

**FOR IMMEDIATE RELEASE****July 18, 2012**

COURT URGED TO DECERTIFY CALIFORNIA CLASS ACTION SUIT

(Prometheus Real Estate Group, Inc. v. Superior Court)

The Washington Legal Foundation (WLF) this week urged the California Supreme Court to review (and ultimately overturn) a lower-court decision that certified a large class action against an apartment complex owner. The suit was filed by a small number of tenants who claim that the value of their rental units was diminished by the significant amount of construction work that took place in the vicinity of the apartment complex. But the trial court has certified them as representatives of a class of more than 1300 current and former tenants.

In a brief filed in *Prometheus Real Estate Group, Inc. v. Superior Court*, WLF argued that the plaintiffs have failed to demonstrate that the case could manageably be tried as a class action. WLF argued that the plaintiffs failed to demonstrate that common issues of fact and law predominate over individual issues – an absolute prerequisite for certification of a class action.

“There is little doubt that the only reason the plaintiffs’ lawyers sought class certification was to coerce the defendant into settling the case without regard to the merits of the plaintiffs’ claims,” said WLF Chief Counsel Richard Samp after filing WLF’s brief. “Class actions of this sort – in which the claims of each tenant turn on facts specific to him – are virtually never appropriate because they could never be brought to trial; yet they serve the purposes of the plaintiffs’ bar by imposing tremendous settlement pressure on defendants,” Samp said.

The defendant (Prometheus) owns the Mansion Grove Apartments in Santa Clara, California. The complex consists of numerous buildings that house nearly 1,000 units spread out widely over more than 20 acres. In the spring of 2008, the City of Santa Clara granted Prometheus approval to add seven new buildings containing 125 new rental units. Construction began in mid-2008 and continued until early 2010.

The nine plaintiffs allege that the noise and disruption of the construction breached the covenant of quiet enjoyment (a lease term implied by law in every residential lease in California). They also allege that Prometheus was guilty of fraud because it failed to provide adequate notice of impending construction, and that that failure induced them to sign or renew their leases. They seek to represent all other tenants for the purpose of raising identical claims on their behalf. The trial court certified the class without

providing any explanation for its action. It did so despite evidence from Prometheus that there was significant variation among tenants regarding (1) the extent to which they were inconvenienced by the construction; and (2) the amount of information they received regarding impending construction plans. The California Court of Appeal declined to review the order. Prometheus is asking the California Supreme Court to review the case and overturn the class certification order.

In its brief in support of Prometheus, WLF argued that class certification is never appropriate when, as here, individual issues of fact predominate over common issues. WLF noted that the covenant of quiet enjoyment is not breached unless the interference with the tenant's property interests is "substantial." Whether interference is "substantial" cannot be litigated on a class-wide basis when, as here, living conditions varied so substantially from tenant to tenant, WLF asserted. WLF noted that some tenants had construction going on very close to their front doors, while others lived significantly further away. Thus, a determination of whether the interference was substantial will have to be undertaken on a tenant-by-tenant basis, WLF argued. The whole point of a class action is to promote trial efficiency by allowing "common" issues to be decided only once and then applied to identically-situated plaintiffs, WLF noted. But trials quickly become unmanageable when, as here, significant factual issues will have to be determined on a plaintiff-by-plaintiff basis.

Class treatment of the fraud claims is similarly unwarranted, WLF argued. It noted that, in order for any plaintiff to prevail on a fraud claim, he will have to show that the defendant provided him with misleading information and that he relied on that information to his detriment. WLF argued that the fraud claim cannot be litigated on a class-wide basis because every tenant's experience was unique – the set of information he received may or may not have been misleading, and he may or may not have relied on that information when signing/renewing the lease.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to promoting tort reform and reining in excessive litigation. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.