S229762

IN THE SUPREME COURT OF CALIFORNIA

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

CARL & SANDRA VAN TASSEL, et al.,
Real Parties in Interest.

From the Opinion by the Court of Appeal, Fifth Appellate District, Case No. F069370

After a Decision of the Kern County Superior Court, Case No. S-1500-CV-279141, The Honorable David Lampe, Judge

APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE CALIFORNIA PROFESSIONAL ASSOCIATION OF SPECIALTY CONTRACTORS IN SUPPORT OF MCMILLIN ALBANY, LLC, et al.

*Robert V. Closson (SBN 125646)
(bclosson@hirschclosson.com)
Jodi E. Lambert (SBN 166634)
HIRSCH CLOSSON, APLC
591 Camino de la Reina, Suite 909
San Diego, California 92108
Telephone: (619) 233-7006; Facsimile: (619) 233-7009
Attorneys for Amicus Curiae, **CALIFORNIA PROFESSIONAL ASSOCIATION OF SPECIALTY CONTRACTORS**

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Telephone: (619) 233-7006; Facsimile: (619) 233-7009
Attorneys for Amicus Curiae, **CALIFORNIA PROFESSIONAL ASSOCIATION OF SPECIALTY CONTRACTORS**

TO THE HONORABLE CHIEF JUSTICE AND HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT:

APPLICATION TO FILE BRIEF OF AMICUS CURIAE CALIFORNIA PROFESSIONAL ASSOCIATION OF SPECIALTY CONTRACTORS IN SUPPORT OF MCMILLIN ALBANY, LLC

Pursuant to California Rule of Court 8.520, The California Professional Association of Specialty Contractors ("CALPASC"), an association of specialty subcontractors engaged in construction of residential housing in the State of California, respectfully applies for leave to file the accompanying Amicus Curiae Brief in support of McMillin Albany, LLC. CALPASC is familiar with the content of the parties' briefs.

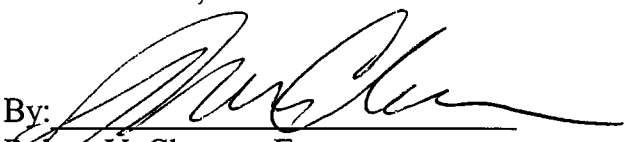
The proposed Amicus Curiae Brief was prepared by the undersigned. Counsel for the parties have not participated in the drafting of the brief nor has any party or counsel for a party made a monetary contribution intended to fund the preparation or submission of the proposed Brief. CALPASC itself has no interest in or connection with any of the parties in this case.

CALPASC is an association of specialty contractors which perform specific trade operations for residential construction in California. CALPASC members are the subcontractors who perform the actual physical construction services for residential construction. CALPASC seeks to file this brief setting forth the perspective of subcontractors relative to the hereinafter referenced Act's impact on construction defect litigation and the perceived catastrophic impact on the construction industry if the *McMillin* opinion is not affirmed.

CALPASC believes its views will assist the Court in resolving the case by addressing the scope of the Act from the perspective of the interest of trade subcontractors who actually perform the physical construction of the residential homes subject to the Act.

Respectfully Submitted,

Date: July 15, 2016 HIRSCH CLOSSON, APLC



By:
Robert V. Closson, Esq.
Jodi E. Lambert, Esq.
Attorneys for Amicus Curiae
The California Professional Association
of Specialty Contractors

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Jodi E. Lambert (SBN 166634)
HIRSCH CLOSSON, APLC
591 Camino de la Reina, Suite 909
San Diego, California 92108
Telephone: (619) 233-7006; Facsimile: (619) 233-7009
Attorneys for Amicus Curiae
CALIFORNIA PROFESSIONAL ASSOCIATION OF SPECIALTY CONTRACTORS

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BRIEF OF AMICUS CURIAE THE CALIFORNIA PROFESSIONAL ASSOCIATION OF SPECIALTY CONTRACTORS IN SUPPORT OF MCMILLIN ALBANY, LLC.

I. INTRODUCTION

There are two contradictory published Appellate Court discussions concerning whether *California Civil Code* §§ 895 et seq., known as the Right to Repair Act (the "Act") precludes common law causes of action for construction defects. The Court in *Liberty Mutual Ins. Co. v. Brookfield Crystal Cove LLC* (2013) 219 Cal.App.4th 98 ("*Liberty Mutual*") indicated that common law causes of action are not subject to the Act and therefore, homeowners (and their insurers) may pursue construction defect litigation without first complying with the Act. The underlying Fifth Appellate District opinion in *McMillin Albany LLC v. Superior Court (Van Tassell)* (2015) 239 Cal.App.4th 1132 ("*McMillin*") took the opposite position, concluding that common law causes of action are subject to the Act.

CALPASC submits the *McMillin* decision was correct in its analysis and that the *Liberty Mutual* opinion is contrary to the Legislative History of the Act, the rationale behind the Act, and its terms. This brief explains, from the perspective of trade contractors, why *McMillin* analyzed the Act correctly and should be affirmed, and conversely why *Liberty Mutual* should be overruled.

II. THE ROLE OF TRADE CONTRACTORS

The interests of CALPASC members are directly impacted by the decision in *McMillin* and the application of the Act. CALPASC is an association of specialty contractors who perform specific trade operations for construction projects, including residential, in California. CALPASC

members are the trade or subcontractors who perform the actual physical construction services for residential (and commercial) construction. Trade contractors in general lack the financial resources of builders, and that relative financial vulnerability explains why CALPASC members have an interest in a broad application of the Act. Allowing homeowners to simply "plead around" the requirements of the Act will mean that the expense and effort of implementing the Act will have been essentially wasted, resulting in a detrimental impact on trade contractors.

The *McMillin* opinion protects the integrity of the Act. It also protects trade contractors from the numerous adverse consequences of a system which does not give them an opportunity to repair before forcing them into litigation, including the resulting increased business costs, insurance premiums, litigation expense, and indemnity obligations.

A brief historical summary illustrates why trade contractors will bear a disproportionate share of the increased litigation expense and exposure which will result if *McMillin* is reversed. It also illustrates the extent that Real Parties' position will adversely affect not only trade contractors, but also the building industry in general, the public, and the courts.

In the 1990's the "continuing damage trigger" decision in *Montrose v. Admiral* (1995) 10 Cal.4th 645 impacted the cost, availability and coverage benefits available to trade contractors. In the same time frame, construction litigation involving condominium and common interest development projects lead to a dramatic reduction in the production of affordable housing in California. Builder insurance became prohibitively expensive (or unavailable altogether), which in turn lead to an increasing reliance by builders on "additional insurance" under trade contractor policies.

Ultimately, *Presley Homes, Inc. v. American States* (2001) 90

Cal.App.4th 571 imposed the full cost of defending builders on the trade contractors' insurers. Along with unacceptable losses in condominium and common interest development projects, *Presley* was followed by an exodus of "admitted" construction industry liability insurers from California. In the years following *Presley*, if CALPASC members could find general liability insurance at all, it was extremely expensive and provided very little coverage. [See, for example, SB 800 Leg Hist. at 000389, Real Estate Journal, "*Insurance Woes Plague Western Home Builders*," March 6, 2002]. [1]

The lack of available insurance resulted in an increased builder emphasis on defense and indemnity from trade contractors pursuant to express indemnity principles. Without builder primary insurance or additional insurance from trade contractor insurers, builders sought to pass the expense of litigating and settling construction defect actions along to trade contractors. Similarly, builders were reluctant to build as much affordable housing (apartments and condominiums) during this time frame, because the unrestrained litigation expense and exposure made doing so cost prohibitive. The result was a dramatic decrease in available affordable housing.

Between 2001 to 2003, it became apparent that if the California building industry was to survive, homeowners, builders and trade contractors would need to change the construction defect litigation system, and reach a solution which would reduce both construction defect litigation and builders' motivation to pass construction liability on to trade contractors via express indemnity.[2] Something also needed to be done to lure building industry

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[1] The Legislative History References correspond to the bate stamped pages in McMillin Albany's Request for Judicial Notice filed on June 16, 2016.

[2] The need to address express indemnity exposure for trade contractors became even more evident in *Crawford v. Weather Shield Mfg.* (2008) 44 Cal.4th

liability insurers to return to the California market, and make it cost effective for builders to address the shortage of affordable housing.

The result was the Act, which was lauded not as an alternative to the prior system of unrestrained litigation, but as a replacement of that system. The Legislative History of SB800 includes numerous testimonials from consumer entities and agencies unrelated to the building industry, supporting the conclusion that a primary purpose of the Act was to reduce construction defect litigation. See, SB 800 Leg Hist. at 000377-387 (various member entities of Job-Center Housing Coalition).

The *McMillin* opinion confirms the benefits of the Act and to overturn the decision would essentially destroy all the progress which has been achieved, and ignore the history behind the Act and why it was enacted in the first place. If Real Parties' position is followed, the consequences, like the earlier events described above, ultimately flow downhill to trade contractors such as CALPASC members. They will ultimately pay the tab for the predictable increase in construction defect litigation which will result in the form of increased business costs; insurance premiums, deductibles and retentions; litigation expense; and indemnity.

The Act, while not a panacea for all the ills of the California construction industry, is effective in reducing the volume, complexity and expense of construction defect litigation. If the Act is optional as Real Parties advocate, it provides little or no benefit to trade contractors.

III. APPLYING THE ACT PURSUANT TO *MCMILLIN* GIVES TRADE CONTRACTORS AN INCENTIVE TO REDUCE THE SIZE AND COMPLEXITY OF LITIGATION

541, which held that Weather Shield had a direct duty to defend the builder. Trade contractors had in effect, become insurers.

Trade contractors have a unique incentive to resolve construction issues under the Act BEFORE litigation is filed. Homeowners, attorneys, and builders may view compliance with the Act as simply an inconvenient impediment to moving forward with the inevitability of litigation, based upon skepticism that ALL defect issues can be resolved through the process required by the Act.

However, trade contractors are involved in discrete issues based on the scope of their work, and have a distinct incentive to resolve claims under the Act before litigation. Doing so enables them to avoid the adverse consequences and expense of litigation as outlined above. Provided a trade contractor can resolve its issues, it can avoid being a party in the event litigation eventually follows between the builder, homeowners and trade contractors which did not settle. A trade contractor can resolve issues involving its work and avoid litigation by performing repairs to the satisfaction of the homeowner during the "right to repair" stage.

The benefit is not limited to the trade contractors themselves. For each trade contractor who is eliminated before litigation pursuant to the Act, the number of parties and complexity of the subsequent litigation is reduced by the elimination of that trade contractor's issues. That reduction benefits the builders, homeowners, and other trades. It also reduces the burden on mediators and trial courts. *Liberty Mutual* defeats this intended purpose and benefit of the Act while *McMillin* encourages this intended and beneficial consequence.

IV. THE ACT WAS DESIGNED TO APPLY TO ALL CONSTRUCTION DEFECT CLAIMS INCLUDING THOSE INVOLVING RESULTANT DAMAGES

Real Parties assert that homeowners who sue in tort for damage-causing

defects are not required to comply with the Act. (Opening Brief at 18.) They further claim the Act was only intended to apply to situations of defects that have yet to cause damage to abrogate the decision in *Aas v. Superior Court* (2000) 24 Cal.4th 627 ("*Aas*"). However, they claim that if the Act was intended to apply to damage causing defects - it is only those defects stemming from violation of the standards set forth in §896 - leaving damage from defects unrelated to the enumerated standards open to a common law claim. The actual language of the Act clearly shows a contrary intent as does its Legislative History. Further, the provisions of the Civil Code are to be liberally construed with a view to effect its objects and to promote justice. *Civil Code* §4. As set forth below, that can only be achieved if the *McMillin* decision is affirmed.

A. The Language of The Act Speaks To Its Exclusivity.

The Act has five chapters. "Chapter 1 provides definitions. (§ 895.) Chapter 2 describes actionable construction defects by setting forth standards for residential construction. (§§ 896, 897.) Chapter 3 requires the builder to provide an express limited warranty covering the fit and finish of specified building components, and addresses the builder's obligations if it offers greater protection to the homeowner through an enhanced protection agreement. (§§ 900–907.) Chapter 4 ... sets forth a prelitigation procedure designed to give a builder the opportunity, before litigation commences, to repair defects brought to its attention by a homeowner's claim. (§§ 910–938.) Chapter 5 refers to litigation matters in case the prelitigation procedure does not resolve the claim, such as the deadline for filing a lawsuit, the burden of proof, damages that may be recovered, and defenses the builder may assert. (§§ 941–945.5.)" *Darling v. Superior Court* (2012) 211 Cal.App.4th 69, 75.

Section 896 entitled "Building standards for original construction

intended to be sold as an individual dwelling unit" is quite direct and explicit:

> 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 ...a general contractor, subcontractor... 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....

Civil Code §896 (emphasis added). The plain and obvious meaning of the above language is that homeowners have no cause of action for loss or harm "arising out of or relating to" conditions of new housing except as provided (or specifically excluded) in the Act. Clearly, the Act was meant to include both claims for defects that have yet to damage the property and those that already have damaged the property.

Had the Legislature wished to exempt common law claims of resultant damages, it certainly was aware of how to do so as the Act refers to the common law more than once. Section 896 states: "As to condominium conversions, this title does not apply to or does not supersede any other statutory or **common law**". Similarly, §936 states: "In addition to the affirmative defenses set forth in Section 945.5, a general contractor, subcontractor...or other entity may also offer **common law** and contractual defenses as applicable to any claimed violation of a standard." If the Legislature wanted to preserve a homeowner's "common law" right to sue for construction defects not among those listed in §896, it knew how to do so and would have done so. It did not. Therefore, except for those specifically excluded by the Act's own terms, all claims for construction defects are subject to the Act.

Furthermore, §897 speaks to the breadth of the Act, stating that:

> 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.

Clearly, this language was intended to mean that if the unaddressed function or component causes damages, it is actionable **under the Act**, and therefore requires compliance with the provisions of the Act.

Finally, §943(a) eliminates any doubt as to the Act's exclusivity. The section, aptly entitled "Exclusiveness of title; exceptions" states:

> 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**.

(emphasis added.)

If, as Real Parties argue, a common law claim for damages falls outside of the Act, the above section is meaningless as it permits the same recovery that would be afforded under a common law negligence claim. This is so because §944 (see below) permits recovery of damages caused by defective construction.

The Act expressly provides the exclusive remedy for construction defects whether or not they have resulted in property damage, subject only to specified exemptions which were not applicable to *McMillin*.

B. The Act Addresses the Recovery of "Damages."

The Act permits the recovery of all types of "damages," including resultant property damage that would be traditionally available for a common law negligence claim. Section 944 states:

> 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...reasonable investigative costs for each established violation, and all other costs or fees recoverable by contract or statute.

(emphasis added).

There would be no reason to include this language if the Act was not intended to apply to defects that have resulted in physical damage. Further, the language of §944 above and the reference in §897 permitting a claim stemming from an unlisted standard which causes damage can only be reconciled to mean the Act was intended to include resulting damage (whether or not the defects causing that damage are included in the §896 list).

Because defects that cause damage are actionable subject to §897, and the damages they cause are addressed by §944, common law resulting damage claims must be subject to the Act. To hold otherwise would be to treat the above damages language of §944 as surplusage which would lead to an impermissible and absurd result. See, *Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798-799.

C. The Legislative History Supports The Exclusivity Of The Act.

The exclusivity of the Act (sometimes referred to as SB800) and its abrogation of common law in the context of *McMillin* is well supported by the applicable legislative history. To hold that the Act did not limit or preclude a homeowner from asserting common law causes of action would effectively eliminate the benefits it was intended to provide to the building industry, consumers, and courts. Further, it defies logic that the building industry

agreed to legislation expanding liability for defects that had not caused damage without getting any substantive corresponding benefit.

Legislators are not only presumed to be aware of the contents of their enactments, they are "deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof." *People v. Scott* (2014) 58 Cal.4th 1415, 1424. There is no question that when the Act was passed, the Legislature was well aware of the significance of common law construction defect claims as well as the *Aas* holding requiring actual damages. Therefore, it logically follows that the Legislature intended the Act to apply to all construction defect claims - including common law claims involving resulting damage - except for the specific exceptions which were inapplicable in *McMillin*.

The bill was considered to be "groundbreaking reform for construction defect litigation" (SB 800 Leg. Hist. 000174); a "significant departure from existing law" (SB 800 Leg. Hist. 000236); and "would make major changes to the substance and process of the law governing construction defects" (SB 800 Leg. Hist. 000242). None of the above could be accurate if homeowners are allowed to simply plead around the Act by alleging common law claims for resultant damage. In addition, the declaration of the Act's intent states:

> The prompt and fair resolution of construction defect claims is in the interest of consumers, homeowners, and the builders of homes, and is vital to the state's continuing growth and vitality. However, 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).) (SB 800 Leg.Hist. 000118-119). The declaration further indicates:

> It is the intent of the Legislature that this act improve the procedures for the administration of civil justice, including standards and procedures for early disposition of construction defects.

Id. at §(c); SB 800 Leg. Hist. 000119.

The Act was not intended to be limited to the issues raised by *Aas*. It was also intended to address the problems of all with an interest in the residential construction community, including homeowners. (SB 800 Leg. Hist. 000238.) The Act "responds to the concerns expressed by builders, subcontractors, and insurers over the costs of construction defect litigation their [sic] impact on housing costs in the state." (SB 800 Leg. Hist. 000174.) The Act therefore was necessarily intended to be comprehensive, subject only to specific delineated exceptions. To infer a broad exception for common law claims would be contextually inappropriate and would defeat its very purpose.

Further, the solution to the concerns of homeowners and the construction community was not solely limited to abrogating the damages rule of *Aas* as Real Parties contend. The Act goes further, creating a right to repair which is part of a "mandatory procedure" that a homeowner must follow prior to filing a construction defect lawsuit. (SB 800 Leg. Hist. 000173.) The reference to such detailed "mandatory" requirements supports the conclusion that Act was intended to preempt common law with respect to "any action" seeking recovery of "damages" arising out of or related to deficiencies in residential construction.

Another purpose of the Act was to provide a measure of certainty in construction defect litigation. (SB 800 Leg.Hist. 000199; 000202.) Before the Act, there was no clear definition of what constituted a "defect" under California law. Therefore, the Legislature crafted over 45 detailed

"functionality" standards, a uniform set of construction performance standards that must be met for all residential homes sold after January 1, 2003. *Civil Code* §938. The purpose of enumerating detailed and specific standards was to increase certainty, facilitate agreement, and streamline construction defect disputes - a purpose which would largely be defeated by creating an implied exception for common law claims.

The conclusion that the Act was intended to apply to both resultant damage and defects which have not caused damage is a matter of common sense. The typical construction defect matter involving allegations of multiple categories of defects (such as *McMillin*), involves both damage and defects, and in many cases the two categories are integrated. For example, a defective roof (defect) will often result in water intrusion damaging the structure interior (resultant damage). It would be extraordinarily inefficient and a waste of resources to have the Act apply only to the defect category. The obvious and logical intent was to allow builders and trade contractors and opportunity to address homeowner complaints of BOTH categories pursuant to the Act, before proceeding with litigation.

Finally, the Act was intended to be invoked by homeowners, who may not be represented by counsel, and who may not want to proceed with litigation. More often than not homeowners will simply want a problem fixed, and will not appreciate the nuances of the Act or the legal distinctions between a defect and resultant damage. The intent of the Act was clearly not to force homeowners into litigation because of such distinctions. Resolving a homeowner complaint pursuant to the Act occurs relatively quickly in comparison to litigation, which may take years. From the perspective of the average homeowner, having repairs made quickly is much better than waiting for those repairs after years of litigation. In order for homeowners to obtain

the full benefit of the Act, it must be construed to incorporate both defects and resultant damage.

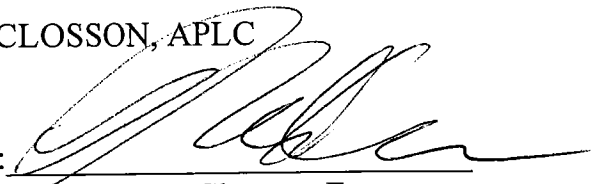
The Legislative Intent of the Act is clear: the Act, with limited narrow exceptions, preempts common law construction defect claims. To conclude otherwise encourages evasion of the Act by the simple expedient of pleading common law claims. It is absurd to conclude that the efforts and resources of the legislative process was intended to create an easily circumvented optional procedure, based upon an exception not even specifically enumerated by the Act itself. A realistic perspective of the legislative history, like a realistic perspective of the Act itself supports only one conclusion: the Act was intended to apply to common law claims. The *McMillin* decision should be affirmed and the *Liberty Mutual* decision overturned.

V. CONCLUSION

The Act was intended to change the world of construction defect litigation. It did, for the better, by creating a comprehensive set of standards for certainty and providing builders with a statutory right to repair alleged defects before having to become a party to a lawsuit. As discussed above, that is clearly what the Act says and what the Legislature intended. It is also the result the Legislature expected would have the greatest benefit for builders, trade contractors, consumers, and California courts. CALPASC therefore respectfully requests that this Court affirm the decision of the Court of Appeal in *McMillin*.

Respectfully Submitted,

Date: July 15, 2016 HIRSCH CLOSSON, APLC

By: 

Robert V. Closson, Esq.
Jodi E. Lambert, Esq.
Attorneys for Amicus Curiae
The California Professional
Association of Specialty
Contractors

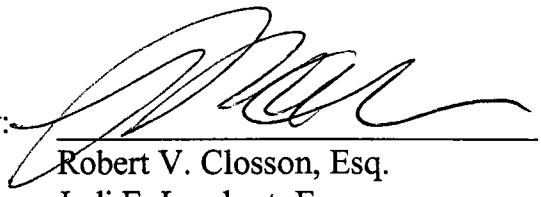
CERTIFICATE OF WORD COUNT

(*California Rules of Court*, Rule 8.204(c)(1).)

The undersigned certifies that the enclosed brief was produced using 13-point Times New Roman type and including footnotes consists of 4,056 words. Counsel relies on the word count of the WordPerfect Version 12 word processing program used to generate this brief.

HIRSCH CLOSSON, APLC

Dated: July 15, 2016

By: 

Robert V. Closson, Esq.
Jodi E. Lambert, Esq.
Attorneys for Amicus Curiae
The California Professional
Association of Specialty
Contractors

SUPREME COURT OF CALIFORNIA FIFTH APPELLATE DISTRICT		FOR COURT USE ONLY
TITLE OF CASE (Abbreviated) ***McMillan Albany, LLC v. Superior Court (Van Tassel)***	FILE NAME/NO.: **CalPASC/McMillan Albany [68037]**	
ATTORNEY(S) NAME AND ADDRESS Robert V. Closson, Esq. HIRSCH CLOSSON, APLC 591 Camino de la Reina, Suite 909 San Diego, California 92108	TELEPHONE (619) 233-7006	
ATTORNEY(S) FOR: ***California Professional Association of Specialty Contractors (CalPASC)***	HEARING: DATE-TIME-DEPT ** / ** / **	CASE NUMBER Supreme Court Case No. S229762 Fifth Appellate District: F069370

DECLARATION OF SERVICE
[Code Civ. Proc. §§ 1013A and 2015.5]

I, the undersigned, declare:

I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 591 Camino de la Reina, Suite 909, San Diego, CA 92108.

I served the following document(s): **APPLICATION TO FILE AMICUS CURIAE BRIEF AND BRIEF OF AMICUS CURIAE CALIFORNIA PROFESSIONAL ASSOCIATION OF SPECIALTY CONTRACTORS IN SUPPORT OF MCMILLIN ALBANY, LLC ET AL.** on the parties in this action addressed as follows: *See attached service list.*

X **BY FIRST CLASS MAIL** - [C.C.P. §§ 1013, 1013(a)(1) & (3)]: I placed a true copy in a sealed envelope addressed as indicated above, on **July 15, 2016**. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

X **BY HAND DELIVERY** - : I caused the original and 14 copies of the documents to be collected by Knox Attorney Services and hand delivered for filing to the Supreme Court of California on **July 15, 2016.**

_ **BY FAX TRANSMISSION** - [C.C.P. §§ 1013, 1013a]: Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in the attached service list. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

_ **BY PERSONAL SERVICE** - [C.C.P. §415.10]: I personally delivered the documents to the individual, or the attorney for that individual at the following address by leaving the document(s) in an envelope clearly labeled to identify the person being served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on **July 15, 2016**, at San Diego, California.

Kathy L. Plati

McMILLAN ALBANY, LLC v. SUPERIOR COURT (Van Tassel)
Supreme Court Case No. S229762
Fifth Appellate District Case No. F069370
File Name/No.: CalPASC/McMillan Albany [68037]

SERVICE LIST

Mark A. Milstein, Esq.
Fred M. Adelman, Esq.
Mayo L. Makarczyk, Esq.
MILSTEIN ADELMAN JACKSON FAIRCHILD AND WEDE LLP
10250 Constellation Blvd., Suite 1400
Los Angeles, CA 90067
TEL (310) 396-9600 / FAX (310) 396-9635
Counsel for Real Parties in Interest **CARL & SANDRA VAN TASSEL, et al.**

Andrew M. Morgan, Esq.
Calvin R. Stead, Esq.
BORTON PETRINI, LLP
5060 California Ave., Suite 700
Bakersfield, CA 93309
Attorneys for Petitioners **McMILLIN ALBANY, LLC; and McMILLIN PARK AVENUE, LLC**

Kathleen F. Carpenter, Esq.
Amy R. Gowan, Esq.
DONAHUE FITZGERALD
Growers Square
1646 N. California Blvd., Suite 250
Walnut Creek, CA 94596
Attorneys for Amicus Curiae **CALIFORNIA BUILDING INDUSTRY ASSOCIATION**

Alan H. Packer, Esq.
NEWMEYER AND DILLION LLP
1333 North California Blvd., Suite 600
Walnut Creek, CA 94596
Attorneys for Pub/Depublication Requestor **LEADING BUILDERS OF AMERICA; CALIFORNIA BUILDING INDUSTRY ASSOCIATION; BUILDING INDUSTRY LEGAL DEFENSE FOUNDATION**

Clerk of the Court of Appeal
FIFTH APPELLATE DISTRICT
2424 Ventura Street
Fresno, CA 93721
Fifth Appellate District Case No. F069370

Clerk of the Superior Court
SUPERIOR COURT OF KERN COUNTY
1415 Truxtun Ave., #212
Bakersfield, CA 93301
Respondent
Honorable David R. Lampe
Kern County Superior Court Case No. S-1500-CV-279141

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102
Supreme Court Case No. S229762
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