27, 2015). This appeal was decided after
5 Defendants filed their respective briefs in opposition to Plaintiffs’ motion for a
6 preliminary injunction.

7 In *Concerned Home Care Providers*, the Second Circuit upheld the New York
8 Wage Parity Act (the “Act”), which sets the minimum amount of total compensation that
9 employers must pay home care aides in order to receive Medicaid reimbursements in
10 New York City and Westchester, Suffolk, and Nassau Counties. N.Y. Pub. Health Law §
11 3614–c. The Second Circuit rejected a claim that the Act was preempted by the National
12 Labor Relations Act under the *Machinists* doctrine. *Concerned Home Care Providers*,
13 2015 WL 1381380 at *4-7. The Second Circuit noted that “the Supreme Court has never
14 applied *Machinists* preemption to a state law that does not regulate the mechanics of
15 labor dispute resolution.” *Id.* at *6; *see id.* at *4 (“The statute’s concern with
16 ‘establishing an equitable *process* for determining terms and conditions of employment’
17 does not extend to the ‘particular *substantive terms* of the bargain that is struck.’”)”
18 (emphasis in original) (citing *Metro. Life v. Massachusetts*, 471 U.S. 724, 753 (1985), in
19 turn citing Archibald Cox, *Recent Developments in Federal Labor Law Preemption*, 41
20 Ohio St. L.J. 277, 297 (1980)). The Second Circuit held that even “assuming, *arguendo*,
21 that there may be labor standards that are so finely targeted that they impermissibly
22 intrude upon the collective-bargaining process, the Wage Parity Law . . . is no such law.”
23 *Ibid.*

24 The Court held that *Chamber of Commerce v. Bragdon*, 64 F.3d 497 (9th Cir.
25 1995), and *520 South Michigan Avenue Associates v. Shannon*, 549 F.3d 1119 (7th Cir.
26 2008) were readily distinguishable, “[e]ven assuming, *arguendo*, that these cases were
27 correctly decided.” *Ibid.* Finally, the Court found nothing untoward in the fact that the
28 Act encouraged union lobbying for minimum-compensation standards, holding that such

1 lobbying is “present ‘with regard to any state law that substantively regulates
2 employment conditions.’ *Machinists* preemption is not a license for courts to close
3 political routes to workplace protections simply because those protections may also be
4 the subject of collective bargaining.” *Concerned Home Care Providers*, 2015 WL
5 1381380 at *6 (quoting *Fort Halifax Packing v. Coyne*, 482 U.S. 1, 21-22 (1987)).
6

7 Dated: April 1, 2015

Respectfully submitted,

8 DAVIS, COWELL & BOWE, LLP
9

10 By: /s/ Paul L. More

11 Richard G. McCracken

12 Andrew J. Kahn

13 Paul L. More

Yuval M. Miller

14 *Attorneys for Intervenor UNITE HERE Local 11*

15 OFFICE OF THE LOS ANGELES CITY ATTORNEY
16

17 By: /s/ Ronald S. Whitaker

18 Michael N. Feuer

19 James P. Clark

20 Thomas H. Peters

Ronald S. Whitaker

Sara Ugaz

21 *Attorneys for Defendant City of Los Angeles*
22
23
24
25
26
27
28

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3 Paul L. More, SBN 243492

4 Yuval M. Miller, SBN 243492

5 DAVIS, COWELL & BOWE, LLP

6 595 Market Street, Suite 1400

7 San Francisco, CA 94105

8 Tel: (415) 597-7200

9 Fax: (415) 597-7201

10 E-mail: rmccracken@dcbsf.com

11 ajk@dcbsf.com

12 pmore@dcbsf.com

13 ymiller@dcbsf.com

14 *Attorneys for Intervenor UNITE HERE Local 11*

15 Michael N. Feuer, City Attorney, SBN 111529

16 James P. Clark, Chief Deputy City Attorney, SBN 647780

17 Thomas H. Peters, Chief Assistant City Attorney, SBN 163388

18 Ronald S. Whitaker, Managing Assistant City Attorney, SBN 110160

19 Sara Ugaz, Deputy City Attorney, SBN 239031

20 OFFICE OF THE LOS ANGELES CITY ATTORNEY

21 200 North Main Street

22 City Hall East, Room 916

23 Los Angeles, CA 90012

24 Tel: (213) 473-6878

25 Fax: (213) 473-6818

26 E-mail: ronald.whitaker@lacity.org

27 *Attorneys for Defendant City of Los Angeles*

PROOF OF SERVICE

I, Dinh Luong, declare as follows:

My business address is DAVIS, COWELL & BOWE, LLP, 595 Market Street, Suite 1400, San Francisco, California 94105. On April 1, 2015, I served the foregoing document(s) described as:

• **JOINT SUPPLEMENTAL BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

on the interested parties, by (i) filing the document using the Court's ECF system, and (ii) placing a true copy thereof in a sealed envelope(s) addressed as follows, and depositing those envelopes with the U.S. Postal Service, with postage prepaid:

Kristina Starr Azlin
John A. Canale
Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071

Michael Starr
Katherine H. Marques
Holland & Knight LLP
31 West 52 Street
New York, NY 10019

*Attorneys for Plaintiffs American Hotel
and Lodging Association and Asian
American Hotel Owners Association*

Ronald S Whitaker
Sara Ugaz
Los Angeles City Attorney's Office
City Hall East
200 North Main Street Room 916
Los Angeles, CA 90012

*Attorneys for Defendant City of Los
Angeles*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on April 1, 2015, at San Francisco, California.



Dinh Luong