



For a future without senior poverty.

November 16, 2020

Honorable Tani G. Cantil-Sakauye, Chief Justice  
& Associate Justices of the  
Supreme Court of California  
350 McAllister St.  
San Francisco, CA 94102

Re: **Amici Letter Supporting Petition for Review in *Moreheart v. Superior Court, So. Cal. Edison Real Party in Interest*, No. S264970, Petition Filed October 9, 2020**

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

AARP and AARP Foundation file this letter brief as Amici Curiae pursuant to Rule 8.500(g) of the California Rules of Court. For the reasons stated herein, AARP and AARP Foundation respectfully request that the Court grant the Plaintiffs' Petition for Review.

### **Statement of Interest**

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans fifty and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families, with a focus on health security, financial stability, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works to end senior poverty by helping vulnerable older adults build economic opportunity and social connectedness. Among other things, AARP and AARP Foundation advocate for equality and fairness for older persons in the judicial system by participating as amici curiae in state and federal courts.

### **Excluding Elderly and Gravely Ill Plaintiffs From Bellwether Trials Violates Code of Civil Procedure 36**

Martin Moreheart is an elderly plaintiff in a case arising out of the massive Thomas wildfire that ravaged two California counties in 2017. It was

uncontroverted that Mr. Moreheart and several other plaintiffs met the age and health requirements of Code of Civil Procedure section 36.<sup>1</sup> Mr. Moreheart was 74 years old when his motion for preference was filed, and he had already been diagnosed with an aggressive colon cancer. The trial court denied trial preference to Mr. Moreheart, and a few other elderly plaintiffs, simply because there were two thousand other plaintiff/victims of the Thomas Fire, and their cases were part of a coordinated proceeding. Granting elderly gravely ill plaintiffs trial preference should not disrupt the coordinated proceeding. The Superior Court has a number of options: it could schedule a preference trial within the coordinated proceeding, or allow qualified plaintiffs to participate in one of the early bellwether trials, or transfer qualified elderly plaintiffs' cases out of the coordinated proceeding to another department for trial.

The statutory requirements of Code of Civil Procedure 36 are mandatory even in complex litigation involving numerous parties. The statute provides no exception for “coordinated proceedings.”<sup>2</sup> “If trial courts are permitted to make administrative inroads into the section 36 mandate, the effectiveness of that mandate will be eviscerated...” (*Koch-Ash v. Superior Court* (1986) 180 Cal.App.3d 689, 698.) Where a party meets the requisite standard for calendar preference under subdivision (a), preference must be granted. (*Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 535.) Inasmuch as multiple trial courts have issued split decisions regarding whether an individual plaintiff can have a “substantial interest” in a coordinated proceeding, Amici respectfully urge the Court to accept review of this case and order the trial court to grant the Petitioners trial preference.

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<sup>1</sup> The trial court specifically held that: “[t]hrough each of the Preference Plaintiffs satisfies the age and health requirements of Code of Civil Procedure section 36, subdivision (a), their motions for trial preference nevertheless fail.” (Appellate Record, Order Denying Pls. Mot. For Trial Preference, Tab 13, p. 342.)

<sup>2</sup> Code of Civil Procedure section 36(a) specifically provides: “A party to a civil action who is over 70 years of age may petition the court for preference, which the court shall grant if the court” finds (1) the “party has a substantial interest in the action as a whole,” and (2) the “health of the party is such that a preference is necessary to prevent prejudicing the party’s interest in the litigation.”

The Honorable Tani G. Cantil-Sakauye  
& Honorable Associate Justices  
November 16, 2020  
Page 3

### Conclusion

For the reasons stated above, Amici respectfully request that the Court grant the petition for review. We thank you for considering the views of AARP and AARP Foundation.

Respectfully submitted,  
AARP & AARP Foundation

/s

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Enc. Proof of Service

PROOF OF SERVICE

*Moreheart v. Superior Court*, No. S262977  
Appellate Case No. B307664  
Los Angeles County Superior Court Case No. JCCP 4965

I, Barbara Jones declare:

At the time of service, I was over 18 years of age and not a party to this action. My business address is 601 E Street, N.W., Washington, D.C. 20049.

On November 16, 2020, I served the following document described as:

**AMICI LETTER IN SUPPORT OF REVIEW**

on all interested parties in this action in the manner designated below at the address (es) set forth in the service list attached hereto:

**[X] ImageSoft TrueFiling (TrueFiling)** – I caused service through the Court’s electronic filing system by filing the document(s) via TrueFiling (Pursuant to California Rules of Court 8.70).

**[X] U.S. Mail** – I caused service on those who are not registered with TrueFiling.com via first-class U.S. Mail, postage thereon fully prepaid, and deposited in a mailbox regularly maintained by the United States Postal Service in Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 16, 2020, at Los Angeles, California.

\_\_\_\_\_/s\_\_\_\_\_  
Barbara Jones

SERVICE LIST

<p><b><i>Via TrueFiling</i></b>          John Charles Hueston          Moez M. Kaba          Douglas James Dixon          Jonathan David Guynn          Derek Ramon Flores          Hueston Hennigan LLP          523 West 6th Street, Suite 400          Los Angeles, CA 90014</p> <p>Leon Bass          Southern California Edison          Company          2244 Walnut Grove Avenue,          Suite 331          Rosemead, CA 91770</p> <p>Brian A. Cardoza          Southern California Edison          Company          2244 Walnut Grove Avenue,          Suite 331          Rosemead, CA 91770</p> <p><i>Counsel for Real Parties in          Interest Southern California          Edison Company; Edison          International</i></p>	<p><b><i>Via TrueFiling</i></b>          Victoria E. Fuller          Niddrie Addams Fuller Singh LLP          600 West Broadway, Suite 1200          San Diego, CA 92101</p> <p>Gerald Blaine Singleton          Singleton Law Firm          450 A Street, 5th Floor          San Diego, CA 92101</p> <p><i>Attorneys for Petitioners</i></p>
<p><b><i>Via TrueFiling</i></b>          Supreme Court of California          350 McAllister Street          San Francisco, California          94102</p>	<p><b><i>Via TrueFiling</i></b>          Court of Appeal          Second Appellate District          (Via True Filing, pursuant to CRC          8.70-8.79, 8.212)</p>
<p><b><i>Via U.S. Mail</i></b></p>	

Frederick Bennett Superior Court for the County of Los Angeles 111 North Hill St, Room 546 Los Angeles, California 90012	
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*Counsel for Respondent*