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November 19, 2007

Via Messenger

Request for Publication (Rule 8.1120)

Honorable Justices
California Court of Appeal
Fourth Appellate District, Division Three
925 N. Spurgeon Street
Santa Ana, California 92701-3724

Re: *Rashidian v. Nasre*
Docket No. G037206

Honorable Justices,

We represent non-parties State Farm General Insurance Company and related State Farm entities ("State Farm"), The Personal Insurance Federation of California ("PIFC"), and The American Insurance Association ("AIA"). We write requesting that this Court publish its October 29, 2007 opinion in this matter or, in the alternative, publish the decision with the exception of Section II of the Discussion Section.

State Farm and its related entities are one of the largest insurers in California. PIFC is a non-profit insurance trade association dedicated to representing its member companies' interests before governmental bodies, including the California Legislature, the Insurance Commissioner and California courts. PIFC's members are insurers specializing in personal lines insurance, primarily private passenger automobile and homeowners insurance, in California and elsewhere. In addition, the National Association of Mutual Insurance Companies ("NAMIC") is an association member of PIFC. PIFC's members account for approximately 48.7 percent of all personal lines insurance sold in California. AIA is a national trade association representing more than 435 property and casualty insurers that write insurance in every jurisdiction in the United States. U.S. premiums for AIA member companies exceed \$120 billion annually. AIA member companies offer all types of property and casualty insurance, including personal and commercial motor vehicle insurance, commercial property and liability coverage, workers' compensation, homeowners' insurance, medical malpractice coverage and product liability insurance. AIA companies, for personal and commercial lines of business, in California write over \$17 billion in premiums, comprising more than 28 percent of the insurance market. Thus, State Farm, PIFC and AIA all have a significant interest in matters effecting litigation within California.

This Court's decision is worthy of publication under Rule 8.1105(c) because of its correct interpretation of the Second Appellate District's decision in *Parkview Villas Assn., Inc. v. State Farm Fire & Cas. Co.* (2005) 133 Cal.App.4th 1197, 1212 ("*Parkview*"). Undersigned counsel was counsel of record for State Farm in *Parkview* and is intimately familiar with that decision and the confusion *Parkview* has created among practitioners and in the trial courts.

As this Court explained in *Rashidian*, in *Parkview*, the Second Appellate District held that procedural defects in an opposing party's separate statement may be corrected by granting a continuance to allow the opposing party to submit a corrected separate statement. (Slip op. at p. 7.) However, since its publication, there has been confusion whether a continuance under *Parkview* is mandatory or remains within the trial court's discretion. This Court in *Rashidian* correctly interpreted *Parkview* and held that this decision remains in the trial court's discretion and, on appeal, the trial court's decision will be reviewed under an abuse of discretion standard. (Slip op. at p. 7.) We submit that this is the correct interpretation of *Parkview*, since the trial court's discretion to grant summary judgment when an opposing party submits a defective separate statement is statutorily conferred by the Legislature in subdivision (b)(3) of Code of Civil Procedure section 437c. Although *Parkview* has been cited seven times in published decisions, no case prior to *Rashidian* has addressed the precise issue of whether the continuance is mandatory or discretionary under *Parkview*.

As lawyers who practice in both the trial courts and appellate courts in this state, we have observed first-hand the confusion and gamesmanship created by *Parkview*. We have also seen trial courts struggle with deciding whether a continuance under *Parkview* is mandatory or discretionary. This confusion, we believe, is confirmed by the fact that according to a *Shepard's* search conducted on Lexis, *Parkview* has been cited in 72 separate appellate briefs in the two years since its decision – a rather remarkable number given that *Parkview* deals exclusively with procedural issues.

The issue of how a trial court should respond when confronted with a defective separate statement is one of continuing controversy. As the *Parkview* court itself noted, "it is not possible to reconcile the various approaches (at least four) articulated by the courts of appeal when confronted with issues arising from a party's attempt to rely on evidence not cited in its separate statement to support or defeat summary judgment." (*Parkview, supra*, 133 Cal.App.4th at p. 1213, fn.10.) Publication of *Rashidian* will assist both members of the Bar and trial courts in addressing the issues created when an opposing party submits a defective separate statement.

Accordingly, *Rashidian* meets the criteria for publication under subdivision (c) of Rule 8.1105 and we ask that the entire opinion be published. In the alternative, the entire decision should be published with the exception of Section II of the Discussion Section.

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California Court of Appeal
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A copy of this letter has been served on all counsel of record, as shown by the attached proof of service.

We thank the Court for its attention to this matter.

Very truly yours,

ROBIE & MATTHAI
A Professional Corporation
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Steven S. Fleischman

LHB Pacific Law Partners, LLP
Clarke B. Holland



Steven S. Fleischman
Attorneys for non-parties State Farm
General Insurance Company, The Personal
Insurance Federation of California and The
American Insurance Association

cc: Counsel of Record

PROOF OF SERVICE

I declare that I am over the age of eighteen (18) and not a party to this action. My business address is 500 South Grand Avenue, 15th Floor, Los Angeles, CA 90071-2609.

On November 19, 2007, I served the foregoing document(s) described as:

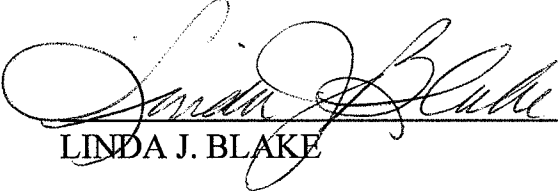
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on all interested parties in this action by placing a true copy of each document, enclosed in a sealed envelope addressed as follows:

See Attached Service List

(X) **BY MAIL:** as follows: I am "readily familiar" with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed and, with postage thereon fully prepaid, placed for collection and mailing on this date in the United States mail at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on November 19, 2007, at Los Angeles, California.


LINDA J. BLAKE

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