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January 23, 2018

Honorable Tani Cantil-Sakauye, Chief Justice
and the Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4783

Re: Amicus Letter in Support of Petition for Review of *The People of the State of California v. ConAgra Grocery Products, et al.*, Court of Appeal Sixth Appellate District Case No. H040880, Supreme Court of the State of California Case No. S246102

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, I submit this amicus letter in support of the petition for review filed in this case because the decision will have a devastating effect on California homeowners.

I am a California real estate broker and analyst with decades of experience and a degree in Quantitative Economics and Decision Sciences from the University of California, San Diego. I founded Reports on Housing in 2004 as a way to communicate what buyers, sellers and real estate professionals were experiencing in the trenches, tracking demand, inventory, distressed homes and market data at both the county and city levels.

The effect of the Sixth District's decision is to throw millions of California homeowners – as many as 3 million in Los Angeles County alone – into financial turmoil. A public nuisance, which is what the Sixth District branded millions of homes, is a crime that threatens, among other things, the health, safety and welfare of the community. Attaching this

designation to every pre-1981 house in the ten jurisdictions will have serious consequences for property owners and for the communities in which they live.

What happens, for example, if a husband and wife want to take out a reverse mortgage on their home to cash in on some of its value? They will be denied because their home is in violation of the law. What if they want to sell? No bank will finance the mortgage for a public nuisance. The value of the home will plummet dramatically until the home is inspected and if lead paint is detected in a deteriorated condition or on certain friction surfaces (even if intact), until that lead paint is abated.

When a home's value drops, its real estate taxes should go down. Multiply that by millions of homes, and it is obvious that cities and towns all across the state will be confronted with shrinking property tax revenues. The shortfall could be devastating for local services like police, fire, sanitation and schools.

The damage isn't limited to homeowners either. Under current law, people who rent a house or apartment that has been designated a public nuisance can stop paying rent until the violation is cured. Landlords of pre-1981 properties will face losses of income. Tenants may be forced to live elsewhere during abatement, increasing California's homelessness problem.

In order to save the majority of the trial court's opinion and abatement order, the Sixth District attempts to argue that the judgment does not improperly affect the rights of individual property owners because the abatement plan is voluntary and the trial court never identified any specific properties. App. Op. at 134. This is not true. Because California law prohibits maintenance of a nuisance, there can be no "voluntary" abatement plan, despite what the decision says. Homeowners who refuse to abate are maintaining a public nuisance and are committing a crime under Section 372 of California's Penal Code. The decision creates a database that identifies these homeowners, and "defers action" on their properties until they sell or vacate. App. Op. at 107. Simply put, if the nuisance is abatable – which the court has determined it is, it must be abated under California law, whether through

the court-ordered abatement plan or otherwise, and the individual properties are identifiable.

California law already recognizes that “[b]ecause of the prevalence of lead-based paint in California, all homes built before 1978 are presumed to contain lead-based paint.” 17 Cal. Code. Regs. § 35043. However, prior to the decision, only deteriorated lead paint constituted a hazard which required abatement. H&S Code § 17920.10(a). The trial and appellate courts, however, identified even intact lead-based paint on certain friction and impact surfaces as imminently harmful and a nuisance. App. Op. at 21 (“Lead paint causes significant physical harm...there is a clear and present danger in the form of a public nuisance...since all paint deteriorates over time the hazard literally remains just below the surface”); App. Op. at 61 (“So long as interior residential lead paint continues to exist in the 10 jurisdictions, this nuisance will continue to be an ongoing and imminent risk to the health of the children in the 10 jurisdictions. The trial court did not abuse its discretion in determining that the danger posed by interior residential lead paint in the 10 jurisdictions poses a sufficiently serious and imminent risk of harm to merit abatement.”).

There is no “nuisance in the air.” Make no mistake: the nuisance identified by the trial and appellate courts is interior residential lead paint. And that interior residential lead paint – the nuisance – exists on *specific individual properties*.

The paradox is that intact lead paint is safe. Trying to remove lead paint from walls may actually create a danger, since it can fill the air with dust. As for slumlord properties where flaking is sometimes a real hazard, California already has a successful lead paint abatement program in place.

Honorable Tani Cantil-Sakauye, Chief Justice
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For the reasons set forth above, I urge this Court to grant the
Petition for Review.

Respectfully submitted,

Steven Thomas

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

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 Orange, State of California. My business address is 33675 Granada Drive, Dana Point, California, 92629.

On January 23, 2018, I served true copies of the following document(s) described as **AMICUS LETTER OF STEVEN THOMAS IN SUPPORT OF PETITIONER** 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 deposited the sealed envelope with the United States Postal Service, with the 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 California that the foregoing is true and correct.

Executed on January 23, 2018, at Dana Point California.

/s/ Michael C. Nason

Michael C. Nason

SERVICE LIST

The People of the State of California v. Atlantic Richfield Company; Conagra Grocery Products Company; E.I. Du Pont De Nemours and Company; NL Industries, Inc.; and The Sherwin-Williams Company

California Supreme Court Case No. S246102

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