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VIA TRUEFILING

The Honorable Chief Justice Patricia Guerrero
and Associate Justices
Supreme Court of California
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797

Re: Response in Support of State Farm's Request for Depublication of Opinion
Levon Nargizyan v. State Farm General Insurance Company
Los Angeles Superior Court Case No. 21STCV32834
2DCA Case No. B342340

Dear Chief Justice Patricia Guerrero and Associate Justices:

Pursuant to California Rules of Court Rule 8.1125(b), the Chamber of Commerce of the United States of America ("U.S. Chamber") and the California Chamber of Commerce ("CalChamber") (collectively, "Amici") submit this letter in support of State Farm's July 13, 2026 Request for Depublication of the Court of Appeal's April 15, 2026, opinion in *Nargizyan v. State Farm General Insurance Co.* (2026) 120 Cal.App.5th 581, 2DCA Case No. B342340.

I. Interest of Amici

The U.S. Chamber is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

CalChamber is a non-profit business association with approximately 11,000 members, both individual and corporate, representing 25% of the state's private sector workforce and virtually every economic interest in the state of California. While CalChamber represents several of the largest corporations in California, 70% of its members have 100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory and legal issues.

Amici have a significant interest in the depublication of the lower court's opinion in *Nargizyan*. The opinion incorrectly applied the managing-agent standard, exposing California's businesses to enormous punitive damages for the actions of low-level employees. If that opinion remains published, future plaintiffs will likely invoke it to seek punitive damages against companies based on decisions by employees with minimal supervisory authority. Businesses in California should not be under constant fear that any decision by such an employee could result in a massive punitive damages award. Amici thus support depublication of the opinion in *Nargizyan*.

II. The Court of Appeal Misapplied California's "Managing Agent" Test.

"The entire basis of the doctrine of vindictive [punitive] damages is that the *person,* himself, *who is sued* has been guilty" such that punishment serves as a "warning to the individual." (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 569 [quoting *Warner v. Southern Pacific Co.* (1896) 113 Cal. 105, 112] alteration and emphasis in original.) Consequently, this Court places "emphasis on the limited role and deterrent purpose of punitive damages awards: 'to punish wrongdoers and thereby deter the commission of wrongful acts.'" (*Id.* at p. 575 [quoting *Neal v. Farmers Ins. Exch.* (1978) 21 Cal.3d 910, 928, fn. 13].). As such, it is "improper ordinarily to award punitive damages against one who himself is personally innocent and therefore liable only vicariously." (*Id.* at p. 570 [quoting *Restatement (Second) of Torts*, § 909, com. b, p. 468]; see also *Warner*, supra, 113 Cal. at p. 112 ["to inflict further damages as a punishment for something which [the defendant] did not do, would be to allow a gross outrage not sanctioned by any principle of justice."].)

Given the narrow purpose of punitive damages, the California Legislature has held that such damages are appropriate in the corporate context only when the wrongful acts were committed by a "managing agent of the corporation." (Civ. Code, § 3294, subd. (b).) A managing agent is not simply any employee with supervisory responsibilities. (*White*, supra, 21 Cal.4th at p. 573.) Instead, this Court has held that "managing agents" are "corporate employees who exercise substantial independent authority and judgment in their corporate decisionmaking so that their decisions ultimately determine corporate policy." (*Id*. at pp. 566–67; *see* also *Mitri v. Walgreen Co.* (9th Cir. 2014) 566 Fed.Appx. 606, 607 [quoting *White*, supra, 21 Cal.4th at pp. 566–67].). For purposes of the managing agent standard, corporate policies are "formal policies that affect a substantial portion of the company and that are the type likely to come to the attention of corporate leadership." (*Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 715; see also *Mitri*, supra, 566 Fed.Appx. at p. 607 [quoting *Roby*, supra, 47 Cal.4th at p. 715].)

This Court has identified several factors for determining whether an employee is a managing agent. These include whether the employee holds "authority to establish or change the company's business policies," or is able to "act independently of" "other employees and . . . the human resources department." (*White*, supra, 21 Cal.4th at pp. 574, 577; see also *Marlo v. United Parcel Service, Inc.* (9th Cir., 2015) 600 Fed.Appx. 551, 551 [asking whether the employee "maintain[s] a company 'culture'—in essence, a company policy"]; *Mitri*, supra, 566 Fed.Appx. at p. 607 [asking whether employee "approve[s] of decisions contrary to corporate policy"].). An employee is thus a managing agent when, for example, the employee establishes a policy of retaliatory firing or overrides a company's progressive discipline policy. (*White*, supra, 21 Cal.4th at p. 577; *Colucci v. T-Mobile USA, Inc.* (2020) 48 Cal. App. 5th 442, 454.)

Here, however, the Court of Appeal concluded that there was a triable issue of fact as to whether a manager who merely had "supervisory authority" to approve or deny claims was a managing agent. (Op. at pp. 34–35.) Plaintiff had submitted a water loss claim to State Farm under his homeowners insurance policy, State Farm investigated and ultimately denied the claim, and Plaintiff offered evidence that such denial was done at the direction of a claims team manager. (Op. at pp. 3, 4–6, 34.) The trial court granted State Farm summary judgment, Op. at p. 12, but the Court of Appeal determined that because the claims team manager ensured that employees "comply with [State Farm's] standard claims processes" and "apply [its] guidelines," a jury could find her a managing agent. (Op. at pp. 34–35.) That conclusion cannot be squared with this Court's precedent. Unlike the managing agents in *White* and *Colucci*, the claims team manager here was simply *following* corporate policy—not setting it. The Court of Appeal's opinion wrongly suggests that supervisory authority alone can satisfy California's managing agent standard. *Ibid.* The opinion should thus not be allowed to stand as published precedent.

III. If Allowed To Stand, The Court of Appeal's Opinion Would Leave California Businesses in Constant Fear of Excessive Punitive Damage Awards.

The opinion below should be depublished not only because it is wrong under this Court's precedent, but also because it will cause significant mischief. If the opinion remains precedential, California businesses of all sizes can expect plaintiffs to increasingly invoke it to seek punitive damages based on managing-agent liability—even when the "managing agent" is a non-executive employee who merely enforces existing company policy. Large businesses like State Farm have hundreds of mid-level managers who, under *Nargizyan*'s standard, could all be considered "managing agents" so long as they possess some supervisory authority. This leaves companies at risk of punitive damages for even ordinary, run-of-the-mill decisions by any of these many managers. And given the fact-intensive nature of Section 3294 claims, it will be difficult to defeat punitive damages claims on the pleadings or at summary judgment whenever the relevant employee exercises any type of supervision. *See White*, supra, 21 Cal.4th at p. 567 (managing agent test is a "question of fact for decision on a case-by-case basis"). The standard adopted in *Nargizyan* thus gives plaintiffs significant leverage to extort settlements from companies based not on the merits of their claims, but instead on the risk of punitive damages and potential litigation costs.

Nargizyan also leaves vulnerable California's small, locally-owned businesses. Though small businesses may have fewer layers of management, many still employ managers and supervisors who do not set company policy. For example, the owner of a local restaurant may hire shift managers to supervise other employees, but that limited supervisory authority does not confer any general policy-making authority. Small businesses, like big companies, rely on their employees' exercise of supervisory authority for operations to run smoothly. But they should not be at risk of punitive damages based solely on the conduct of lower-level employees. Indeed, the threat of punitive damages, which could trigger bankruptcy for many small businesses, would induce many businesses to settle even meritless cases. And if plaintiffs' attorneys use this expansive standard to target vulnerable businesses and extort settlements, California businesses and consumers will suffer. This Court should thus intervene to prevent the opinion in *Nargizyan* from being weaponized against California's business community.[1]

IV. Conclusion

The Court of Appeal's April 15, 2026 opinion in *Nargizyan* misapplied this Court's precedent and poses a substantial risk to businesses across California. Accordingly, the Court should order the opinion depublished. A depublication order would not disturb the judgment below. The parties would still proceed to trial following remand, and the Court of Appeal's opinion would remain binding on the parties as law of the case. Meanwhile, courts in *other cases* would continue to apply the managing-agent standard this Court has previously established. All depublication would do is remove a citable misstatement of that standard. That is precisely the type of situation where depublication under Rule 8.1125 is appropriate.

Sincerely,

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[1] Both Plaintiff-Appellant and its amici Consumer Attorneys of California accuse State Farm of taking inconsistent positions in the Court of Appeal and in this Court. But even if that were true (which it is not), the U.S. Chamber and CalChamber did not take any position on publication in the Court below, and the concerns they highlight here independently warrant depublication.