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February 19, 2009

The Honorable Ronald M. George, Chief Justice
and the Honorable Associate Justices of the
California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102

Re: Letter in Support of Petition for Rehearing of the decision in *Meyer v. Sprint Spectrum L.P.* --- Cal.Rptr.3d ---, 2009 WL 197560 (Jan. 29, 2008) - Supreme Court Case No. S153846

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

In *Meyer v. Sprint Spectrum L.P.*, this Court held that the Consumers Legal Remedies Act, Civil Code section 1770 *et seq.* ("CLRA") does not authorize peremptory challenges to provisions in an agreement which purport to foreclose the public civil justice system (*e.g.*, through arbitration) and which are unconscionable under California law. Despite the plain language of the statute and the breadth of all its provisions, the Opinion concluded that "insert" means "enforce" and that the infringement of a legal right is not actionable without some form of economic damage. A petition for rehearing was filed in *Meyer* on February 17, 2009 (No. S153846).

The Center for Responsible Lending, Consumer Action, Consumer Watchdog, Consumers for Auto Reliability and Safety, The National Association of Consumer Advocates, the National Consumer Law Center, Public Citizen, and United Policyholders respectfully urge this Court to grant rehearing of its Opinion in *Meyer*. This broad collection or organizations has banded together because of the potentially devastating consequences for consumers if this Opinion is not substantially modified. The Opinion eviscerated the language and scope of the CLRA, despite the statute's plain language and its express command that its provisions be viewed liberally. At issue is whether California consumers are protected from the explicitly and broadly proscribed unlawful practices enumerated in the Act and are authorized to seek injunctive and declaratory relief when they have been damaged by the infringement of their legally protected rights. As our State and Nation enter the second year of a broad and deepening credit economic crisis, the significance of this question is beyond dispute.

*ADMITTED IN CALIFORNIA AND CONNECTICUT
**ADMITTED IN CALIFORNIA AND MASSACHUSETTS

I. *AMICI*'S IDENTITIES AND INTERESTS

Amici curiae are non-profit organizations which advocate, protect, defend, and monitor consumer interests nationwide. They and their members have a very substantial interest in the resolution of the issues raised by this case. See Exhibit A to this letter for additional information about each *amicus curiae*.

II. REASONS WHY THE PETITION FOR REHEARING SHOULD BE GRANTED

A. The CLRA Authorizes Lawsuits to Obtain Injunctive and Declaratory Relief to Protect Against the Infringement of Legal Rights.

The CLRA is one of the principal statutory schemes that offers protection to California consumers victimized by more than twenty (20) separately enumerated unlawful business practices. The CLRA is often the only means through which meaningful relief for such wrongful practices can be obtained.

What differentiates the CLRA from virtually every other consumer protection statute nationwide is the specificity and breadth of the legislative language in virtually every respect. It not only enables challenges to an entity's enforcement of unlawful provisions in an agreement, but makes it unlawful merely to insert them. It enables the consumer to file a lawsuit any place in California where the entity does business. There is a relaxed standard for class certification which does not require the consumer to allege and prove that a class action is superior to any other form of adjudication. The remedies, while expressly cumulative to any others that may be available, contain virtually every monetary and other remedy provided by California law, including special statutory damages for consumers who are elderly or disabled. (Civ. Code § 1780(b).) The statute provides that all of its provisions are to be liberally construed (§ 1760), and prohibits the waiver of any of its provisions by any consumer (§ 1751). No other statute in California, and perhaps in the nation as a whole, creates protections as broad and specific as does the CLRA.

Many significant consumer law decisions in California have properly construed the provisions of the CLRA. *See, e.g.*, *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148; *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429; *Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th 1066; *Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463; *Klussman v. Cross Country Bank* (2005) 134 Cal.App.4th 1283; *Johnson v. Capital One Bank* (2004) 120 Cal.App.4th 942; *Jewett v. Capital One Bank* (2003) 113 Cal.App.4th 805; *Florez v. Linens 'N Things, Inc.* (2003) 108 Cal.App.4th 447; *Shea v. Household Bank (SB)* (2003) 105 Cal.App.4th 85; *Mitchell v. American Fair Credit Assn.* (2002) 99 Cal.App.4th 1345; *Szetela v. Discover Bank* (2002) 97 Cal.App.4th 1094; *In re Providian Credit Card Cases* (2002)

96 Cal.App.4th 292; *America Online, Inc. v. Superior Court* (2001) 90 Cal.App.4th 1; *Prata v. Superior Court* (2001) 91 Cal.App.4th 1128.

In addition, this Court has granted review in *Fairbanks v. Los Angeles County Superior Court (Farmers New World Life Insurance et al., Real Parties in Interest)*, No. S157001, and will hear oral argument on March 4, 2009. *Fairbanks* presents the issue of whether insurance is a "good" or a "service" that is subject to the CLRA. The proper analysis of the reach of the CLRA and whether it authorizes, by its terms, lawsuits seeking injunctive and declaratory relief to protect legal rights in the absence of economic harm or loss, therefore, is critical to millions of consumers in California.

B. This Court's Construction of the CLRA Eviscerated the Statute's Plain Terms and Disregarded the Unambiguous Legislative Intent of the Act.

Amici submit that this Court in its Opinion eviscerated the plain language and reach of the CLRA for several reasons.

The provisions that Sprint inserted into its agreement clearly infringed legal rights under established California law, including many decisions of this Court. The amended complaint alleged that several provisions inserted by Sprint into the consumer contract were unconscionable and illegal because, among other things, they foreclosed access to the public civil justice system, prohibited the right to jury trial, prohibited the right to obtain a classwide adjudication in a suitable proceeding, split the cost of arbitration, allowed Sprint to unilaterally change the terms of the contract, and imposed a 60-day limitation period for initiating billing disputes. (Slip Op. at 2.) Instead of recognizing that these illegal contract provisions are subject to the proscriptions of the CLRA (and their presence in the contracts is a per se conflict with the CLRA's terms), this Court's Opinion characterized the challenge "as a preemptive lawsuit to strike these terms should any dispute arise" because plaintiffs did not allege the existence of a dispute other than the infringement of legal rights. (Slip Op. at 4.) The unambiguous allegations that plaintiffs' legal rights were infringed by the provisions of Sprint's agreement were clear and constitute the requisite "damage" to trigger a valid lawsuit to obtain injunctive and declaratory relief.

Numerous decisions of this Court have held provisions prohibiting classwide adjudication in an arbitral forum to be unconscionable under California law. (*See Discover Bank v. Superior Court* (2005) 36 Cal.4th 148; *Gentry v. Superior Court* (2007) 42 Cal.4th 443.) Decisions of this Court and others have concluded that the preclusion of discovery before arbitration and cost splitting also are unconscionable. (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83; *Circuit City v. Adams* (9th Cir. 2002) 279 F.3d 889; *Grouley v. Yellow Transp., L.L.C.* (D.Colo. 2001) 178 F.Supp.2d 1196; *Mendez v. Palm Harbor Homes Inc.* (2002) 111 Wash.App. 446, 461; *Cole v. Burns Intern Sec. Services* (D.C.Cir. 1997) 105 F.3d 1465, 1484.) Similarly, both this Court and the United States Supreme Court have held that the

stronger party may not insert terms in an adhesion contract that eliminate or limit statutory rights and remedies otherwise available in a public judicial forum. (*See Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th 1066; *Equal Employment Opportunity Commission v. Waffle House, Inc.* (2002) 534 U.S. 279; *Mitsubishi Motors Corp. V. Soler Chrysler-Plymouth, Inc.* (1985) 473 U.S. 614; *Gilder v. Interstate/Johnson Lane Corp.* (1991) 500 U.S. 20.) Finally, while a party may include a provision in an adhesion agreement that allows it to unilaterally change the terms of the agreement, it may not add a new material term to the agreement unless it obtains clear, unmistakable consent by the customer. (*Badie v. Bank of America, N.A.* (1998) 67 Cal.App.4th 779, 803-04.) Preventing challenges to such unconscionable provisions in consumer agreements will only incentivize bad corporate practices in derogation of now established California precedent.

In addition, and significant for the purposes of this case, in both *Badie v. Bank of America* and *Ting v. AT&T* (N.D.Cal. 2002) 182 F.Supp.2d 902, *aff'd in rel. part* (9th Cir.) 319 F.3d 1126, *cert. den.* (2003) 540 U.S. 811, the plaintiffs sought injunctive and declaratory relief against business's attempts to impose mandatory pre-dispute arbitration on millions of their customers.[1] Both lawsuits were brought pursuant to the CLRA and the UCL. In *Badie*, the Court of Appeal held that Bank of America's *attempt*, through a change in terms stuffer, to impose arbitration constituted a breach of the covenant of good faith and fair dealing because there was no attempt to obtain the customer's clear and unambiguous consent to the material new term. In *Ting*, the district court declared that AT&T's *attempt* to impose arbitration and four distinct unconscionable provisions on consumers was unlawful under both the CLRA and the UCL. The injunctive relief it issued was affirmed on appeal.

Crucial to the issue in this case is the fact that in neither *Badie* nor *Ting* was there any attempted enforcement by the corporate entity of the terms of the respective agreements at the time the lawsuits were filed. Rather, both cases involved lawsuits seeking declaratory and injunctive relief because of the alleged corporate attempt to infringe upon the customer's legal rights. Both cases were tried after significant discovery which provided substantial evidentiary proof of the claims and support for the decisions. The statute prohibits the "insertion" of unlawful terms; it does not require a defendant's "enforcement" of the contract or its provisions as a pre-condition for the issuance of injunctive and declaratory relief. Under the reasoning of the Opinion issued by this Court in *Meyer*, neither of those decisions was proper and *Meyer* will no doubt be cited for the proposition that *Badie* and *Ting* are no longer good law. Yet, it is clear from the language of the CLRA that it expressly authorizes a lawsuit to obtain injunctive and declaratory relief to protect against the infringement of the legal rights that are similar, and in

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[1] Examination of the propriety of mandatory pre-dispute arbitration clauses in the insurance setting have also been addressed by this Court in *Engalla v. Permanente Med. Group* (1997) 15 Cal.4th 951 and other cases.

some cases identical, to the precise challenges in the amended complaint in this case. Rehearing should be granted and the Opinion substantially modified to hold, as this Court correctly held in *Kagan v. Gibraltar Savings & Loan Association* (1984) 35 Cal.3d 582, that a consumer suffers "damage" when her legal rights are infringed in a transaction containing unlawful provisions or in a situation when a party inserts unconscionable terms in a contract.

The undeniable consequence of this Court's Opinion in *Meyer* will be to incentivize the very conduct the Legislature sought to prohibit in multiple separate provisions of the CLRA. It will spawn continued adhesion contracts containing unconscionable terms that foreclose access to the public civil justice system. For example, under the Court's reasoning, a plaintiff challenging the unconscionable provisions of a consumer contract will have to wait until a defendant enforces those provisions to have standing under the CLRA. If the plaintiff files in state court, and then gets removed under the federal Class Action Fairness Act (CAFA), Pub. L. No. 109-2, 119 Stat. 4, and then is subject to a motion to compel arbitration, the plaintiff may be unable to build the evidentiary record required to defeat the motion to compel. The plaintiff thus never has an adequate opportunity to have a court hear and rule on his CLRA claim on the merits. (*See, e.g., Green Tree Financial Corp. – Alabama v. Randolph* (2000) 531 U.S. 79 (holding in a 5-4 decision that the plaintiff had failed to meet the burden of establishing a sufficient evidentiary record to demonstrate unconscionability of arbitration clause). Such a result is inimical to the expressed language and intent of the CLRA.

Moreover, the Legislature expressly provided that all the terms of the CLRA, including its liability provisions for including unlawful provisions "intended to result or which result in a transaction" or for "inserting" unconscionable terms in an agreement (Civil Code §§ 1770(a) and (a)(19)), should be interpreted liberally, further indicating that a wholesale substitution of legislative terms is improper. Section 1760 provides: "This title shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection."

This Court in its Opinion acknowledged Section 1760 (Slip Op. at 12), but brushed it aside in a circular argument: The Court stated that liberal construction cannot be used to rewrite a statute where it had already determined that preemptive lawsuits were prohibited. (*Id.*) But this analysis puts the cart before the horse. The *first* question is what do the CLRA's explicit provisions state. The second question is whether those provisions should be given broad or narrow scope. Section 1760 answers that question: they are to be construed liberally. This mandated liberal construction, coupled with the twin provisions prohibiting *either* including unlawful terms in any "transaction intended to result or which results in the sale or lease of goods or services" (Civ. Code § 1770(a)), *or* "inserting an unconscionable provision in the contract" (*Id.*, § 1770(a)), triggers liability. This Court simply, and erroneously, read the word "inserting" out of section (a)(19) and ignored the broad language regarding "transaction" in section 1770(a).

In doing so, it violated the well-established rule this Court reaffirmed just two months ago in *Vasquez v. State of California* (2008) 45 Cal.4th 243, 253.

> In construing . . . any statute, our office is simply to ascertain and declare what the statute contains, not to change its scope by reading into it language it does not contain or by reading out of it language it does. We may not rewrite the statute to conform to an assumed intention that does not appear in its language. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 545)

Indeed, under the reasoning of this Court's Opinion, specific sections of the CLRA are in peril. Several specific prohibitions – for example, misrepresenting the reasons for price decreases, the geographic origin of goods, and the authority of a salesperson or agent to negotiate the final terms of a transaction with a consumer, and the prohibition on the dissemination of an unsolicited prerecorded message by telephone (see Section 1770 (a)(13), (a)(18), (a)(21), and (a)(22)) – would be rendered meaningless without the authority to file suit for injunctive and declaratory relief. This is most striking when considered in the context of section 1780(a)(2), which specifically authorizes injunctive relief and does so without any reference to any damage other than the infringement of a legal right. Because an unlawful business practice under 1770 can expressly be remedied with injunctive relief under 1780, this Court's holding requiring a showing of additional "damage" interdicts the statutory language and does violence to the prescribed legislative scheme.

C. The Opinion's Dismissal of the Basis for Its Seminal Holding in *Kagan v. Gibraltar Savings & Loan Ass'n* Compounds the Improper Narrowing of the CLRA.

In *Kagan v. Gibraltar Savings & Loan Association* (1984) 35 Cal.3d 582, it is undisputed that the plaintiff brought a class action alleging "[t]hat Gibraltar engaged in deceptive practices proscribed by the [CLRA] in falsely advertising that customers would not be charged management fees in connection with Individual Retirement Accounts." (*Id.* at 587.) It is also undisputed that the plaintiff properly and timely notified Gibraltar of its misrepresentations to herself and all members of the class after Gibraltar informed her the fee would be imposed and deducted from her account. Within the thirty day period authorized by Civil Code section 1782, Gibraltar announced that plaintiff's account had not been charged and reimbursed the plaintiff's husband the $15 trustee fee charged in prior years. (*Id.* at 589.) Plaintiff then filed the class action "on behalf of herself and those other persons who had been induced to establish IRA accounts through Gibraltar's alleged false advertising and misrepresentations." (*Id.* at 589.)

This Court held that section 1782 means what it says: unless and until a defendant "has made all remedies appropriate to the notice it has received" (35 Cal.3d at 591), it remains subject

to a class action lawsuit for relief appropriate to the claims of *both* imposing the fee and making the unlawful representations. (*Id.* at 592.) To emphasize the nature and breadth of its holding, this Court stated as follows:

> We thus reject Gibraltar's effort to equate pecuniary loss with the standing requirement that a consumer "suffer[] any damage." As it is unlawful to engage in any of the deceptive business practices enumerated in section 1770, consumers have a corresponding legal right not to be subjected thereto. Accordingly, we interpret broadly the requirement of section 1780 that a consumer "suffer[] any damage" to include the infringement of any legal right as defined by section 1770. (35 Cal.3d at 593 (footnote omitted).)

This was plainly not dictum. It was the fulcrum of the decision that interpreted section 1770 to prohibit unlawful conduct in all of its subsections and confirmed that under the plain language of section 1782(d), a consumer may seek injunctive relief without providing the defendant with any prior notice. (*Id.*)

The statement was central to the discussion by the *Kagan* Court about "the clear legislative intent that prospective defendants under the Act not avert a class action by exempting or 'picking off' prospective plaintiffs one-by-one through the provision of individual remedies." (*Id.*) The Court examined the statute's language, as well as the unambiguous intent of the Legislature.

> Note that section 1782(c) precludes the further maintenance of the action only if *all* the described conditions are shown to exist. Those conditions require settlement with all reasonably identifiable members of the class. The term "maintained" in section 1782(c) was deliberately and carefully chosen just as the term "commenced" was deliberately avoided. *The intent was to make certain that a person can commence a class action 30 days after he has made a demand on behalf of the class even if the merchant has offered to settle his particular claim in accordance with section 1782(b).* An action so commenced may not be maintained, however, if the conditions for settlement with the class have been met. It is evident that construction of section 1782(c) so as to preclude a person from maintaining any action if his particular claim has been settled would destroy class actions under the statute. That most certainly was not the intent of the legislation.

(*Id.* (emphasis added).)

This language, which is essential to the *Kagan* Court's holding, thus cannot be reconciled with this Court's Opinion in *Meyer*. Similarly, the re-writing of legislative intent in *Meyer*

cannot be squared with the construction of this Court's own admonition in *Vasquez* that the Court must interpret the language used and is not free to ignore or substitute for it. Because the statute condemns inserting unlawful terms in a contract and authorizes the remedy of injunction for it, this Court may not superimpose a requirement of economic harm *in addition to* the damage occasioned by the infringement of a legal right. The plaintiffs and class in *Meyer* must be afforded the right to challenge Sprint's insertion of unconscionable terms and seek to enjoin them as the Legislature so clearly authorized them to do.

D. The Opinion's Conclusion About the CLRA's Statute of Limitations Is Erroneous and Must Be Modified.

In its Opinion, this Court pointed to the statute of limitations provisions in the CLRA, Civil Code section 1783, as a basis for concluding that no preemptory challenge was permissible when an individual or entity merely inserts an unlawful provision in an agreement. The Court said that because the three-year statute runs from the date a consumer "discovers" the violation, consumers would be harmed if they were required to file a preemptory challenge. (Slip Op. at 12, citing *Chamberlain v. Ford Motor Co.* (N.D.Cal. 2005) 369 F.Supp.2d 1138, 1148.)

The Opinion is erroneous in this respect as well. Some consumers will "discover" the violation when they read the agreement. Others will not "discover" the violation until it is called to their attention at the time the defendant seeks to "enforce" the agreement against the consumer. The statute of limitations does not begin to run until the date of discovery. In this respect, the CLRA's statute of limitations is no different from accrual of the limitations period for many other California statutes.

III. CONCLUSION

For the foregoing reasons, the Center for Responsible Lending, Consumer Action, Consumer Watchdog, Consumers for Auto Reliability and Safety, The National Association of Consumer Advocates, the National Consumer Law Center, Public Citizen, and United Policyholders respectfully requests this Court to grant the Petition for Rehearing and substantially modify its Opinion in this case.

Respectfully submitted,

THE STURDEVANT LAW FIRM,
A Professional Corporation

By: _____
James C. Sturdevant
Attorneys for *Amici*

EXHIBIT A

AMICI STATEMENTS OF INTEREST

The Center for Responsible Lending

The Center for Responsible Lending ("CRL") is a non-profit, non-partisan research and policy organization dedicated to eliminating abusive financial practices so that low- and moderate-income households can protect their assets and build wealth. It has testified numerous times before Congress and state legislatures, regularly provides written and oral testimony to federal and state regulatory agencies, and has appeared as amicus before many courts.

CRL has offices in California, North Carolina, and the District of Columbia, and is an affiliate of the Center for Community Self-Help, which includes a credit union and a loan fund. The Self-Help Credit Union has $260 million in assets and some 12,700 deposit accounts. Self-Help's loan fund has provided more than $5 billion in financing to help over 50,000 low-wealth borrowers in forty-seven states buy homes, build businesses, and strengthen community resources. CRL's affiliation with Self-Help provides it with important insight into the business needs of financial institutions and the responsibilities of such institutions to their customers and to communities.

Consumer Action

Consumer Action is a non-profit, membership-based organization that was founded in San Francisco in 1971. CA has a national reputation for multilingual consumer education and advocacy in the fields of credit, banking, privacy, insurance and utilities. During its more than three decades, Consumer Action has continued to serve consumers nationwide by advancing consumer rights, referring consumers to complaint-handling agencies through our free hotline, publishing educational materials in Chinese, English, Korean, Spanish, Vietnamese and other languages, advocating for consumers in the media and before lawmakers, and comparing prices on credit cards, bank accounts and long distance services.

Consumer Watchdog

Consumer Watchdog (formerly The Foundation for Taxpayer and Consumer Rights) is a non-profit corporation founded in 1985 to advocate for the rights of policyholders, patients, and ratepayers. A core mission of Consumer Watchdog is to defend, enforce and monitor the implementation of insurance reform Proposition 103 and other consumer protection statutes before the Legislature, administrative agencies, and the courts. Consumer Watchdog's attorneys have represented consumers who are the victims of abusive business practices in numerous actions under the Consumers Legal Remedies Act and the Unfair Competition Law.

Consumers for Auto Reliability and Safety

Consumers for Auto Reliability and Safety ("CARS") is a national, award-winning non-profit auto safety and consumer advocacy organization dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses. CARS is recognized by California lawmakers, legislative analysts, regulators, and the news media as representing the interests of California motorists.

CARS has spearheaded enactment of numerous landmark measures to protect California consumers that were signed into law by governors from both major political parties. The President of CARS served as a public member on a Federal Trade Commission panel to negotiate regarding possible federal preemption of state consumer protection laws. The United States Congress has repeatedly invited the President of CARS to testify regarding policies affecting consumers, on behalf of American consumers.

The National Association of Consumer Advocates

The National Association of Consumer Advocates ("NACA") is a nationwide, nonprofit corporation with over 1,000 members who are private and public sector attorneys, legal services attorneys, law professors, law students and non-attorney consumer advocates, whose practices or interests primarily involve the protection and representation of consumers. Its mission is to promote justice for all consumers. NACA is dedicated to the furtherance of ethical and professional representation of consumers. Its *Standards And Guidelines For Litigating And Settling Consumer Class Actions* may be found at 176 F.R.D. 375 (1998).

About 150 of NACA's members are California consumer attorneys or non-attorney advocates who regularly represent and advocate for consumers residing in California. Included within these cases are numerous cases brought under California's state statutes against financial institutions, including nationally-chartered banks. Therefore, NACA has a substantial interest in resolution of the issues raised by this case. NACA believes that additional briefing will be helpful to the Court on matters not fully addressed by the parties themselves.

The National Consumer Law Center

The National Consumer Law Center ("NCLC") is recognized nationally as an expert in consumer credit issues, and has drawn on this expertise to provide information, legal research, policy analyses and market insights to federal and state legislatures, administrative agencies and the courts for over 40 years. A major focus of NCLC's work has been to increase public awareness of, and to promote protections against, unfair and deceptive practices perpetrated against low-income and elderly consumers. NCLC publishes a eighteen-volume Consumer Credit and Sales Legal Practice Series, including, *inter alia*, *Unfair and Deceptive Acts and Practices* (7th ed. 2008). NCLC frequently is asked to appear as *amicus curiae* in consumer law cases before trial and appellate courts throughout the country and does so in appropriate circumstances.

Public Citizen

Public Citizen is a national, nonprofit consumer advocacy organization founded in 1971 to represent consumer interests in Congress, the executive branch and the courts. Public Citizen fights for openness and democratic accountability in government; for the right of consumers to seek redress in the courts; for clean, safe and sustainable energy sources; for social and economic justice in trade policies; for strong health, safety and environmental protections; and for safe, effective and affordable prescription drugs and health care.

United Policyholders

United Policyholders ("UP") is a non-profit consumer organization founded in 1991 that helps solve insurance problems and advocates for integrity in the insurance system. The financial security that insurance policies provide is critical to consumers and is an integral part of the fabric of our economy and our society.

United Policyholders work is divided into three program areas: Roadmap to Recovery, offering resources to help policyholders navigate and resolve large loss claims, Roadmap to Preparedness, promoting disaster preparedness, insurance literacy and personal financial preparedness, and Amicus Project/Advocacy advancing the interests of insurance consumers in courts of law, legislative and other public policy forums, and in the media. UP monitors the national insurance marketplace with a particular focus on California and areas impacted by natural disasters.

United Policyholders has appeared as *amicus curiae* in over two hundred and forty cases throughout the United States, including numerous cases in the California courts. Arguments from our amicus curiae brief were cited with approval by the California Supreme Court in *TRB Investments, Inc. v. Fireman's Fund Ins. Co.*, 145 P.3d 472 (Cal. 2006) *Vandenburg v. Superior Court*, 982 P.2d 229 (Cal. 1999), *Watts Industries, Inc. v. Zurich American Insurance Co.*, (2004) 18 Cal. Rptr.3d 61, and *Julian v. Hartford*, (2005) 35 Cal.4th 747. United Policyholders has appeared as *amicus curiae* in the United States Supreme Court. *See, e.g., Metlife v. Glenn, Campbell v. State Farm, FL Aerospace v. Aetna Casualty and Surety Co.*, and *Humana, Inc. v. Forsyth* in which United Policyholders' brief was cited in the published opinion at 525 U.S. 299 (1999).

PROOF OF SERVICE

I, the undersigned, declare that I am a citizen of the United States, over the age of 18 years, employed in the City and County of San Francisco, California, and not a party to the within action. My business address is 354 Pine Street, Fourth Floor, San Francisco, California 94104.

On February 19, 2008, I caused the document entitled below to be served on the parties in this action listed below by placing true and correct copies thereof in sealed envelopes and causing them to be served, as stated:

Letter to The Honorable Ronald M. George, Chief Justice And the Honorable Associate Justices of the California Supreme Court In Support of Petition for Rehearing

By U.S. Mail:

I am readily familiar with The Sturdevant Law Firm's practice for collection and processing of documents for ***mailing*** with the ***United States Postal Service***, being that the documents are deposited with the United States Postal Service with postage thereon fully prepaid the same day as the day of collection in the ordinary course of business. The parties listed below are being served today by U.S. Mail.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on February 19, 2008, at San Francisco, California.

Béla Nuss