IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

PAUL ARON, Plaintiffs, Respondent, and Cross-Appellant, v. WIB HOLDINGS, LLC and BARBARA BILLS, Defendants and Appellants.	Court of Appeal No. B271271 Superior Court No. SC124344

Consolidated appeals

APPLICATION FOR LEAVE TO FILE AMENDED AMICI CURIAE BRIEF Of CITY OF SANTA MONICA and LEAGUE OF CALIFORNIA CITIES

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Application of Leave to File Amended Amici Curiae Brief

To the Honorable Justices of the California Court of Appeal:

The City of Santa Monica ("City") and the League of California Cities ("League") respectfully seek this Court's permission to file the attached amended *amici curiae* brief in support of the Respondent Paul Aron. The City and the League submitted their original brief on December 19, 2018, well in advance of its deadline. If Respondent Paul Aron files his reply brief tomorrow, the City and League's brief will not be due for another 14 days. All counsel were notified today, December 28, of this amended filing.

The reason for filing this amended brief is that we have discovered that a round of early revisions to the brief's third section were omitted from the editing process. Those revisions are important to further underscore the importance of the public policy arguments, especially regarding the affordable housing crisis, behind local ordinances that limit malicious evictions and allow both tenants and cities to enforce such ordinances. In addition, a case citation is corrected.

Accordingly, the City and the League respectfully request that this Court grant leave to file the attached amended *amici curiae* brief.

Dated: December 28, 2017

By: /s/ *Gary W. Rhoades*
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Identification of Amici Curiae

The City of Santa Monica. The City is a charter city, and in 1979, its voters amended the City Charter by adding a residential rent control law. Santa Monica City Charter §1804(b). The new law prohibited a landlord from increasing the rent (except for certain periodic adjustments) after a prior tenant vacated the unit. The law also limited the grounds for eviction to certain enumerated causes. Santa Monica City Charter §1806(a).

The purpose of Santa Monica's rent control law was "to alleviate the hardship [on tenants] caused by [the] serious housing shortage." *Santa Monica Beach, Ltd. v. Superior Court* (1999) 19 Cal.4th 952, 969-70, *quoting* Santa Monica City Charter §1800. In 1995, the California Legislature enacted the Costa-Hawkins Rental Housing Act ("Costa-Hawkins"), which altered local rent control laws by mandating "vacancy decontrol." Civil Code §§1954.50-1954.53. The statute entitles landlords to charge market rent levels on all newly vacated units statewide.

In September 1995, following a burgeoning number of complaints of landlord misconduct that appeared to be related to vacancy decontrol, the Santa Monica City Council adopted the Tenant Harassment Ordinance ("Ordinance"), Santa Monica Municipal Code ("S.M.M.C.") §§4.56.010-040.

Given its direct relationship to the Ordinance, its history of enforcing the Ordinance and defending the Ordinance in courts, the City is in a unique position to provide insight on this matter.

The League of California Cities. The League of California Cities is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

In California, local government plays a primary role in ensuring the availability of safe and affordable housing. That role is specifically recognized in state law; for example, in the requirement that local governments create and adhere to a general plan that includes a defined housing element. California Government Code § 65588. It is also recognized more generally in the California Constitution, which gives local governments the authority to enact laws to secure the public health, safety, and welfare. California Constitution, Art. XI, § 7. That role has never been more apparent to local government and the people alike than in the present statewide housing shortage.

The League is also in a unique position to provide insight to this Court on the effects of expanding the litigation privilege to prevent cities from protecting their tenants from malicious prosecutions.

Issues

Based on the parties' briefings, the Court can deny Appellants' appeal without reaching the preemption issues addressed in this brief. In the unlikely event the Court reaches these issues, amici address two narrow and simple questions: First, does the litigation privilege preempt the Ordinance's creation of liability for landlords who have filed and lost a malicious and baseless prosecution against their tenant? Second, does state malicious prosecution law somehow preempt the same pertinent section of the Ordinance? Under California's litigation-privilege and preemption jurisprudence, the answer to both questions is "no." In fact, to resolve litigation privilege issues, the Ordinance at issue in this appeal was amended to follow the guidance provided by the California Supreme Court in *Action Apartment Ass'n, Inc. v. City of Santa Monica* (2007) 41 Cal. 4th 1232.

Preliminary Statement

Like many local governments in this state, Santa Monica employs the limited form of rent control known commonly as "vacancy decontrol" as dictated by the Costa-Hawkins Rental Housing Act. Civil Code §1954.53(a). Under this system, residential rents are controlled while a tenant remains in place, but may be increased almost without limit when the tenant leaves and the unit is re-rented. As countenanced by the Legislature when it passed vacancy decontrol, in order to make the rent control system work, Santa Monica must necessarily limit the grounds for eviction; otherwise, landlords could

completely circumvent any rent limitation by simply evicting tenants with low rents. [1] Thus, as in most local jurisdictions with some form of residential rent control, Santa Monica allows only for-cause evictions. And in order to both protect affordable housing stock and ensure that landlords do not circumvent eviction limitations, the City makes it illegal for landlords to induce tenants to leave their rental units through intimidation and harassment tactics, including the filing of baseless and malicious unlawful detainers.

In the case at hand, Appellants assert that the litigation privilege is not merely a possible defense in their case, but that it preempts the Ordinance's prohibition of a landlord's malicious prosecution. This ground has been explored before with the same Ordinance. In 2007, the City applied the Supreme Court's guidance in *Action Apartment Ass'n, Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232 to revise its Ordinance to require a tenant to satisfy all three requirements of a malicious prosecution action, and thus avoid preemption by the litigation privilege.

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[1] While the Costa-Hawkins Rental Act was only intended to provide rent relief to landlords upon a tenant's voluntary vacancy, it also unintentionally provided a financial incentive for unscrupulous landlords to evict tenants in controlled units, in order to take advantage of the new vacancy decontrol. Recognizing the impact this change would have on existing tenancies and the local interest in preserving affordable housing stock, the Legislature struck a balance between state and local regulation. Costa Hawkins specifically acknowledged:

> "Nothing in this section shall be construed to affect any authority of a public entity that may otherwise exist to regulate or monitor the basis for eviction." Civil Code §1954.53(e).

Also, it should be noted that this particular litigation has taken an unusual path and the Appellants claim a high number of disparate issues on appeal. WIB Holdings and Barbara Bills appealed from the Order granting the motion for new trial, appealable pursuant to Code of Civil Procedure section 904.1(a)(4). However, they also purport to appeal from the Order granting their own anti-SLAPP motion, and from the "formal order of March 4, 2016," i.e., the Judgment, raising five other questions on appeal that presuppose the appellants have standing to appeal from the Order granting their anti-SLAPP motion or the Judgment. [AOB 29; AA 444-445.]

Respondents have already argued that this is improper: "WIB Holdings and Barbara Bills do not have standing to appeal from either the Order granting their anti-SLAPP motion or the Judgment in their favor because they are not aggrieved by them. See C. Civ. Proc. § 902." [RB 18.] Respondents further argue that "it is not the case that 'newly discovered evidence' within the meaning of the statute can only mean evidence that existed prior to the trial or, in this case, the hearing on the anti-SLAPP motion." [RB 24.]

Therefore, there are substantive and procedural barriers for the Appellants that they will likely not get around. Their litigation privilege attack on the Ordinance, in the context of a Motion for New Trial, seems ill-conceived and gratuitous. Once the City added the favorable termination requirement, the claim was sufficiently similar to malicious prosecution that these matters would turn on a question of fact. Landlords faced with

such claims may raise litigation privilege as a defense and courts may give those defenses appropriate applications, without violating the presumption favoring the validity of an ordinance against an attack of state preemption. *See Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.

Argument

I. The Litigation Privilege Does Not Preempt An Ordinance That Prohibits Malicious, Baseless Prosecutions Against Tenants Who Obtain Favorable Terminations

In *Action Apartment Ass'n, Inc. v. City of Santa Monica* (2007) 41 Cal.4th 1232, the Supreme Court addressed a former version of the pertinent subsection of the Ordinance prohibiting malicious unlawful detainers, ruling that the litigation privilege of Civil Code section 47 applied. The Court acknowledged, however, that the litigation privilege "is not without limit" and cited the examples of private actions for malicious prosecution and government actions. Id. at 1245. The *Action Apartment* Court discussed a key exception to the privilege: malicious prosecution.

The Court had already recognized that malicious prosecution is an exception to the litigation privilege. *Albertson v. Raboff* (1956) 45 Cal. 2d 375, 382. The Court then provided a strong indication of what the Ordinance needed to avoid future preemption by the litigation privilege:

> As noted above, we have recognized an exception to the litigation privilege for the tort of malicious prosecution because "the requirements of favorable termination, lack of probable cause, and malice are

> satisfied." *Albertson v. Raboff* (1956) 46 Cal.2d 375, 382. However, section 4.56.020(i)(1) does not require that all three of the conditions of malicious prosecution be met. Favorable termination is not an element of a cause of action under section 4.56.020(i)(1), and we need not address whether a similar ordinance that included this element would be excepted from the litigation privilege. *Action Apartment* at 1250.

Following publication of *Action Apartment*, Santa Monica amended section 4.56.020, subdivision (i)(1) to cure the identified issues. Specifically, the City added a "favorable termination" requirement by adding this provision: "No landlord shall be liable under this subsection for bringing an action to recover possession unless and until the tenant has obtained a favorable termination of that action."

The cause of action for a malicious or bad faith eviction authorized by Section 4.56.020, subsection (i)(1) meets the other two prongs of the *Action Apartment* challenge.

The Ordinance begins with a "malice" (or after 2015, a "bad faith") requirement. And then subsection (i)(1) of section 4.56.020 (as it stood in 2014) specifically makes it unlawful for a landlord to "bring any action to recover possession of a rental housing unit based upon facts which the landlord has no reasonable cause to believe to be true or upon a legal theory which is untenable under the facts known." This is the "lack of probable cause," the third and final element.

The Ordinance addresses two other of the *Action Apartment* Court's concerns. First, the Ordinance's reference to a landlord's liability for bringing "an action to recover possession"

demonstrates that the City intended to create a cause of action to deal with an extremely narrow group, much narrower than garden-variety malicious prosecution. If the litigation privilege trumped a suit for a malicious eviction under subsection 4.56.020(i)(1), the privilege would " 'effectively immunize conduct that the [statute] prohibits' *(Komarova v. National Credit Acceptance, Inc., supra,* 175 Cal.App.4th at p. 338, 95 Cal.Rptr.3d 880) thereby encouraging, rather than suppressing, " 'the mischief at which it was directed.' " *Barela v. Superior Court* (1981) 30 Cal.3d at 251.

Second, the right of tenants to be free from malicious prosecution actions brought by their landlords—a serious and local concern in Santa Monica–would be "significantly or wholly inoperable if its enforcement were barred by the litigation privilege." *Id.*

The *Action Apartment* Court made a further point on what would occur if Santa Monica added "favorable termination" to the Ordinance:

> "The analysis required to determine whether the litigation privilege applies to a prelitigation communication involves a question of fact. In contrast, the question whether an action under the provision of section 4.56.020(i)(1) based on an eviction action contains the same elements as a malicious prosecution action, and is therefore exempt from the litigation privilege, is a question of law requiring a categorical determination. As explained above, the fact that an eviction action was terminated in the tenant's favor does not alter that determination. This additional fact does not transform an action under the provision of section 4.56.020(i)(1) based on a defendant bringing an eviction action into one that is "analogous" to malicious prosecution (dis. opn. of Corrigan, J., *post,* 63 Cal.Rptr.3d at p. 405, fn. 2, 163 P.3d at p. 94, fn. 2), such that we could recognize a

> categorical exception to the litigation privilege as a matter of law, because the ordinance does not require all of the elements of a malicious prosecution action." *Action Apartment Ass'n v. City of Santa Monica* (2007) 41 Cal.4th 1232at footnote 6. (Emphasis added.)

Once the City made this twice-suggested change, according to the Court, the analysis would then turn on a question of fact for each case. In 2014, for example, when the Appellants lost the unlawful detainer action to Mr. Aron and Mr. Aron then filed his tenant harassment case against them, Section 4.56.020(i)(1) was raised and Paragraph 15 of Aron's Complaint contained all the necessary elements of "favorable termination, lack of probable cause, and malice," elements that the Supreme Court advised were necessary to avoid preemption.[2] That is the appropriate standard to apply any preemption analysis.

Appellants cite to one Court of Appeal opinion that they claim follows *Action Apartment* in a way that applies here. It does not apply. In *Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, the landlord brought an unlawful detainer action against the tenants who then cross-claimed for, among other things, retaliatory eviction under Civil Code section 1942.5, based on the landlord's alleged violation of the city's rent control

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[2] The Appellants argue that the Ordinance as it currently exists, after being amended again in 2015 to substitute the nearly identical "malice" with "bad faith" is preempted. (AOB at 35, 38.) However, the current version of the Ordinance is not before the court as this case arises out of the Landlord's violation of the Ordinance in 2014, and Mr. Aron is accordingly suing the Landlords for violation of the Ordinance as it existed at that time.

ordinances. While the Court of Appeal held that the retaliatory eviction claim was barred by the litigation privilege, it made that particular ruling only after a fact-intensive analysis. The court determined that outside of the unlawful detainer itself, there were "no actions taken or statements made" by the landlords showing a retaliatory motive. Without such evidence or context, the bare facts of the unlawful detainer and its underlying Three Day Notice remained protected by the privilege. Id. at 1492-93. If there had been sufficient evidence of retaliation, the Feldman court would have ruled otherwise, just like a court looking at Santa Monica's ordinance does if there is sufficient evidence of malice or bad faith.

Moreover, the *Feldman* court did not discuss the distinction between a tenant suing under a city ordinance, as here, and a tenant suing under the authority of a state statute; nor did it analyze section 1942.5 to determine whether it “makes clear” that it is not barred by the litigation privilege as in *Action*. *Action Apartment* at p. 1246. Preemption of a city's ordinance was not at issue, much less an ordinance that had been amended to avoid the public policy concerns addressed by the privilege.

The Second District's Court of Appeal has distinguished or declined to follow *Action Apartment* several times, including in *Banuelos v. LA Investment*, LLC (2013) 219 Cal.App.4th 323. In *Banuelos*, a plaintiff sued mobile home park owners and manager, who had brought an unlawful detainer action against him. Plaintiff alleged retaliation, bad faith, intentional and negligent interference with economic advantage, and negligence.

The defendants demurred, invoking the litigation privilege.

After a full discussion of *Action Apartment* as well as the cases purporting to follow it, the *Banuelos* Court determined that *Action Apartment* was not controlling and found that the litigation privilege did not bar a statutory retaliatory eviction action. *Id.* at 331-33. While that finding hinged on the fact that a state law and a city ordinance are not co-equal, the case shows that no further expansion of the litigation privilege has occurred, especially in the Second District.

Finally, although the judicial expansion for the litigation privilege has now been stretched to a breaking point, it has not been haphazard but rather always guided by the touchstone of the public policy on which the privilege is based: allowing access to the courts for "resolution of disputes and the ascertainment of truth." *Edwards v. Centex Real Estate Corp.* (1997) 53 Cal.App.4th 15, 33, 61 Cal.Rptr.2d at 529. The expansion should not go beyond that, especially in the name of helping landlords perpetuate fraud against tenants in order to evict them and circumvent rent control laws.

II. The Ordinance's Prohibition Of Malicious Unlawful Detainer Actions Is Not Preempted By California Law

Article XI, Section 7 of the California Constitution provides that a "city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." The Appellants' opening brief devotes nine pages to the altogether novel assertion that a local

ordinance is preempted as a matter of law if it is deemed to be equivalent to a cause of action for malicious prosecution.

Appellants' burden here—where they claim that state law preempts a local ordinance—is heavy, as it is "well established" that "under the California Constitution a municipality has broad authority, under its general police power, to regulate the development and use of real property within its jurisdiction to promote the public welfare." *California Bldg. Ind. Ass'n v. City of San Jose* (2015) 61 Cal. 4th 435, 455. Moreover, where "there is a significant local interest" the presumption favors the validity of the local ordinance against an attack of state preemption." *Garcia v. Four Points Sheraton LAX* (2010) 188 Cal. App. 4th 364, 373. Thus, "if there is a significant local interest to be served which may differ from one locality to another then the presumption favors the validity of the local ordinance against an attack of state preemption." *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal. 4th 1139, 1149. *See also Browne*, 213 Cal. App. 4th at 719 ("There is a particular reluctance to find preemption of a local regulation covering an area of significant local interest that differs from one locality to another, such as land use regulation").

The significant local issue here is Santa Monica's local and acute housing shortage and epidemic of tenant harassment stemming from Costa-Hawkins. The *Action Apartment* Court acknowledged this point:

> "The Legislature was well aware, however, that such vacancy decontrol gave landlords an incentive to evict tenants that were paying rents below market rates.

> (*Bullard v. San Francisco Residential Rent Stabilization Bd.* (2003) 106 Cal.App.4th 488, 492, 130 Cal.Rptr.2d 819 (*Bullard*).) Accordingly, the statute expressly preserves the authority of local governments "to regulate or monitor the grounds for eviction." (Civ. Code, § 1954.53, subd. (e).) *Action Apartment Ass'n v. City of Santa Monica* (2007) 41 Cal. 4th pp. 1237-38.

A month later, in October 1995, the City enacted its Tenant Harassment ordinance. (Santa Monica Mun. Code, § 4.56.) When the Santa Monica City Council amended the ordinance in 1996, residents testified "that instances of tenant harassment [had] been increasing in the City since the passage of [Costa–Hawkins]—the statewide vacancy decontrol measure." (Santa Monica Ord. No. 1859ccs, § 1, subd. (a).) In addition, "[s]tatistical information supplied by the Rent Control Board staff show[ed] that since the passage of [Costa–Hawkins], controlled rental units [were] being vacated at substantially higher rates." (Santa Monica Ord. No. 1859ccs, § 1, subd. (b).)" *Action Apartment Ass'n v. City of Santa Monica* (2007) 41 Cal. 4th 1232.

Santa Monica was attempting to preserve and protect affordable housing and the vulnerable tenants in its jurisdiction in the midst of an affordable housing crisis and the unusual whipsaw that vacancy decontrol put tenants in—with their rent controlled apartments, landlords targeted them with harassment. Also, once a tenant vacated what was an affordable unit, that affordability was lost to both the tenant and the City's supply, as the landlord then raised the rent to the much-higher market rate. To deal with this local problem, the purpose and effect of the Ordinance is as an affordable housing measure.

Appellants' preemption claim requires them to prove that the Ordinance is preempted because it attempts to enter an area fully occupied. The AOB, however, fails to cite any statute or case stating that California has occupied the field of malicious prosecution. Instead, Appellants make a convoluted and failing argument built on English common law.

Even if this Court were to find any occupation of the field of malicious prosecution, the state does not occupy the field of affordable housing and housing free from tenant harassment. To the contrary, the Legislature explicitly preserved those issues for cities like Santa Monica when it passed Costa-Hawkins. Civil Code §1954.53(e).

The issue of whether a state law occupies the field of a local law arose in *California Grocers Ass'n v. City of Los Angeles* (2011) 52 Cal.4th 177, 188. In *California Grocers*, the California Supreme Court examined the question of whether California food safety laws preempt a local ordinance that requires a grocery store, after a change of ownership, to retain the employees of the former owner for a ninety-day transition period. The Court first noted that "express field preemption turns on a comparative statutory analysis." *Id.* at 188. Next, a court conducting this analysis must determine "[w]hat field of exclusivity ...the state preemption clause define[s]," and then ask whether the local law falls within it. *Id.* at 188-89.

A review of the considerable history and context of the Ordinance here, Santa Monica's Ordinance, subsection 4.56.020(i)(1) in particular, shows it does not fall within this field,

for two independent reasons. First, it is not primarily a malicious prosecution ordinance. As established above and recognized in *Action Apartment*, the City of Santa Monica had determined that the City and its low-income residents faced an affordable housing crisis as well as a tenant harassment epidemic. Not only were tenants losing their homes, but the City would lose an affordable unit to vacancy decontrol each time a tenant vacated due to harassment. Accordingly, the Ordinance was primarily proposed, debated and adopted as a local affordable housing regulation, the purpose of which was to preserve and protect affordable housing. Because it serves a different purpose, it occupies a different field.

Second, while both the malicious prosecution common law tort and Santa Monica's harassment Ordinance employ prohibitions against certain forms of prosecutions to advance their respective (and distinct) policy goals, "[t]he mere fact that the two sets of legislation employ similar regulatory tools (i.e., proscriptions against certain types of discrimination) does not mean they occupy the same field." *Citizens for Uniform Laws*, 233 Cal. App. 3d at 1475. Rather, the pivotal issue is whether the ordinance occupies the same 'field' or 'subject matter' as that regulated by malicious prosecution common law in California. If not, there is no preemption.

When a local law serves a different purpose than a state statute, that different purpose "removes it from the field occupied by the state legislation." *Citizens for Uniform Laws*, 233 Cal. App. 3d at 1475; *see also Birkenfeld v. City of Berkeley* (1976) 17

Cal. 3d 129, 149 (holding that a local ordinance is not preempted by a state statute when the two laws serve distinct purposes).

In *Rental Housing Association v. City of Oakland* (2009) 171 Cal. App. 4th 741, for example, the First District Court of Appeal considered a preemption challenge to an Oakland law that made it "unlawful for a landlord to refuse to rent or lease or otherwise deny to or withhold from any person any rental unit because the age of a prospective tenant would result in the tenant acquiring rights under" other provisions of the ordinance. The court found that the purpose of the Oakland ordinance was "to defend and nurture the stability of housing" and to "address housing problems in the City of Oakland so as ... to advance the housing policies of the City." *Id.* at 749-50. Accordingly, the court concluded that even though the ordinance and FEHA both regulated housing discrimination, FEHA did not preempt the Oakland law, because the age discrimination provision did not have the same purpose as FEHA (*Id.* at 761) just as the City's Ordinance did not have the same purpose involved with the development of the malicious prosecution tort.

Even if this Court finds that Santa Monica's Ordinance is both an affordable housing measure and a malicious prosecution measure (in other words, with mixed motives), preemption still does not apply. In *Cal. Tow Truck Ass'n v. City & County of San Francisco* (9th Cir. 2012) 693 F. 3d 847, a local ordinance was challenged under federal preemption regarding travel while the local concern was safety. The court looked at the issue of mixed motives and determined that "[t]he presence of such mixed

motives . . . does not preclude the application of the safety exception, provided that the State's safety motives are not pre-textual." *Id.* at 859-60.

Like the ordinances at issue in *Rental Housing Association* and *Cal. Tow Truck,* the public interest motives behind Santa Monica's malicious-eviction provision are not pre-textual. Also, it was not enacted only to address malicious prosecutions but to protect and preserve the City's supply of affordable housing. Therefore, preemption does not apply.

III. The Expansions Of The Litigation Privilege And Preemption Urged By Appellants Would Leave Local Government Unable To Effectively Protect The Public Interest During Housing Crises

As *Action Apartment* acknowledges, California law "expressly preserves the authority of local government to 'regulate or monitor the grounds for eviction.'" *Action Apartment* at 1238 (citing Civ. Code Section 1954.53(e)). Cities have always had an understandably keen interest in limiting the grounds for eviction of its own residents, but the importance of a city's role in housing has only increased in the decade since *Action Apartment.* Throughout the state, more and more cities—including Los Angeles, San Francisco, Oakland—have enacted just-cause eviction ordinances or are considering doing so. Santa Monica has recently expanded just-cause eviction rights for nearly all tenants, whether they reside in rent controlled units or not.

These developments are in response to an ever-growing public crisis. The supply of available affordable housing has become tighter and tighter, and rents have increased to the point

that renters who are maliciously evicted are increasingly likely to become temporarily or permanently homeless.

Santa Monica is one of the California cities where this effect is heightened. The City's residential real estate and rental values have shot up higher than many cities, going up 25%, for example, just in the three year period between 2010 and 2013. For a tenant unfairly forced from her Santa Monica home, she is even more likely to become homeless or leave her city. In an affordable housing crisis, a city has both a moral interest and a practical interest in preventing homelessness within its borders.

As implied in the sections above, one effective way to further that interest and prevent homelessness has been to prevent landlords from evicting tenants without cause and especially with malice. However, under the interpretations of litigation privilege and preemption urged by Appellants, a landlord could serve a tenant with a baseless notice to quit and then wait to see whether the tenant has resources (money and an attorney) to stay on in spite of it. And under this interpretation the landlord would also be empowered to file the baseless eviction and see whether the tenant has the further resources to mount a defense or the courage to do so against the prospect of suffering credit damage if the defense is unsuccessful.

Many tenants will think that the better choice is to vacate without a fight. In the case of those tenants who are elderly, unsophisticated, poor, immigrant, or otherwise vulnerable or disadvantaged, the likelihood of the tenant wrongfully being driven away is greater still. The financial incentives for landlords

to evict tenants so that they can raise rents to market rates create greater and greater probabilities that they will invest in such litigation. The low probability that tenants will put up a vigorous defense or file their own subsequent malicious prosecution actions underscores the need for an ordinance that not only prohibits such evictions but that can also be enforced by a city.

The reality in Santa Monica and many other cities is that the interpretation of the litigation privilege and preemption urged by Appellants would make these tenant protection laws unenforceable. If these interpretations were adopted, a city with both the constitutional authority and the responsibility to protect its residents and address housing concerns, could do no more in these bad faith eviction cases than watch as its low-income and vulnerable residents give up or lose their homes.

Conclusion

For the foregoing reasons, Amici Curiae respectfully request that the Court dismiss the appeal.

Dated: December 28, 2017

By: /s/ *Gary W. Rhoades*
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Deputy City Attorney
For *Amicus Curiae*
City of Santa Monica and
League of California Cities

Certificate of Compliance

Pursuant to rule 29.1(c)(1) of the California Rules of Court, I hereby certify that, as counted by our word-processing system, this Amicus Curiae Brief contains 5,580 words, exclusive of the table, signature block, and this Certification.

Executed on the 28th day of December 2017 at Santa Monica, California.

By: /s/ *Gary W. Rhoades*
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