

Case Nos. 17-17478, 17-17480

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CITY AND COUNTY OF SAN FRANCISCO,
Plaintiff-Appellee,

v.

DONALD J. TRUMP et al.,
Defendants-Appellants.

COUNTY OF SANTA CLARA,
Plaintiff-Appellee,

v.

DONALD J. TRUMP et al.,
Defendants-Appellants.

On Appeal from the United States District Court for the Northern District of
California, Nos. 17-485-WHO & 17-574-WHO

**BRIEF AMICI CURIAE OF SERVICE EMPLOYEES INTERNATIONAL
UNION AND UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION SUPPORTING APPELLEES, AFFIRMANCE**

Nicholas Clark, Gen'l Counsel
United Food and Commercial
Workers International Union
1775 K Street NW
Washington, DC 20006
(202) 466-1522

Attorney for UFCW

Nicole G. Berner, Gen'l Counsel
Deborah L. Smith
Claire Prestel
Service Employees International
Union
1800 Massachusetts Ave. NW
Washington, DC 20036
(202) 730-7466

Attorneys for SEIU

TABLE OF CONTENTS

	Page(s)
INTERESTS OF AMICI CURIAE.....	1
INTRODUCTION	2
ARGUMENT	3
I. The Challenged Executive Order Threatens Essential Services That Protect the Health and Well-Being of Millions of Residents and Workers.....	3
II. The Human Impact of Executive Order 13768.....	8
A. Impact on Public Hospitals	8
B. Impact on Public-Health Workers	13
C. Impact on Social Services.....	16
CONCLUSION.....	18

TABLE OF AUTHORITIES

	Page(s)
Statutes	
California Welfare & Institutions Code §17000.....	4
Other Authorities	
Am. Public Health Ass’n, <i>The Role of Public Health in Ensuring Healthy Communities</i> (Jan. 1, 1995) (Policy Statement No. 9521(PP))	5
Charles Liu et al., <i>California Emergency Department Closures Are Associated with Increased Inpatient Mortality at Nearby Hospitals</i> , 33 Health Affairs 1323 (2014).....	5
Executive Order 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017).....	3
Jane Wishner et al., <i>A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies</i> , The Kaiser Comm’n on Medicaid & the Uninsured: Issue Br. (July 2016), http://files.kff.org/attachment/issue-brief-a-look-at-rural-hospital-closures-and-implications-for-access-to-care	5
Katherine Neuhausen et al., <i>Disproportionate Share Hospital Payment Reductions May Threaten Financial Stability of Safety-Net Hospitals</i> , 33 Health Affairs 988 (2014).....	4
Laurel Beck, Pub. Policy Inst. of Cal., <i>California’s In-Home Support Program</i> (Nov. 2015), http://www.ppic.org/main/publication_show.asp?i=1169	7
Patricia A. Schene, <i>Past, Present, and Future Roles of Child Protective Services</i> , 8 Protecting Children From Abuse & Neglect 23 (Spring 1998)	7
Paul Campbell Erwin, M.D., D.P.H. et al., <i>Resources That May Matter: The Impact of Local Health Department Expenditures on Health Status</i> , 127 Pub. Health Reports 89 (2012).....	6

San Francisco Dep't of Pub. Health,
<https://www.sfdph.org/dph/default.asp>.....5

Santa Clara Cnty. Pub. Health Dep't, <https://www.sccgov.org/sites/sccphd/en-us/aboutus/Pages/default.aspx>.....5

Thomas R. Frieden, M.D, M.P.H., *Government's Role in Protecting Health and Safety*, 368 N. Eng. J. Med. 1857 (2013).....6

Tuberculosis Control Branch, Cal. Dep't of Pub. Health,
Responsibilities of Public Health Departments to Control Tuberculosis, https://www.ctca.org/filelibrary/responsibilities%20of%20Public%20Health%20Departments%20to%20Control%20Tuberculosis_6-24-13_final.pdf6

INTERESTS OF AMICI CURIAE

Amici curiae are the Service Employees International Union (“SEIU”) and the United Food and Commercial Workers International Union (“UFCW”).

SEIU is a labor organization of two million members engaged in public service, healthcare, and property service work; approximately half of SEIU members work in public service. UFCW is a labor organization of approximately 1.3 million members, representing workers across the United States and Canada in a wide range of industries, with the majority working in retail food, meat and poultry processing, food processing and manufacturing, and non-food retail.

Amici are dedicated to improving the lives of workers and their families, including by ensuring justice and fair treatment for our country’s immigrant communities.

Amici represent many workers in the City and County of San Francisco (“San Francisco”) and in the County of Santa Clara (“Santa Clara”) who provide and depend on the public services threatened by President Trump’s unconstitutional Executive Order.

The parties have consented to the filing of this brief. No party’s counsel authored this brief in whole or in part, and no person other than SEIU or its counsel made any monetary contribution intended to fund its preparation or submission.

INTRODUCTION

Amici represent and advocate for millions of employees nationwide, including many in San Francisco and Santa Clara who provide and depend on the public services threatened by President Trump's unconstitutional Executive Order. SEIU members, for example, work for Santa Clara and San Francisco as doctors, nurses, homecare aides, and family support specialists. The important work they do and the services they provide are described in Part I of this brief; Part II tells of their concerns, informed by specific personal experiences, about the harm the Executive Order will do to their patients and clients, to their own families, and to the trust in public-service professionals that is essential to the care they provide.

The stories of these front-line workers are relevant to the district court's Spending Clause holding because they show the breadth and depth of the Executive Order's impact on local jurisdictions' federally funded programs that have nothing to do with immigration enforcement. These workers' experiences, which are emblematic of experiences nationwide, are also relevant because they show the irreparable harm that President Trump's unlawful Order will do to public service workers and people across the country. Indeed, San Francisco, Santa Clara, and other jurisdictions across the United States are already weighing an impossible choice between two forms of irreparable harm to their workers and residents: eliminate jobs now in anticipation of the federal government's failure to

reimburse for costs incurred or operate under a cloud of fiscal uncertainty and threatened financial disaster.

ARGUMENT

I. The Challenged Executive Order Threatens Essential Services That Protect the Health and Well-Being of Millions of Residents and Workers.

President Trump's Executive Order 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017), poses a threat of irreparable harm to the over 2.7 million residents, thousands of public service workers, and essential public institutions and economies of San Francisco and Santa Clara—harm that will be inflicted in jurisdictions across the country if the Order is allowed to take effect.

The Executive Order threatens San Francisco's and Santa Clara's receipt of \$2.9 billion in federal funds, which support San Francisco's Human Services Agency, Department of Public Health, Department of Emergency Management, and Department of Transportation, as well as Santa Clara's Valley Medical Center, Social Services Agency, Public Health Department, and Office of Emergency Services, among others. As described in greater detail below, these vital community institutions protect and improve the health and well-being of San Francisco's and Santa Clara's residents by ensuring that experienced and skilled public employees provide necessary services. Indeed, California counties have a legal responsibility to provide healthcare to their indigent populations, see

California Welfare & Institutions Code §17000, and county hospitals and public health departments enable San Francisco and Santa Clara to comply with that obligation.

San Francisco and Santa Clara public hospitals, such as Zuckerberg San Francisco General Hospital and Santa Clara's award-winning Valley Medical Center,¹ provide high quality, cost-effective medical care to all residents of the Counties regardless of their ability to pay. These safety-net hospitals care for the most vulnerable patients in the healthcare system, providing extensive services, via both inpatient and outpatient care, to Medicaid and uninsured patients. *See, e.g.,* Katherine Neuhausen et al., *Disproportionate Share Hospital Payment Reductions May Threaten Financial Stability of Safety-Net Hospitals*, 33 Health Affairs 988 (2014).

Funding cuts to county hospitals have serious consequences for patients, including the loss of emergency medical care and reduced access to cancer

¹ Valley Medical Center has received honors and awards for excellence from the March of Dimes, American Diabetes Association, Veterans Affairs Department, and others. *See* <https://www.scvmc.org/about/Pages/awards.aspx>. In addition to being a leader in HIV/AIDS care, Zuckerberg San Francisco General Hospital is also the only Level 1 Trauma Center in San Francisco and Northern San Mateo County. *See* <http://zuckerbergsanfranciscogeneral.org/about-the-hospital/>.

treatments, intensive care beds, and surgery.² One of the ripple effects caused by reduced access to emergency treatments is increased hospital admission rates resulting in death. *See, e.g.,* Charles Liu et al., *California Emergency Department Closures Are Associated with Increased Inpatient Mortality at Nearby Hospitals*, 33 Health Affairs 1323 (2014).

Public health departments focus on prevention to protect their populations from illness, disease, and injuries. *See* Am. Public Health Ass'n, *The Role of Public Health in Ensuring Healthy Communities* (Jan. 1, 1995) (Policy Statement No. 9521(PP)). The San Francisco and Santa Clara Public Health Departments comprise dozens of programs and services that address the specific health needs of their communities, including programs aimed at lowering tuberculosis rates, combating Zika dangers, monitoring HIV/AIDS infection rates, preventing the damaging effects of lead poisoning, and working with high risk mothers and babies. *See* Santa Clara Cnty. Pub. Health Dep't, <https://www.sccgov.org/sites/sccphd/en-us/aboutus/Pages/default.aspx>; San Francisco Dep't of Pub. Health, <https://www.sfdph.org/dph/default.asp>. Law mandates some of these public health

² *See, e.g.,* Jane Wishner et al., *A Look at Rural Hospital Closures and Implications for Access to Care: Three Case Studies*, The Kaiser Comm'n on Medicaid & the Uninsured: Issue Br. (July 2016), <http://files.kff.org/attachment/issue-brief-a-look-at-rural-hospital-closures-and-implications-for-access-to-care>.

department activities, such as the diagnosis and treatment of tuberculosis. *See* Tuberculosis Control Branch, Cal. Dep't of Pub. Health, *Responsibilities of Public Health Departments to Control Tuberculosis*, https://www.ctca.org/filelibrary/responsibilities%20of%20Public%20Health%20Departments%20to%20Control%20Tuberculosis_6-24-13_final.pdf.

By focusing on prevention, public health departments save millions of dollars in healthcare costs and, more importantly, save lives. One study found that each \$10 increase in per capita health department expenditures leads to a 7.4% decrease in infectious-disease mortality. *See* Paul Campbell Erwin, M.D., D.P.H. et al., *Resources That May Matter: The Impact of Local Health Department Expenditures on Health Status*, 127 *Pub. Health Reports* 89 (2012). “When government fails to protect and improve people’s health, society suffers.” Thomas R. Frieden, M.D, M.P.H., *Government’s Role in Protecting Health and Safety*, 368 *N. Eng. J. Med.* 1857 (2013).

County social service agencies promote the economic and social well-being of individuals and communities, serving seniors, dependent adults, children, and the disabled. San Francisco’s Human Services Agency and Santa Clara County’s Social Services Agency offer In-Home Supportive Services to eligible aged, blind, and disabled residents who, without care, would be unable to remain safely in their own homes. These programs divert chronically impaired people from nursing

homes by providing quality services at lower costs. Laurel Beck, Pub. Policy Inst. of Cal., *California's In-Home Support Program* (Nov. 2015), http://www.ppic.org/main/publication_show.asp?i=1169. The protection of children from child abuse is also a primary function of the San Francisco and Santa Clara agencies: Social workers screen and investigate reports of child abuse and neglect, and ensure that children are protected while also emphasizing less restrictive placement alternatives. Patricia A. Schene, *Past, Present, and Future Roles of Child Protective Services*, 8 *Protecting Children From Abuse & Neglect* 23 (Spring 1998).

Within these departments and agencies, public service workers are the lifeblood of the community safety net, providing world-class healthcare, nursing the sick, caring for seniors and disabled individuals, keeping neighborhoods safe, educating children, and providing other essential services for all who live and work in San Francisco and Santa Clara Counties. The Counties' physicians, nurses, and homecare workers are on the front line of the healthcare system, responsible for integrating culturally sensitive hospital and in-home care. The Counties' social workers protect children and the elderly from abuse; their public health advocates ensure that individuals affected by mental illness have safe, supportive environments; and their emergency dispatchers give childbirth and CPR instructions over the phone while sending firemen, EMT staff, and sheriff's

deputies to emergency situations. Ultimately, the Counties' health and social service workers are the foundation for planning, delivering, and managing San Francisco's and Santa Clara's complex infrastructures of critical public services.

The individuals whose experiences and concerns are recounted below are union members who work in San Francisco's and Santa Clara's public hospitals, health departments, and social service agencies. They have chosen to work for these county institutions because of their deep commitment to providing comfort and service to those in need, and because of their belief in working for the public good. The experiences of these public service workers illustrate the importance of this case to millions of individuals and families, working people in these Counties and beyond, and the nation as a whole.

II. The Human Impact of Executive Order 13768

A. Impact on Public Hospitals

Nurses and doctors who work in the public-hospital system understand that federal funding cuts will be catastrophic for public health and that President Trump's Order, which seeks to compel county agencies to engage in immigration enforcement, will foster distrust of county workers and discourage immigrant families from seeking care.

Nurse Sasha Cuttler is a member of SEIU Local 1021 who helps oversee quality and safety programs at Zuckerberg San Francisco General Hospital and

who worries that the Executive Order will affect public-health funding.³

Mr. Cuttler has been a nurse since 1985 and has dedicated his career to making improvements to public health. He notes that, among its many roles, San Francisco General maintains the only psychiatric emergency room and trauma center in the city, provides health services for jails in San Francisco, and operates a rape crisis center.

Mr. Cuttler has particular expertise with respect to tuberculosis, having written a doctoral dissertation about controlling the disease in San Francisco. In his research, Mr. Cuttler found that tuberculosis survival rates were tied to the city's provision of publicly funded, no-cost care, which allowed San Francisco to achieve lower mortality levels than other cities. He believes that the Executive Order's anti-immigrant animus will further escalate fear among immigrant communities and lead patients not to seek care for infectious disease and other conditions: "Public health has no borders and making people afraid to accept care is a recipe for epidemic disease. That's an inevitable consequence." Furthermore, in Mr. Cuttler's experience, federal grant funds have been crucial to care improvement projects, such as a project funded by a grant from the federal Agency for Healthcare Research and Quality that reduced fall injuries in his hospital.

³ Mr. Cuttler and the other individuals named here were interviewed by attorneys about their experiences and work. They have given amici permission to tell their stories, and records of their interviews and statements are on file with undersigned counsel.

Mr. Cuttler has already seen the impact of an increasingly anti-immigrant climate. Students from a local vocational high school who intern at his hospital have said that they have been harassed and told to “return to Mexico.” A fellow SEIU member and registered nurse was also recently deported and separated from her children because she was undocumented. And Immigration and Customs Enforcement recently visited a daycare center two blocks from San Francisco General looking for someone. Mr. Cuttler believes events like these spread fear among the patient population.

Nurse Martha Baer is a member of SEIU Local 1021 and a registered nurse at Zuckerberg San Francisco General Hospital. She has worked for the City and County of San Francisco for ten years. For the past four years, she has worked at one of the hospital’s primary care clinics, which serves thousands of San Francisco residents each year, including high-risk patients with multiple chronic illnesses. Nurse Baer treats patients with severe and complex conditions, including chronic kidney disease, diabetes, cancer, and heart failure, among other serious conditions.

Without the care that Nurse Baer and the clinic’s other medical professionals provide, their patients would be forced to rely on sporadic treatment at hospital emergency rooms during medical crises. In other words, patients would face serious consequences if the clinic were defunded and its essential services not available. As Nurse Baer explains: “We keep people from resorting to the

emergency room for care, which benefits everyone. Costs are lower, care is better and waiting time is less at the clinics.”

The story of one of Nurse Baer’s recent patients provides an example the harm defunding would do. In June 2017, Nurse Baer’s clinic treated a patient who suffers from an autoimmune kidney disease, diabetes, coronary artery disease, and congestive heart failure. Nurse Baer observes: “Caring for him is complicated because the treatment for his cardiac problem would harm his already damaged kidneys, and the treatment for his kidney condition is terrible for his diabetes. It’s heart-breaking. But we keep him stable with clinic visits, adjust his meds, do an EKG if he needs it and monitor him to keep him out of the hospital.” Without access to the clinic, this patient would suffer life-threatening medical consequences.

In addition to treating patients with complex medical conditions, Nurse Baer also works with vulnerable populations and patients who have survived tremendous challenges. These are the patients who inspired her to become a nurse. She believes that establishing a relationship of trust with her patients is critical to providing effective medical care. Much of her work involves educating her patients about their diseases and how to manage them themselves, and Nurse Baer is convinced that, if her patients did not trust her, they would not follow her recommendations and not report their symptoms accurately. Without the patients’

trust, her work would be impossible. Nurse Baer believes that the anti-immigrant hostility of the Executive Order causes patients to fear and distrust all governmental institutions.

Dr. Joe is a member of SEIU's Committee of Interns and Residents and a third-year, internal-medicine resident at Valley Medical Center.⁴ He is concerned about serious consequences stemming from cuts in publicly funded healthcare services. Like Mr. Cuttler, he has particular experience with tuberculosis, having seen a patient in his primary care service who had not received any medical care for many years and who complained of a cough. Dr. Joe ordered an x-ray and learned that the patient had already lost half of one lung to tuberculosis. Without the County's medical services, Dr. Joe's patient would have risked further harm to himself and continued to expose thousands of people to that dangerous disease.

Dr. Joe is especially aware of the need for the culturally sensitive medical services that the County provides, which are essential to achieving trust among traditionally underserved populations. He remembers vividly a patient he saw last year who had been the victim of human trafficking and who came to him during her dialysis treatments. Using the network of services available at Valley Medical

⁴ Dr. Joe asked that his last name not be printed in this brief. He has undergraduate and medical school degrees from the University of California, Davis, and he chose to do his residency at Santa Clara County's hospital, Valley Medical Center, because he believes "passionately in the importance of serving vulnerable populations."

Center, Dr. Joe worked with a team of social workers, nurses, clinicians, and other staff to earn the patient's trust and learn her full story. The information elicited turned out to be crucial to the patient's proper diagnosis, treatment, and follow-up.

Given that experience and others, Dr. Joe believes it is critical that underserved populations who may have a distrust of the medical system have a safe place where their medical needs can be addressed. "I know how scary it is for people to trust a foreign and complex medical system. I have family members who were sick and I know how much it meant to them to have a doctor . . . who they really believed wanted to help them. I want to be that compassionate physician."

B. Impact on Public-Health Workers

Public service workers are also worried about the effect the Executive Order will have on their public-health work.

Pamela Ortiz is a member of SEIU Local 521 and a licensed vocational nurse who has provided safety-net health services for the Santa Clara County health system since 1997, including 16 years working at a county methadone clinic. Ms. Ortiz is concerned that when services are cut because of President Trump's Executive Order she will not be able to conduct visits to provide testing, vaccination, and education to patients in residential substance abuse treatment programs. She fears patients will stop seeking testing and services as a result, thereby weakening public health for the community as a whole.

Ms. Ortiz believes her patients will not be able to afford private drug-treatment services and will wait longer for help, leading to increased hospitalizations and costs. Fear of rising costs is already a reality: One patient was recently misinformed that he had to pay hundreds of dollars for x-rays (though they were covered by the county); the patient left the program two days later. Ms. Ortiz worries that this will happen more often when services are cut and patients do not have a healthcare worker, like herself, whom they trust to provide services in a non-judgmental way. The rise in overdoses the country is already experiencing worries her, and when funding is cut, she predicts the situation will become much worse.

Ms. Ortiz viscerally understands the importance of a healthcare safety net. She was born at the county hospital, Valley Medical Center, and raised by her single mother in San Jose with the assistance of Aid to Families with Dependent Children benefits. Unfortunately, her mother died of congestive heart failure and pneumonia in 1990, at the age of 54, because she lacked health insurance.

Ms. Ortiz herself raised and sent two daughters to college with her salary and hopes to do the same for her 16-year-old son. But because of the high cost of housing in San Jose, which has already forced her to live an hour and a half away from her job, she fears that if she is let go because of funding cuts she could face homelessness—and will face age discrimination in any search for a new job. For

all these reasons, Ms. Ortiz believes in county services, in the importance of preventive healthcare, and in reaching underserved populations. What makes the difference, she says, is “having the funding to treat, talk, test, and educate people and let them know they matter to us no matter where they come from.”

Marilyn Mara is a member of SEIU Local 521 and a nurse employed by Santa Clara County’s Department of Public Health. Ms. Mara emigrated from the Philippines at age 13 and has worked for the County for 18 years providing essential health services. She is concerned about the effects the Executive Order will have on the client population she serves, who are among society’s most vulnerable: “We work with high-risk populations including infants who can be medically fragile and premature, mothers with postpartum depression, pregnant and parenting teens, neglected and abused children, children with high levels of lead, obese children at risk for diabetes, patients with tuberculosis or other communicable diseases, adults and the elderly with chronic medical conditions, patients with history of domestic violence and substance-use, and others.” She worries that when services are cut patients will rely more on emergency services and drive up costs; she believes cuts in funding “will be felt for years and maybe decades” in terms of public health.

In Ms. Mara’s experience, continuity of care is crucial, and trust plays an important role in achieving that continuity. If patients do not trust their providers,

they will skip “regular well-child check-ups and immunizations, follow up less frequently with primary providers, and their medical conditions will worsen.” And Ms. Mara worries that the anti-immigrant animus of the Executive Order will reduce trust and exacerbate these negative effects. She believes fear of deportations or raids will lead members of immigrant communities to stay home and avoid seeking services.

C. Impact on Social Services

Public service workers who provide other social services worry about the Executive Order’s effects as well.

Claudia Nicole Arevalo is a member of SEIU Local 2015 who has worked for 20 years as a caregiver for the In-Home Supportive Services program in San Francisco. She currently provides home care for three different patients, two of whom have no family to help them. Ms. Arevalo cares for her patients ten hours per day Monday to Friday and for four hours on Saturday. She assists them by doing their grocery shopping, cooking food, housekeeping, administering medication, accompanying them to medical appointments, and keeping them company. She describes herself as “a nurse, housekeeper, psychologist, and chef, all in one,” and she believes when public funding is cut her clients will most likely get sicker and require more hospitalizations.

The Executive Order also worries Ms. Arevalo personally because she lives with her daughter and granddaughter and is afraid that when program funding is cut she may not be able to support them. Ms. Arevalo emigrated from El Salvador in 1992 and has built a life here, like other hard-working immigrants. If she experiences pay cuts or loses her job, she will “lose everything I’ve built since I got here. I’ve bought a house and I’m paying for it every month. How would I eat? It would be the worst thing to happen to me.” Ms. Arevalo also sees “a lot of fear already in the immigrant communities. People are already not shopping or going out; they’re also getting sick and dying and preparing to go back to the countries of their births. The whole United States will be hit hard.”

Lorena Briones has been a member of SEIU Local 521 and a social worker for Santa Clara County for 22 years. Ms. Briones evaluates and manages the service needs of a range of clients who are unable to remain in their homes without additional care. Ms. Briones’s caseload is anywhere between 276 and 340 clients, and her recent clients have included an individual diagnosed with ALS who was incapable of any form of self-care; a 95-year-old woman who lived alone; a quadriplegic young person; a severely autistic young man; and a little girl with paranoid schizophrenia. In all cases, Ms. Briones assesses the needs not only of the disabled or elderly individual but also of the family members who care for that individual in order to determine the best way to help the family as a whole.

Ms. Briones does not know what will happen to the vulnerable populations she serves when funding is cut in Santa Clara County: “There are more than 21,000 clients with severe, life-threatening problems in Santa Clara County. Without the help that we arrange for them, I don’t know how they would survive.” Ms. Briones is also the sole support for her 14-year-old daughter and 10-year-old son and worries that when the County is defunded she will not earn enough to care for her children and ensure that they have health insurance. But Lorena remains committed to the County’s goal of helping those who cannot help themselves, and her work with people who have suffered so much helps her “remember every day when I leave my home how blessed I am.”

CONCLUSION

President Trump’s unconstitutional and punitive Executive Order threatens a wide range of critical programs that have nothing to do with immigration. And the Order is causing irreparable harm to jurisdictions like San Francisco and Santa Clara and will continue to cause irreparable harm to communities and the public

employees who serve them. Accordingly, amici urge the Court to affirm the District Court's rulings.

Dated: February 12, 2018

Respectfully submitted,

/s/ Nicole G. Berner

Nicole G. Berner

Nicole G. Berner, Gen'l Counsel
Deborah L. Smith
Claire Prestel
Service Employees
International Union
1800 Massachusetts Ave. NW
Washington, DC 20036
(202) 730-7466
nicole.berner@seiu.org

Attorneys for SEIU

Nicholas Clark, Gen'l Counsel
United Food and Commercial
Workers International Union
1775 K Street NW
Washington, DC 20006
(202) 466-1522
nclark@ufcw.org

Attorney for UFCW

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(a)(5) because this brief contains 4,027 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typeface requirements of Fed. R. App. P. 32(a)(5) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word 2016 and Times New Roman 14-point font.

Dated: February 12, 2018

/s/ Nicole G. Berner

Nicole G. Berner

CERTIFICATE OF SERVICE

I hereby certify that on February 12, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: February 12, 2018

/s/ Nicole G. Berner

Nicole G. Berner