COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CONSUMER ADVOCACY GROUP, INC. Plaintiff / Appellant, v. ENCHANTE ACCESSORIES, INC. Defendant / Respondent.	2nd Civ. Case No. **B337902** Superior Court Case No. 20STCV18693

Appeal From Los Angeles Superior Court
Case No. 20STCV18693
Honorable Randolph Hammock
Telephone number: (213) 633-0649; Dept. 49

APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CHEMICAL TOXIN WORKING GROUP INC., DBA HEALTHY LIVING FOUNDATION INC. SUPPORTING APPELLANT CONSUMER ADVOCACY GROUP

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Application to File Amicus Curiae
Brief Supporting Consumer Advocacy Group

To the Honorable Elwood Lui, Administrative Presiding Justice,
and the Honorable Associate Justices of the Second Appellate District:

The Chemical Toxin Working Group Inc., a California Non-Profit Corporation, doing business as Healthy Living Foundation Inc., hereby applies for permission to file a brief as amicus curiae urging the public importance of certain issues raised by Appellant Consumer Advocacy Group, pursuant to Rule of Court 8.200 subdivision (c).

This case concerns whether a person acting "in the public interest" pursuant to California Health & Safety Code section 25249.7 subdivision (d) is empowered to unilaterally settle a suit alleging violations of Section

25249.6 upon receipt of a statutory settlement offer under Code of Civil Procedure section 998. Amicus has brought suits "in the public interest" to enforce the toxin-disclosure requirement of Section 25249.6 on numerous occasions and urges the Court to decide whether cost-shifting under Code of Civil Procedure section 998 properly applies in such suits.

Lack of clarity on that point has left amicus, and any other person acting "in the public interest," unsure if they ***can*** accept a Section 998 offer and unclear if a ***failure to do*** results in bearing the risk of cost shifting.

The obligations that come with acting under Health and Safety Code section 25249.7 are numerous. So, too, are the requirements for a valid statutory settlement offer under Section 998. The interaction between the two is at issue in this appeal, and the conflicting requirements would seem to prevent amicus, and others similarly situated, from accepting a statutory settlement offer. To date, no Court of Appeal has addressed that conflict, and the resultant lack of clarity as to whether or not cost shifting properly applies to one acting "in the public interest" has left amicus and others in a state of limbo.

The apparent conflict between the two sets of requirements has become more acutely felt in recent months. Both the Second District's October opinion in *Gorobets v. Jaguar Land Rover North America*, LLC (2024) 105 Cal.App.5th 913, 926, and the Supreme Court's recent decision

in *Madrigal v. Hyundai Motor America* (Mar. 20, 2025, No. S280598) reaffirmed and *emphasized* requirements applicable to all Section 998 offers which are irreconcilable with the requirements for one acting "in the public interest" to enforce California's toxic exposure laws, where any settlement offer must be conditioned upon the court finding it to be in the public interest, among other conditions, including non-opposition of the California Attorney General.

Amicus believes that the proposed brief will assist the Court by providing additional perspective, confirming the public importance of the issue now before the Court, and highlighting relevant portions of recent decisions, including a Supreme Court decision which postdates the parties' briefing.

The Chemical Toxin Working Group Inc., a California Non-profit Corporation, doing business as Healthy Living Foundation Inc. ("HLF"), is a non-profit consumer health organization that implements measures to reduce the amount of chemical toxins in foods posing targeted dangers to fetuses, children, pregnant women and women of childbearing age; improves safety for workers by reducing their exposure to chemicals; publishes consumer health periodicals, books, and comparative test results.

HLF's Chief Officer David W. Steinman is an early proponent of Proposition 65 who campaigned for its passage and contributed with his research to its development. Mr. Steinman is a publisher, a health

journalist and a bestselling author of Raising Healthy Kids: Protecting Your Children from Hidden Chemical Toxins (Skyhorse, 2024), Diet For A Poisoned Planet (Crown Ed., 1990, Ballantine 2d Ed., 1992, Running Press 3d Ed., 2007); among his other books are: The Safe Shopper's Bible (Macmillan Ed., 1995, Wiley 2d Ed., 2000), The Breast Cancer Prevention Program (Macmillan Ed., 1997). Mr. Steinman represented the public interest at the National Academy of Sciences on the Safe Seafood Committee that produced Seafood Safety (Washington, D.C.: National Academies Press, 1991), advised Congress on related legislation, and has testified before Congress as an expert witness on food safety.

Counsel for Appellant Consumer Advocacy prompted this brief and assisted its preparation and drafting.

If the Court grants this application, amicus curiae requests the Court permit the filing of the brief that is bound with this application.

Aida Poulsen

Aida Poulsen
Counsel for Amicus Curiae
THE CHEMICAL TOXIN WORKING GROUP INC., DBA HEALTHY LIVING FOUNDATION INC.

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AMICUS CURIAE BRIEF OF THE CHEMICAL TOXIN WORKING GROUP INC., DBA HEALTHY LIVING FOUNDATION INC. SUPPORTING APPELLANT CONSUMER ADVOCACY GROUP

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INTRODUCTION

California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Saf. Code, § 25249.5 et seq.), commonly known as Proposition 65, allows a person acting in the public interest to bring suit *qui tam* to enforce its toxin-disclosure requirement and collect civil penalties owed to the State. (Health & Saf. Code, § 25249.7 subd. (d).) Consistent with the *qui tam* nature of such an action, the right to settle a claim of violation does not belong wholly to the person bringing suit "in the public interest." Rather, settlement of such an action is conditioned on Attorney General review and Court approval of settlement terms under specified statutory criteria to ensure that the settlement serves the public good. The statute requires that the trial court adjudicate whether those statutory criteria are met, and judgment cannot be entered until it has done so. (Health & Saf. Code, § 25249.7 subd. (f)(4).)

Section 998 is incompatible with this requirement because it "states that '[i]f the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge *shall enter judgment* accordingly" (*Madrigal v. Hyundai Motor America* (Mar. 20, 2025, No. S280598) ___Cal.5th___ [quoting § 998, subd. (b)(1), emphasis original to the Supreme Court].) Division Two of this court recently reiterated neither the clerk nor the court is authorized to adjudicate over the terms of Section 998

agreements before entering judgment. (*Gorobets v. Jaguar Land Rover North America, LLC* (2024) 105 Cal.App.5th 913 (*Gorobets*), 926.)

Further, [t]o be valid under Section 998, the offer (1) must be "sufficiently" "certain," "specific," or "definite" in its terms and conditions [citations], (2) must be unconditional [citations], and (3) must be made in good faith[.]" (*Gorobets, supra,* 105 Cal.App.5th 913, 925-926.)

Those well-established requirements are incompatible with the requirements concerning settlement of a suit brought "in the public interest" to enforce this State's toxin-disclosure requirement. (See generally Health & Saf. Code, § 25249.7.)

In Proposition 65 cases, a settlement is conditioned on trial court approval and Attorney General review. (Health & Saf. Code, § 25249.7 subd. (f).) The statute authorizing such suits *requires* that a trial court adjudicate whether certain statutory factors are satisfied before entering judgment. (*Id*. at subd. (f)(4).) The trial court's role in reviewing Proposition 65 settlements is not limited to a mechanical application of the statutory factors. It must assess whether the consent judgment is just and whether it serves the public interest. (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46 (*Kintetsu*), 61.) This judicial review is a safeguard to ensure that the policies underlying Proposition 65 are upheld and that the public's interest is adequately represented. (*Ibid*.)

Absent an exception to the review and approval prerequisites, a statutory settlement offer cannot be *unconditional* in such a case. Moreover, absent an exception to Section 998 subdivision (b)(1)'s mandate that "[i]f the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge *shall enter judgment* accordingly," a trial court would be unable to comply with Proposition 65's requirement that "the court may approve the settlement only if the court makes all of the [required] findings[.]" (Health & Saf. Code, § 25249.7 subd. (f)(4).)

A person acting in the public interest is not empowered to unilaterally settle a claim which belongs to the state. Nor can a trial court comply with the divergent procedures for entry of judgment prescribed by Section 998 and Proposition 65, respectively. Nor can a settlement offer be at once "unconditional" and conditioned on Attorney General review and court approval. (See *Toste v. CalPortland Construction* (2016) 245 Cal.App.4th 362 (*Toste*), 374 [finding statutory settlement offer "conditioned on the approval of a good faith settlement motion" invalid].)

The incompatible requirements mean that the imposition of cost shifting for *failure to accept* cannot serve Section 998's purpose of encouraging settlement and would only render citizen enforcement of Proposition 65's consumer protections cost-prohibitive, defying the statutory purpose of creating a self-funding mechanism for enforcers and incentives for attorneys to represent actions in the public interest.

STATEMENT OF THE CASE AND STANDARD OF REVIEW

Plaintiff/Appellant Consumer Advocacy Group dismissed an action brought in the public interest alleging Defendant/Respondent Enchante Accessories had violated of Health and Safety Code section 25249.6 by failing to disclose to consumers that certain products it manufactured and sold contained DEHP. Some months before the voluntary dismissal without prejudice, Defendant/Respondent had served a statutory settlement offer under Section 998.

Following dismissal, the trial court found that Enchante's Section 998 offer was valid, and on that basis awarded six figures in expert and other costs which would not otherwise be recoverable.

The lower court's determination of the validity of the offer and attendant issues of statutory interpretation are reviewed de novo. (*Zavala v. Hyundai Motor America* (2024) 107 Cal.App.5th 458, 468 [validity of offer reviewed de novo].) (*Chavez v. California Collision, LLC* (2024) 107 Cal.App.5th 298 (*Chavez*), 306 [interpretation of Section 998].)

ARGUMENT

I. Section 998 Offers Cannot Be Conditional.

Recent decisions have reaffirmed and emphasized relevant requirements and considerations under Section 998.

In its March 20, 2025, opinion in *Madrigal v. Hyundai Motor America,* the California Supreme Court noted that the terms of Section 998

"are clear and mandatory." The Court emphasized the statutes' provisions relating to entry of judgment.

> It [section 998] provides that a valid, statutory settlement offer must 'allow judgment to be taken' (§ 998(b)) and states that '[i]f the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge *shall enter judgment* accordingly' (§ 998, subd. (b)(1), italics added).

(*Madrigal v. Hyundai Motor America* (Mar. 20, 2025, No. S280598) ___Cal.5th___ [2025 Cal. LEXIS 1454, at *12].) [Italics original to the Court.].)

The above italicized straightforward directive makes no exception for an approval motion, whether in Proposition 65 or anywhere else. The italics, and by extension the emphasis, are original to the Supreme Court.

Further, the Supreme Court reiterated that, in interpreting and applying Section 998, the statute's policy objectives must be considered. "The trial court's construction of section 998 would undermine the statute's policy objectives, which we have repeatedly stated should be considered in its interpretation." (*Madrigal, supra,* (Mar. 20, 2025, No. S280598) ___Cal.5th___ [2025 Cal. LEXIS 1454, at *14].)

"The clear policy behind section 998 is to encourage the settlement of lawsuits before trial." (*Madrigal, supra,* (Mar. 20, 2025, No. S280598) ___Cal.5th___ [2025 Cal. LEXIS 1454, at *9].) In this case, as in *Madrigal*, the trial court's construction would be at odds with that policy.

The plain language of Section 998 prohibits the trial court from adjudicating the terms of the offer, and obligates the clerk to enter

judgment upon notification of acceptance. (*Gorobets, supra,* 105 Cal.App.5th 913, 926.) Further, to be valid, a Section 998 offer must, among other things "be unconditional" (*Id.* at pp. 925-926.)

A Section 998 offer that entails trial court approval is "is conditional and invalid." (*Toste, supra,* 245 Cal.App.4th 362, 376.)

When the statute governing an action conflicts with the provisions of Section 998, it is an error to award costs under that section. (See, e.g., *Chavez, supra,* 107 Cal.App.5th 298, 306 [holding that trial court when it awarded post-offer costs to defendants based on Section 998 because that general provision conflicted with governing section of the Labor Code].)

II. Prop 65 Settlement Cannot Be Unconditional.

Proposition 65 allows a "person in the public interest" to file suit to enforce the statute's toxin-disclosure requirement, seeking recovery of civil penalties and injunctive relief. (Health & Saf. Code, § 25249.7 subd. (d).)

Once a Proposition 65 complaint is filed, it cannot be settled out of court. Upon entering a settlement agreement, an enforcer must undergo numerous mandatory procedures.

California Code of Regulations, Title 11, § 3001(e) reads:

> "Settlement" means any agreement to resolve all or part of (1) an action in which a violation of Proposition 65 is alleged, or (2) any violation alleged in a notice given pursuant to Health and Safety Code section 25249.7(d)(1). "Settlement" includes any settlement

> by which injunctive relief, whether permanent or preliminary, is agreed upon, and also includes any agreement pursuant to which the case is dismissed, except for a voluntary dismissal in which no consideration is received from the defendant. Private Enforcers shall comply with these requirements for each partial settlement and any final settlement.

(Cal. Code Regs. tit. 11, § 3001 subd. (e).)

Upon entering a settlement agreement, an enforcer must undergo the following procedures pursuant to Cal. Code Regs. tit. 11, § 3003 subd. (a):

(1) "[S]erve the Settlement on the Attorney General with a Report of Settlement in the form set forth in Appendix B within five days after the action is Subject to a Settlement, or concurrently with service of the motion for judicial approval of settlement pursuant to Health and Safety Code section 25249.7(f)(4), whichever is sooner;"

(2) Serve the motion and all supporting papers and exhibits on the Attorney General no later than 45 days prior to the date of the hearing of the motion;

(3) Reserve the hearing date with the court not earlier than 45 days after service of the motion on the Attorney General;

(4) File a motion to approve settlement and enter a consent judgement, supporting papers and exhibits with the court;

(5) Communicate with Attorney General's office regarding their position as relates to the settlement;

(6) If changes are demanded by the Attorney General, renegotiate the settlement and resubmit all of the above to the court and to the Attorney General;

(7) Or, if renegotiation is unsuccessful, face Attorney General filing an opposition with the court;

(8) If Attorney General expresses non-opposition, file an affidavit with the court, conveying that the non-opposition to the settlement agreement was expressed by the Attorney General office.

"Proposition 65 allows for enforcement by the state or by private plaintiffs on the state's behalf." (*LaFace v. Ralphs Grocery Co.* (2022) 75 Cal.App.5th 388, 398.) A private person bringing an enforcement action proceeds *qui tam*, and has only a representative interest, not an individual interest. (*Consumer Adv. Group v. Exxonmobil Corp.* (2008) 168 Cal.App.4th 675, 692-693 [Proposition 65 claims are wholly "representative" and entail no "individual" claim].) (See also *California Bus. & Indus. All. v. Becerra* (2022) 80 Cal.App.5th 734, 739 [Proposition 65 is "not meaningfully distinguishable from comparable *qui tam* statutes"].)

In Prop 65, public interest is king. Consistent with the historical *qui tam* nature of acting on behalf of a king,[1], a "person in the public interest" is not empowered to unilaterally settle a case where the king is public good. The statute provides that:

> If there is a settlement of an action brought by a person in the public interest under subdivision (d), the plaintiff shall submit the settlement, other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings: […]

(Health & Saf. Code, § 25249.7 subd. (f)(4).)

The trial court's role in reviewing Proposition 65 settlements is not limited to a mechanical application of the statutory factors. It must assess whether the consent judgment is just and whether it serves the public interest. (*Kintetsu, supra,* 141 Cal.App.4th 46, 61.) This judicial review is a safeguard to ensure that the policies underlying Proposition 65 are upheld and that the public's interest is adequately represented. (*Ibid*.)

The statute further provides that the Attorney General may participate in such proceedings. "The plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in a proceeding without intervening in the case." (Health & Saf.

[1] The term *qui tam* originates from Latin: "*Qui tam pro domino rege quam pro se ipso in hac parte sequitur*," meaning "He who sues on behalf of the King, as well as for himself."

Code, § 25249.7 subd (f)(5).) The Attorney General has standing to appeal a settlement that it considers to be not "in the public interest" with or without intervening. (e.g., *Consumer Cause, Inc. v. Johnson & Johnson* (2005) 132 Cal.App.4th 1175, 1179, fn.3.)

III. The Two Sets of Requirements Are Incompatible.

The applicability of the requirements in Section 25249.7 subdivision (f), quoted above, turns on whether or not there is consideration. (Health & Saf. Code § 25249.7 subd. (f)(4) ["other than a voluntary dismissal in which no consideration is received"].) Under California law, "consideration" means:

> Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

(Civ. Code, § 1605.)

The California Supreme Court has construed the above quoted definition to entail two conditions, and has emphasized that the presence of ***either*** condition constitutes consideration:

> Thus, there are two requirements in order to find consideration. The promisee must confer (or agree to confer) a benefit or must suffer (or agree to suffer) prejudice. We emphasize either alone is sufficient to constitute consideration

(*Steiner v. Thexton* (2010) 48 Cal.4th 411, 420-421.)

As has often been noted, "a section 998 offer has value beyond the monetary award provided if it also includes a waiver of costs" (*Adams v. Ford Motor Co.* (2011) 199 Cal.App.4th 1475, 1485.) Thus, a Section 998 offer contemplating dismissal in exchange for a waiver of costs "entails consideration" and would be no less subject to the review and approval process of Section 25249.7 subdivision (f) than if it contemplated payment of money in exchange for dismissal.

Thus, Respondent's assertion that an offer contemplating only a "dismissal" is exempt from the review and approval process falls flat: a waiver of costs is of value, and thus constitutes "consideration." Further, the Supreme Court has specifically rejected the contention that a Section 998 offer ceases to be a settlement offer when it contemplates a dismissal. (*Goodstein v. Bank of San Pedro* (1994) 27 Cal.App.4th 899, 905 [rejecting argument "that a compromise settlement under Code of Civil Procedure section 998 can never include an agreement for a voluntary dismissal"].) As a result, the statutory settlement offer under Section 998 would be within the scope of Section 25249.7 subdivision (f) no less than any other.

The conflicting requirements entailed would obligate an offer to be both "unconditional" and conditioned upon Attorney General's review and court approval. As detailed above, the trial court would be required both to enter judgment upon receipt of acceptance, without any adjudication, and

required to refrain from entering judgment until after it had adjudicated that Proposition 65's statutory criteria are satisfied, and the Attorney General review period had passed. And a plaintiff acting "in the public interest" would be obliged to either unilaterally dispose of a *qui tam* action (something such a plaintiff has no power to do under the authorizing statute), or face the penalty non-acceptance.

Amicus urges the Court to state plainly what is already well-understood among those who work to enforce Proposition 65: that neither a settlement offer, nor a trial court, nor a plaintiff can comply with the requirements of both Section 998 and Proposition 65 at once. Having done so, the Court should clarify that, given those conflicting requirements, the more general provisions of Section 998 cannot properly apply to shift costs in Proposition 65 citizen suits.

IV. The Legislature Is Presumed to Have Ratified Incompatibility of 998 Offer and Prop 65 Settlement Requirements.

Both Proposition 65 and Section 998 have been amended in the time since the fundamental incompatibility became apparent. When a statute has been construed by the courts, and the Legislature subsequently amended the statute without changing the interpretation put on that statute by the courts, the Legislature is presumed to have been aware of and acquiesced in the courts' construction of that statute. (See, e.g., *People v. Salas* (2006) 37 Cal.4th 967, 979.) Given that the Legislature amended both statutes and

did not countermand that incompatibility, it is presumed to have been aware of and acquiesced to that incompatibility.

V. Economically Viable Private Enforcement Was a Legislative Intent in Protecting Consumers.

Where an offeree cannot accept a Section 998 offer (which, as above, is always the case in a suit brought "in the public interest" under Proposition 65), imposing cost shifting as a penalty for non-acceptance cannot encourage settlement and does not serve the policy behind Section 998. Allowing cost-shifting in such cases as this one would only render private enforcement prohibitively risky, frustrating the purpose of Proposition 65 to the enormous detriment of the public.

Industrial development over the past century has led to a proliferation of toxic exposures with which traditional product liability law was ill-equipped to deal. Chemical engineering has derived many wonders of the modern age that can do amazing and useful things. But some of those chemicals, even ones that can do some very useful things, are also very toxic. Because the adverse effects of many toxins result from cumulative exposure levels, proving a causal connection to any single product among the myriad contributors is often difficult or impossible.

The adverse effects, too, can be viewed in aggregate. At an individual level, while some toxic exposures may change the entire course of a person's life, others may only cause a disease to onset slightly earlier

than it otherwise would have, or make it slightly more severe, or merely make a person a bit more susceptible. Yet the aggregate effects of such toxic exposures damage the overall economy to the tune of hundreds of billions of dollars every month, with cumulative costs estimated as high as 10% of global GDP.[2]

While many chemicals have been banned outright, and others banned or capped in specific applications, there remains a middle ground of chemical exposures that, while still toxic, are too useful, or too difficult to eliminate, for an outright ban or to make sense. It is that middle ground of products and exposures – not sufficiently dangerous to justify an outright ban, but still significant contributors to aggregate exposure levels associated with adverse outcomes and devastating economy-wide costs – to which Proposition 65 is addressed.

Market forces frequently incentivize exposing consumers to toxins without telling them about it. Making a product out of PVC dosed with phthalates (which make PVC more flexible) is often much cheaper and easier than using non-toxic alternatives. If both can be sold on equal footing, without disclosure of toxins in the cheaper option, an obvious incentive arises. Prop 65 represents a policy decision to change that

[2] Environmental Health Perspectives: Kippler, Maria et al., Cadmium and Early Pregnancy Hormones – A Prospective Cohort Study, Environmental Health (2017), https://ehjournal.biomedcentral.com/articles/10.1186/s12940-017-0340-3. (Last visited March 30, 2025.)

incentive structure. The law requires a warning before exposing consumers to damaging carcinogens and reproductive toxins (See Health & Saf. Code § 25249.6.)

Because such toxic exposures are far more numerous than government agencies have the resources to handle, the law allows private persons to bring suit in the public interest to recover civil penalties owed to the state, with a quarter payable to the person who brings the action. (Health & Saf. Code § 25249.7 subd. (d).) The law was adopted with the explicit goal "*to secure strict enforcement of the laws controlling hazardous chemicals and deter actions that threaten public health and safety*." (*Lee v. Amazon.com, Inc*. (2022) 76 Cal.App.5th 200, 236 [quoting text of Prop. 65 Ballot Pamp].) Both Amicus and Appellant CAG work to see that goal realized.

Companies, for their part, understandably want to avoid providing warnings of toxins in their products — doing so makes little business sense; compliance comes at a cost to them, individually, and the benefit is only to the public at large. But it is difficult to overstate the extent to which the aggregate effects of undisclosed toxic exposures tower over the effects on a given company: whether in the form of cancer, infertility and miscarriage, plummeting testosterone levels, or a myriad of other adverse outcomes, undisclosed toxic exposures have massive economic effects.

Balancing those economic and human costs with the burden of compliance on companies is a question of policy, and the proper province of the voters and Legislature. It is not unlawful to sell products that expose Californians to toxic chemicals like ortho-phthalates; but if a company knows its products contribute more than marginally to aggregate exposure, California law requires that they provide "clear and reasonable" warning or face suit for civil penalties. Respondent Enchante, ever an evangelist of DEHP's safety, has repeatedly chosen the latter.

Upholding the costs award in this case would not, and cannot, succeed in encouraging settlement. It would serve only to penalize and render prohibitively risky any attempt to enforce this state's toxin-disclosure law and thereby frustrate the purpose of both the People and the Legislature in providing for citizen-enforcement.

CONCLUSION

Amicus urges the Court to clarify whether Section 998 cost-shifting properly applies in cases brought "in the public interest" under Proposition 65. Due to the conflicting requirements under those statutes set forth above, Amicus respectfully suggests that it cannot apply, and that any attempt at its application would require rewriting otherwise applicable rules and frustrate the purpose of both statutes.

Date: March 31, 2025

By: Aida Poulsen

Aida Poulsen
Counsel for Amicus Curiae
THE CHEMICAL TOXIN WORKING GROUP INC., DBA HEALTHY LIVING FOUNDATION INC.

CERTIFICATE OF WORD COUNT

Pursuant to the California Rules of Court, I hereby certify that this brief contains 3561 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

Date: March 31, 2025

By: *Aida Poulsen*

Aida Poulsen
Counsel for Amicus Curiae
THE CHEMICAL TOXIN WORKING GROUP INC., DBA HEALTHY LIVING FOUNDATION INC.

PROOF OF SERVICE

Case No. B337902

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 15303 Ventura Blvd., Suite 900 Los Angeles, CA 91403.

On March 31, 2025, I caused to be served the following document(s): **APPLICATION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CHEMICAL TOXIN WORKING GROUP INC., DBA HEALTHY LIVING FOUNDATION INC. SUPPORTING APPELLANT CONSUMER ADVOCACY GROUP**

I caused the above document(s) to be served on the person(s) listed below by the following means and as indicated on the attached Service List:

PLEASE SEE ATTACHED SERVICE LIST

X (By E-Mail – PDF Format) I caused the foregoing document to be served by e-mail transmission, in PDF Format, to each of the interested parties at the e-mail address shown above.

X (By Mail) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after day of deposit for mailing contained in affidavit.

X I consigned a true and correct electronic copy of said document for service via TrueFiling on March 31, 2025.

I am readily familiar with my firm's practice for collection and processing of correspondence for delivery in the manner indicated above, to wit, that correspondence will be deposited for collection in the above-described manner this same day in the ordinary course of business.

Executed on March 31, 2025, in Chandler, Arizona.

Jennifer Reinhart

Jennifer Reinhart

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Health and Safety Code (HSC) § 25249.7(o)