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July 13, 2026

VIA TRUEFILING

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

Re: **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(a)(1), State Farm General Insurance Company ("State Farm") respectfully requests depublication of the Court of Appeal's April 15, 2025 opinion in *Levon Nargizyan v. State Farm General Insurance Company* (2025) __ Cal.App.5th __, 2DCA Case No. B342340, in which State Farm was the respondent. If *Nargizyan* remains a published decision, it will create confusion among California courts and litigants because it directly conflicts both with this Court's precedent relating to (1) interpretation of an insurance contract, as set out in *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807 and *Another Planet Entertainment, LLC v. Vigilant Ins. Co.* (2024) 15 Cal.5th 1106 and (2) the "managing agent" element of a punitive damages claim as set out in *White v. Ultramar* (1999) 21 Cal.4th 563 and *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686.

1. The *Nargizyan v. State Farm* Decision

Nargizyan involves an insurance contract dispute. The parties asked the trial court to determine whether Nargizyan's homeowners insurance policy issued by State Farm provided coverage for a water loss that resulted from a pinhole leak in a crawlspace pipe. The relevant insurance policy excludes losses caused by "f. continuous or repeated seepage or leakage of water or steam from a: … (3) plumbing system … which occurs over a period of time." The trial court granted summary judgment in State Farm's favor, but the court of appeal reversed.

Notwithstanding undisputed factual evidence regarding the nature of the leak and the extent of water damage, the court of appeal found a triable issue as to whether the exclusion applied by misapplying black-letter rules of contract interpretation.[1] The court of appeal: (1) equated argument of counsel with interpretive intent preempting the contract terms (Opinion, p. 16) (applying what it characterized as the "mutual interpretation of the policy language set forth in their respective summary judgment briefs"), (2) found forfeiture of a plain language contract interpretation argument based on a failure to offer extrinsic evidence supporting it in the trial court, even though no forfeiture of a plain language argument could exist here under applicable law (Opinion, p. 16 n.6), and (3) appeared to import both a "long term" limitation and an evidentiary duration burden on the insurer not included in the policy or supported by prior judicial constructions of the same or similar policy terms (Opinion, p. 16 n. 6, 23).

The Court also reversed summary judgment on the punitive damages claim on the ground that evidence of an employee's tenure at a company, discretion to make coverage determinations on individual insurance claims, and decision to deny coverage for Nargizyan's claim, could meet the "managing agent" test under California law. (Opinion, p. 35.)

2. The Court of Appeal's Decision to Publish

Nargizyan was initially an unpublished decision. However, following requests for publication from Nargizyan and *twenty others* with a plaintiff's-side bias—from plaintiff's lawyers, to public adjusters, to organizations representing policy-holders—the court of appeal decided to publish its opinion. As explained below, there is a reason that so many plaintiff's-affiliated law firms and organizations sought publication: *Nargizyan* is an outlier, and is wrong.

It presumably will be used by those who sought its publication to evade the plain language of an insurance contract, pursue punitive damages in contravention of this Court's decisions, and avoid proper summary judgment in not only insurance coverage disputes, but in any case involving a corporate defendant where punitive damages are sought based on conduct of lower-level, non-executive employees. Leaving *Nargizyan* in place will result in more confusion among trial courts and more risk that the Court's decisions will be misapplied. And that will lead to (1) more trials where summary judgment would be appropriate under this Court's decisions, further burdening the state's limited judicial resources, and (2) more pressure on corporate defendants to settle claims—not based on legal merit, but on risk that this Court's decisions will continue to be misapplied.

[1] The undisputed record showed that so much water escaped the pinhole leak that it saturated crawlspace building materials, saturated subflooring above those crawlspace building materials, and saturated cement and hardwood flooring above the subfloor, such that the hardwood and tile flooring throughout multiple rooms needed to be replaced. (Opinion, pp. 2-4). Even days after the pinhole leak was discovered, Nargizyan's water mitigation vendor reported seeing water in the dirt crawlspace 1.75" deep. (Opinion, pp. 3-4).

3. Reasons for Depublication

"There are no fixed criteria for depublication, but it most often occurs because a majority of the justices believe the opinion is wrong on a significant point." (Cal. Prac. Guide Civ. App. & Writs (The Rutter Group 2025) Ch. 11-F [citing Grodin, *The Depublication Practice of the California Supreme Court* (1984) 72 Cal.L.Rev. 514, 515].) Depublication may also be appropriate where the court of appeal's "analysis was too broad and could lead to unanticipated misuse as precedent." (*Ibid.*) Both of those factors exist here.

a. *Nargizyan*'s Contract-Interpretation Analysis Conflicts with This Court's Long-standing Precedent on Insurance Policy Interpretation

California courts must interpret a contract according to the parties' "mutual intention … at the time the contract is formed …." (*AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 822.) "If possible, we infer this intent solely from the written provisions of the insurance policy. [Citation.] If the policy language is clear and explicit, it governs." (*Another Planet Entertainment, LLC v. Vigilant Ins. Co.* (2024) 15 Cal.5th 1106, 1135-36.)

The Opinion did not find any ambiguity in the policy terms, and thus should have considered only the plain language of the policy. Instead, it applied what it found to be the "mutual interpretation of the policy language set forth in their respective summary judgment briefs" in the trial court to interpret the policy language. (Opinion, p. 16). Argument of counsel, however, does not equate with policy terms, and argument of counsel is not evidence. (*Beagle v. Vasold* (1966) 65 Cal.2d 166, 176 ["It is undeniable that the argument of counsel does not constitute evidence."].)

Building from this erroneous foundation, the Opinion then appears to read into the policy, at Nargizyan's insistence, a "long term" limitation, *i.e.*, that leakage or seepage must be "long term" in order for the exclusion to apply. (Opinion, p. 16, fn. 6.) The "long term" limitation, however, does not appear in the State Farm policy language or in prior judicial constructions of similar language. Applicable interpretive standards do not permit importing into an unambiguous agreement or language found nowhere within it. (*Certain Underwriters at Lloyd's of London v. Superior Ct.* (2001) 24 Cal.4th 945, 960 ["we do not rewrite any provision of any contract, including the standard policy underlying any individual policy, for any purpose]; *Vons Companies, Inc. v. United States Fire Ins. Co.* (2000) 78 Cal.App.4th 52, 59 ["We do not have the power to create for the parties a contract that they did not make and cannot insert language that one party now wishes were there."].)[2]

[2] Even worse, the opinion concluded that State Farm forfeited its right to challenge Nargizyan's attempt to read language into the policy that does not appear in the policy because State Farm did not offer extrinsic evidence supporting its policy interpretation. (Opinion, pp. 16-17, n. 6.) This makes little sense under the applicable interpretive standards because the plain language argument State Farm proffered turned on the policy language, not extrinsic evidence.

By applying an incorrect contract interpretation framework, the Opinion risks confusion among trial courts across contract disputes. As a matter of logic and law, forfeiture of a plain language argument based on a failure to offer extrinsic evidence supporting it belies the very nature of a plain language argument. The same is true of the Opinion's suggestion of a policy limitation that the contracting parties did not include and that prior decisions interpreting similar language did not import.

b. <u>The Opinion Creates Confusion and Conflict with Existing Case Law Interpreting Similar Exclusionary Language</u>

The Opinion's suggestion that an insurer must demonstrate the precise duration of a leak in order for the exclusion to apply, when no leak duration is specified in the policy language, will also create confusion in the law. (Opinion, pp. 16, 23.) On this issue, the Opinion conflicts with prior judicial construction of similar policy terms and should be depublished for that reason. (*Bartlome v. State Farm Fire & Casualty Co.* (1989) 208 Cal.App.3d 1235, 1239.)

In particular, the court in *Freedman v. State Farm Ins. Co.* (2009) 173 Cal.App.4th 957, found a similar exclusion applicable based on the nature of the leak and the extent of damage, regardless of its precise duration. Even with uncertainty regarding precise duration of the leak, the court applied the exclusion as a matter of law: "Given the small size of the hole(s) through which the water leaked, and given the extensive amount of water damage. . ., the leak must have lasted a sufficiently long time, or stopped and started sufficiently many times, to count as 'continuous' or 'repeated' under any reasonable construction of those terms." (*Id.* at p. 964; see also *Brown v. Mid-Century Ins. Co.* (2013) 215 Cal.App.4th 841 ["[A]lthough there may be, at the quantum level, some ambiguity in the concept of 'a period of time', an average layperson understands generally what 'a period of time' is."]; accord *Mojica v. State Farm General Ins. Co*. (S.D. Cal. 2024) 735 F. Supp. 3d 1247, 1257, *aff'd* (9th Cir. Dec. 11, 2025) 2025 WL 3553034 [regardless of whether the leak occurred for 42 days or 5.8 days, "a consistent leak of this type is, as a matter of law, 'continuous' or 'repeated,' not a sudden one-time flood of water that would be covered under this type of insurance contract."].)

The Opinion here applies the wrong legal framework to reach a result in tension with *Freedman* and *Brown*, to the fanfare of the plaintiff's-side insurance bar. As noted above, the Court of Appeal in *Nargizyan* rewrote the State Farm policy to add a policy limitation that does not appear in the policy. In so doing, the Opinion creates a conflict with *Freedman* and *Brown*, which interpret the same or similar language to distinguish between sudden versus gradual and continuous leaks, without importing a specific duration limitation. By creating unnecessary tension with *Freedman* and *Brown*, leaving the Opinion in place risks further incorrect application of the contract interpretation framework set by this Court across contract disputes.

c. *Nargizyan*'s Application of the "Managing Agent" Test Conflicts with This Court's Opinions

In *White v. Ultramar* (1999) 21 Cal.4th 563, 573, 577 the Court held that a "managing agent" for purposes of imposing punitive damages on a corporate employer under Civil Code section 3294 is someone who "exercise[s] substantial independent authority and judgment in their corporate decision-making so that their decisions ultimately determine corporate policy." The Court rejected a broader reading of "managing agent" imposing punitive damages where the employee was a mere supervisory employee. (*Id*. at p. 573.) In *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, 715, the Court applied and clarified its holding in *White*: "When we spoke in *White* about persons having 'discretionary authority over … corporate policy' [citation], we were referring to 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,* 47 Cal.4th at pp. 714-15.) The *Roby* Court held that an award of punitive damages against an employer could not be based on the conduct of a supervisor overseeing four employees.

Nargizyan held that there was a triable issue of fact as to whether a State Farm "claims team manager" was a "managing agent" because she had worked at the company for 26 years, had "discretion to direct" employees that she supervised "that claims be covered or denied" and "instructed [the employee she supervised] to deny Nargizyan's claim." (Opinion, p. 35.) That is directly contrary to *Roby* and *White*. The Court of Appeal did not find, because the record did not contain any such evidence, that the supervisor had authority over formal corporate policy or even authority over a significant number of claims employees. *Nargizyan* directly undercuts this Court's precedent in *Roby* and *White* and will wrongly invite punitive damages claims against *any* corporation based on a lower-level employee's conduct untethered to any corporate policy. The Court explicitly clarified the "managing agent" standard in *Roby*. *Nargizyan* muddies the waters again.

4. Conclusion

For the reasons set forth above, State Farm respectfully requests that the Court depublish the *Nargizyan* opinion.

Very truly yours,

Cheryl A. Orr
for MUSICK, PEELER & GARRETT LLP

CAO:ksr

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PROOF OF SERVICE

Nargizyan v. State Farm
Case No. B342340

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, Suite 2900, Los Angeles, CA 90071-3048.

On July 13, 2026, I served true copies of the following document(s) described as **LETTER RE REQUEST FOR DEPUBLICATION OF OPINION** on the interested parties in this action as follows:

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address k.rubenzer@musickpeeler.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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☒ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Musick, Peeler & Garrett LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

CALIFORNIA COURT OF APPEAL
FOR THE SECOND DISTRICT
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☒ **BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered users will be served by the TrueFiling system. Participants in the case who are not registered users will be served by mail or by other means permitted by the court rules.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 13, 2026, at Los Angeles, California.

Kathy S. Rubenzer

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