

**B309416**

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION FOUR**

=====  
**COUNTY OF LOS ANGELES, DEPARTMENT  
OF PUBLIC HEALTH et al.,**  
*Petitioners,*

*v.*

**SUPERIOR COURT OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES,**  
*Respondent.*

=====  
**CALIFORNIA RESTAURANT ASSOCIATION, INC., et al.,**  
*Real Parties in Interest.*

=====  
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES • CASE NOS. 20STCP03881 & 20STCV45134  
JAMES C. CHALFANT & STEPHANIE BOWICK, JUDGES • TELEPHONE NOS. (213) 830-0785 & (213) 633-0519  
=====

**APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF;  
AMICUS CURIAE BRIEF OF THE BICYCLE CASINO, LP,  
CALIFORNIA COMMERCE CLUB, INC., CRYSTAL CASINO,  
HAWAIIAN GARDENS CASINO, and HOLLYWOOD PARK CASINO  
COMPANY, INC. IN SUPPORT OF REAL PARTIES IN INTEREST  
CALIFORNIA RESTAURANT ASSOCIATION, INC., et al.**

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## **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

Pursuant to California Rules of Court, rule 8.487(e), The Bicycle Casino, LP, California Commerce Club, Inc., Crystal Casino, Hawaiian Gardens Casino, and Hollywood Park Casino Company, Inc. request permission to file the attached amicus curiae brief in support of plaintiffs and real parties in interest California Restaurant Association, Inc., et al.<sup>1</sup>

Amici own and have long operated the following casinos: The Bicycle Hotel & Casino, The Commerce Casino & Hotel, the Crystal Casino, the Hawaiian Gardens Casino, and the Hollywood Park Casino. All of these casinos are located within Los Angeles County. In addition to entertainment opportunities for their patrons, the casinos provide jobs and licensing fees that their local communities depend on to fund city services.

After initially promulgating extensive rules allowing for the safe operation of casinos during the pandemic, the County of Los Angeles Department of Public Health (the Health Department or the County) reversed course and mandated their closure. As in the case of the outdoor restaurant dining ban at issue here, the Health Department issued an industry-crippling order closing the casinos without accounting for the order's substantial costs or

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<sup>1</sup> No party or counsel for a party in the pending appeal authored this proposed brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the proposed brief. No person or entity other than amici, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the proposed brief. (See Cal. Rules of Court, rule 8.200(c)(3).)

weighing those costs against whatever public health benefits the order might provide. Amici therefore have an interest in this court's affirmance of the trial court's ruling that the Health Department must not act arbitrarily by failing to consider the costs of its orders.

The proposed amicus brief supplements the parties' briefs by providing additional argument and authority supporting the requirement that an agency must consider the costs of its rules, and by providing an overview of the extensive scientific research linking unemployment to adverse health effects including increased mortality. The brief also provides this court with a broader perspective about how the Health Department's insensitivity to the costs imposed by its orders has impacted another industry and the local communities that rely on it.

Accordingly, amici request that this Court accept and file the attached amicus curiae brief.

January 18, 2021

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# AMICUS CURIAE BRIEF

## INTRODUCTION

The COVID-19 pandemic is an undeniable tragedy, but that does not give the Health Department carte blanche to compound the tragedy by issuing orders that cripple entire industries without regard to how little those orders slow the pandemic, and no matter how great the costs of those orders on the public. No agency can act arbitrarily by failing to consider the massive social and economic costs of its orders.

The trial court did not abuse its discretion in finding that the Health Department's outdoor restaurant dining ban was arbitrary for failing to consider the enormous costs it imposed. Shutting down an entire industry and putting tens or even hundreds of thousands of people out of work does not merely impose economic costs; it also imposes tremendous social and health costs. An extensive body of scientific research links involuntary unemployment to diminished health and shortened life expectancy. As amici will explain, these adverse health effects caused by the outdoor dining ban far exceed any minimal benefit from such a ban in preventing COVID infections.

Regrettably, the Health Department's insensitivity to the social, economic, and public health costs of its actions extends beyond the restaurant industry. Los Angeles's shuttered casinos are currently prevented from providing jobs and tax revenues their host cities need to fund essential services, as well as a much needed and safe form of outdoor enjoyment for a public fatigued by the pandemic. This court should affirm the trial court's

thoughtful order requiring the Health Department to consider the true costs of its actions before upending the lives of so many people.

## LEGAL ARGUMENT

### **I. The trial court properly found that it is arbitrary for an agency to cripple an entire industry without accounting for the social and economic costs of such an order.**

#### **A. Arbitrary agency actions must be enjoined.**

An administrative agency acting in a quasi-legislative capacity is not permitted to take an action that is “ ‘ ‘ ‘arbitrary, capricious, or entirely lacking in evidentiary support.’ ” ’ ”

(*Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 230; see *American President Lines, Ltd. v. Zolin* (1995) 38 Cal.App.4th 910, 934 [“The phrase ‘arbitrary or capricious’ encompasses conduct not supported by a fair or substantial reason”].)

Arbitrary health regulations not only violate California administrative law, they are also unconstitutional where they unreasonably interfere with the right to pursue a chosen occupation. (See *Chalmers v. City of Los Angeles* (9th Cir. 1985) 762 F.2d 753, 756–757 [interest in selling T-shirts from a vending cart is constitutionally protected].) If a legal requirement “purporting to have been enacted to protect the public health . . . has no real or substantial relation to [that] object[ ] . . . it is the duty of the courts to so adjudge, and thereby give effect to the Constitution.” (*Jacobson v. Massachusetts* (1905) 197 U.S. 11, 31

[25 S.Ct. 358, 49 L.Ed. 643]; see *Roman Catholic Diocese of Brooklyn v. Cuomo* (2020) 592 U.S. \_\_\_ [141 S.Ct. 63, 70, \_\_\_ L.Ed.2d. \_\_\_] (conc. opn. of Gorsuch, J.) [“this Court essentially applied rational basis review” in *Jacobson*].)

**B. The trial court properly ruled that an outdoor dining ban is arbitrary where it does not adequately account for its social and economic costs.**

The County claims that its outdoor dining ban is authorized because it is necessary to protect the public health and prevent the spread of disease. (See PWM 50; Health & Saf. Code, §§ 101040, subd. (a) [authorizing measures that “may be necessary” to preserve the public health during an emergency], 120175 [authorizing such measures as “may be necessary” to prevent the spread of disease].) “When inquiring into whether a regulation is arbitrary, capricious, or lacking in evidentiary support,” however, “the court must ensure that an agency has adequately considered *all relevant factors*, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” (*American Coatings Assn. v. South Coast Air Quality Management Dist.* (2012) 54 Cal.4th 446, 460, emphasis added, internal punctuation marks omitted.)

Because the widespread social and economic costs of an industry-crippling regulation are, at the very least, a “relevant factor” in assessing whether such a regulation should be adopted, an agency acts arbitrarily if it does not properly consider those costs. The United States Supreme Court’s federal administrative

law decisions are instructive in this regard, as they show that agencies are not free to all but ignore the costs of their actions.

In *Motor Vehicle Mfrs. Assn. v. State Farm Mut.* (1983) 463 U.S. 29, 43 [103 S.Ct. 2856, 77 L.Ed.2d 443], the Court held that an agency rule is arbitrary and capricious where the agency “entirely failed to consider an important aspect of the problem.” This holding has been applied to require that an agency must consider “both the costs and the benefits” of its proposed action. (*State v. U.S. Bureau of Land Management* (N.D.Cal. 2017) 277 F.Supp.3d 1106, 1122, emphasis omitted.)

In *Michigan v. E.P.A.* (2015) 576 U.S. 743, 752 [135 S.Ct. 2699, 192 L.Ed.2d 674], the Court held that the Clean Air Act’s phrase “‘appropriate and necessary’ requires at least some attention to cost” when regulations are promulgated under that statute. The Court further held that it is not “rational” to impose massive economic costs in return for minimal benefits. (*Ibid.*) In *Industrial Union Dept. v. American Petrol. Inst.* (1980) 448 U.S. 607, 642, 644 [100 S.Ct. 2844, 65 L.Ed.2d 1010] (plurality opinion), the Court held that the Occupational Safety and Health Act’s phrase “reasonably necessary or appropriate” requires that the federal Occupational Safety and Health Administration must “undertake some cost-benefit analysis before [it] promulgates any standard.”

Applying the above principles to the County’s rulemaking at issue here, the phrase “necessary” in the Health and Safety Code similarly requires that the Health Department assess and consider the human and economic costs of its outdoor dining ban.

A court may deem that ban irrational and arbitrary if the ban's massive costs substantially outweigh its minimal benefits. Accordingly, the trial court had ample basis to conclude that the Health Department should have considered the social and economic costs of its action before peremptorily banning outdoor dining throughout Los Angeles County. (See County PWM, vol. 5, exh. 34, pp. 2076, 2117–2118.)

**II. The costs of banning outdoor dining and other safely run outdoor activities are enormous and disproportionate to any benefits.**

**A. The public health costs of unemployment caused by the outdoor dining ban are massive, and far outweigh the ban's minimal health benefits.**

Were the Health Department to have adequately considered the costs of its outdoor dining ban, it would have understood that those massive costs outweigh whatever minimal benefits may result.

There are about 24,292 restaurants in Los Angeles County, and about 150,000 of their workers have lost their jobs because of restaurant closures and limited operations attributable to Health Department orders since the pandemic began. (County PWM, vol. 2, exh. 4, pp. 588, 630.)

After the County's earlier ban on indoor dining, for many restaurants transitioning to outdoor dining was the difference between staying in business and closing. (County PWM, vol. 2, exh. 4, p. 631; vol. 5, exh. 34, pp. 2122–2123.) Each restaurant represents the lives and livelihoods of dozens of people, from

servers and busboys to chefs, line cooks, hosts, dishwashers, managers, and owners, as well as those of persons in related occupations such as parking valets and musicians. 96.7 percent of restaurants reported that a ban on outdoor dining would force them to lay off or furlough staff. (County PWM, vol. 2, exh. 4, p. 670.) So when the County ordered the indefinite suspension of all outdoor dining, the trial court properly recognized that, in so doing, it threw tens of thousands of Los Angeles County's economically most fragile residents out of work. (County PWM, vol. 5, exh. 34, p. 2122.)

One estimate is that at least 70,471 restaurant workers have lost their jobs because of the outdoor dining ban alone, under the conservative assumption that each of the restaurants that shrinks their workforce because of the outdoor dining ban loses only three jobs.<sup>2</sup> The actual figure could, of course, be much higher.

The costs of putting such a multitude out of work are not simply depleted bank accounts, increased stress, and time spent searching for a new job. A well-developed body of research demonstrates that involuntary unemployment is linked to a host of serious adverse health effects, including a greatly increased risk of early death.

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<sup>2</sup> This estimate is calculated by multiplying 24,292 restaurants in Los Angeles County (County PWM, vol. 2, exh. 4, p. 588) by the 96.7 percent that will shrink because of the outdoor dining ban (County PWM, vol. 2, exh. 4, p. 670), and multiplying that number by three workers per affected restaurant.

“The relationship between unemployment and poor health has been well documented.” (Pharr et al., *The Impact of Unemployment on Mental and Physical Health, Access to Health Care and Health Risk Behaviors* (Dec. 25, 2011) International Scholarly Research Notices 1, 1 <<https://bit.ly/3qt9aG3>> [as of Jan. 14, 2021] (hereafter Pharr).) “Unemployment has an adverse effect on health,” which is “still demonstrable when social class, poverty, age and pre-existing morbidity are adjusted for.” (Wilson & Walker, *Unemployment and health: A review* (1993) 107 Pub. Health 153, abstract <<http://bit.ly/35NdVT1>> [as of Jan. 14, 2021].) “The unemployed tend to have higher levels of impaired mental health including depression, anxiety, and stress, as well as higher levels of mental health hospital admissions, chronic disease . . . and premature mortality.” (Pharr, at p. 1 <<http://bit.ly/39jZfeZ>>; see Linn et al., *Effects of Unemployment on Mental and Physical Health* (1985) 75 Am. J. of Pub. Health 502, 502 <<https://bit.ly/3i24lAt>> [as of Jan. 14, 2021].) “[U]nemployment is associated with unhealthy behaviors such as increased alcohol and tobacco consumption and decreased physical activity,” while employment is correlated with “better health, improved self-confidence, self-esteem, and happiness.” (Pharr, at p. 1 <<http://bit.ly/39jZfeZ>>.)

Studies have further established that adverse health effects and unemployment are not merely correlated, but rather that diminished mental and physical health is *caused by* unemployment. One study found that “higher levels of depression are a result of unemployment.” (Pharr, *supra*, at p. 1

<http://bit.ly/39jZfeZ>.) Another study observed evidence supporting a causal explanation for the association between unemployment and mortality. (Clemens et al., *What is the effect of unemployment on all-cause mortality? A cohort study using propensity score matching* (2015) 25 *European J. of Pub. Health* 115 <https://bit.ly/3shFYmU> [as of Jan. 14, 2021].) A third study found that “the health deterioration from unemployment is likely to be large,” and estimated “an almost 10% worse health (in absolute terms) from being unemployed compared to being employed.” (Norström et al., *Does unemployment contribute to poorer health-related quality of life among Swedish adults?* (2019) 19 *BMC Pub. Health* 1, 1 <https://bit.ly/38Mcbv8> [as of Jan. 14, 2021].) The study noted other research findings that unemployment has a negative health effect that extends beyond the period of unemployment, and concluded that unemployment is “a public health problem.” (*Ibid.*)

A number of other studies quantify the relationship between unemployment and premature mortality. One study of twins found that, controlling for social, behavioral, health, and personality factors, the yearly risk of early mortality associated with unemployment increases by 30 to 40 percent. (Voss et al., *Unemployment and Early Cause-Specific Mortality: A Study Based on the Swedish Twin Registry* (2004) 94 *Am. J. of Pub. Health* 2155, 2158 <https://bit.ly/3ntLgbu> [as of Jan. 14, 2021].)<sup>3</sup>

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<sup>3</sup> For women, the study found that 20 percent of suicides were attributable to unemployment, and for men, 38 percent of external, undetermined-cause deaths were attributable to unemployment.



Another study found the yearly risk of early mortality increases by 73 percent for the unemployed, meaning that “the health-damaging effect associated with being jobless is similar to the effect of about 10 extra years of age.” (Granados et al., *Individual Joblessness, Contextual Unemployment, and Mortality Risk* (2014) 180 Am. J. of Epidemiology 280, 284–285 <<https://bit.ly/2XudBDM>> [as of Jan. 14, 2021].) A third study found that, for individuals between 45 and 66 years old who lost their jobs during a recession, yearly mortality risk increased by about 60 percent. (Noelke & Beckfield, *Recessions, Job Loss, and Mortality Among Older US Adults* (Nov. 2014) 104 Am. J. of Pub. Health e126, e132 <<https://bit.ly/3i3F2hm>> [as of Jan. 14, 2021].) A fourth study found that “job displacement leads to a 15-20% increase in death rates during the following 20 years,” implying “a loss in life expectancy of about 1.5 years for a worker displaced at age 40.” (Sullivan & von Watcher, *Mortality, Mass-Layoffs, and Career Outcomes: An Analysis using Administrative Data* (Nov. 2007) National Bureau of Economic Research, Working Paper No. 13626, p. 1 <<https://bit.ly/3bCaLFf>> [as of Jan. 14, 2021] (hereafter Sullivan).)

Nor are the adverse health effects of unemployment limited to the unemployed individuals. Studies also find that job loss leads to a substantial increase in domestic violence. One study found that a 1 percent increase in the male unemployment rate is associated with a 2.75 percent increase in the incidence of physical violence against women. (Bhalotra et al., *Intimate Partner Violence: The Influence of Job Opportunities for Men and*

*Women* (Nov. 7, 2019) The World Bank Economic Review, abstract <<https://bit.ly/39tDAB1>> [as of Jan 14, 2021].) Another study found that male job loss results in a roughly 30 percent increase in the chance that a man perpetrates violence, and female job loss increases the chance that a woman is victimized by nearly 60 percent. (Bhalotra, *A shadow pandemic of domestic violence: The potential role of job loss and unemployment benefits* (Nov. 13, 2020) Centre for Economic Policy Research <<http://bit.ly/2XC6SI5>> [as of Jan 14, 2021].)

The lesson of these studies is that the job losses precipitated by the County's outdoor dining ban are exacting a colossal toll on public health throughout Los Angeles County. Even considering the increased mortality risk to unemployed individuals alone, the health costs of job loss due to the outdoor dining ban are immense. One attempting to quantify the costs of the outdoor dining ban could use the above studies to estimate that the outdoor dining ban costs unemployed restaurant workers over 100,000 years in reduced life expectancy—over 1,000 lifetimes—and a concomitant loss of economic productivity throughout the County that will be felt for years to come.

In contrast to the substantial public health costs of layoffs, the measurable benefits of the outdoor dining ban are minimal. The Health Department conceded that it does not have data on how many people have been infected by outside dining at a restaurant. (County PWM, vol. 5, exh. 34, p. 2073–2074.) The CRA has submitted Dr. Lyons-Weiler's estimate that, assuming all Los Angeles County restaurants operated at a full 60-person

outdoor seating capacity, a worst case scenario would be that 4.5 deaths from COVID might occur in 30 days of operation. (See County PWM, vol. 2, exh. 4, p. 591; vol. 5, exh. 34, p. 2086.) Of course, the real number would be much lower because it is not realistic to assume, as the worst case model did, that all Los Angeles County restaurants have an outdoor seating capacity of 60 and would operate at full capacity at all times, or that symptomatic individuals are as likely as anyone else to dine out. (See County PWM, vol. 2, exh. 4, p. 591.) Although every death is tragic, there is no human activity that occurs without risk, and the risk of COVID mortality from outdoor dining is minimal when compared to the mortality risk from choking, food poisoning, or sudden cardiac arrest, risks associated with dining that people encounter in their daily lives without thinking twice. (See County PWM, vol. 2, exh. 4, p. 592; vol. 5, exh. 34, p. 2086; Lindgren, *Heavy holiday dinners can trigger a heart attack* (Dec. 20, 2016) UCI Health <<https://bit.ly/3oGIh0T>> [as of Jan. 14, 2020].)

**B. The Health Department’s insensitivity to costs has resulted in other massively costly closures with minimal benefit.**

The preceding comparison of the massive unemployment and health costs of the outdoor dining ban with its minimal perceived health benefits does not account for the ban’s ruinous impact on restaurant owners or “the psychological and emotional cost to a public tired of the pandemic and seeking some form of enjoyment in their lives,” costs which the trial court recognized.

(County PWM, vol. 5, exh. 34, p. 2124.) Unfortunately, the Health Department's complete disregard for these and other costs has led to other similar costly shutdown orders that achieve no substantial countervailing benefits.

Like restaurants, amici's casinos are in a position to safely provide much needed enjoyment to the public outdoors. (See Tat, *LA County's card rooms deal final hands before shutting down again amid coronavirus restrictions* (Nov. 29, 2020) L.A. Daily News <<http://bit.ly/39r9eiq>> [as of Jan. 14, 2021] [casino patron: "I can't stay home. I stay home, I go crazy."] (hereafter Tat).)

Indeed, the Health Department had previously issued detailed requirements to allow for safe casino operations. After casinos were closed at the outset of the pandemic, they were initially allowed to reopen in June 2020 with a number of conditions including (1) face coverings worn by all patrons and employees; (2) occupancy limited to 50 percent; (3) measures to ensure physical distancing of at least six feet, or alternatively an impermeable barrier, between and among employees and patrons; (4) symptom checks before patrons enter the facility; and (5) discontinued meal and beverage service at gaming tables. (County of L.A. Dept. of Pub. Health, Order of the Health Officer, Reopening Protocol for Cardrooms, Satellite Wagering Facilities and Racetracks with Onsite Wagering: Appendix Q (June 19, 2020) pp. 2–5 <<https://bit.ly/2K4tyO0>> [as of Jan. 14, 2021].) After casinos were closed again later in the summer, the Health Department updated its requirements to allow reopening in October provided that gaming take place only outdoors. (County

of L.A. Dept. of Pub. Health, Order of the Health Officer, Reopening Safer at Work and in the Community for Control of COVID-19 (Nov. 25, 2020) pp. 11–12 <<https://bit.ly/35tHA3q>> [as of Jan. 14, 2021].)

Yet at the end of November, the Health Department again mandated the casinos’ complete closure, despite there being no evidence that casinos are a source of COVID transmissions. (Rosenfeld, *City leaders with cardrooms once again fight back against coronavirus closures* (Nov. 30, 2020) L.A. Daily News <<http://bit.ly/38wp641>> [as of Jan. 14, 2021] (hereafter Rosenfeld) [“the county has said it doesn’t have data on transmissions at cardrooms”]; see Tat, *supra*, <<http://bit.ly/39r9eiq>> [“Industry representatives say they’re not aware of cardrooms being the source of COVID-19 transmissions and have pressed county officials for data to show otherwise”].)

Like the outdoor dining ban, the casino closure orders have imposed massive costs on these shuttered businesses, their employees, and the surrounding communities.

*Costs imposed on employees and their families:*

Approximately 6,620 employees of the amici casinos have been laid off, furloughed, or had their jobs otherwise eliminated because of the closure orders.<sup>4</sup> Many of the remaining employees are working on reduced schedules. For context, the 2,104 employees terminated or furloughed from The Commerce Casino

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<sup>4</sup> Approximate workforce reductions—The Commerce Casino: 2,104 employees; Hawaiian Gardens Casino: 1,910 employees; Bicycle Hotel & Casino: 1,532 employees; Hollywood Park Casino: 800 employees; and Crystal Casino: 274 employees.

represent about 90 percent of its prepandemic workforce. This court should assume that this laid off workforce and their families are experiencing all of the adverse health effects of unemployment detailed above.

*Costs imposed on casinos:* The amici casinos spent over \$8.5 million to comply with the prior rules for how they could reopen safely, such as to install plexiglass dividers, move gaming tables outdoors, purchase temperature check and sanitizing supplies, and otherwise restructure their operations to minimize the risks of COVID transmission.<sup>5</sup> Like the closure of the restaurants, the closure of the casinos after they retooled and restructured to comply with previous Health Department orders is arbitrary and capricious. (See *F.C.C. v. Fox Television Stations, Inc.* (2009) 556 U.S. 502, 515 [129 S.Ct. 1800, 173 L.Ed.2d 738] [“It would be arbitrary or capricious to ignore” matters such as when an agency’s “prior policy has engendered serious reliance interests”].)

Like the shuttered restaurants, the amici casinos cannot recoup these costs and certainly cannot do so while they remain closed. The 2020 revenues from the amici casinos have plummeted approximately 63 to 72 percent compared to 2019.

*Costs imposed on surrounding communities:* The order shutting down the amici casinos imperils not only private livelihoods, but also the public fisc. The amici casinos’ licensing

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<sup>5</sup> Approximate investments—The Commerce Casino: \$3.5 million; Hawaiian Gardens Casino: \$2 million; The Bicycle Hotel & Casino: \$2.2 million; Hollywood Park Casino: \$550,000; Crystal Casino: \$300,000.

fees represent a large portion of the operating budgets for their respective host cities, funding essential services including those that provide for the most vulnerable members of the community and those devoted to public safety. By closing the casinos, the County has deprived those municipalities of that essential revenue.

- The Commerce Casino’s license fee provided about \$27.6 million (28 percent) of the City of Commerce’s fiscal year 2018-2019 revenues. (See City of Commerce, Cal., Comprehensive Annual Financial Report 2019 (Jan. 24, 2020) pp. 9–10 <<https://bit.ly/3shGYr5>> [as of Jan. 14, 2021].) In 2020, the payment dropped by about \$20 million, representing a loss of approximately 20 percent of the city’s revenues.
- The Hawaiian Gardens Casino license fee provided about \$13.4 million (59 percent) of the City of Hawaiian Gardens’ fiscal year 2018-2019 revenues. (The City of Hawaiian Gardens Cal., Comprehensive Annual Financial Report: Fiscal year Ended June 30, 2019 (Dec. 1, 2019) pp. ii, 4 <<https://bit.ly/3i6hmJ2>> [as of Jan. 14, 2021].) In 2020, the payment dropped by about \$9.6 million, representing a loss of approximately 42 percent of the city’s revenues.
- The Bicycle Hotel & Casino’s fee provided about \$14.3 million (29 percent) of the City of Bell Gardens’ fiscal year 2018-2019 revenues. (City of Bell

Gardens, Adopted Budget Report: July 1, 2020 to June 30, 2021 (undated) pp. 33, 43 <<https://bit.ly/3i6hlFm>> [as of Jan. 14, 2021].) In 2020, the payment dropped by about \$9.3 million, representing a loss of approximately 19 percent of the city's revenues.

These drastic city revenue losses have already had severe real-world consequences. The City of Commerce has furloughed 200 employees, and its mayor recognized that the casino's closure "impacts our programs for the community so we really need this casino to get up and going." (Garcia, *Bell Gardens, Commerce, Hawaiian Gardens facing dire financial situation with closure of casinos* (Dec. 1, 2020) abc7 <<https://bit.ly/35xMf49>> [as of Jan. 14, 2021].) Bell Gardens has eliminated police officer positions, decreased employee salaries, and reduced the availability of other important services for children and seniors. (*Ibid.*) Bell Gardens' mayor believes "[t]his could be the last nail for our businesses and city . . . . This is more than just gaming. It's a vital resource to our community." (Rosenfeld, *supra* <<http://bit.ly/38wp641>>.) The City of Hawaiian Gardens has laid off over 40 percent of its staff and will cut essential services if the closures continue. (*Ibid.*)

As with the Health Department's outdoor dining ban, there is no evidence that the Health Department took the devastating costs to surrounding communities into account when it ordered the casinos to close, much less that it weighed those costs against the minimal risk of COVID transmission when casinos operate



pursuant to the Health Department guidelines that were previously in place.

### CONCLUSION

This court should make clear that the Health Department must consider all of the human and economic costs to the community before ordering entire industries to close their doors. Otherwise, the Health Department can be expected to continue its blinkered policy of economic devastation in the name of disease prevention, regardless of the overwhelming adverse economic and health effects from unemployment and reduced city services. For the foregoing reasons, amici respectfully request that this court uphold the preliminary injunction.

January 18, 2021

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**CERTIFICATE OF WORD COUNT  
(Cal. Rules of Court, rule 8.204(c).)**

The text of this brief consists of 3,993 words as counted by the program used to generate the brief.

Dated: January 18, 2021



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Eric S. Boorstin

## **PROOF OF SERVICE**

**LA County Dept. of Public Health v. Superior Court of Los Angeles  
Case No. B309416**

### **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On January 18, 2021, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF; AMICUS CURIAE BRIEF OF THE BICYCLE CASINO, LP, CALIFORNIA COMMERCE CLUB, INC., CRYSTAL CASINO, HAWAIIAN GARDENS CASINO, AND HOLLYWOOD PARK CASINO COMPANY, INC. IN SUPPORT OF REAL PARTIES IN INTEREST CALIFORNIA RESTAURANT ASSOCIATION, INC., ET AL.** on the interested parties in this action as follows:

#### **SEE ATTACHED SERVICE LIST**

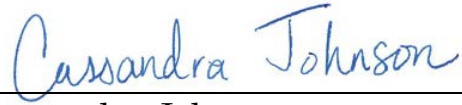
**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

#### **BY E-MAIL OR ELECTRONIC TRANSMISSION:**

Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 18, 2021, at Burbank, California.



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Cassandra Johnson

**SERVICE LIST**

**LA County Dept. of Public Health v. Superior Court of Los Angeles  
Case No. B309416**

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<p><b>Hon. Timothy J. Chalfant</b>  Los Angeles Superior Court  Stanley Mosk Courthouse  111 North Hill Street  Department 85  Los Angeles, CA 90012</p>	<p><b>Trial Judge</b>  Case no. 20STCP03881</p> <p>[Via U.S. Mail.]</p>
<p><b>Hon. Stephanie Bowick</b>  Los Angeles Superior Court  Stanley Mosk Courthouse  111 North Hill Street  Department 19  Los Angeles, CA 90012</p>	<p><b>Trial Judge</b>  Case no. 20STCV45134</p> <p>[Via U.S. Mail.]</p>