Case No. S229762

In the
SUPREME COURT OF CALIFORNIA

McMILLIN ALBANY, LLC, et al.
Defendant and Petitioners,
v.
THE SUPERIOR COURT OF KERN COUNTY,
Respondent.

Carl Van Tassel, et al.
Real Party in Interest.

From a Decision of the Court of Appeal, Fifth Appellate District, Case No. F069370, Vacating the Judgment of the Superior Court, County of Kern, Hon. David R. Lampe, Case No. CV279141DRL

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF

IN SUPPORT OF PETITIONER AND DEFENDANT McMILLIN ALBANY, LLC

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The Association of Defense Counsel of Northern California and Nevada and the Association of Southern California Defense Counsel request leave to file the amicus brief accompanying this Application, based on the following grounds.

A. INTEREST OF PROPOSED AMICI CURIAE

1. The Association of Defense Counsel of Northern California and Nevada ("ADC-NCN") is an association of over 800 attorneys primarily engaged in the defense of civil actions. ADC-NCN members have a strong interest in the development of substantive and procedural law in California, and extensive experience with construction defect matters. The Association's Nevada members are also interested in the development of California law because Nevada courts often follow the law and rules adopted in California. ADC-NCN has appeared as amicus in numerous cases.

2. The Association of Southern California Defense Counsel ("ASCDC") is the nation's largest regional organization of lawyers who specialize in defending civil actions. ASCDC counts as members approximately 1,200 attorneys in Southern and Central California. ASCDC is actively involved in assisting courts on issues of interest to its members. It has appeared as amicus curiae in numerous cases before this Court and the Courts of Appeal.

The two Associations are separate organizations, with separate memberships and governing boards. They coordinate from time to time on a number of matters of shared interest, such as this application and brief.

B. WHY THIS APPLICATION SHOULD BE GRANTED

The accompanying proposed brief could help this Court decide the issues addressed by this case by providing a broader perspective than that offered by the parties themselves within the confines of the record on appeal and issues addressed below. The parties' briefs discuss the rights of homeowners and builders under Title 7 of the Civil Code, Section 895, et seq. (also known as "the Right to Repair Act" or "SB800"), but the Legislative history and various provisions of Title 7 make it clear that SB800 was also intended to benefit others involved in the residential construction industry who are frequently named as defendants and cross-defendants in construction defect litigation, including general contractors, subcontractors, design professionals, product manufacturers, and material suppliers. Members of the Associations represent all categories of prospective defendants in residential construction defect litigation, all of whom have an interest in the determination of the issues of whether SB800 provides the exclusive framework for residential construction defect claims regardless of whether a claimed defect has caused damage, thereby precluding common law causes of action for defects which have caused damage, and whether homeowners can avoid participation in the statutorily mandated pre-litigation procedures set forth in Civil Code section 910 et seq. by not specifically pleading a violation of the standards for construction set forth in Civil Code section 896.

C. NO OTHER PARTY INVOLVED

No other party or its counsel has authored this brief in whole or in part, or has made a monetary contribution to fund the preparation or submission of this brief. (Cal. Rules of Court, rule 8.520(f)(4).)

D. CONCLUSION

Because members of the Associations represent general contractors, subcontractors, design professionals, product manufacturers, and material suppliers, in addition to builders, all of these participants in the residential construction industry have a material interest in the outcome of the issues presented to this Court, and the perspectives of the participants other than builders are not represented by the parties to this proceeding, the Court should grant this request, and grant the Association of Defense Counsel of Northern California and Nevada and the Association of Southern California Defense Counsel leave to file the accompanying amicus brief.

Respectfully submitted,

Dated: July 15, 2016

RYAN & LIFTER

By: _____
Jill J. Lifter

Attorney for Amicus Curiae
Association of Defense Counsel of
Northern California and Nevada

Dated: July 15, 2016

CHAPMAN, GLUCKSMAN
DEAN ROEB & BARGER

By: _____
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AMICUS CURIAE BRIEF OF ASSOCIATION OF DEFENSE COUNSEL OF NORTHERN CALIFORNIA AND NEVADA AND ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL

IN SUPPORT OF PETITIONER AND DEFENDANT McMILLIN ALBANY, LLC

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I. INTRODUCTION

In 2002, the Legislature enacted Title 7 of the Civil Code (Civil Code section 895 et seq.), commonly referred to as the Right to Repair Act ("the Act") or SB800, addressing the substance and process of the law governing construction defects with respect to residential units first sold on and after January 1, 2003. This case presents the fundamental question of whether Title 7 of the Civil Code establishes the exclusive framework for residential construction defect claims, regardless of whether a claimed defect has caused damage, subject only to the express exceptions set forth in Title 7 itself.

Although the Act's prelitigation procedures apply in the first instance as between only the homeowner and the builder, the right to repair clearly inures to the benefit of other parties in the construction industry, including general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals, which also have an interest in the determination of this issue. This is because a homeowner is required to comply with the prelitigation procedures as a prerequisite to "filing an action against ***any party*** alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896)." (Civil Code section 910[1], emphasis added.) So, while the homeowner is required to give prelitigation notice of claimed violations of the Act's standards only to the builder, the homeowner is precluded from filing an action against these other interested parties to which the standards apply unless such notice has been given.

The legislative history of the Act demonstrates that its provisions were the result of a compromise between construction industry constituents

[1] All further statutory references are to the Civil Code unless otherwise stated.

and homeowners' representatives, with the intent to provide homeowners with the right to seek redress for defects which had not caused damage in exchange for prospective defendants having the right to repair claimed deficiencies before they could be sued. The Act also addressed the need to define the standards for determining whether a condition amounted to a defect and the procedures for expeditiously resolving claimed deficiencies short of litigation. Real Parties in Interest would turn the Act on its head by interpreting it to give homeowners the right to seek redress for defects which have not caused damage while depriving the builder and others involved in the construction of the residential structure the right to receive notice and the opportunity to repair where a defect has caused damage. In other words, they would have this court interpret the Act to give homeowners rights they did not have before by virtue of this court's decision in *Aas v. Superior Court* (2000) 24 Cal.4th 627, while giving builders and others in the residential construction industry nothing.

In addition, Real Parties' position is wholly inconsistent with the legislative intent to reduce construction defect litigation, increase the availability of liability insurance for those involved in residential construction, and reduce the cost of such liability insurance. To the contrary, it would serve to increase such litigation and make liability insurance more difficult to obtain and more expensive. This is because claimants would not be required to participate in the statutory prelitigation procedures intended to facilitate resolution of construction defect claims short of litigation insofar as the claims which they already had a right to make prior to enactment of Title 7 are concerned. In short, Real Parties' interpretation would mean business as usual for residential construction defect claims as to which there was already a right of recovery under the common law, with the addition of the right to make claims for violations of

statutory standards established by the Act for which the common law did not provide a right of recovery.

Amici curiae respectfully submit that this is entirely inconsistent with the legislative intent in enacting Title 7 and should be rejected by this court. The Court of Appeal's decision in this matter should be affirmed.

II. DISCUSSION OF ISSUES BEFORE THE COURT

A. The Act is Intended to Apply to General Contractors, Subcontractors, Material Suppliers, Individual Product Manufacturers, And Design Professionals, All of Which Benefit from the Act's Prelitigation Notice Requirement

As stated by the court in *The McCaffrey Group, Inc. v. Superior Court* (2014) 224 Cal. App. 4th 1330, 1342-1343:

> The Legislature enacted the Act to "'specify the rights and requirements of a homeowner to bring an action for construction defects, including applicable standards for home construction, the statute of limitations, the burden of proof, the damages recoverable, a detailed prelitigation procedure, and the obligations of the homeowner.' (Legis. Counsel's Dig., Sen. Bill No. 800 (2001–2002 Reg. Sess.).)" (*Anders v. Superior Court* (2011) 192 Cal.App.4th 579, 585 [121 Cal. Rptr. 3d 465] (*Anders*).) The Legislature declared that "prompt and fair resolution of construction defect claims is in the interest of consumers, homeowners, and the builders of homes ... [but] under current procedures and standards, homeowners and builders alike are not afforded the opportunity for quick and fair resolution of claims. Both need clear standards and mechanisms for the prompt resolution of claims." (Stats. 2002, ch. 722, § 1, subd. (b), p. 4247.) The Legislature further declared it intended the Act to "improve the procedures for the administration of civil justice, including standards and procedures for early disposition of construction defects." (Id., § 1, subd. (c), p. 4247.)

The legislative history further reflects that the burden of construction defect litigation on subcontractors was a major consideration in enacting Title 7.

The following is an excerpt from Senate Judiciary Committee 2001-2002 Regular Session Comments:

> The bill seeks to respond to concerns expressed by a number of parties. The bill responds to concerns from homeowners and the Consumer Attorneys of California over the consequences of *Aas v. Superior Court,* (2000) 24 Cal. 4th 627, which held that defects must cause actual damage or personal injury prior to being actionable in tort. The bill also responds to concerns expressed by builders, subcontractors, and insurers over the costs of construction defect litigation their (sic) impact on housing costs in the state.

(Sen. Com. on Judiciary, Analysis of Sen. Bill No. 800 (2001-2002 Reg. Sess.) as amended August 28, 2002, p. 3, Exhibit 1 to Petitioners' Motion for Judicial Notice of Legislative History of SB800, Vol. 1, page SB 800 Leg. Hist. 000174.) And the following is the synopsis of SB 800 from the Assembly Committee on Judiciary:

> This bill, the consensus product resulting from nearly a year of intense negotiations among the interested parties, proposes two significant reforms in the area of construction defect litigation. First, the bill would establish definitions of construction defects for the first time, in order to provide a measure of certainty and protection for homeowners, builders, subcontractors, design professionals and insurers. Secondly, the bill requires that claimants alleging a defect give builders notice of the claim, following which the builder would have an absolute right to repair before the homeowner could sue for violation of these standards. If the builder failed to acknowledge the claim within the time specified, elected not to go through the statutory process, failed to request an inspection within the time specified, or declined to make the offer to repair, or if the repair is inadequate, the homeowner is relieved from any further pre-litigation process.

(Assem. Com. on Judiciary, Analysis of Sen. Bill No. 800 (2001-2002 Reg. Session) as amended August 25, 2002, p.1, Exhibit 1 to Petitioners' Motion for Judicial Notice of Legislative History of SB800, Vol. 1, page SB 800 Leg. Hist. 000199.)

1. The Act Applies to General Contractors, Subcontractors, Material Suppliers, Individual Product Manufacturers, and Design Professionals

In addition to the legislative history leading up to the enactment of Title 7 making it clear that the legislation was intended to benefit all participants in residential construction, the provisions of the Act itself clearly apply to participants other than builders. Section 896 identifies the types of actions and the prospective defendants to which the Act applies:

> In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, ***a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title***. This title applies to original construction intended to be sold as an individual dwelling unit. As to condominium conversions, this title does not apply to or does not supersede any other statutory or common law.

(Civil Code section 896, emphasis added.)

2. General Contractors, Subcontractors, Material Suppliers, Individual Product Manufacturers, and Design Professionals Are Intended Beneficiaries of the Act's Prelitigation Procedures

The applicability of the Act to a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional is limited "to the extent set forth in Chapter 4 (commencing with Section 910)." (Section 896.) Although the Act does not require claimants to give participants in the construction of the residential structure other than the

builder the prelitigation notice of claimed violations of the standards set forth in Chapter 2 or the right to repair, those participants have an interest in the builder having the right to notice and an opportunity to repair. As noted above, Section 910 requires a claimant to comply with the prelitigation procedures as a prerequisite to "filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896)." In other words, a claimant may not commence an action seeking recovery for alleged construction defects against general contractors, subcontractors, design professionals, individual product manufacturers or material suppliers unless he or she first provides the requisite notice of the claimed violation and the builder is afforded the opportunity to exercise its right to repair.

Chapter 4 sets forth the prelitigation procedures. Section 916(e), which is included in Chapter 4, provides:

> If a builder intends to hold a subcontractor, design professional, individual product manufacturer, or material supplier, including an insurance carrier, warranty company, or service company, responsible for its contribution to the unmet standard, the builder shall provide notice to that person or entity sufficiently in advance to allow them to attend the initial, or if requested, second inspection of any alleged unmet standard and to participate in the repair process. The claimant and his or her legal representative, if any, shall be advised in a reasonable time prior to the inspection as to the identity of all persons or entities invited to attend. This subdivision does not apply to the builder's insurance company. Except with respect to any claims involving a repair actually conducted under this chapter, nothing in this subdivision shall be construed to relieve a subcontractor, design professional, individual product manufacturer, or material supplier of any liability under an action brought by a claimant.

The import of this provision is that parties other than the builder which were involved in the construction of the residential structure which is the

subject of a claimed unmet standard cannot be held responsible for the cost of addressing the unmet standard unless they have been given sufficient notice and an opportunity to participate in the repair process. This is extremely important because participation in the repair process is likely to be the most cost effective means of addressing the claimant's claims and availing oneself of the opportunity to do so is the only viable means of avoiding litigation—the primary goal of the Act. It is also important because those parties are consistently named as defendants and cross-defendants when litigation ensues.[2] Denial of the right to prelitigation notice and the right to repair to the builder effectively assures not only litigation against the builder, but also litigation against these other interested parties. And this means that there is no reduction in litigation, contrary to the intent of the Act.

B. The Legislative History Of The Act Reflects The Legislature's Clear Intent That Title 7 Supplant The Common Law With Respect To Claims For Defects In Residential Construction

There can be no question that the Legislature intended that the Act would supplant the common law with respect to claims for defects in residential construction, rather than simply creating a statutory scheme applicable only to defects which have not caused damage. The following

---

[2] The attorney for real parties in interest declared that in construction defect cases, his firm's custom and practice is to file a complaint against the developer for all construction defects found in the plaintiffs' homes. Once they learn the identities of the subcontractors and manufacturers involved, they bring those parties into the lawsuit. As of January 2012, real parties in interest had amended the complaint to add as defendants 28 manufacturers and subcontractors involved in the construction of their homes. (*The McCaffrey Group, Inc. v. Superior Court*, 224 Cal. App. 4th 1330, 1339-1340 (Cal. App. 5th Dist. 2014), involving the same firm that represents Real Parties in Interest in this case.)

excerpts from the Senate Rules Committee Analysis dated 8/29/02 are telling:

> This bill reforms construction defect law in order to promote safe and affordable residential housing for California. Specifically, this bill:
>
> 1. Defines construction defects to ensure performance with specified standards.
>
> 2. ***Requires claimants to provide notice to builders regarding alleged violations.***
>
> 3. ***Gives builders an absolute right to repair alleged defects before a claimant may sue.***
>
> 4. Preserves the right of homeowners to pursue remedies if the repair is not made or is inadequate.
>
> . . .
>
> ***In a significant departure from existing law, the bill imposes a procedure that a homeowner must follow before bringing suit against a builder.*** In summary, the homeowner must send a written notice to the builder setting out the nature of the claim. The builder must acknowledge the claim in writing. The builder may then elect to conduct inspection and testing of the alleged defect within a specified period, and must provide certain documentation to the homeowner on request regarding building plans and specifications. ***Most importantly, the builder may then offer to repair the alleged violation within a prescribed period. Such an offer to repair must also compensate the homeowner for all applicable damages recoverable.*** Upon receipt of the offer to repair, the homeowner has a prescribed period in which to authorize the builder to proceed with the repair. The offer to repair must also be accompanied by an offer to mediate the dispute if the homeowner so chooses.

(Sen. Rules Committee Analysis of SB 800, as amended 8/28/02, pp. 2 and 4, Exhibit 1 to Petitioners' Motion for Judicial Notice of Legislative History of SB800, Vol. 1, pages SB 800 Leg. Hist. 000236, 238, emphasis

added.) The following excerpts from the Senate Republican Commentaries Digest summarizing Assembly amendments, also pertaining to the August 28, 2002 version of the bill, are instructive:

> Governs ***any action*** against a builder, subcontractor, individual product manufacturer, or design professional, seeking recovery of damages arising out of, or related to deficiencies in, residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction.
>
> ***Requires certain procedures be followed before filing a construction defect lawsuit.*** This procedure would provide the builder with a right to attempt a repair of the defect prior to litigation, inspections and exchanges of documentation under certain circumstances, and mediation at various points, all pursuant to various timeframes set forth in the bill. The bill would provide that if the builder fails to follow any of the procedures, the homeowner is entitled to proceed with the filing of an action.

(Senate Republican Commentaries on SB 800, version date 8/28/02, pp. 35-36, Exhibit 1 to Petitioners' Motion for Judicial Notice of Legislative History of SB800, Vol. 1, pages SB 800 Leg. Hist. 000240-241, emphasis added.) These comments unequivocally reflect the Legislature's intent that the Act and its prelitigation procedures would apply across the board to "any action" seeking recovery of damages related to construction deficiencies against a party involved in residential construction. They do not make any references to exceptions for, or limitations to, certain types of deficiencies.

C. The Provisions Of The Act Make It Clear That It Provides The Exclusive Framework For Residential Construction Defect Claims Regardless of Whether a Claimed Defect Has Caused Damage, Subject Only to the Express Exceptions Set Forth in the Act Itself

As noted above, Section 896 specifically applies "in ***any action***" seeking recovery of damages for deficiencies in residential construction from the participants in the construction and, except as specifically set forth in Title 7, the claimant's claims or causes of action shall be limited to violation of the standards set forth in Chapter 2. Real Parties incorrectly assert that Section 897 does not itself constitute a standard, but simply maintains the common law right to sue for damages where a deficiency has caused damage. (Opening Brief, pp. 28-31 and Reply Brief, pp. 12-14.)

Section 897 provides:

> The standards set forth in this chapter are intended to address every function or component of a structure. To the extent that a function or component of a structure is not addressed by these standards, it shall be actionable if it causes damage.

Section 897 makes it abundantly clear that the Legislature intended the standards specifically set forth in section 896 to be all-inclusive by using the words "every function or component of a structure" in describing the scope to which the standards were intended to apply. Section 897 recognizes the possibility that some function or component was unintentionally overlooked in enumerating the standards in section 896. Instead of leaving it to the imagination of claimants to conjure up some such function or component, the Legislature determined that the standard for determining whether a claimant would have a cause of action and a party involved in residential construction would have liability for an unspecified function or component would be whether it causes damage.

While section 897 could have been more explicit in stating that a function or component which is not enumerated in section 896, but nonetheless causes damage, is considered a violation of the statutory construction standards, other provisions of the Act certainly lead to this conclusion. For example, numerous sections in Chapter 3, which largely addresses optional enhanced protection agreements, refer to the "protection" or "provisions" "set forth in Chapter 2 (commencing with Section 896)." (See sections 901, 902, 903, 904, 905, and 906.) Section 942 similarly provides: "In order to make a claim for violation of the standards set forth in Chapter 2 (commencing with Section 896) . . ."

And while Real Parties state that "Section 910(a) requires the claimant to give notice of his or her "claim that the construction of his or her residence violates any of the standards set forth in Chapter 2" (Opening Brief, p. 31), they neglect to include the rest of the sentence, which reads "(commencing with Section 896)". They also omit the prefatory language in section 910, which reads: "Prior to filing an action against any party alleged to have contributed to a violation of the standards set forth in Chapter 2 (commencing with Section 896), the claimant shall initiate the following prelitigation procedures." Chapter 2 contains only sections 896 and 897. If section 897 did not establish a construction standard under Title 7, there would be no need to refer to "Chapter 2 (commencing with Section 896)", as opposed to limiting the references to section 896 alone.

To say that section 897 preserves a common law right to sue without complying with the Act's prelitigation procedures as long as there is resulting damage ignores the very distinct possibility—indeed likelihood—that unmet standards enumerated in section 896 would result in damage and that section 897 clearly does not apply to those standards. It also reads into section 897 far more than it says and would make it inconsistent with other provisions of the Act.

Section 943(a) provides:

> Except as provided in this title, no other cause of action for a claim covered by this title or for damages recoverable under Section 944 is allowed. In addition to the rights under this title, this title does not apply to any action by a claimant to enforce a contract or express contractual provision, or any action for fraud, personal injury, or violation of a statute. Damages awarded for the items set forth in Section 944 in such other cause of action shall be reduced by the amounts recovered pursuant to Section 944 for violation of the standards set forth in this title.

The damages recoverable under section 944 expressly include damage caused by a violation of the standards. Section 944 provides:

> If a claim for damages is made under this title, the homeowner is only entitled to damages for the reasonable value of repairing any violation of the standards set forth in this title, the reasonable cost of repairing any damages caused by the repair efforts, ***the reasonable cost of repairing and rectifying any damages resulting from the failure of the home to meet the standards,*** the reasonable cost of removing and replacing any improper repair by the builder, reasonable relocation and storage expenses, lost business income if the home was used as a principal place of a business licensed to be operated from the home, reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute.

(Civil Code Section 944, emphasis added.) Section 944 does *not* refer to section 896; rather, it refers to claims for damages "under this title" and "violation of the standards set forth in this title." Thus, the applicability of Title 7 is not limited to claims for unmet standards which have not caused damage. There is no provision in Title 7 which gives a claimant the right to file an "action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction" against a builder, general contractor, subcontractor, material supplier,

individual product manufacturer, or design professional without complying with the prelitigation procedures set forth in Chapter 4 of the Act, commencing with section 910.

D. Denial Of The Right To Prelitigation Notice Of Claimed Deficiencies And The Right To Repair Would Be Contrary To The Legislative Goal Of Making Liability Insurance More Available And Affordable

The prevalence of construction defect litigation and the lack of available insurance coverage are of particular concern to subcontractors, which are often required by contract to defend, indemnify, and hold harmless the builders who hire them to construct the residential structures and whose insurance carriers are often required to defend all claims asserted against the builders, regardless of the subcontractor's limited scope of work. (*See, e.g. Crawford v. Weather Shield Mfg.* (2008) 44 Cal.4th 541and *UDC-Universal Development, L.P. v. CH2M Hill* (2010) 181 Cal.App.4th 10, which held that a subcontractor and a consultant, respectively, had a direct duty to defend the builder. *See, also, Presley Homes, Inc. v. American States* (2001) 90 Cal.App.4th 571, which imposed the full cost of defending the builder on the subcontractor's insurer which had named the builder as an additional insured.) These defense obligations often drive cases more so than the actual liability and damages issues. Allowing suits to recover for defects which have caused damage without requiring the claimants to engage in the statutory prelitigation procedure and affording the builder the right to repair will do nothing to alleviate this endemic problem which is a key factor in the limited availability of insurance coverage, the high cost of the coverage that is available, and the cost of housing.

Real Parties provide no logical explanation of how denying builders the right to prelitigation notice of claimed violation of the standards set

forth in Chapter 2 of the Act and the right to repair would "lessen the need for traditional construction defect litigation, reduce the cost of liability insurance, and ultimately reduce the cost of new homes." (Reply Brief, page 4.) It is not at all clear how giving claimants the right to make claims for "identifiable but non-damage-causing defects" without also eliminating the "common law right to recover in tort for damage-causing defects" (Reply Brief, pages 3-4) would serve any of the stated purposes of the Act.

Given that traditional liability insurance does not provide coverage for defective workmanship and defective products, as opposed to damage caused by defective workmanship and defective products, allowing suits to recover resulting damage to continue unabated is unlikely to make such insurance more available or more affordable. The means by which the amount of traditional construction defect litigation could be lessened, the cost of liability insurance could be reduced, and the cost of new homes could ultimately be reduced would be to require claimants to give notice of claimed violations which have caused damage and to allow the builder (and thereby the other parties which the builder would seek to hold responsible) the opportunity to repair them before a claimant could file an action. If the Act allowed claimants to continue to file actions to recover for violations which have caused damage without complying with the statutory prelitigation process, it would accomplish nothing to reduce construction defect litigation.

III. CONCLUSION

The legislative history of the Act and its express provisions make it abundantly clear that the Act was intended to supplant the common law with respect to claims for defects in residential construction and it was not intended to simply create a statutory scheme applicable only to defects

which have not caused damage. Real Parties' interpretation would mean business as usual for residential construction defect claims as to which there was already a right of recovery under the common law, with the addition of the right to make claims for violations of statutory standards established by the Act for which the common law did not provide a right of recovery. This is entirely inconsistent with the legislative intent in enacting Title 7 and should be rejected by this court. Because Real Parties complaint alleged construction defects which were encompassed in the standards set forth in Chapter 2 (commencing with Section 896), they were required to comply with the prelitigation procedures set forth in Chapter 4, which they did not do. The Court of Appeal's decision in this matter granting writ relief to McMillin should therefore be affirmed.

Respectfully submitted,

Dated: July 15, 2016

RYAN & LIFTER

By: _____
Jill J. Lifter

Attorney for Amicus Curiae
Association of Defense Counsel of
Northern California and Nevada

Dated: July 15, 2016

CHAPMAN, GLUCKSMAN
DEAN ROEB & BARGER

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Glenn T. Barger

Attorney for Amicus Curiae
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California Defense Counsel

CERTIFICATE OF WORD COUNT

I, JILL J. LIFTER, certify pursuant to California Rule of Court 8.204(c)(1), that the word count on the foregoing Amicus Curiae Brief including footnotes is 4,466, as counted by Microsoft Word, the word processing program used to generate the brief.

Dated: July 15, 2016

RYAN & LIFTER
A Professional Corporation

By: _____
JILL J. LIFTER

PROOF OF SERVICE
Case No. S229762
McMillin Albany LLC v. Superior Court of Kern County

1. I am a resident of the State of California, over the age of eighteen years and not a party to the within action. My business address is: Ryan & Lifter, 2000 Crow Canyon Place, Suite 400, San Ramon, CA 94583.

2. On July 15, 2016 I caused a true and correct copy of the Application to File Amicus Curiae Brief and Brief in Support of Petitioner and Defendant McMillin Albany, LLC. submitted on behalf of the Association of Defense Counsel of Northern California and Nevada and the Association of Southern California Defense Counsel to be electronically submitted to the Supreme Court of California using the e-submission portal on the Court's website: www.courts.ca.gov/supremecourt.htm.

3. On July 15, 2016 I caused an Original and 8 hardcopies of the Application to File Amicus Curiae Brief and Brief in Support of Petitioner and Defendant McMillin Albany, LLC. submitted on behalf of the Association of Defense Counsel of Northern California and Nevada and the Association of Southern California Defense Counsel to be submitted for filing via Overnight Mail by Federal Express to:

Supreme Court of California
350 McAllister Street
San Francisco CA 94102-7303
(415) 865-7000

4. On July 15, 2016, I caused true and correct copies of the Application to File Amicus Curiae Brief and Brief in Support of Petitioner and Defendant McMillin Albany, LLC. submitted on behalf of the Association of Defense Counsel of Northern California and Nevada and the Association of Southern California Defense Counsel to be enclosed in a sealed envelope, addressed to the parties listed below. I am readily familiar with the firm's business practice for collection and processing of envelopes and packages for mailing with the U.S. Postal Service. Under the firm's practice, mail is deposited in the ordinary

course of business with the United States Postal Service at San Ramon, California, that same day, with postage thereon fully prepaid:

Respondent: Hon. David R. Lampe Dept. 11, Metropolitan Division Kern County Superior Court 1415 Truxtun Avenue Bakersfield CA 93301 T: 661-868-5393	**Attorneys for Petitioners McMillin Albany, LLC; and McMillin Park Avenue, LLC** Andrew M. Morgan, Esq. Borton Petrini LLP 5060 California Avenue, Suite 700 Bakersfield CA 93301 T: 661-322-3051 F: 661-322-4628 amorgan@bortonpetrini.com
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 15, 2016 at San Ramon, California.

Marianne Dundon