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April 3, 2013

Via facsimile to (619) 645-2495

Hon. Judith McConnell, Presiding Justice
Hon. Judith L. Haller, Associate Justice
Hon. Alex C. McDonald, Associate Justice
Court of Appeal of California
Fourth Appellate District, Division 1
Symphony Towers
750 B Street, Suite 300
San Diego, California 92101

**RE: Request for Publication of *Ramirez v. Balboa Thrift and Loan*,
No. D060057, Opinion Filed March 21, 2013**

Dear Presiding Justice McConnell and Associate Justices Haller and McDonald:

Consumers for Auto Reliability and Safety, National Consumer Law Center, and Public Good Law Center respectfully request that the Court certify the above-referenced opinion for publication.¹ The opinion cogently analyzes the requirements for class certification based on an Unfair Competition Law (Bus. & Prof. Code § 17200) claim incorporating the Rees-Levering Motor Vehicle Sales and Finance Act (Civ. Code § 2981 et seq.), and clarifies important aspects of both substantive and procedural law. Its publication would be of significant benefit to California consumers.

The opinion readily meets the standards for publication set forth in the California Rules of Court. An opinion may be published if, among other possible reasons, it (1) “establishes a new rule of law,” (2) “applies an existing rule to a set of facts significantly different from those stated in published opinions,” or (6) “involves a legal issue of continuing public interest.” (Calif. Rules of Court, rule 8.1105, subds. (c)(1), (2), (6).) The Court’s decision satisfies these criteria.

The Court correctly held that Balboa Thrift and Loan was not entitled to assert a fraud defense to the UCL claim alleged by class members because the assertion was unfounded, made without any proof and, crucially, made after the 60 days allowed under Civil Code section 2983.3(b). The opinion clarifies that a creditor cannot determine whether a buyer is entitled to reinstatement, and notify the buyer of the decision or assert any statutory exceptions, after the 60-day notice period after repossession has passed.

To our knowledge, no court has previously determined, in a Rees-Levering case, whether finance companies may maintain an affirmative defense claiming material representations in the

credit application after the statutory 60-day period has expired. Further, no court – until now – has reconciled the potential conflict between Civil Code sections 2983.2(a) and 2983.3. The opinion merits publication for resolving these two outstanding issues. Indeed, without a published opinion, they will remain unresolved.

A published opinion will also benefit the general public by helping reduce the risks millions of California car buyers face when they enter into retail installment contracts with auto dealers to purchase new or used vehicles. For most consumers, especially in California, a vehicle is (after a home) the second-largest purchase they make, and is essential in order to get to work, convey children to school, and access medical care and other necessities of life. When vehicles are repossessed, the state has a strong interest in ensuring that consumers are provided a fair and reasonable opportunity to reinstate the contract before they lose their jobs and enter a potentially ruinous economic spiral.

Publication of the opinion would make available a careful treatment of the law that would be of distinct benefit to future courts and litigants. Specifically, the opinion holds that creditors retain rights to bring affirmative claims, such as fraud, against buyers only during the applicable limitations period. That very cogent conclusion will ensure that class certification will not be denied when the creditor's NOI was insufficient regarding the buyers' reinstatement rights. More broadly, the opinion is an excellent scholarly discussion of the statutory exceptions under section 2983.3 that both summarizes the case law and discusses the fine distinctions inherent in the law—a treatment which will be helpful to judges and attorneys alike. Given the court rule favoring publication, this case readily merits joining the official reports.

Thank you very much for considering this request.

Respectfully submitted,

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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. For more than two decades and under four different governors, CARS has spearheaded enactment in California of landmark laws to protect car buyers, including laws to curb auto lending abuses such as dealer markups on the interest rates on car loans. CARS has also helped to obtain relief – including forgiveness of deficiencies – for thousands of vehicle owners whose vehicles were illegally repossessed and sold without their being able to reinstate the loans. The United States Congress has repeatedly invited the president of CARS to testify on behalf of the public interest regarding auto safety practices, flood and salvage car fraud, and auto sales and lending scams. CARS has received numerous awards in recognition of its consumer work for consumers, including the nation's highest honors for consumer advocacy organizations.

National Consumer Law Center (NCLC) is a public interest, non-profit law office established in 1969 and incorporated in 1971. It is a national research and advocacy organization focusing specifically on the legal needs of low income, financially distressed and elderly consumers. NCLC devotes special attention to vulnerable populations, including immigrants, elders, homeowners, former welfare recipients, victims of domestic violence, military personnel and others, on a wide variety of consumer issues. NCLC publishes a series of consumer law manuals that the *ABA Journal* has called the “standard reference set,” including volumes on Consumer Class Actions (7th ed. 2010) and Repossessions (7th ed. 2010). The Court’s opinion in this case would make a welcome addition to those volumes.

Public Good Law Center (Public Good) is a public interest organization dedicated to the proposition that all are equal before the law. Through *amicus curiae* participation in cases of particular significance for consumer protection and the preservation of a fair marketplace before the U.S. Supreme Court, the California Supreme Court, and federal and state appellate and trial courts around the nation, Public Good seeks to ensure that the protections of the law remain available to everyone – including those seeking redress for illegal auto lending practices.