S246102

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,
Plaintiff, Cross-defendant and Respondent,
v.
CONAGRA GROCERY PRODUCTS COMPANY et al.,
Defendants and Appellants;

THE SHERWIN-WILLIAMS COMPANY,
Defendant, Cross-complainant and Appellant.

AFTER A DECISION BY THE COURT OF APPEAL, SIXTH APPELLATE DISTRICT,
CASE NO. H040880

(SANTA CLARA COUNTY SUPERIOR COURT, CASE NO. 1-00-CV-788657;
JUDGE JAMES P. KLEINBERG)

THE SHERWIN-WILLIAMS COMPANY'S REPLY TO SUPPORT THE PETITIONS FOR REVIEW

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INTRODUCTION: WHY REVIEW IS WARRANTED

Contrary to plaintiffs' denial, it is a revolutionary departure from California law to impose public nuisance liability on Sherwin-Williams and two other former lead paint manufacturers for their truthful promotion of lawful products for then-common and lawful uses. Moreover, liability was based on a general risk of harm to the public that was unknown and unknowable generations ago at the time of sale and was unconnected to any manufacturer's product or any property. Without causation anywhere, the Court of Appeal's opinion ("Opinion") held Sherwin-Williams jointly and severally liable for everyone's interior lead paint in every pre-1951 property.

Each of these departures from established public nuisance principles affects myriad product manufacturers, and each raises a pure question of law that merits review. Collectively, the Opinion creates a tort unrecognizable in California jurisprudence and rejected by every other appellate court to consider it. As the New Jersey Supreme Court concluded, allowing public nuisance liability against former lead paint manufacturers "would stretch the concept of public nuisance far beyond recognition and would create a new and entirely unbounded tort antithetical to the meaning and inherent theoretical limitations of the tort of public nuisance." (*See In re Lead Paint Litigation* (N.J. 2007) 924 A.2d 484, 494.) Constitutional rights of free speech, free association, and due process of law also are at stake.

The Opinion's impact on Californians is equally unprecedented. Plaintiffs agree that millions of residences with well-maintained lead paint now are public nuisances subject to inspection and abatement. (Answer 20, 37.) The properties of owners who decline intrusive inspection will go on a "blacklist." As *amici* point out, under the Opinion, all owners of properties with interior lead paint and lead in soil are violating criminal law by maintaining a public nuisance. The Opinion threatens property values, habitability, financing, insurance rates, and tax assessments. It also envisions claims against property owners and other third parties at fault for the nuisance. Owners did not ask for this lawsuit, and the Court should determine whether the law permits public nuisance liability in this case before inspectors knock on millions of Californians' doors. The Legislature already has implemented a successful prevention program that balances the interests of property owners and residents.

Plaintiffs provide no good reason for this Court to wait to decide the appropriate scope of public nuisance liability. This Court has recognized "the need for California businesses to know, to a reasonable certainty, what conduct California law prohibits and what it permits." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 185.) Public entities, often targets,[1] will become more at risk

[1] *See, e.g.*, *Citizens for Odor Nuisance Abatement v. City of San Diego* (2017) 8 Cal.App.5th 350, 359.

for public nuisance claims, if standards remain uncertain. Without settled rules, courts will struggle to determine whether to permit public nuisance claims to proceed, how to administer discovery, and how to try public nuisance cases.

Nor should the judicial burdens be underestimated. Immense resources are needed for case administration, discovery, and trials of public nuisance cases aiming to provide solutions for societal risks arising from disposal or deterioration of old products. This case began almost 18 years ago. Even with arbitrary, truncated time limits and no re-cross examination, the trial took six weeks. Without apportionment of liability, one lawsuit can spawn thousands of contribution claims and third-party lawsuits against all persons, including public entities, who specified or promoted a product. The Opinion never addresses how to handle those hundreds of thousands of claims. Plaintiffs' suggestion to do nothing ignores the foreseeable problems of judicial administration.

No "unique" facts insulate the Opinion from review, as plaintiffs suggest. (Answer 2.) What is unique are the important, unsettled legal issues created by the Opinion's extreme deviation from accepted public nuisance law. With a full trial record and well-developed legal issues, this case is an ideal vehicle to clarify the rules for public nuisance liability.[2] This Court

[2] This Court's denial of defendants' petition for review after the Court of Appeal's interlocutory decision in 2006 is of no consequence to

should grant review to ensure uniformity and settle important questions of public nuisance and constitutional law.

DISCUSSION OF ISSUES WARRANTING REVIEW

I. THIS COURT SHOULD REVIEW AND RESOLVE THE NUMEROUS CONFLICTS WITH ESTABLISHED TORT LAW.

The Court of Appeal did not "appl[y] well-established principles of California's public nuisance law," as plaintiffs claim. (Answer 2.) Sherwin-Williams' liability is based on two generic promotions of ordinary products for then-common uses over 110 years ago.[3] Every company in every industry selling products, from fast food to bicycles to cell phones, has similar advertisements. For good reason, no American court has ever premised public nuisance liability on product promotion. (*See State of R.I. v. Lead Industries Ass'n, Inc.* (R.I. 2008) 951 A.2d 428, 456 ["The law of public nuisance never before has been applied to products, however harmful."].) This Court should decide whether California will step outside the national consensus in such a dramatic way.

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consideration of the issues now. (*See Trope v. Katz* (1995) 11 Cal.4th 274, 287 fn.1.)

[3] Plaintiffs' claim that these two advertisements are mere "exemplars" is unsupported. Plaintiffs' expert was "not aware of any ad from Sherwin-Williams that says that a painter or a consumer should use white lead pigment in interior residential paints." (29 RT 4449:1-5.)

A. Conduct.

Plaintiffs downplay, but cannot avoid, the Opinion's clash with *City of Modesto Redevelopment Agency v. Superior Court* (2004) 119 Cal.App.4th 28 and *City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575. *City of San Diego* refused to apply public nuisance to nearly identical facts. The City alleged that asbestos created a public nuisance due to "normal wear, aging, abrasions and impacts," and that "'new and further deterioration' would occur so long as asbestos-containing building[] materials were present." (*Id.* at 578.)[4] The evidence showed prior general knowledge of "human health hazards presented when asbestos-containing building materials degraded, releasing asbestos fibers and dust into the air." (*Id*. at 581.) But, unlike here, the court held that product liability, not public nuisance, governs the manufacture, sale, and promotion of products. (*Id*. at 584-587.)

Modesto likewise rejected the application of public nuisance liability to products. For public nuisance liability, *Modesto* required affirmative conduct beyond a mere failure to warn, such as instructing users to dispose of product wastes in violation of environmental statutes. (*Modesto*, 119 Cal.App.4th at 42.) Like the Opinion, plaintiffs do not and cannot explain

[4] Unlike plaintiffs here, San Diego identified the manufacturers of the asbestos products in its buildings. (*City of San Diego*, 30 Cal.App.4th at 579.)

how the ordinary promotion of lead paint before 1951 instructed an unlawful use, when no statute, regulation or industry standard prohibited interior use. Moreover, many interior residential uses of lead paint are not harmful and are permitted today, as plaintiffs recognize. (Typed opn. 61, fn. 52; 66). Neither plaintiffs nor the Opinion explains how this case presents, at most, anything other than a failure to warn about the uses of lead paint. Ordinary product advertising is not an instruction advising criminal misconduct as in *Modesto*. And, to be sure, no other state has applied public nuisance in this manner. (*See State of R.I.*, 951 A.2d at 454-455; *Lead Paint Litigation*, 924 A.2d at 501-502.) The lack of uniformity in California law created by the Opinion merits review.

Plaintiffs, moreover, miss the point by asserting that *Modesto* does not conflict with the Court of Appeal's 2006 ruling in this case. (*Cty. of Santa Clara v. Atlantic Richfield Co.* (2006) 137 Cal.App.4th 292 ("*Santa Clara I*").) In 2006, the court had to accept plaintiffs' unproven allegations of deliberate concealment of lead paint's dangers and a century-long scheme of promoting misinformation and material falsehoods. (*Id.* at 306.) These allegations were never proved. At issue now is the application of public nuisance liability to Sherwin-Williams' generic advertising for a line of paints, ads which never gave "explicit instructions to use [lead] paints on residential interiors" (typed opn. 50), and never said that it was safe for paint to deteriorate or be eaten. This Court's review is needed to prevent

advertisements for regular household products, across every industry, from becoming grounds for billion-dollar public nuisance liability when they deteriorate over years from lack of maintenance or misuse.

Plaintiffs further say that the trial court "did not hold the Manufacturers liable solely based upon the text of their advertisements, but upon a[…] course of conduct that included manufacturing and distributing lead pigments and paints." (Answer 44.) However, the Opinion only relies on advertising (typed opn. 26), and California's courts have held that "manufacture, distribution, and supplying … does not fall within the context of nuisance." (*Modesto*, 119 Cal.App.4th at 42; *In re Firearm Cases* (2005) 126 Cal.App.4th 959, 990-991 [rejecting "staggering" public nuisance liability where "[t]he manufacturer[']s liability will turn not on whether the product was defective, but whether its legal marketing and distribution system somehow promoted the use of its product by criminals…"] (citation omitted).) Plaintiffs' arguments highlight the confusion created by the Opinion on the conduct necessary for public nuisance liability and demonstrate the need for this Court's review.

B. Causation.

In *Bockrath v. Aldrich Chemical Co.* (1999) 21 Cal.4th 71, 79-80, on which the Court of Appeal and plaintiffs rely, this Court required proof of actual causation: plaintiffs "must allege that each toxin … absorbed was manufactured or supplied by a named defendant." So, too, in *Miranda v.*

Bomel Construction Co., Inc. (2010) 187 Cal.App.4th 1326, 1336, the "mere possibility alone" of causation was insufficient. Foreseeability of harm also does not prove causation; "plaintiff[s] must show some substantial link or nexus between omission and injury." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 778.)[5]

The Opinion departed from these accepted causation principles. Plaintiffs' expert admitted he "can't tell" if Sherwin-Williams' promotions had any effect, and plaintiffs admitted in discovery that there is no evidence of anyone's reliance on any Sherwin-Williams' advertisement. (29 RT 4351:3-12; 133 AA 39574.) Moreover, no evidence shows that any Jurisdiction residence has Sherwin-Williams' interior lead paint, let alone because of a wrongful promotion. Although "[c]ausation is an essential element of a public nuisance claim" (*Citizens for Odor Nuisance Abatement*, 8 Cal.App.5th at 359), the Opinion substituted general risk of harm to the public from generic promotions to the public as the causation standard. The Court of Appeal's elimination of causation-in-fact presents a dangerous and erroneous standard that merits review.

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[5] In *Modesto* and the two cases on which it heavily relied, *Selma Pressure Treating Co., Inc. v. Osmose Wood Preserving Co. of America, Inc.* (1990) 221 Cal.App.3d 1601 and *Shurpin v. Elmhirst* (1983) 148 Cal.App.3d 94, plaintiffs identified the particular defendants who provided the products or services directly causing a public nuisance at specifically identified locations. Causation-in-fact and legal causation were straightforward.

C. Knowledge.

Contrary to plaintiffs' assertions (Answer 25-28), general knowledge of a substance's toxicity or danger is not enough for tort liability under existing law. (*See Carlin v. Superior Court* (1996) 13 Cal.4th 1104, 1111-1112, 1114; Rest.2d Torts § 825 ["knowledge" means acting with the purpose of causing the interference with a public right, or knowledge that the interference is resulting or is substantially certain to result from the conduct].) Yet, the Opinion imposed liability despite acknowledging that the identified public nuisance harm and hazard—low-level exposure from household dust caused by lead paint on deteriorated or friction surfaces—was not scientifically known until over 50 years after Sherwin-Williams had stopped making interior lead-based paint. (Sherwin-Williams Petition 21; typed opn. 11, fn. 18; 126 AA 37500:20-127 AA 37502:1.) The court, thus, did not merely make an "inference[] drawn from evidence," as plaintiffs suggest, but changed the rule for proof of culpability. (Answer 25.) This Court should decide whether to open the door to public nuisance liability against any manufacturer whose product is found, decades after its manufacture, to pose health hazards in far lower doses or different circumstances than was scientifically known at the time of its sale or promotion.

D. Existing Legislation and Policy.

Plaintiffs do not deny that the Opinion departs from the Legislature's policy and rules for preventing childhood lead exposure. (Answer 24.) By condoning that departure, rather than "tethering" public nuisance liability to align with Legislative policy, the Opinion conflicts with separation of powers doctrine. (*Firearm Cases*, 126 Cal.App.4th at 979-80.)

Because the Opinion orders abatement of well-maintained lead paint on friction surfaces, the scope of the nuisance finding goes beyond Legislative limits, as the Opinion and plaintiffs concede. (Typed opn. 66; Answer 23-24.) Unlike the Opinion, the Health and Safety Code allows intact lead paint to remain on friction surfaces. (Health & Saf. Code § 17920.10.) The Legislature only requires abatement of "lead hazards," and puts responsibility on property owners, not former manufacturers, to inspect for and abate "lead hazards." (169 AA 50243-50246.) Carefully apportioned regulatory fees provide program funding. In all three ways, the Opinion conflicts with legislative rules and policy.

The Opinion's conclusion that there is no conflict because the Legislature did not expressly forbid the courts from interfering is a radical new standard. (Typed opn. 64-66; *see Friends of H. St. v. City of Sacramento* (1993) 20 Cal.App.4th 152, 165 ["[U]nder separation of powers doctrine, courts lack power to interfere with legislative action at either the state or local level."].) California law has long prohibited courts from revisiting legislative

policy determinations based on their "subjective notions of fairness," as the Opinion did here. (*Cel-Tech*, 20 Cal.4th at 184 ["The appellate courts have "neither the power nor the duty to determine the wisdom of any economic policy; that function rests solely with the legislature…."]; *see also People v. Carter* (1997) 58 Cal.App.4th 128, 134 ["The role of the judiciary is not to rewrite legislation to satisfy the court's, rather than the Legislature's, sense of order and balance."].) In this case, the lower courts impermissibly substituted their judgment for Legislative policy and standards on complex housing policy issues.

Plaintiffs also dismiss Sherwin-Williams' petition as "an imaginary parade of horribles," claiming that nothing horrible has happened since *Santa Clara I*. (Answer 3, 51-53.) However, that opinion merely permitted the case to proceed with discovery. This Opinion held that two ordinary local newspaper advertisements in 1904 constitute "substantial and unreasonable" conduct for public nuisance liability. It then upheld a remedy of unheard-of scale with new abatement standards, directly affecting the existing legislative framework and the rights of owners of all properties with lead paint. This Opinion also creates a stark divergence between the lead abatement rules for the ten plaintiff cities and counties and all other cities and counties in the State. This Opinion, if left unchecked, will set public nuisance standards for years to come, and trigger the storm of litigation and unintended consequences that not just Sherwin-Williams but also other state supreme

courts and *amici* forecast. In contrast, the Legislature's existing programs to prevent childhood lead exposure are a "public health success," and plaintiffs have not asked the Legislature for more enforcement authority or funding to order abatement of lead hazards. (33 RT 4925:7-14; 126 AA 37323:3-9.)

II. IMPORTANT CONSTITUTIONAL ISSUES WARRANT ATTENTION.

A. Imposing Liability On Truthful Promotions Of Products For Then-Lawful Uses Violates Defendants' Federal And State Constitutional Rights Of Free Speech.

Plaintiffs miscast the free speech issues presented for review. The Opinion based liability on its novel theory that "[p]romotion of lead paint for interior residential use necessarily implied that lead paint was safe for such use" and, therefore, became misleading by omission. (Typed opn. 37.) Its new theory alone merits review, and is contradicted by its recognition that most interior residential lead paint is not a public nuisance hazard. (Typed opn. 72.)

Like the Opinion, plaintiffs cite no authority holding that the court's theory of advertising liability is either permissible or satisfies First Amendment standards. Plaintiffs' cited cases concern the constitutional validity of state regulations requiring a specific disclosure in commercial advertising. (*See Milavetz, Gallop & Milavetz, P.A. v. United States* (2010) 559 U.S. 229; *Zauderer v. Office of Disciplinary Counsel* (1985) 471 U.S.

626.) In contrast, no state regulation required Sherwin-Williams to disclose potential lead paint risks in its advertising.

Plaintiffs' new "implication" theory also cannot overcome U.S. Supreme Court authority protecting advertisements for products with health hazards. In striking state regulations prohibiting advertising of alcohol content and alcohol pricing, the United States Supreme Court never suggested that advertising is false or misleading when it does not disclose known health risks. (*44 Liquormart, Inc. v. Rhode Island* (1996) 517 U.S. 484; *Rubin v. Coors Brewing Co.* (1995) 514 U.S. 476.) Plaintiffs have not met their burden to produce evidence, and there is no finding, sufficient under heightened judicial scrutiny or otherwise, to justify public nuisance liability based on truthful promotion of lawful products for then-lawful uses generations ago. (*Sorrell v. IMS Health Inc.* (2011) 564 U.S. 552, 569-71; *Lorillard Tobacco Co. v. Reilly* (2001) 533 U.S. 525, 571.) That the Opinion had to resort to an implication to support its theory confirms that there is no evidence of a false or misleading statement of fact or advocacy of then-unlawful conduct. Its creation of a broad, new exception to "indispensable" free speech rights demands this Court's review. (*Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council* (1976) 425 U.S. 748, 765.)

Plaintiffs also attempt to evade the First Amendment by contending that no injunction prohibits current or future speech. (Typed opn. 43-44.) However, the United States Supreme Court rejected this proposition over 50

years ago: "The fear of damage awards … may be markedly more inhibiting than the fear of prosecution under a criminal statute." (*New York Times Co. v. Sullivan* (1964) 376 U.S. 254, 277; *see also NAACP v. Claiborne Hardware Co.* (1982) 458 U.S. 886, 918 [the State "may not award compensation for the consequences of nonviolent, protected activity"].) To prevent the fear of unpredictable liability imposed in hindsight from chilling free speech, this Court should grant review.

B. The Court of Appeal's Opinion Fails To Protect Defendants' Right Of Free Association.

Plaintiffs also misconstrue the federal and state constitutional right of free association. (Answer 46-47.) The Lead Industries Association (LIA) had the same right of free speech as any commercial enterprise. And there is no finding that Sherwin-Williams contributed to the LIA's Forest Products-Better Paint campaign to promote interior lead paint use (at a time when it made no interior lead paints), or that Sherwin-Williams participated in the LIA with the specific purpose to further unlawful activities. (*Claiborne Hardware*, 458 U.S. at 928-29.) Constructive knowledge does not pass the *Claiborne Hardware* test of specific intent to advance unlawful activities. (*Accord Chavers v. Gatke Corp.* (2003) 107 Cal.App.4th 606, 618-619.) This Court's review is needed to correct an error of important constitutional law.

C. The Court of Appeal's Repeated Departure From Settled Principles Of Tort Liability Offends Due Process.

Plaintiffs see no due process problem with the Court of Appeal's adoption of collective liability and the lack of manufacturer or property identification.[6] But plaintiffs' reliance on a "pervasive, community-wide public health hazard" (Answer 37) does not justify disregard of federal and state due process principles. (*Firearm Cases*, 126 Cal.App.4th at 985-986.) The Opinion deviates in so many ways from settled legal principles that it imposes arbitrary, disproportionate liability offensive to due process.

1. By not permitting discovery or requiring proof of product identification at any location of the public nuisance, the Opinion dispenses with causation-in-fact. In the Court of Appeal's view, proof of both product identification and reliance on Sherwin-Williams' ads are irrelevant. (Typed opn. 51-52, 57, 72; *compare Univ. of Tex. Southwestern Med. Ctr. v. Nassar* (2013) 133 S.Ct. 2517, 2524 ["Causation in fact—*i.e.*, proof that the defendant's conduct did in fact cause the plaintiff's injury—is a standard requirement of any tort claim."].)

2. Absent proof of the alleged nuisance at any location, the Opinion allows a nuisance in the abstract, as well as causation in the air not

[6] It is not true that Sherwin-Williams "dropped" its inspection demands. (Answer 14.) It requested inspection at various times before trial, but the trial court denied each request. (*See, e.g.*, 24 AA 6616-6618; 70 AA 20417). Plaintiffs' argument not only is wrong, but immaterial. Plaintiffs bear the burden of proving causation at the public nuisance properties.

linked to Sherwin-Williams' allegedly wrongful conduct. (*Compare Agency for Health Care v. Assoc. Indus.* (Fla. 1996) 678 So.2d 1239 [allowing state to sue for recovery of Medicaid payments without identifying individual recipients violated due process].)

3. The Opinion permits proof of causation by, at most, a "very minor force" and acknowledges that defendants can exculpate themselves property by property during the remedial stage (typed opn. 49, 72-73), yet nevertheless denies apportionment and imposes joint and several liability. (Typed opn. 71-74.) The result is arbitrary and grossly disproportionate liability not founded, as required, on individual responsibility. (*See Paroline v. United States* (2014) 134 S.Ct. 1710, 1724-25 [courts must be "reluctant to adopt aggregate causation logic in an incautious manner," such as "a manner contrary to the bedrock principle that restitution should reflect the consequences of the defendant's own conduct"]; *Lineweaver v. Plant Insulation Co.* (1995) 31 Cal.App.4th 1409, 1418 ["it serves no justice to fashion rules which allow responsible parties to escape liability while demanding others to compensate a loss they did not create."].)

4. The Opinion holds Sherwin-Williams entirely liable for industry-wide products and promotions for which it is not responsible, crossing the limits of due process already strained by market share liability. (*Compare Ferris v. Gatke Corp.* (2003) 107 Cal.App.4th 1211, 1223 ["courts should employ such group liability concepts with great caution"].)

5. Liability is premised on an unexpected application of a vague standard without fair notice of the potential liability generations ago when the allegedly wrongful conduct occurred. (*Compare Rogers v. Tennessee* (2001) 532 U.S. 451, 451.)

Arbitrarily separating liability from individual fault and the remedy from individual responsibility for the harm, without fair notice, departs from centuries of traditional law and, therefore, violates federal and state due process principles. (*See Honda Motor Co., Ltd. v. Oberg* (1994) 512 U.S. 415, 430 ["As this Court has stated from its first due process cases, traditional practice provides a touchstone for the constitutional analysis."].) This Court's review is warranted to prevent the Opinion's distortion of tort law from infecting myriad future cases and infringing due process.

III. THIS COURT SHOULD NOT CONSIDER PLAINTIFFS' ADDITIONAL QUESTION REGARDING POST-1950 PROPERTIES.

The Court of Appeal decided "the record lacks substantial evidence to support the [trial] court's finding that [defendants'] wrongful promotions were causally connected to post-1950 homes." (Typed opn. 53.) Neither the Opinion nor plaintiffs' brief on this issue raises an important question of law warranting review. Moreover, plaintiffs' continued attempt to hold Sherwin-Williams liable for post-1950 residences, when the undisputed evidence shows that it stopped making white lead carbonate pigments in 1947, had no interior residential paint formulas or promotions for interior residential use

of lead paint then, and complied with a national standard to add warnings against interior residential use by 1955, reaffirms the lack of principle underlying plaintiffs' theory of the case.

CONCLUSION

Sherwin-Williams joins the reply briefs submitted by the other defendants and urges the Court to grant the Petitions for Review.

January 29, 2018

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CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c)(1).)

The text of this brief consists of 3,872 words as counted by the Microsoft Word version 2010 word processing program used to generate the brief.

Dated: January 29, 2018

/s/ Robert A. Mittelstaedt
Robert A. Mittelstaedt

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this legal action. I am employed in the County of San Francisco, State of California. My business address is 555 California Street, 26th Floor, San Francisco, California, 94104-1500.

On January 29, 2018, I served true copies of the following document(s) described as **THE SHERWIN-WILLIAMS COMPANY'S REPLY TO SUPPORT THE PETITIONS FOR REVIEW** 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 Jones Day's practice for collecting and processing correspondence for mailing. On the same day that the 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 electronically, I transmitted the document(s) via e-mail or electronic transmission via the 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 Colorado that the foregoing is true and correct.

Executed on January 29, 2018, at San Francisco, California.

/s/ Lisa C. Bellamy
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Counsel Name/Address	Party(ies) Represented
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Steven Thomas Reports on Housing 42 Hallcrest Drive Ladera Ranch, CA 92694 c/o nason.mike@gmail.com	Amicus Curiae for Appellant **Steven Thomas** ***Electronic Service Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
Clerk of the Court Santa Clara County Superior Court 191 N. First Street San Jose, CA 95113-1090 (408) 882-2110	Court Clerk [Case No. 1-00-CV-788657] U.S. Mail (TrueFiling)

Counsel Name/Address	Party(ies) Represented
Honorable Peter H. Kirwan Santa Clara County Superior Court 191 N. First Street, Dept. 19 San Jose, CA 95113-1090 (408) 882-2110	Trial Judge [Case No. 1-00-CV-788657] Via U.S. Mail (TrueFiling)
Clerk of the Court California Court of Appeal Sixth Appellate District 333 W. Santa Clara Street Suite 1060 San Jose, CA 95113-1717	Court Clerk [Case No. H040880] ***Electronic Service Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) **and** via U.S. Mail (TrueFiling)
Clerk of the Court Supreme Court of California 350 McAllister Street San Francisco, CA 94102-3600	Court Clerk [Case No. S246102] ***Electronic Service Copy*** via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) **Hard Copy (unbound) Follows by Mail**