California Apartment Association
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June 10, 2021

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The Honorable Tani Cantil-Sakauye, Chief Justice, and the Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-7421

RE: Peviani v. Arbors at California Oaks Property Owner
Supreme Court Case No. S268759
Letter Supporting Petition for Review

Honorable Chief Justice and Associate Justices:

The California Apartment Association (hereafter "CAA") respectfully submits this amicus curiae letter in support of the Petition for review in this case.

For more than 80 years, CAA has served the multi-family housing industry in California. Today, CAA is the nation's largest statewide trade group representing owners, investors, developers, managers and suppliers of rental homes and apartment communities. CAA has more than 13,000 members, representing more than 60,000 rental property owners and industry professionals. CAA's members are responsible for nearly two million rental housing units throughout California. CAA's mission is to promote fairness and equality in the rental of residential housing, and to promote and aid in the availability of high-quality rental housing in California. CAA represents its members in legislative, regulatory, judicial, and other state and local forums.

Peviani v. Arbors at California Oaks Property Owner is a purported class action case in which tenant plaintiffs sued the owner and manager of a 460-unit apartment complex for alleged breach of the warranty of habitability, bad faith retention of security deposits under Civil Code section 1950.5 ("Section 1950.5 Claim"), and false advertising. *Peviani* is of particular interest to CAA because it creates, rather than answers, questions – to the detriment of the rental housing industry.

With respect to plaintiffs' Section 1950.5 claim, the Fourth District correctly noted that (a) the "primary question for the security deposit class, in regard to commonality for class certification, is whether common evidence predominates concerning the reasonableness of defendants' deductions" *and* (b) "plaintiffs bear the burden of proving commonality." Yet the Fourth District nonetheless relieved plaintiffs of their well-established burden because it found what it labeled an "interesting twist": at trial, defendants would bear the burden to prove the reasonableness of their security deposit deductions. (Op. 33.) However, the fact that a defendant has the trial burden

does not relieve plaintiffs of their burden at class certification. (*See, e.g.*, *Bauman v. Islay Investments* (1975) 45 Cal.App.3d 797, 802-803.) Further, no matter who carries the burden at trial, for purposes of considering class certification, there is no common evidence that cuts across the class. This is so because the issue of whether security deposit deductions are reasonable requires a move-out by move-out adjudication of the contemporaneous evidence of each apartment unit's condition – typically photographs and notes from move-in and move-out inspections and testimony from the tenant and personnel who inspected the unit – and other evidence relevant to whether security deposit deductions were appropriate in light of all the facts and circumstances specific to each tenant's residency.

In its opinion reversing the trial court's denial of certification, the Fourth District points to no common evidence of alleged unreasonable security deposit deductions. And there is no basis to assume common evidence could later be discovered. To the contrary, the Fourth District repeatedly acknowledged that adjudication of such a Section 1950.5 Claim requires adjudication of the reasonableness of each tenant's deposit deductions, even in the class setting. For example, the Fourth District noted that:

- Defendant could present a property manger's testimony "regarding ***each moveout*** …";
- "If one were to assume…700 were complete moveouts … and … defendants' trial plan is to have [the property manager] testify about ***all 700 moveouts***…";
- "Presumably, by the time of trial, the allegedly unreasonable deduction(s) ***for each moveout*** will have been identified…"; and,
- Evidence of repairs will vary for vary for each move out, as illustrated by the fact that for tenant "McConville's moveout, it may not be necessary to present evidence of repairs and carpet pads" but it would "be necessary to present evidence of pets and pet odor."

(Op. 36-37 (emphasis added).)

Without explaining how it arrived at this determination, the Fourth District sua sponte opined that the reasonableness of security deposit deductions "involves the decision-making process, the criteria, and the consistency of the decision-maker…" such that testimony of a single witness on defendants' side might be sufficient. (Op. 38) However, even assuming defendants only presented one such witness (as opposed to testimony from the varied personnel who performed in-person inspections and observed the condition of the paint or stains on the carpet or odor from a pet), this does not change the need to individually examine the facts pertaining to each move-out. Section 1950.5 specifically provides that a landlord may charge "reasonably necessary" amounts to (a) return the unit to the same level of cleanliness it was at move-in, and (b) repair damages caused by the tenant exclusive of ordinary wear and tear. Accordingly, *for each tenancy*, the trier of fact must evaluate (i) the unit's condition at move-in, (ii) the unit's condition at move-out, (iii) whether cleaning was necessary to return the unit to the same level of cleanliness as at move-in, (iv) whether damage beyond ordinary wear and tear necessitated a repair (such as painting); and (v) whether the amount charged was reasonable for the work performed. Further, this Court requires an individualized liability analysis because – even with an unlawful charge – a landlord is entitled to setoff amounts owed for unpaid rent, cleaning and repairs. (*Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 742-43.)

As the trial court here concluded, if class certification is granted it will be clogged with 1,413+ mini-trials about tenant experiences and move-outs. This result is entirely unnecessary. The legislature has already determined that there is a forum well suited to deal with exactly this type of landlord-tenant dispute, i.e., Small Claims Court, as specifically set forth in Section 1950.5(n). The disposition of security deposits is the most common source of landlord/tenant disputes. In CAA's experience, the small claims process works well in this context, and as the legislature intended. It allows a tenant to put on the entirety of his or her security deposit evidence and seek the full measure of his or her allowable relief under Section 1950.5. At the same time, it allows a landlord to present all their defenses. Put simply, a class action is not the superior means of resolving security deposit claims under Section 1950.5.

Peviani's unusual result is made all the more troubling when viewed in the context of a landlord having to defend against a Section 1950.5 claim where, as here, plaintiffs complain about every charge on every tenant's statement of deposit account. Plaintiffs suggested to the trial court that they were offering statistical analysis yet they offered no statistics expert, no explanation how any sampling could allegedly be done, and no trial plan showing how individual issues (including defenses) could be managed fairly and efficiently, etc. By granting review, the Court can clarify the applicable class certification burden and necessary requirements for a statistical sampling plan to meet that class certification burden. Without review, this case could be misconstrued as condoning certification of improper shotgun style class claims despite the individualized nature of each tenant's experience.

This is not merely a hypothetical concern. It is why *Peviani* is a deeply troubling case for rental owners across the state. As the operative complaint in this case makes clear, the purported class plaintiffs used a scatter-shot style pleading (and class certification) approach to seemingly complain about every aspect of the 26-acre apartment complex over a time-period spanning more than four years. For instance, with respect to the false advertising claim, the trial court expressly found that plaintiffs were potentially complaining about anything said or written and disseminated in any way about the numerous described amenities and services, such as newly renovated interiors, pools, hot tubs, assigned parking, fitness equipment, quality plush carpeting, central heating and air conditioning, wood floors, granite countertops, car wash, and a 48-hour maintenance commitment. (Order Denying Class Certification, 3.) The trial court was unable to discern what the supposed uniform false advertising was. This alone should have been sufficient to warrant affirmance.

The members of CAA serve a vital role in providing homes to Californians. Their ability to provide quality rental housing should not be jeopardized by *Peviani's* departure from well-established law about a plaintiffs' class certification burden and the requirements for statistical evidence sufficient to meet that burden. Moreover, California should be encouraging, not discouraging the development of additional housing for its residents. Unfair application of the law does no such thing. Granting review would allow this Court the opportunity to ensure that both tenants and landlords have fair access to justice. The Court should seize this opportunity. Courts, attorneys, and the public will all benefit from this Court's guidance on the class certification questions at issue in this case.

For these reasons, and those presented in the petition for review, CAA respectfully urges the Court to grant review.

Sincerely,

California Apartment Association

By Heidi Palutke
Education, Policy and Compliance Counsel
CA State Bar No. 200253

CERTIFICATE OF SERVICE

PEVIANI et al. v. JRK PROP. HOLDINGS, et al.

Court of Appeal Case No. E073950
Superior Court Case No. RIC1704192

I am employed in the County of Riverside, State of California. I am over the age of 18 years and am not a party to the within action. My business address is: 1770 Iowa Avenue, Suite 110, Riverside, CA 92507.

On June 10, 2021, I served the foregoing documents entitled:

CALIFORNIA APARTMENT ASSOCIATION AMICUS LETTER

on all interested parties in this action by:

☒ **US Mail:** The above-entitled document to be served via U.S. Mail by placing a true copy thereof in an enclosed sealed envelope, with first class postage prepaid, and depositing said envelope in a United States Post Office mailbox in 1770 Iowa Avenue, Riverside, California 92507, addressed to all parties on the attached service list.

☒ **ELECTRONIC COURT FILING (ECF):** The above-entitled document to be served electronically through the True Filing ECF website, addressed to all parties appearing in the True Filing's ECF service list. A copy of the "Filing Receipt" Page will be maintained with the original document in our office.

I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this June 10, 2021, at Riverside, California**.**

Jennifer Cintron
Jennifer Cintron

SERVICE LIST

PEVIANI et al. v. JRK PROP. HOLDINGS, et al.
COURT OF APPEAL CASE NO. E073950
RIVERSIDE SUPERIOR COURT CASE NO.: RIC1704192

Via US Mail
Clerk, Riverside Superior Court
Palm Springs Courthouse Dept PS1
3255 E. Tahquitz Canyon Way
Palms Springs, CA 92262

District Attorney for the County of Riverside
Consumer Protection Unit
3690 Orange St.
Riverside, CA 92501

Office of the Attorney General
Appellate Coordinator
Consumer Protection Section
300 S. Spring Street
Los Angeles, CA 90013-1230

Clerk, Court of Appeal
4th District, Division 2
3389 Twelfth Street
Riverside, CA 92501

Clerk, Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797

Via Electronic Service
Gregory S. Weston
The Weston Firm
1405 Morena Boulevard, Suite 201
San Diego, CA 92110

Attorney for Plaintiff-Appellants

greg@westonfirm.com