



**TENANTS
TOGETHER** California's
Statewide Organization
for Renters' Rights

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October 8, 2013

Chief Justice Tani Gorre Cantil-Sakauye
California Supreme Court
350 McAllister St.
San Francisco, California 94102-4797

Re: Amicus Curiae Letter in Support of the Petition for Review of *Hendleman et al.*,
v. Los Altos Apartments, L.P., et al.;
Second Appellate District, Division Three, No. B235404
The Superior Court of Los Angeles County, No. BC406059

Dear Honorable Chief Justice Cantil-Sakauye:

I write on behalf of Tenants Together, Asian Americans Advancing Justice - Asian Law Caucus, Bet Tzedek Legal Services Inc., Inner City Law Center, Public Law Center, and the National Housing Law Project and the undersigned California legal services and tenant advocacy organizations to express our support for the Petition of Review submitted by attorneys for the Plaintiffs/Appellants in *Hendleman vs. Los Altos Apartments*. The entities expressing support for the Petition are nonprofit organizations dedicated to supporting and advocating on behalf of tenants throughout the State of California.

Tenants Together is California's only statewide renters' rights organization and works to improve the lives of California's tenants through education, organizing, impact litigation and advocacy. Among other activities, Tenants Together monitors developments in the courts and legislature that affect the rights of tenants. Tenants Together runs the only statewide hotline for tenants and has tenant-members throughout the state of California. Through our Tenant Lawyer Network, Tenants Together also provides technical assistance to hundreds of attorneys every year. Difficulty obtaining repairs for habitability problems is one of the most common reasons that tenants contact Tenants Together through our hotline or attend our various legal clinics across California.

Bet Tzedek is a 501(c)(3) nonprofit organization based in Los Angeles, which has a staff of 70 (including 30 attorneys) and hundreds of Pro Bono attorneys and law student interns, and has helped an estimated 350,000 persons over its 40 year history. Bet Tzedek conducts a full complement of outreach and educational programs, clinics and legal representation that secure the basic necessities of life, such as housing, employment rights, healthcare, and public benefits for more than 15,000 low-income persons in California.

The National Housing Law Project is a charitable nonprofit corporation established in 1968 whose mission is to use the law to advance housing justice for the poor by increasing and preserving the supply of decent, affordable housing; by improving existing housing conditions, including physical conditions and management practices; by expanding and enforcing tenants' and homeowners' rights; and by increasing housing opportunities for people protected by fair housing laws.

Inner City Law Center is a nonprofit law firm focused on housing, homelessness, and veterans' issues. As the only full-time provider of legal services on Skid Row in downtown Los Angeles, ICLC combats slum housing throughout Los Angeles and develops strategies to end homelessness. ICLC's staff of forty provides free, high-quality legal representation to low-income tenants, working-poor families, immigrants, people who are homeless or disabled, and veterans. ICLC's main projects include homelessness prevention, homeless veterans, slum housing, government benefits, and housing policy. Since ICLC's founding, combating substandard, unhealthy and unsafe living conditions has been central to our mission. No family should have to live in an unhealthy home.

Asian Americans Advancing Justice - Asian Law Caucus is the nation's oldest legal and civil rights organization serving the Asian Pacific American communities. Through its Housing Rights program, the organization represents the working class, elderly, and immigrant families who are most at risk of losing their homes due to unfair and deceptive landlord practices.

The Court of Appeal opinion in *Hendleman v. Los Altos Apartments* (2013) 218 Cal.App.4th 1380 conflicts with settled landlord-tenant law and will have a devastating effect on tenant health and safety around the state. Up until this decision, it has been settled law in California that a landlord is required to maintain a residential property at standards described in the health and safety codes. Cal. Health and Safety Code § 17910-98; *Knight v. Hallsthammar* (1981) 29 Cal.3rd 46. Landlords are liable for violations of which they have constructive or actual knowledge. *Knight at Id*; *Peterson v. Superior Court* (1995) 10 Cal.4th 1185, 1205. This incentivizes self-regulation, encourages regular maintenance, and provides recourse where landlords fail to protect tenant health and safety. The Court of Appeal's decision in *Hendleman* denies class certification by requiring that tenants not only prove the substandard condition and the landlord's active or constructive knowledge, but that the tenants had knowledge of the defect. This

requirement finds no support in decades of caselaw, as set forth in the Petition for Review. Absent review, California trial courts will be in the impossible situation of deciding whether to follow *Hendleman v. Los Altos Apartments* or other appellate decisions regarding the required elements of a habitability claim. To the extent that *Hendleman v. Los Altos Apartments* is followed, landlords will be encouraged to ignore violations that are not immediately apparent to tenants albeit extremely dangerous.

Advocates around the state have terrifying stories to tell of habitability violations known to landlords but not to tenants, at least not until it is too late to protect the tenants. What follows are several examples that are just the tip of the iceberg, but give a sense of the stakes here. This is literally a life or death issue for tenants.

A legal aid attorney from Legal Service in Northern California provided an example of a maintenance man who was fired for objecting to illegal and dangerous wiring modifications that the landlord was enclosing in the walls. The landlord was knowingly and intentionally doing non-code work that created a fire hazard and would put future tenants at risk. He was hiding it, covering it with sheet rock where it could not be detected in what appeared to be a recently remodeled and painted unit. If the Supreme Court allows the *Hendleman* decision to stand, the landlord who hides non-code work would not be liable until after the fire occurs.

Another advocate from Fair Housing Council of San Fernando Valley reported the case of a tenant who along with her baby died and left behind two orphaned daughters. They died as a result of carbon monoxide poisoning from a defective heater in a unit that lacked the carbon monoxide detector required by state law. If she had been able to see or detect the toxic fumes emanating from the heater she would not have died. To condition the right to relief on the tenant's knowledge of the misconduct defeats the very purpose of the law to protect the health and safety of such tenants.

Another advocate, from the same agency, reported the case of a young mother with an 11-day-old baby who had the pipes inside the apartment walls burst with approximately 3 inches of sewer water flooding her apartment. Under *Hendleman v. Los Altos Apartments*, a landlord would seek to escape liability for failure to maintain the pipes in a building by simply keeping it a secret.

The absurdity of the *Hendleman* decision harkens back to the days when sweatshop workers in the United States died in fires because doors were locked. Tenants who have few resources nor control over some of the most threatening systems -- water quality, paint contents, wiring violations, aging pipes, gas leaks -- cannot be expected to engage a professional to inspect every aspect of their rental unit in order to live safely.

On behalf of the tenants and their advocates, we respectfully express our support for appellant's petition and request that the Court overturn the Court of Appeal decision in *Hendleman*.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leah Simon-Weisberg". The signature is fluid and somewhat stylized, with a large initial "L" and a long, sweeping underline.

Leah Simon-Weisberg, Legal Director, Tenants Together
Asian Americans Advancing Justice - Asian Law Caucus
Bet Tzedek Legal Services Inc.
Fair Housing Council of San Fernando Valley
Inner City Law Center
Legal Aid Association of California
Public Law Center
National Housing Law Project