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**Court of Appeal Upholds Landmark Ruling Affirming Judgment Ordering  
the Removal of Lead Paint From Pre-1951 Homes**

SANTA CLARA COUNTY, CALIF. – After a seventeen year legal battle that broke new legal ground, California’s Sixth District Court of Appeal unanimously upheld a lower court decision ordering three lead paint manufacturers to clean up lead paint inside older homes in the County of Santa Clara and nine other California cities and counties. Today’s ruling holds defendants Sherwin-Williams Company, NL Industries, Inc., and ConAgra Grocery Products Company responsible for the public nuisance created by lead paint inside pre-1951 homes.

The County of Santa Clara has been the lead public entity in the case over the last seventeen years. “This is a tremendous victory for the thousands of children who are endangered by lead paint in their homes,” said Santa Clara Assistant County Counsel Danny Chou. “The court’s decision provides for the removal of lead paint from many older homes in Santa Clara County that contains this dangerous toxin and holds the paint companies responsible for the danger that they created. The Court has sent a thundering message about the protection that California provides to its most vulnerable citizens.”

The first complaint in this case was filed in 2000 by then Santa Clara County Counsel Ann Ravel. Nine other cities and counties joined the litigation, and together they pursued the case aggressively for more than seventeen years. “We fought – and will continue to fight – to ensure that corporations are held accountable for creating serious environmental hazards in our communities,” said Santa Clara County Counsel James R. Williams. “As this case demonstrates, Santa Clara County will continue to lead efforts to protect our most vulnerable residents.”

The counties and cities alleged that defendants Sherwin-Williams Company, ConAgra Grocery Products Company, and NL Industries, Inc.'s aggressive marketing of lead paint, which they knew was highly toxic to young children, has created a public nuisance that threatens the health of California's children to this day.

In 2013, Honorable Judge James P. Kleinberg of Santa Clara Superior Court issued a \$1.15 billion judgment in favor of the counties and cities, ruling that NL Industries, ConAgra and Sherwin-Williams were liable for the harm that they created.

Today's ruling upheld the existence of the nuisance as to pre-1951 homes, overturned it as to homes built between 1951-1980, and remanded the case to trial court for further proceedings to limit the \$1.15 billion abatement fund to an amount sufficient to address the problems lead paint poses in pre-1951 housing. That amount will be determined in court.

According to the Centers for Disease Control (CDC) and California's Childhood Lead Poisoning Prevention Branch, lead paint is the primary cause of lead exposure for children who live in older homes. The California Legislature has declared that "childhood lead exposure represents the most significant childhood environmental problem in the state today." (Health & Saf. Code, § 124125.)

In 2009 alone, at least 10,875 children in the cities and counties prosecuting the case had been poisoned by lead. In 2012, the CDC released a report, the CDC Response to Advisory Committee on Childhood Lead Poisoning Prevention Recommendations in "Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention," finding that "no safe blood lead level in children has been identified." Even at the lowest levels, lead causes permanent neurological damage to children, decreasing IQ and causing other serious health consequences.

"Lead paint poisons thousands of children in California each year," said Santa Clara County Public Health Officer Sara Cody. "It has created a public health crisis that has far reaching consequences for our community and our nation. The court's decision will ensure that future generations of children are protected from this very serious environmental hazard."

More than a decade of pre-trial maneuvers, appeals, false starts, and delays precede today's ruling, which will allow local governments to eliminate the health hazards posed by lead paint in homes built before 1951.

During the 2013 trial in the case, the counties and cities presented evidence that the three defendant paint companies aggressively promoted and sold lead paints for use in homes despite knowing that those paints were highly toxic, particularly to children. The trial court ruled that Sherwin-Williams, NL, and ConAgra are liable for cleaning up the hazard they created, and they appealed. The Court of Appeal found the evidence at trial established that these companies

actually knew that interior residential lead paint posed a serious risk of harm to children. Nonetheless, these companies “repeatedly promoted its lead paint for interior residential use.” These promotional activities were “inherently misleading because [they] implicitly asserted that [lead paint] was safe for such use when it was not.”

The case was litigated by the County of Santa Clara, the County of Alameda, the City of Oakland, the City and County of San Francisco, the City of San Diego, the County of Los Angeles, the County of Monterey, the County of San Mateo, the County of Solano, and the County of Ventura. The plaintiffs are represented by their own County Counsel and City Attorney’s Offices, working in collaboration with the law firms of Cotchett Pitre & McCarthy LLP, Motley Rice LLP, Mary Alexander and Associates, and the Law Offices of Peter Earle.

### **About the Santa Clara County Counsel’s Office**

The County Counsel serves as legal counsel to the County, its Board of Supervisors and elected officials, every County department and agency, and the County’s boards and commissions. With a staff of 170 employees, including 85 attorneys, the Office of the County Counsel is also responsible for all civil litigation involving the County and its officers. Through its Social Justice and Impact Litigation Section, the Office litigates high-impact cases, drafts innovative local ordinances, and develops policies and programs to advance social and economic justice.

### **About the County of Santa Clara, California**

The County of Santa Clara government serves a diverse, multi-cultural population of 1.9 million residents. With a \$6.5 billion annual budget, dozens of offices/departments, and over 18,000 employees, the County provides essential services to its residents, including public health protection, environmental stewardship, medical services through Santa Clara Valley Medical Center, child and adult protection services, homelessness prevention and treatment, roads, park services, libraries, emergency response to disasters, protection of minority communities and those under threat, access to a fair criminal justice system, and many others, particularly for those in the greatest need. The County is the most populous in Northern California.