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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

15
16 Southern California Healthcare System,
Inc., a California Corporation, d/b/a
17 Southern California Hospital at Culver
City.

18 Plaintiff,

19 v.

20 City of Culver City, et al.

21 Defendants.

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23
24
25 Service Employees International Union –
United Healthcare Workers West,

26 Proposed Intervenor.
27
28

Case No.: 2:21-cv-05052
Hon. Mark Scarsi

**NOTICE OF MOTION AND MOTION
TO INTERVENE
BY PROPOSED INTERVENOR
SERVICE EMPLOYEES
INTERNATIONAL UNION– UNITED
HEALTHCARE WORKERS WEST**

Hearing Date: July 26, 2021
Time: 9:00 a.m.
Location: Courtroom 7C

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Service Employees International Union –United Healthcare Workers West
4 (“SEIU-UHW”), a healthcare justice union whose members include approximately
5 575 workers at Southern California Hospital at Culver City (“SCHCC”), brings
6 this motion for leave to intervene in this action in defense of Culver City’s
7 Ordinance Establishing Premium Hazard Pay for On-Site Hospital Workers at
8 Covered Hospitals (“the Ordinance”). Defendants City of Culver City (“the City”),
9 Mayor Alex Fisch, Vice Mayor Daniel Lee, and Council Members Yasmine-Imani
10 McMorrin, Göran Eriksson, and Albert Vera (collectively, “Defendants”) do not
11 oppose this motion.

12 The Ordinance requires that, for 120 days after its effective date, certain
13 frontline workers¹ at general acute care hospitals in Culver City be paid an hourly
14 premium in recognition and compensation for the risks, efforts and burdens they
15 face providing essential services to the community during the ongoing pandemic.

16 SEIU-UHW seeks leave to intervene in this lawsuit to defend its interest as a
17 leading proponent of the Ordinance, and the interest of its members who work at
18 SCHCC in receiving the hazard pay required by the Ordinance. These types of
19 interests are well established grounds for intervention: courts routinely grant
20 intervention to public interest groups seeking to intervene in order to defend

21 _____
22 ¹ “Hospital Worker” is defined in the Ordinance to mean “any individual providing
23 direct patient care and services supporting patient care at a Covered Hospital,
24 including, but not limited to, clinicians, nurses, aides, technicians, janitorial and
25 housekeeping staff, security guards, food services workers, laundry workers,
26 pharmacists, and nonmanagerial administrative staff”; it does not include “any
27 exempt manager or an individual performing exclusively managerial or
28 supervisory functions, or any physician or surgeon licensed by the State of
California pursuant to Chapter 5 of Division 2 of the Business and Professions
Code.” ECF No. 1-1, Ex. A (“Ordinance”), § 1.D.

1 legislation that benefits their members and for which they have advocated. *See e.g.*,
2 *Californians for Safe & Competitive Dump Truck Trans. v. Mendonca*, 152 F.3d
3 1184, 1189–90 (9th Cir. 1998); *Am. Hotel & Lodg. Ass’n v. City of L.A.*, No. CV
4 14-09603-AB (SSX), 2015 WL 12745805, at *1 (C.D. Cal. Mar. 25, 2015).

5 Under Federal Rule of Civil Procedure 24(a), SEIU-UHW has a right to
6 intervene in this matter because the motion is timely; because SEIU-UHW has a
7 significant protectable interest in the Ordinance because its members include
8 approximately 575 SCHCC workers who are entitled to hazard pay under the
9 Ordinance; and because intervention may be necessary in order to adequately
10 protect SEIU-UHW’s particular interests in defending the Ordinance, which are
11 narrower than those of the Defendants, who represent the public at large. SEIU-
12 UHW will represent its interests as a principal proponent of the initiative and its
13 members’ interests in receiving the pay premium the Ordinance was intended to
14 provide, drawing upon its knowledge of the experiences of workers at the hospital
15 and the circumstances of the Ordinance’s adoption by the City.

16 If the Court should find that SEIU-UHW does not have a mandatory right of
17 intervention under Federal Rule of Civil Procedure 24(a), the Court should
18 nevertheless grant this motion under the permissive intervention standard set forth
19 in Rule 24(b), because the motion is timely, SEIU-UHW’s defenses of the
20 Ordinance share the same questions of law and facts as the main action, and
21 intervention will not delay or prejudice the litigation or the original parties’ rights.

22 II. STATEMENT OF FACTS

23 SEIU-UHW is California’s largest healthcare workers’ union, with over
24 98,000 members who are frontline caregivers working in hospitals, clinics, nursing
25 homes, laboratories, and other healthcare facilities, including about 575 members
26 at SCHCC. *See* Declaration of Bruce Harland (“Harland Dec.”), ¶¶ 2-3; ECF No. 1
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28

1 (“Complaint”), ¶¶ 30, 64.² SEIU-UHW regularly engages in advocacy related to
 2 workplace justice, healthcare reform, and patient care, and was a principal
 3 supporter of the Ordinance. *See* Harland Dec. ¶ 4; Complaint ¶ 3.

4 The Ordinance provides hospital workers an additional five dollars of pay
 5 per hour of work. Ordinance, § 2.A, at pp. 71-72. This premium pay is intended to
 6 “compensate essential Hospital Workers for their daily sacrifices and the ongoing
 7 risks and burdens they and their families face while providing vital services to the
 8 community during the pandemic.” *Id.* at p. 70. The Ordinance is also designed to
 9 “promote job retention by ensuring Hospital Workers are adequately compensated
 10 for the substantial risks, efforts, and expenses they are undertaking to provide
 11 essential services in a safe and reliable manner.” *Id.*

12 The Ordinance takes effect 30 days after its adoption, and requires that
 13 hazard pay be provided for 120 days following the effective date. *Id.* at § 10, p. 74.
 14 The Ordinance further provides that the City will monitor COVID-19 indicators
 15 during the 120 days the premium pay requirement is in effect, and may rescind the
 16 Ordinance “if evolving conditions render it advisable to do so.” *Id.*

17 III. ARGUMENT

18 Federal Rule of Civil Procedure 24 permits two types of intervention:
 19 intervention as of right and permissive intervention. Rule 24(a) provides that a
 20 court must permit a timely motion to intervene by anyone who “claims an interest
 21 relating to the property or transaction that is the subject of the action, and is so
 22 situated that disposing of the action may as a practical matter impair or impede the
 23 movant's ability to protect its interest, unless existing parties adequately represent
 24 that interest.” Fed. R. Civ. P. 24(a)(2). Rule 24(b) provides that, on timely motion,
 25 _____

26 ² It is undisputed that SEIU-UHW was a proponent of the Ordinance, but SEIU-
 27 UHW disputes the allegations in the Complaint as to the nature of its advocacy on
 28 behalf of its members.

1 “the court may permit anyone to intervene who... has a claim or defense that
2 shares with the main action a common question of law or fact,” provided the court
3 considers “whether the intervention will unduly delay or prejudice the adjudication
4 of the original parties’ rights.” Fed. R. Civ. P. 24(b).

5 As set forth below, SEIU-UHW has a substantial interest in defending the
6 Ordinance sufficient to meet the standards for both mandatory and permissive
7 intervention.

8 **A. SEIU-UHW Has a Right to Intervene in this Action.**

9 Rule 24(a) is to be interpreted liberally in favor of intervention. *California*
10 *ex rel. Lockyer v. United States*, 450 F.3d 436, 440 (9th Cir. 2006); *Donnelly v.*
11 *Glickman*, 159 F.3d 405, 409 (9th Cir. 1998). Nonconclusory allegations in the
12 motion to intervene are to be accepted as true. *Southwest Center for Biological*
13 *Diversity v. Berg*, 268 F.3d 810, 820 (9th Cir. 2001). Courts apply a four-part test³
14 under Rule 24(a) to determine whether intervention is warranted:

15 (1) the application for intervention must be timely; (2) the applicant
16 must have a “significantly protectable” interest relating to the property
17 or transaction which is the subject of the action; (3) the applicant must
18 be so situated that the disposition of the action may, as a practical
19 matter, impair or impede [its] ability to protect that interest; and (4) the
20 applicant's interest must not be adequately represented by the existing
21 parties in the lawsuit.

22 *Berg*, 268 F.3d at 817-18. SEIU-UHW meets all four requirements.

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24
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26 _____
27 ³ No showing of standing is needed. See *Vivid Entertainment, LLC v. Fielding*, 774
28 F.3d 566, 573 (9th Cir. 2014).

1 **1. This motion is timely.**

2 This motion is being filed within one week of the filing of the Complaint
3 and the Plaintiff’s Motion for Preliminary Injunction and is therefore timely. *See,*
4 *e.g., Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897
5 (9th Cir. 2011) (intervention motion filed at the “early stage” of approximately
6 three months after complaint and two weeks after the answer was timely); *Idaho*
7 *Farm Bureau Fed’n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (intervention
8 motion filed four months after complaint, and before hearing on preliminary
9 injunction motion, was timely).

10 **2. SEIU-UHW has a significantly protectable interest in the**
11 **Ordinance.**

12 SEIU-UHW has two distinct interests in the Ordinance, each of which is
13 adequate to support intervention as of right under Rule 24(a). First, the union was a
14 principal supporter of and advocate for the Ordinance. Second, many of the
15 union’s members will be directly impacted by the outcome of the litigation, as they
16 are among the SCHCC workers who will benefit from the Ordinance’s premium
17 pay requirement and will therefore suffer direct harm if the Ordinance is
18 temporarily or permanently enjoined.

19 **a. SEIU-UHW has a significantly protectable interest as a**
20 **proponent of the Ordinance.**

21 It is well established that public interest groups are entitled as a matter of
22 right to intervene for the purpose of defending the legality of legislation they have
23 supported. *See, e.g., Sagebrush Rebellion v. Watt*, 713 F.2d 525, 526-27 (9th Cir.
24 1983) (citing *Washington State Bldg. & Constr. Trades Council v. Spellman*, 684
25 F.2d 627 (9th Cir. 1982)); *see also Idaho Farm Bureau*, 58 F.3d at 1397 (same). It
26 is undisputed that SEIU-UHW was a primary proponent of the Ordinance,⁴ and the

27 ⁴ *See, e.g.,* ECF No. 1, ¶ 3.

1 union is therefore entitled to intervene to defend the law against the Plaintiff's
2 challenge.

3 Intervention is also warranted because Plaintiff's arguments put SEIU-
4 UHW's support and advocacy for the Ordinance directly at issue. For instance,
5 Plaintiff alleges that the Ordinance was "motivated by a desire to target SCHCC at
6 the behest (or demand) of SEIU[-UHW]." ECF No. 1, ¶ 3. With claims of this
7 kind, Plaintiff calls into question the legitimacy or propriety of SEIU-UHW's
8 constitutionally protected right to petition. In light of Plaintiff's arguments
9 attempting to undermine or discredit the Ordinance based on the union's advocacy,
10 SEIU-UHW is entitled to intervene to address such claims and to defend its right to
11 engage in the legislative process.

12 **b. SEIU-UHW has a significantly protectable interest in**
13 **the hazard pay to which its members are entitled under**
14 **the Ordinance.**

15 Courts have frequently recognized that unions have a protectable interest
16 justifying intervention where their members' interests are at stake. *See, e.g., U.S. v.*
17 *City of Los Angeles*, 288 F.3d 391, 398-99 (9th Cir. 2002) (holding that police
18 union had a protectable interest because the complaint sought injunctive relief
19 against members and raised factual allegations concerning members' actions);
20 *Mendonca*, 152 F.3d at 1189-90 (holding union had a protectable interest in
21 defending prevailing wage law because its members had a "significant interest" in
22 receiving the prevailing wage); *Am. Hotel & Lodging Ass'n v. City of Los Angeles*,
23 No. CV 14-09603-AB (SSX), 2015 WL 12745805, at *3-4 (C.D. Cal. Mar. 25,
24 2015) (holding union had a protectable interest in litigation challenging local
25 minimum wage ordinance as beneficiaries of the ordinance); *Golden Gate*
26 *Restaurant Ass'n v. City & County of San Francisco*, No. C 06-06997 JSW, 2007
27 WL 1052820, at *2 (N.D. Cal. April 5, 2007) (holding unions had significantly
28

1 protectable interest in outcome of challenge to healthcare ordinance because
2 unions' members would benefit from the ordinance). Similarly, SEIU-UHW's
3 members have an interest in receiving compensation for the considerable risks they
4 face while providing an essential service during the ongoing COVID-19 pandemic.

5 SEIU-UHW's interests as a proponent of the hazard pay law and its
6 members' interest in receiving the Ordinance's benefits are each sufficient to
7 satisfy the "significantly protectable interest" prong of the test governing
8 intervention as of right.

9 **3. The relief sought by the Plaintiff would impair SEIU-UHW's**
10 **ability to protect its interests.**

11 The third factor in the Rule 24(a) test is whether the proposed intervenor's
12 interests "would as a practical matter be impaired or impeded by the disposition of
13 [the] action." *Berg*, 268 F.3d at 822; *see also* Fed. R. Civ. P. 24 advisory
14 committee's note to 1966 amendment (stating that a party is entitled to intervene if
15 resolution of the action would affect them "in a practical sense").

16 SCHCC seeks a judgment declaring the Ordinance "void and invalid" and a
17 "preliminary and permanent injunction enjoining the City, and any private
18 enforcer, from enforcing or taking any action under the Ordinance." ECF No. 1,
19 Complaint at Prayer for Relief, ¶¶ 1-7; ECF No. 11, Motion for Preliminary
20 Injunction. The injunctive and declaratory relief sought would clearly impair
21 SEIU-UHW's members' interest by preventing them from receiving the hazard pay
22 they would otherwise receive under the Ordinance. *See Mendonca*, 152 F.3d at
23 1190; *Am. Hotel & Lodg. Ass'n*, 2015 WL 12745805 at *4; *Golden Gate*
24 *Restaurant Ass'n*, 2007 WL 1052820 at *3.

25 As a proponent of the Ordinance, the union also has an interest in preventing
26 the possible *stare decisis* effect of a declaration that the Ordinance is
27 unconstitutional on any of the grounds asserted by the City. The union represents
28

1 not only members in Culver City, but also workers throughout California in other
2 locations where similar legislation could potentially be enacted, and thus has a
3 broad interest in any possible precedential effect of this litigation. These are
4 additional grounds for allowing intervention. *See Greene v. United States*, 996 F.2d
5 973, 977 (9th Cir. 1993) (citing *United States v. Oregon*, 839 F.2d 635, 638 (9th
6 Cir. 1988)) (“Intervention may be required when considerations of *stare decisis*
7 indicate that an applicant’s interest will be practically impaired”); *cf. City of Los*
8 *Angeles*, 288 F.3d at 397-98 (“By allowing parties with a *practical* interest in the
9 outcome of a particular case to intervene, we often prevent or simplify future
10 litigation involving related issues; at the same time, we allow an additional
11 interested party to express its views before the court.”).

12 **4. The City may not adequately represent SEIU-UHW’s**
13 **interests.**

14 Finally, intervention is appropriate where the proposed intervenor makes a
15 “minimal” showing that their interests may be inadequately represented by the
16 existing parties, including where the defendants’ interests in the litigation may be
17 generally aligned with, but not identical to, the proposed intervenor’s. *Trbovich v.*
18 *United Mine Workers*, 404 U.S. 528, 538-39 & n.10 (1972) (granting intervention
19 to union members whose position was aligned with that of Secretary of Labor,
20 because Secretary had duties to the public as well as to union members and these
21 separate duties “may not always dictate precisely the same approach to the conduct
22 of the litigation”); *Sagebrush Rebellion*, 713 F.2d at 528; *Southwest Ctr. for*
23 *Biological Diversity*, 268 F.3d at 823; *see also* 6 James Wm. Moore, et al., Moore’s
24 Federal Practice § 24.03[4][a] (3d ed. 1999) (“[T]he applicant should be treated as
25 the best judge of whether the existing parties adequately represent his or her
26 interests, and . . . any doubt regarding adequacy of representation should be
27 resolved in favor of the proposed intervenors.”).

1 This prong of the Rule 24(a) test is satisfied when the applicant (has interests
2 that are “more narrow and parochial than the interests of the public at large.”
3 *Mendonca*, 152 F.3d at 1190; *see also Sierra Club v. Espy*, 18 F.3d 1202, 1207-08
4 (5th Cir. 1994) (proposed intervenors, timber trade groups, satisfied the “minimal
5 burden” of showing the government might not adequately represent their interest,
6 because the government “must represent the broad public interest, not just the
7 economic concerns of the [intervenors]”).

8 Here, SEIU-UHW has a narrower interest than the City because the union
9 represents the interests of its members, who include the Ordinance’s Hospital
10 Worker beneficiaries, whereas the City represents the interests of the public at
11 large, including “businesses and employers who may claim to be harmed” by the
12 Ordinance. *Golden Gate Restaurant Ass’n*, 2007 WL 1052820, at *4.

13 SEIU-UHW has an additional interest that may be narrower than the City’s,
14 which is its interest in responding to SCHCC’s allegations concerning SEIU-
15 UHW’s role in lobbying for passage of the Ordinance and its National Labor
16 Relations Act preemption claim. *See, e.g.*, ECF No. 1, ¶¶ 3, 10, 78, 142-151. In
17 *American Hotel and Lodging Association*, the court held that a union had a
18 “distinct interest” in defending against a plaintiff’s preemption arguments
19 concerning or based upon allegations about the collective bargaining process. 2015
20 WL 12745805 at *5. The same is true here. Although the City has a general
21 interest in defending the Ordinance, it does not have the same interest in
22 responding to SCHCC’s attempt to use the union’s role in collective bargaining in
23 support of litigation that would directly harm the union’s members.

24 SEIU-UHW and its counsel also have knowledge and expertise bearing on
25 the issues in this case that may aid the Court in resolving Plaintiff’s claims. SEIU-
26 UHW has significant knowledge of the impacts of COVID-19 on the healthcare
27 industry in general and on workers at SCHCC in particular. *See, e.g., Sagebrush*
28

1 *Rebellion, Inc.*, 713 F.2d at 528 (holding mandatory intervention was appropriate
2 where the intervenor possessed “expertise apart from that of the [party]” that
3 rendered the party inadequate to represent the intervenor’s interests under Rule
4 24(a)(2)). SEIU-UHW’s counsel has experience litigating cases challenging laws
5 such as the Ordinance that establish minimum labor standards as either
6 unconstitutional or preempted by federal labor law, including cases of direct
7 relevance to SCHCC’s claims here, that will supplement the City’s defense of the
8 Ordinance and better enable the Court to assess SCHCC’s claims.

9 **B. SEIU-UHW Also Qualifies for Permissive Intervention.**

10 Even if the Court finds that SEIU-UHW does not qualify for intervention as
11 of right, alternatively, the Court should grant this motion under the permissive
12 intervention standard. Fed. R. Civ. P. 24(b). Courts considering whether to grant
13 permissive intervention take three factors into account: (1) the existence of
14 independent grounds for jurisdiction;⁵ (2) timeliness; and (3) whether the
15 applicant’s claim or defense and the main action share common questions of law or
16 fact. *Northwest Forest Resources Council v. Glickman*, 82 F.3d 825, 839 (9th Cir.
17 1996). The Court must also consider whether “the intervention will unduly delay or
18 prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3).

19 SEIU-UHW satisfies these requirements. This application for intervention is
20 timely, having been filed immediately after Plaintiff initiated the litigation and
21 moved for preliminary injunction. Granting SEIU-UHW intervenor status at the
22 outset of the litigation will not delay the litigation, nor will SEIU-UHW’s
23 participation prejudice the original parties. Fed. R. Civ. P. 24(b)(3).

24

25 ⁵ Independent grounds for jurisdiction are not required where, as is the case here,
26 the district court’s jurisdiction is grounded in a federal question and the proposed
27 intervenor does not seek to bring new state-law claims. *See Freedom from Religion*
28 *Foundation, Inc. v. Geithner*, 644 F.3d 836, 843 (9th Cir. 2011).

1 Finally, SEIU-UHW’s anticipated defenses of the ordinance share common
 2 questions of law and fact with the City’s anticipated defenses. Both SEIU-UHW
 3 and the City will show that the ordinance is a typical and permissible exercise of
 4 local police power to enact minimum labor standards, which is not preempted by
 5 the National Labor Relations Act, or unconstitutional or unlawful in any of the
 6 other ways alleged by the Plaintiffs. *See* ECF No. 1, Complaint (listing eleven
 7 causes of action including NLRA preemption and various constitutional claims).⁶
 8 Thus, permissive intervention should be granted if mandatory intervention is not.
 9 *See Employee Staffing Services v. Aubry*, 20 F.3d 1038, 1042 (9th Cir. 1994)
 10 (affirming order allowing union to intervene under permissive intervention
 11 standard).

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Court should grant SEIU-UHW’s motion to
 14 intervene.

15
 16 Dated: June 28, 2021

Respectfully submitted,
 FEINBERG, JACKSON,
 WORTHMAN & WASOW, L.L.P.
 WEINBERG, ROGER & ROSENFELD
 By: /s/ Catha Worthman
 Catha Worthman
 Attorneys for Proposed Intervenor

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 27 ⁶ The Complaint lists twelve causes of action but starts with a second cause of
 28 action. ECF No. 1, at p. 43.