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June 28, 2018

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice  
And Honorable Associate Justices of the  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

Re: Successor Agency to the Redevelopment Agency of the City of Sunnyvale  
v. Michael Cohen, et al., Third Appellate District, Case No. C077659

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

Pursuant to the California Rules of Court, Rule 8.500(g), the League of California Cities (the "League")<sup>1</sup> respectfully submits this letter as *amicus curiae* in support of the Petition for Review filed in *Successor Agency to the Redevelopment Agency of the City of Sunnyvale and City of Sunnyvale v. Michael Cohen, et al.* (Third Appellate District, Case No. C077659) filed by the Successor Agency to the Redevelopment Agency of the City of Sunnyvale and the City of Sunnyvale.

This case is of significance not just to California cities, but to any party concerned about the retroactive application of statutes in the absence of such legislative intent. The Court of Appeal decision is contrary to a long line of cases not only within the state, but nationwide. It is particularly concerning because many cases of statutory interpretation are heard in the Third Appellate District due to its location in the state's Capital, including all cases involving the law that dissolved redevelopment agencies (the "Dissolution Law").<sup>2</sup> The fact that the Court of Appeal decision is unpublished does not mean that well-settled principles should not be followed. Moreover, review should be granted because guidance in this area would be helpful for pending cases involving similar statutory interpretation issues.

<sup>1</sup> The League of California Cities is an association of 474 California cities dedicated to protecting and restoring local control to provide for the public health, safety and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, which is comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

<sup>2</sup> Health and Safety Code section 34161 *et seq.* Health and Safety Code section 34189.3 requires that all cases regarding the implementation of the Dissolution Law be filed in the County of Sacramento.



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In this case, the Court of Appeal determined that a valid agreement entered into between the former redevelopment agency and its sponsoring city in 1977 – 35 years before the dissolution of redevelopment agencies – was not an enforceable obligation. With very little discussion, it held that Health and Safety Code section 34179.5 should be read to retroactively to prohibit a payment that had been made under the 1977 agreement. However, the statute contains no language stating it should be applied retroactively. The Court of Appeal’s holding is inconsistent with a long line of cases rejecting the retroactive application of new legislation, particularly where no such legislative intent can be gleaned from its provisions.

This Court and the U.S. Supreme Court have long emphasized the importance of evaluating several factors to determine whether a statute should be applied retroactively. First and foremost is a requirement to determine if the statutory language contains unambiguous language of retroactivity. The basis for such a rule is fundamental fairness, so that parties know what the law is and can conform their behavior accordingly. *McClung v. Employment Development Department* (2004) 34 Cal.4th 467, 475, citing *Landgraf v. USI Film Products* (1994) 511 U.S. 244, 265.) “The presumption against statutory retroactivity has consistently been explained by reference to the unfairness of imposing new burdens on persons after the fact. (*McClung, supra*, 34 Cal. 4th at 475.) In the statute under consideration in *Sunnyvale*, there is no language evidencing the Legislature’s intent that the statute be applied retroactively.

As stated in the Petition for Review, this Court has found – in a variety of different contexts – that new legislation should not be applied retroactively, including *People v. Brown* (2012) 54 Cal.4th 314, 321-322, *as modified on denial of reh’g* (Sept. 12, 2012) ( statute enacted in response to fiscal emergency not retroactive); *Strauss v. Horton* (2009) 46 Cal.4th 364, 474 *as modified* (June 17, 2009) abrogated by *Obergefell v. Hodges* (2015) 135 S. Ct. 2584 (Proposition 8’s constitutional ban on same-sex marriage cannot be applied retroactively); *McClung, supra*, (2004) 34 Cal.4th at 475 (change in law extending liability did not apply retroactively); *Elsner v. Uveges* (2004) 34 Cal.4th 915, 938-939 (change in law regarding standard of care and burden of proof in negligence action could not be applied retroactively); *City of Long Beach v. Department of Industrial Relations* (2004) 34 Cal.4th 942, 950-954 (change in definition of “construction” under prevailing wage law applied prospectively); *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 842-847 (law repealing immunity for tobacco companies did not apply retroactively); *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1206-1209 (state proposition limiting joint tortfeasor’s liability for non-economic damages did not apply retroactively); *Aetna Cas. & Sur. Co. v. Industrial Acc. Commission* (1947) 30 Cal.2d 388, 395-396 (change in worker compensation law increasing employer liability could not be applied retroactively).



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While these well-settled principles of statutory interpretation have been followed in some decisions of the Third Appellate District,<sup>3</sup> they were not followed in *Sunnyvale*. Moreover, the League is aware of at least two pending cases in the Third Appellate District which involve similar issues of retroactivity as in *Sunnyvale*.<sup>4</sup> Therefore guidance from this Court is critically important.

For all of the reasons stated above and in the Petition for Review, the League respectfully urges the Court to grant the Petition for Review and provide the necessary guidance as to whether these provisions in AB 1484 can be applied retroactively in the absence of any expression of legislative intent to that effect.

Respectfully submitted,

Iris P. Yang  
of BEST BEST & KRIEGER LLP

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<sup>3</sup> In both *City of Emeryville v. Cohen* (2015) 233 Cal.App.4<sup>th</sup> 293, 312 and *County of Sonoma v. Cohen* (2015) 235 Cal.App.4<sup>th</sup> 42, 51, the Court of Appeal followed the long line of cases that have *rejected* the retroactive application of new legislation. In both cases, the Third Appellate District stated that the Legislature did not intend the provisions of AB 1484 to apply retroactively.

<sup>4</sup> The cases are *City of Watsonville v. Cohen*, Case No. C076296, and *El Cerrito Redevelopment Agency Successor Agency v. Cohen*, Case No. C078064.

**CERTIFICATE OF SERVICE**  
Third Appellate District Case No. C077659

At the time of service I was over the age of 18 years, and not a party to this action. My business address is 500 Capitol Mall, Suite 1700, Sacramento, California 95814. On the date set forth below, I served the following document(s):

**LETTER TO THE HONORABLE TANI GORRE CANTIL-SAKAUYE,  
CHIEF JUSTICE AND HONORABLE ASSOCIATE JUSTICES OF THE  
SUPREME COURT OF CALIFORNIA**

- By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):
- Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Sacramento, California.

- By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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34-2013-80001627**

**Via U.S. Mail**

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**Via Overnight Mail**

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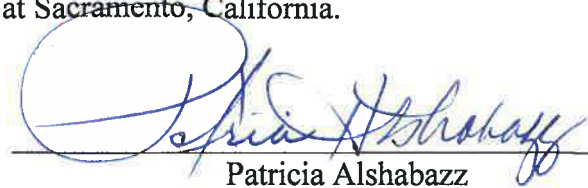
**Via E-Submission  
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**Via U.S. Mail & Email**

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

Executed on April 30, 2018, at Sacramento, California.

  
Patricia Alshabazz