



CALIFORNIA CITIZENS AGAINST LAWSUIT ABUSE

January 11, 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 of California Citizens Against Lawsuit Abuse in Support of Petition for Review of *The People of the State of California v. Atlantic Richfield Co., 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, California Citizens Against Lawsuit Abuse (“CALA”) submits this amicus letter in support of the petition for review by defendants and petitioners ConAgra Grocery Products Company, NL Industries, Inc., and The Sherwin-Williams Company (“the Companies” or “Petitioners”).

Statement of Interest of Amicus

CALA is a nonpartisan grassroots movement of concerned citizens and businesses who are fighting against lawsuit abuse in California. CALA serves as a watchdog to challenge abuses within our civil justice system, and engages the public and the media to deliver the message that lawsuit abuse is alive and well in California — and that all Californians are paying the price. CALA members and supporters represent a broad and diverse cross section of Californians. They own small retail stores and hotels, manufacturing firms, real estate brokerages, trucking companies, and more. However, the bulk of CALA’s supporters are several thousand consumers concerned about the impacts of lawsuit abuse.

As set forth more fully below, the citizens of California face significant risks as a result of the decision of the Sixth District Court of Appeal (the “Decision”), including potential health risks from wholesale abatement of even intact lead-based paint, and a reduction in property values of all pre-1981 properties. In addition, California’s businesses and economy will suffer from the reductions in tax revenue. For these reasons, CALA urges this Court to review the Decision.

CALIFORNIA CITIZENS AGAINST LAWSUIT ABUSE

Page 2

The court's abatement plan creates unnecessary risks to the public. There is no pressing public safety issue that warrants judicial usurping of a successful legislative program. In fact, the enforcement of local building regulations and the State's current program to minimize lead exposure have drastically reduced the number of children with elevated blood lead levels. The court's unprecedented abatement plan, which orders the abatement of even intact lead paint, puts the health of California's children at risk. The court's plan would actually expose children to more lead dust, not less, as studies by the U.S. Department of Housing and Urban Development ("HUD") show. The vast majority of states around the country – and HUD – favor keeping lead paint covered rather than removing it. Currently, HUD will not pay to abate windows with intact lead paint.

The Decision will lower property values. The Decision, which labels more than 3 million homes in ten jurisdictions as public nuisances, will cause property values across California to plummet. Property owners are required to disclose the existence of a nuisance when selling a property. In addition, the trial court requires that any properties that do not participate in the abatement plan, "should be deferred for actionable lead hazard control until the property owner vacates or sells the property." Homeowners may not be able to take out a second loan or home equity line of credit. Sellers may be forced to lower the sale price if the home appraises lower than a buyer's offer. This phenomenon will not be restricted to the 10 jurisdictions. Under existing law, pre-1978 properties in California are *presumed* to contain lead-based paint. (17 Cal. Code Regs. 35043.) The trial court expanded that presumption to pre-1981 homes and held that lead-based paint -- even in an intact condition on certain friction surfaces – poses an imminent risk of harm and is a nuisance. Although this ruling applies only to the 10 jurisdictions, it has placed the legal status of intact lead paint throughout the State in question, and buyers across the State will be wary of purchasing pre-1981 properties.

California's economy will suffer from the lost property tax revenue. California lost property tax revenue from depressed home values will undoubtedly cause critical public services to be cut. The Decision is likely to impair local governments' ability to provide education, public safety, and other services residents demand and need. K-12 spending per pupil in California is tied to the Proposition 98 funding guarantee, and would fall dramatically should The Decision be upheld. This would force school districts in the state to cut programs such as music, physical education, and art, reduce class offerings, and lay off staff. These cuts are likely to disproportionately affect lower-income communities just when the average blood lead levels of minorities and the poor are coming in line with the average blood lead levels of the general population.

CALIFORNIA CITIZENS AGAINST LAWSUIT ABUSE

Page 3

The Decision rewards slumlords at the expense of responsible property owners.

The Decision places property owners with 10 or more housing code violations at the front of the line to get their properties inspected and abated. This will create a situation in which law-abiding citizens who have maintained their properties will have to endure crashes in property values and wait in line while the bad actors get rewarded for willfully failing to maintain their properties.

For the reasons set forth above, CALA urges this Court to review the case in order to restore order and predictability for California's property owners and tenants, and to put law making on the critical issues of housing and public health back in the hands of the legislature.

Respectfully submitted,



Ken Barnes
Executive Director,
California Citizens Against Lawsuit Abuse

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

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 Sacramento, State of California. My business address is 1215 K Street, Suite 1700, Sacramento, California, 95814.

On January 11, 2018, I served true copies of the following document(s) described as **AMICUS LETTER OF CALIFORNIA CITIZENS AGAINST LAWSUIT ABUSE 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 placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the California Citizens Against Lawsuit Abuse’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 California that the foregoing is true and correct.

Executed on January 11, 2018, at Sacramento, California.

/s/ Ken Barnes

Ken Barnes

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

Counsel Name/Address	Party(ies) Represented
<p>Joseph W. Cotchett Cotchett, Pitre & McCarthy, LLP 840 Malcolm Road, Suite 200 Burlingame, CA 94010 nfineman@cpmlegal.com jcotchett@cpmlegal.com</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Robert J. McConnell Fidelma L. Fitzpatrick Motley Rice LLC 55 Cedar Street, Suite 100 Providence, RI 02903-1034 bmccConnell@motleyrice.com ffitzpatrick@motleyrice.com</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Danny Y. Chou Orry P. Korb Greta S. Hansen Jenny S. Lam Office of County Counsel County of Santa Clara 70 W. Hedding Street East Wing, 9th Floor San Jose, CA 95110-1770 danny.chou@cco.sccgov.org orry.korb@cco.sccgov.org greta.hansen@cco.sccgov.org jenny.lam@cco.sccgov.org</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>

Counsel Name/Address	Party(ies) Represented
<p>Owen J. Clements Erin B. Bernstein San Francisco City Attorney's Office 1390 Market Street, Seventh Floor San Francisco, CA 94102 owen.clements@sfgov.org erin.bernstein@sfgov.org</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Andrew J. Massey Donna R. Ziegler Office of the County Counsel Alameda County 1221 Oak Street, Suite 450 Oakland, CA 94612 andrew.massey@acgov.org donna.ziegler@acgov.org</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Andrea E. Ross Office of the County Counsel of Los Angeles 500 W Temple Street, Suite 648 Los Angeles, CA 90012 aross@counsel.lacounty.gov</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>William M. Litt Charles J. McKee Office of County Counsel 168 West Alisal Street, Third Floor Salinas, CA 93901-2439 littwm@co.monterey.ca.us mckeecj@co.monterey.ca.us</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>

Counsel Name/Address	Party(ies) Represented
<p>Paul F. Prather Jan I. Goldsmith Office of the City Attorney City of San Diego 1200 3rd Avenue, Suite 1100 San Diego, CA 92101 pprather@sandiego.gov cityattorney@sandiego.gov</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Barbara J. Parker Wendy M. Garbers Oakland City Attorney One Frank H. Ogawa Plaza, 6th Floor Oakland, CA 94612 bjparker@oaklandcityattorney.org wgarbers@oaklandcityattorney.org</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Rebecca M. Archer John C. Beiers County Counsel County of San Mateo Hall of Justice & Records 400 County Center, 6th Floor Redwood City, CA 94063-1662 rmarcher@smcgov.org jbeiers@smcgov.org</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Dennis Bunting Office of the County Counsel Solano County 675 Texas Street, Suite 6600 Fairfield, CA 94533 dwbunting@solanocounty.com</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California <i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>

Counsel Name/Address	Party(ies) Represented
<p>Eric J. A. Walts LeRoy Smith Office of the County Counsel County of Ventura 800 S. Victoria Avenue, UC #1830 Ventura, CA 93009 eric.walts@ventura.org leroy.smith@ventura.org</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Peter G. Earle Law Offices of Peter G. Earle, LLC 839 North Jefferson Street, Suite 300 Milwaukee, WI 53202 peter@earle-law.com</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Stacey M. Leyton Altshuler Berzon LLP 177 Post Street, Suite 300 San Francisco, CA 94108 sleyton@altshulerberzon.com</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Mary Alexander Mary Alexander and Associates, P.C. 44 Montgomery Street, Suite 1303 San Francisco, CA 94104 malexander@maryalexanderlaw.com</p>	<p>Counsel for Plaintiff, Respondent and Cross-Appellant The People of the State of California</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Raymond A. Cardozo Reed Smith LLP 101 Second Street, Suite 1800 San Francisco, CA 94105-3659 rcardozo@reedsmith.com</p>	<p>Counsel for Defendant and Appellant ConAgra Grocery Products Company</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>

Counsel Name/Address	Party(ies) Represented
<p>Allen J. Ruby Skadden, Arps, Slate, Meagher & Flom LLP 525 University Avenue, Suite 1100 Palo Alto, CA 94301 allen.ruby@skadden.com</p>	<p>Counsel for Defendant and Appellant ConAgra Grocery Products Company</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>James P. Fitzgerald James J. Frost McGrath North Mullin & Kratz, PC LLO First National Tower 1601 Dodge Street, Suite 3700 Omaha, NE 68102 jfitzgerald@mcgrathnorth.com jfrost@mcgrathnorth.com</p>	<p>Counsel for Defendant and Appellant ConAgra Grocery Products Company</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>David M. Axelrad Lisa Perrochet Horvitz & Levy LLP 15760 Ventura Boulevard, 18th Floor Encino, CA 91436-3000 daxelrad@horvitzlevy.com lperrochet@horvitzlevy.com</p>	<p>Counsel for Defendant, Cross-Complainant and Appellant The Sherwin-Williams Company</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Robert A. Mittelstaedt Jones Day 555 California Street, 26th Floor San Francisco, CA 94104 ramittelstaedt@jonesday.com</p>	<p>Counsel for Defendant, Cross-Complainant and Appellant The Sherwin-Williams Company</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>

Counsel Name/Address	Party(ies) Represented
Charles H. Moellenberg, Jr. Paul Michael Pohl Leon F. DeJulius Jones Day 500 Grant Street, Suite 4500 Pittsburgh, PA 15219 chmoellenberg@jonesday.com pmpohl@jonesday.com lfdejulius@jonesday.com	Counsel for Defendant, Cross-Complainant and Appellant The Sherwin-Williams Company <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
Cynthia Helene Cwik Jones Day 12265 El Camino Real, Suite 200 San Diego, CA 92130 chcwik@jonesday.com	Counsel for Defendant, Cross-Complainant and Appellant The Sherwin-Williams Company <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
James H. McManis William W. Faulkner McManis Faulkner 50 W. San Fernando Street, 10th Floor San Jose, CA 95113 jmcmanis@mcmanislaw.com wfaulkner@mcmanislaw.com	Counsel for Defendant and Appellant NL Industries <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
Andre M. Pauka Jameson R. Jones Bartlit Beck Herman Palenchar & Scott LLP 1801 Wewatta Street, Suite 1200 Denver, CO 80202 andre.pauka@bartlit-beck.com jameson.jones@bartlit-beck.com	Counsel for Defendant and Appellant NL Industries <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)

Counsel Name/Address	Party(ies) Represented
Richard A. Derevan Todd E. Lundell Snell & Wilmer, L.L.P. 600 Anton Boulevard, Suite 1400 Costa Mesa, CA 92626-7689 rderevan@swlaw.com tlundell@swlaw.com	Counsel for Defendant and Appellant NL Industries <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)
Clement L. Glynn Glynn & Finley 100 Pringle Avenue, Suite 500 Walnut Creek, CA 94596 cglynn@glynnfinley.com	Counsel for E.I. DuPont de Nemours Company <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling), per agreement of the parties
Daniel M. Kolkey Gibson Dunn & Crutcher LLP 555 Mission Street, Suite 3000 San Francisco, CA 94105-0921 dkolkey@gibsondunn.com	Counsel for E.I. DuPont de Nemours Company <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling), per agreement of the parties
Theodore J. Boutrous, Jr Gibson Dunn & Crutcher LLP 333 S. Grand Avenue Los Angeles, CA 90071-3197 tboutrous@gibsondunn.com	Counsel for E.I. DuPont de Nemours Company <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling), per agreement of the parties
Christian E. Henneke McGuireWoods LLP 800 E. Canal Street Richmond, VA 23219-3916 chenneke@mcguirewoods.com	Counsel for E.I. DuPont de Nemours Company <i>Electronic Service Copy</i> via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling), per agreement of the parties

Counsel Name/Address	Party(ies) Represented
<p>Sean Morris Arnold & Porter Kaye Scholer LLP 777 S. Figueroa Street, 44th Floor Los Angeles, CA 90017-5844 sean.morris@apks.com</p>	<p>Attorneys for Atlantic Richfield Company</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling), per agreement of the parties</p>
<p>Jerome B. Falk, Jr. Arnold & Porter Kaye Scholer LLP Three Embarcadero Center, 7th Floor San Francisco, CA 94111-4024 jerome.falk@apks.com</p>	<p>Attorneys for Atlantic Richfield Company</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling), per agreement of the parties</p>
<p>Christopher M. Kieser Pacific Legal Foundation 930 G Street Sacramento, CA 95814 ckieser@pacificlegal.com</p>	<p>Amicus Curiae for Appellant Pacific Legal Foundation</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Dario B. de Ghetaldi Corey, Luzaich, de Ghetaldi & Riddle, LLP 700 El Camino Real P.O. Box 669 Millbrae, CA 94030 deg@coreylaw.com</p>	<p>Amicus Curiae for Respondent American Academy of Pediatrics, California</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Paula K. Canny Law Offices of Paula Canny 840 Hinckley Road, Suite 101 Burlingame, CA 94010 pkcanny@aol.com</p>	<p>Amicus Curiae for Respondent California Conference of Local Health Officers</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>

Counsel Name/Address	Party(ies) Represented
<p>Amir M. Nassihi Shook Hardy & Bacon LLP One Montgomery Street, Suite 2700 San Francisco, CA 94104 anassihi@shb.com</p>	<p>Amicus Curiae for Appellant NFIB Small Business Legal Center, et al.</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Ingrid M. Evans Evans Law Firm, Inc. 3053 Fillmore Street, Suite 236 San Francisco, CA 94123 ingrid@evanslaw.com</p>	<p>Amicus Curiae for Respondent Changelab Solutions et al.</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Fred J. Hiestand Civil Justice Association of California 1201 K Street, Suite 1850 Sacramento, CA 95814 fhiestand@aol.com</p>	<p>Amicus Curiae for Appellant Civil Justice Association of California</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Michael E. Wall Natural Resources Defense Council 111 Sutter Street, 21st Floor San Francisco, CA 94104-4545 mwall@nrdc.org</p>	<p>Amicus Curiae for Respondent Environmental Health Coalition and Healthy Homes Collaborative</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>
<p>Jonathon Krois Natural Resources Defense Council 40 West 20th Street, 11th Floor New York, NY 10011 jkrois@nrdc.org</p>	<p>Amicus Curiae for Respondent Environmental Health Coalition and Healthy Homes Collaborative</p> <p><i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling)</p>

Counsel Name/Address	Party(ies) Represented
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)
Honorable James P. Kleinberg Santa Clara County Superior Court 191 N. First Street, Dept. 1 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] <i>Electronic Service Copy</i> 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] <i>Electronic Service Copy</i> via Court’s Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) Hard Copy (unbound) Follows by Mail