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Date: April 24, 2017

To: The Honorable Bill Dodd
Member, California State Senate

From: Rex D. Frazier, President
Michael A. Gunning, Vice President
Kara Cross, General Counsel
Ross Buckley, Legislative Advocate

**RE: SB 33 (Dodd) – OPPOSE UNLESS AMENDED
CORRECTION to Sacramento Bee Editorial**

In response to today's Sacramento Bee editorial, we write to correct the statement that PIFC has agreed to amendments with the Consumer Attorneys of California (CAOC), sponsors of SB 33. The Personal Insurance Federation of California (PIFC) is still in opposition to SB 33, unless it is amended to specifically and narrowly prevent the enforcement of arbitration agreements in a Wells Fargo scenario.

The amendments offered to your office by PIFC are re-attached to this letter.

Unfortunately, our proposed amendments have been revised by CAOC to significantly change the intent of our proposed language - **PIFC strongly opposes CAOC's revisions to our amendments.**

While, the CAOC have mischaracterized their changes as "very minor drafting changes"; the reality is the impact is significant and will have a much broader impact on arbitration agreements.

We believe our amendments, as drafted, directly address the Wells Fargo scenario, while preventing unintended outcomes – such as costly class action litigation that does not ultimately benefit consumers.

We request an immediate meeting with you to discuss the direction of this bill. In the meantime, we respectfully remain **OPPOSED UNLESS AMENDED to SB 33.**

If you have any questions regarding PIFC's position, please contact Kara Cross, PIFC General Counsel at (916) 442-6646 or kcross@pifc.org

cc: Members of the Legislature

Proposed amendment to SB 33 (Dodd)

Strike lines 1-32, page 2 and lines 1-17, page 3 and subdivision (d) is added to Code of Civil Procedure, section 1281.2 to read as follows:

On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:

- (a) The right to compel arbitration has been waived by the petitioner; or
- (b) Grounds exist for the revocation of the agreement.

(c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact. For purposes of this section, a pending court action or special proceeding includes an action or proceeding initiated by the party refusing to arbitrate after the petition to compel arbitration has been filed, but on or before the date of the hearing on the petition. This subdivision shall not be applicable to an agreement to arbitrate disputes as to the professional negligence of a health care provider made pursuant to Section 1295.

If the court determines that a written agreement to arbitrate a controversy exists, an order to arbitrate such controversy may not be refused on the ground that the petitioner's contentions lack substantive merit.

If the court determines that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies.

If the court determines that a party to the arbitration is also a party to litigation in a pending court action or special proceeding with a third party as set forth under subdivision (c) herein, the court (1) may refuse to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order arbitration among the parties who have agreed to arbitration and stay the pending court action or special proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the outcome of the court action or special proceeding.

(d) The petitioner seeks to apply a written agreement to arbitrate, contained in a contract consented to by a consumer, to a contractual relationship with that consumer created fraudulently by the petitioner without the consumer's consent and by unlawfully using the consumer's personal identifying information as defined in Section 1798.92.