IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S219919

JOSHUA HAVER, Individually and as
Successor-in-Interest to LYNNE HAVER, Deceased, et al.,
Plaintiffs, Appellants, and Petitioners,

v.

BNSF RAILWAY COMPANY,
Defendant and Respondent.

After a Decision by the Court of Appeal,
Second Appellate District, Division Five
(Case No. B246527)

On Appeal from the Superior Court of Los Angeles County
(Case No. BC435551, Honorable Richard E. Rico, Judge)

APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANT/RESPONDENT

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APPLICATION TO FILE BRIEF AMICUS CURIAE

Pursuant to California Rule of Court 8.520(f),[1] Pacific Legal Foundation requests leave to file the attached brief amicus curiae in support of Defendant/Respondent BNSF Railway Company. Amicus is familiar with the issues and scope of their presentation, and believes the attached brief will aid the Court in its consideration of the issues presented in this case.

IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation's (PLF) Free Enterprise Project was developed to protect the free enterprise system from abusive regulation, the unwarranted expansion of claims and remedies in tort law, and barriers to the freedom of contract. PLF has participated in cases across the country on matters affecting the expansion of tort liability, including cases that involve asbestos liability, *see, e.g.*, *Webb v. Special Electric Co.*, docket no. S209927 (pending); *Kesner v. Superior Ct.*, docket no. S219534 (pending); *Bostic v. Georgia-Pacific Corp.*, 439 S.W.3d 332 (Tex. 2014); *Georgia Pacific, LLC v. Farrar*, 432 Md. 523 (2013); *O'Neil v. Crane Co.*, 53 Cal. 4th 335 (2012); *Macias v. Saberhagen Holdings, Inc.*, 282 P.3d 1069 (Wash. 2012); *Aubin v.*

[1] Pursuant to California Rule of Court 8.520, Amicus Curiae affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

Union Carbide Corp., No. SC2012-2075 (Fla. S. Ct. filed Oct. 1, 2012). PLF attorneys also have published on the impact of tort liability in general, and premises liability in particular. *See, e.g.*, Deborah J. La Fetra, *A Moving Target: Property Owners' Duty to Prevent Criminal Acts on the Premises*, 28 Whittier L. Rev. 409 (2006); Deborah J. La Fetra, *Freedom, Responsibility, and Risk: Fundamental Principles Supporting Tort Reform*, 36 Ind. L. Rev. 645 (2003). After reviewing the briefs in this case, Amicus believes that its public policy perspective and litigation experience will provide a useful additional viewpoint on the issues presented.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Haver plaintiffs brought a premises liability claim alleging that Lynne Haver contracted throat cancer and, ultimately fatal lung disease, as a result of secondary, "take-home" exposure to asbestos brought home by her husband from his work at the railroad. The trial court rejected their claim and the appellate court affirmed, based on the rule that premises owners owe no duty to protect family members of workers from secondary exposure to asbestos used during the course of the property owners' business. *Haver v. BNSF Railway Co.*, 226 Cal. App. 4th 1104, 172 Cal. Rptr. 3d 771, 772 (2014).

California's law of premises liability does not allow recovery for "take-home" claims, where the plaintiff was never on the property and has no

relationship or other close connection to the owner of the property. The landowner's lack of control over an off-duty, off-premises employee strongly counsels against imposition of a duty, because the class of potential third-party plaintiffs in such circumstances is unknowable and unlimited. The public policy of creating rational limits on liability counsel against such an expansion of duty. Moreover, establishing a duty in such cases would present serious collateral concerns about how courts are to determine causation in take-home cases. By a large margin, courts nationwide have refused to permit take-home claims based on premises liability, in recognition of the policy concerns that outweigh the foreseeability that a worker's laundry may expose others to workplace contaminants. This Court should adopt the majority view and affirm the decision below.

ARGUMENT

I

HOUSEHOLD MEMBERS SUFFERING ASBESTOS-RELATED INJURIES HAVE REMEDIES WITHOUT THIS COURT EXPANDING THE CONCEPT OF DUTY UNDER A PREMISES LIABILITY THEORY

Plaintiffs suffering from asbestos-related ailments typically sue a large array of defendants, and this case is no different. *See* Respondent's Brief, *Haver v. BNSF Railway Co.*, 2011 WL 4352629 *1 (Cal. App. Aug. 25, 2011) ("Prior to her death, Ms. Haver filed a personal injury action against multiple

defendants, including Defendant BNSF, to recover for her asbestos-related injuries. (Appellants' Appendix ["AA"] 47.)"). In these cases, the plaintiffs' basic strategy to sue any employer, manufacturer, or property owner with any connection (no matter how remote) to asbestos, has been a largely successful "endless search for a solvent bystander" that impels most, if not all, of the defendants to settle. *See* S. Todd Brown, *Bankruptcy Trusts, Transparency and the Future of Asbestos Compensation*, 23 Widener L. J. 299, 305-06 (2013) (citations omitted) (discussing the bankruptcies of the first- and second-tier defendants such that "[d]efendants who were once viewed as tertiary have increasingly become lead defendants in the tort system, and many of these defendants have also entered bankruptcy in recent years").

When a particular defendant refuses to settle, it is because that defendant believes it has a solid claim that the plaintiff has simply swept it up in kitchen-sink litigation, without any proof that the defendant had any duty to the plaintiff or that the defendant's conduct caused any harm to the plaintiff. For example, in *Kesner v. Superior Court*, 171 Cal. Rptr. 3d 811, 813 (Ct. App. 2014), *review granted*, Cal. Sup. Ct. docket no. S219534), Kesner sued 19 defendants on a variety of tort theories; only his claim against his uncle's employer, Pneumo Abex, proceeded to judgment. Opening Brief on the Merits, *Kesner v. Sup. Ct.*, 2014 WL 6980104 *2 (Cal. 2014). In *Georgia Pacific LLC v. Farrar*, 432 Md. 523, 526 (2013), the plaintiff sued more than 30 defendants; only her "take-home" claims against her grandfather's

employer were actually litigated. And in *Olivo v. Owens-Illinois, Inc.*, 186 N.J. 394, 400 (2006), an employee's wife sued 32 defendants on a take-home asbestos claim, all of whom settled except Exxon Mobil, the landowner of one of the husband's worksites. *See also* Heather Isringhausen Gvillo, *Calif. car dealer sues asbestos firm, calls its attorneys 'shakedown artists'*, Legal Newsline L. J. (Aug. 22, 2014)[2] (car dealership, the successor-in-interest to a worker's employer, was sued along with dozens of other defendants in an asbestos case; when plaintiff could offer no evidence to link the dealership to the worker's asbestos exposure, the dealership sued the firm representing the plaintiff for malicious prosecution).

In *Boley v. Goodyear Tire & Rubber Co.*, 929 N.E.2d 448, 450 (Ohio 2010), current Ohio Supreme Court Chief Justice Maureen O'Connor concurred in a decision applying the state's "no premises liability for exposure outside the premises" statute[3] to make two important points. First, Justice O'Connor noted that the legislation targeted the enhancement of the judicial system's ability to "supervise and control litigation and asbestos-related bankruptcy proceedings," and "conserve the scarce resources of the

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[2] *Available at* http://legalnewsline.com/issues/asbestos/251325-calif-car-dealer-sues-asbestos-firm-calls-its-attorneys-shakedown-artists (last visited Mar. 5, 2015).

[3] Ohio Rev. Code Ann. § 2307.941 (2004) ("A premises owner is not liable for any injury to any individual resulting from asbestos exposure unless that individual's alleged exposure occurred while the individual was at the premises owner's property.").

defendants" for future plaintiffs with direct claims. *Id*. at 453 (O'Connor, J., concurring). Second, she emphasized that the statute eliminating "take-home" asbestos liability claims does not leave ill plaintiffs without legal recourse:

> Although the legislature barred appellants from recovering from Goodyear, [the statute] does not prevent them from recovering from defendants other than premises owners, including the manufacturers or suppliers of the asbestos that caused Mary Adams's illness and death. In fact, [the statute] clearly contemplates take-home-asbestos-exposure claims against defendants *other than the premises owners*.

Id. at 454 (emphasis added). With clear eyes, the Justice O'Connor noted that the *Boley* plaintiffs "asserted multiple claims against more than 200 named defendants and 100 John Doe defendants" and that they "resolved and/or settled their claims" against most of them. *Id*. (O'Connor, J., concurring).

The only remaining defendant in this litigation is BNSF Railway Co., and the only remaining theory is premises liability. The court below held that BNSF owed no duty to Lynne Haver. *Haver*, 172 Cal. Rptr. 3d at 776. *See also Preston v. Goldman*, 42 Cal. 3d 108, 119 (1986) (Possession and control form the basis for imposing tort liability for conditions on land.). Not only did the railroad have no control whatsoever over Mrs. Haver (or even a passing acquaintance), it even lacked control over Mr. Haver's conduct once he left the premises, in that it could not require him to wash his own laundry. By rejecting Haver's claim that BNSF owed her a duty, the court below correctly joined the majority of courts that have considered the issue of take-home liability. *See Campbell v. Ford Motor Co.*, 206 Cal. App. 4th 15, 33-34 (2012)

(citing cases and comprehensive discussion in law review articles); *Nelson v. Aurora Equipment Co.*, 391 Ill. App. 3d 1036, 1040, 1044, *app. denied*, 233 Ill. 2d 564 (2009) (employer owed no duty under a premises liability theory to wife and mother exposed to husband's and son's asbestos-contaminated clothing because she was neither an entrant on the land nor did she have any relationship to the employer).

II

A DUTY IN THIS CASE WOULD HAVE RIPPLE EFFECTS ACROSS MANY OTHER INDUSTRIES AND CONTAMINANTS

A. A Holding That a Landowner or Employer Owes a Duty to Anyone Who Might Foreseeably Handle Contaminated Laundry Has Implications Far Beyond Asbestos

This Court held in *O'Neil v. Crane Co.*, 53 Cal. 4th 335, 365-66 (2012), " '[S]ocial policy must at some point intervene to delimit liability' even for foreseeable injury . . . ." (citation omitted). The facts of this case involve a typical household routine in which a wife launders her husband's clothes. If the Court were to find that the husband's employer owes a duty to the wife under these circumstances, the holding would open the door to other circumstances where laundry is likely be handled by someone other than the owner, presenting a risk of exposure to toxins of some sort.

Shared laundry facilities present one likely scenario. Many apartment complexes offer common laundry rooms, available to all tenants. *Nahrstedt*

v. Lakeside Village Condominium Assn., 8 Cal. 4th 361, 368 (1994); *People v. Woods*, 65 Cal. App. 4th 345, 347 (1998). Residue from tenant clothing could contaminate the machines or tables provided for folding and stacking laundry, exposing fellow tenants and apartment building employees (*e.g.*, maintenance staff) to dust or potential toxins acquired in the tenants' workplace. Similarly, many universities offer on-campus housing that includes shared laundry facilities, some of which may be used by students coming home from chemistry labs or other classes or jobs in which potentially harmful substances are used. *See People v. O'Keefe*, 222 Cal. App. 3d 517, 521 (1990) (a student dormitory is "analogous to a hotel or apartment complex" where "facilities are shared"); Ruthanne Huising and Susan S. Silbey, *Constructing Consequences for Noncompliance: The Case of Academic Laboratories*, 649 Annals Am. Acad. Pol. & Soc. Sci. 157, 173-74 (2013) (describing health, safety, and environmental hazards in a campus lab). Do landowners who control the property where the chemicals or other toxins originate have a duty to everyone who uses a shared laundry facility, thus risking exposure?

In addition to the do-it-yourself laundries in shared housing, commercial laundries and linen services launder clothes potentially contaminated by toxins (and also use caustic chemicals themselves) to which laundry workers could be exposed. *See Mellem v. Kalispell Laundry & Dry Cleaners*, 237 Mont. 439, 440 (1989) (plaintiff employed by a commercial

laundry for five years suffered from severe chronic obstructive pulmonary disease along with chronic pneumonia, allegedly due in part to her exposure to certain fumes and particles while employed at the laundry). Commercial laundries are not necessarily standalone buildings or shops, but may offer pick-up and delivery services, thus bringing delivery truck drivers into contact with dirty laundry as well, particularly when they are serving industrial customers. *See, e.g.*, *City of Los Angeles v. Kossman*, 274 Cal. App. 2d 116, 117 (1969) (commercial laundry company serviced the entire Los Angeles area by means of delivery trucks, including "substantial industrial accounts which it billed on a monthly basis for supplying clean work clothes, wiping rags, and miscellaneous items"). *See also Peerless Oakland Laundry Co. v. Hickman*, 205 Cal. App. 2d 556, 558 (1962) (customers included restaurants, taverns, doctors, dentists and barber shops).

Hotels and motels launder enormous quantities of sheets and towels daily, which may be contaminated by guests. While one may initially think of hotel guests as people on vacation, or white-collar workers on business trips, hotels and motels also serve as residences for mobile workforces. For example, in the railroad industry, maintenance workers frequently move from site to site and use employer-paid motels for lodging. *See Loram Maint. of Way, Inc. v. Ianni*, 210 S.W.3d 593, 595 (Tex. 2006). Whatever dust or contaminants the workers bring home may well be transferred to bed linens or

towels, to which the motel laundry workers would be exposed. Does the railroad owe a duty to them?

Last, but certainly not least, hospital laundries obviously handle linens and patient gowns that carry contaminants. For example, the hepatitis B virus can survive on the surface of a piece of clothing or other material at room temperature for a week and can thus be spread by dirty laundry. *American Dental Ass'n v. Martin*, 984 F.2d 823, 824 (7th Cir. 1993). In *Vickers v. Missouri Dept. of Public Safety*, 283 S.W.3d 287, 293 (Mo. App. 2009), a night shift attendant at an assisted living home washed bed pads, bed sheets, pillow cases, blankets, bed spreads, and personal clothing of all the residents. She developed a rare and serious disease traceable to contaminants in the laundry. *Id*. at 295-96.

All of these cases present situations where the transmission of contaminants via laundry is foreseeable, and would be difficult to distinguish from a decision in this case if this Court allows the Havers' premises liability claim. Public policy discourages expansion of liability to an unlimited—and unlimitable—class of potential plaintiffs.

B. The Duty Sought in This Case Is Analogous to the Duty Sought—and Rejected—in Driving While Fatigued Cases

The potential for unlimited liability represents a glaring concern for imposing liability on the employer for injuries occurring outside the place of employment. It is particularly troubling in the context of premises liability,

which was founded on an owner's responsibility to ensure safe conditions on the land. *Preston*, 42 Cal. 3d at 119. When the danger leaves the property, the landowner's control comes to an end. *See Medina v. Hillshore Partners*, 40 Cal. App. 4th 477, 485 (1995) (courts "have consistently refused to recognize a duty of persons injured in adjacent streets or parking lots over which the defendant does not have the right of possession, management and control") (citation omitted). The landowner's ability to exercise control has been dispositive in numerous cases where an employee was required to work long hours, becoming fatigued, and then allowed to drive home, causing an accident en route.[4] *Cf. Depew v. Crocodile Enterprises, Inc.*, 63 Cal. App. 4th 480, 483 (1998) (claim that employer was liable for fatigued employee causing a fatal car accident on the way home from work failed for lack of causation).

Like the asbestos take-home cases, the dangerous condition (fatigue) was created on the worksite, and the employee's condition caused injuries to others, who had no connection to the workplace. Courts have rejected arguments that the landowner/employer owed the injured person a tort duty arising under these circumstances. In *Pilgrim v. Fortune Drilling Co., Inc.*, 653 F.2d 982, 985 (5th Cir. 1981), a case involving a fatigued employee

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[4] In 1995, the National Highway Traffic Safety Administration reported that 100,000 auto crashes are caused by driver fatigue each year, injuring 71,000 people, killing 1,550 more, and causing at least $12.5 billion in property loss and diminished productivity. Joshua D. Levine, Note *A Road to Injustice Paved with Good Intentions: Maggie's Misguided Crackdown on Drowsy Driving*, 56 Hastings L.J. 1297, 1297 (2005) (citations omitted).

coming off a 12-hour shift, the Fifth Circuit, correctly anticipating Texas courts' rulings on the matter, held that a Texas employer did not owe a duty to "users of the public highways to prevent its employees from driving home when they are so exhausted from working that their driving would create an unreasonable risk of harm to others" because the employer had no right to control the employee "once he had finished his day's work." *Id*. at 986. *See also Nabors Drilling U.S.A., Inc. v. Escoto*, 288 S.W.3d 401, 410-11 (Tex. 2009) (rejecting plaintiff's request to establish a new duty on employers whose work conditions may contribute to fatigue to prevent an off-duty employee's fatigue-related automobile accidents, even when such accidents may be foreseeable).

In *Barclay v. Briscoe*, 427 Md. 270 (2012), a longshoreman fell asleep at the wheel while driving home after a 22-hour shift at the Port of Baltimore. He crashed into another motorist, severely injuring him. The motorist sued the Port for negligence in failing to protect the motoring public from a fatigued employee driving after an unreasonably long shift. *Id*. at 273. The court acknowledged that the accident was foreseeable, but held that there could be no duty absent a relationship between the Port and the injured party. *Id*. at 294-95. *See also Black v. William Insulation Co.*, 141 P.3d 123, 131 (Wyo. 2006) (relying in part on *Depew*, 63 Cal. App. 4th 480, and holding that an employer had no duty to a third party killed by an exhausted employee who fell asleep at the wheel); *Rodriguez v. U.S. Steel Corp.*, 24 N.E.3d 474, 477-79

(Ind. App. 2014) (rejecting a duty of employers to third-party motorists for injuries caused by a sleep-deprived employee who caused a car accident because, although the accident was foreseeable, the employer and the injured motorist had no direct relationship and public policy counsels against placing this burden on the employer).

Courts reject employer liability in these circumstances because, although it certainly is foreseeable that a hardworking employee, after long shifts, could drive while fatigued with catastrophic consequences, there is no way to limit a duty to the motoring public.

> Under those circumstances, the world becomes an employer's plaintiff once the nature or demands of a job become laborious to the degree of posing a foreseeable risk of harm to others. Establishing an appropriate point at which to draw such a line is difficult, if for no other reason than that labor, whether repairing a derailed train or providing patient care services, is exhausting or at least taxing.

Andrew W. Gefell, *Dying to Sleep: Using Federal Legislation and Tort Law to Cure the Effects of Fatigue in Medical Residency Programs*, 11 J.L. & Pol'y 645, 684-85 (2003). The inability to limit the duty sought in this case should lead this Court to the same conclusion as in the fatigue cases: Employers cannot owe a legal duty to protect family members or the multitude of others who may come into contact with off-duty employees who present a work-created danger to others.

III

AN EXPANDED DUTY COULD LEAD TO EXPANDED CAUSATION, FURTHER EXPANDING THE POOL OF PLAINTIFFS

Having resolved the matter on the duty question, the court below did not reach the issue of causation. Unfortunately, the issues of duty and causation frequently are conflated in court decisions considering take-home liability, whether that liability is sought pursuant to premises liability or some other negligence theory. For this reason, an expansion of duty to family members and others who have never been on the defendant's premises or have any other relationship with the defendant risks erosion of clear and robust causation standards, with the result that the mere creation of risk in combination with other risks, would support a claim for damages. *See* Jane Stapleton, *The Two Explosive Proof-of-Causation Doctrines Central to Asbestos Claims*, 74 Brook. L. Rev. 1011, 1029 (2009). This Court should hold, for the reasons explained above and by the *Campbell* court, that no duty exists under a premises liability theory for take-home asbestos claims. If the Court holds otherwise, the implications of finding such a duty will likely have further—perhaps unintended—consequences regarding how courts approach the question of causation.

A plaintiff alleging asbestos-related injuries "[bears] the burden of proof on the issue of exposure to the defendant's product." *Rutherford v.*

Owens-Corning-Illinois, Inc., 16 Cal. 4th 953, 975 (1997); *McGonnell v. Kaiser Gypsum Co.*, 98 Cal. App. 4th 1098, 1103 (2002). If there has been no exposure, there is no causation. *Dumin v. Owens-Corning Fiberglas Corp.*, 28 Cal. App. 4th 650, 655 (1994); *see also Howard ex rel. Estate of Ravert v. A.W. Chesterton Co.*, 621 Pa. 343, 348-49 (2013) (rejecting "any exposure" causation and requiring evidence of dosage upon which a claim of causation is based). As this Court held in *Bockrath v. Aldrich Chemical Company, Inc.*, 21 Cal. 4th 71, 81 (1999), "[t]he law cannot tolerate lawsuits by prospecting plaintiffs who sue multiple defendants on speculation that their products may have caused harm over time through exposure to toxins in them, and who thereafter try to learn through discovery whether their speculation was well founded." *See also* Richard O. Faulk, *Dispelling the Myths of Asbestos Litigation: Solutions for Common Law Courts*, 44 S. Tex. L. Rev. 945, 963 (2003) (In asbestos cases brought on a premises liability theory, "[e]xposure periods may vary from several years to a few weeks (or even less), but no matter how short the exposure period may be, and no matter how vaguely documented the actual exposures may be, plaintiffs insist that each contributing exposure was a proximate cause of their illnesses.").

An expansion of the duty element that affects judicial consideration of causation consequently presents an increased risk that innocent parties are forced to compensate plaintiffs for injuries inflicted by others. *See* Harvey S. Perlman, *Interference with Contract and Other Economic Expectancies: A*

Clash of Tort and Contract Doctrine, 49 U. Chi. L. Rev. 61, 70 (1982) ("the extension of liability increases the likelihood . . . that the substantive legal rule will be applied erroneously"). Lax causation standards are particularly prone to result in injustice in asbestos take-home cases because the potential dangers of asbestos dust carried outside an employers' premises were unknown for many decades after the general dangers of asbestos were understood. *Georgia Pacific LLC v. Farrar*, 432 Md. 523, 534-35 (2013).

This potential for asbestos tort liability without proof of causation is particularly worrisome, because there is no principled reason why expansive causation rules would necessarily be limited to asbestos-related cancer cases—they may be expanded to lead paint-related illnesses, workplace injuries, or to injuries caused through the instrumentality of a product. Stapleton, *supra*, at 1030, 1036. Even if the rule is confined to "toxic torts," expanded notions of duty and causation would generate a flood of new cases. *See* Gerald W. Boston, *Toxic Apportionment: A Causation and Risk Contribution Model,* 25 Envtl. L. 549, 551 n.1 (1995) (Toxic tort cases have included exposure to asbestos, cigarette smoke, fumes from mildew, formaldehyde vapors, pesticides, contaminated water supply, and others; absolving plaintiffs of the need to prove an essential element of their claim in the asbestos context could well transfer to other types of cases in which diseases are latent for long periods before they are manifest.); *cf. Miranda v. Bomel Const. Co., Inc.*, 187 Cal. App. 4th 1326, 1336 (2010) (employer not

liable for employee's Valley Fever because the employee could not prove that he inhaled the fungal spores on the employer's premises). One scholar sums up the policy implications of causation problems this way:

> Where a plaintiff may recover even with weak proof of causation, litigation will be brought, not based on whether the causative inference is likely to be true, but based on the potential for recovery. The incentive to pursue those cases in which the harm alleged is most likely due to the defendant's conduct will evaporate. Under an eroded causation standard, the plaintiff is incentivized in the weakest possible manner to pursue damages only against those who caused his injury. Potential defendants cannot effectively regulate their conduct where the scope of their liability is so unclear.

Jonathan C. Mosher, *A Pound of Cause for a Penny of Proof: The Failed Economy of an Eroded Causation Standard in Toxic Tort Cases*, 11 N.Y.U. Envtl. L.J. 531, 616 (2003). This Court should retain the traditional limitations on the scope of duty (and consequently, causation), to further the "public policy . . . served by adherence to the strict requirement that the plaintiff prove each of the necessary elements of the tort." *Leonardini v. Shell Oil Co.*, 216 Cal. App. 3d 547, 566 (1989).

CONCLUSION

The decision below should be affirmed.

DATED: March _____, 2015.

Respectfully submitted,

By _____
DEBORAH J. LA FETRA

Attorney for Amicus Curiae
Pacific Legal Foundation

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 8.204(c)(1), I hereby certify that the foregoing APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANT/RESPONDENT is proportionately spaced, has a typeface of 13 points or more, and contains 3,973 words.

DATED: March _____, 2015.

_____
DEBORAH J. LA FETRA

DECLARATION OF SERVICE BY MAIL

I, SUZANNE M. MACDONALD, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California.

I am over the age of 18 years and am not a party to the above-entitled action.

My business address is 930 G Street, Sacramento, California 95814.

On March ____, 2015, true copies of APPLICATION TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF DEFENDANT/RESPONDENT were placed in envelopes addressed to:

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which envelopes, with postage thereon fully prepaid, were then sealed and deposited in a mailbox regularly maintained by the United States Postal Service in Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this ____ day of March, 2015, at Sacramento, California.

_____
SUZANNE M. MACDONALD