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July 18, 2022

VIA TRUE FILING
Honorable Chief Justice Tani Cantil-Sakauye
and Associate Justices
California Supreme Court
350 McAllister St., Room 1295
San Francisco, CA 94102

Re: *Williams v. National Western Life Insurance Co.*, Case No. C090436, Amicus Letter of the Public Investors Advocate Bar Association in Opposition to Request for Depublication of *Williams v. Nat'l Western Life Ins. Co.*, (5/10/22) 78 Cal. App.5th 500

Dear Justice Tani Cantil-Sakauye and Associate Justices,

The Public Investors Advocate Bar Association ("PIABA") submits this letter as amicus curiae in opposition to National Western Life Insurance Company's ("NWL") request for depublication of the opinion in the above-referenced matter, *Williams v. National Western Life Insurance Co.,* Case No. C090436, published 5/10/22 at 78 Cal. App.5th 500. ("*Williams* Opinion"). PIABA is a national organization of attorneys who advocate on behalf of savers, investors and retirees in disputes with their financial professionals.

The continued publication of the *Williams* Opinion is of critical importance to investors. The *Williams* Opinion clarifies that life insurance carriers may be held responsible for the acts of independent life insurance producers who transact business on their behalf, under the fundamental doctrine of principal-agent liability. The *Williams* Opinion makes an important distinction between life insurance agents and other types of insurance agents such as property and casualty agents. That distinction is essential because other courts, including the Third Appellate Court of Appeals in its initial decision in this matter, and California federal district courts, have relied upon inapplicable case law regarding property and casualty agents [*Eddy v. Sharp* (1988) 199 Cal. App.3d 858 ("*Eddy*") and *Mercury Ins. Co. v. Pearson* (2008) 169 Cal. App.4th 1064 ("*Mercury*")] in holding that life insurance agents who transact business on behalf of multiple carriers are only agents of the insured and not of the carriers. (See e.g. *Klein v. Mony Life Insurance Company of America* (C.D. Cal. 2018) 2018 U.S. Dist. LEXIS 91272 [citing *Eddy* and *Mercury* as authorities for its ruling which dismissed a complaint against a life insurer without leave to amend on the

grounds that the insurer's non-exclusive agent was only an agent of the insured]). Consequently, maintaining the precedential value of the *Williams* Opinion is necessary in order to ensure that California state and district courts understand the agency relationship between life insurance agents and the insurers on whose behalf they act.

Depublishing the *Williams* Opinion, by contrast, would leave a vacuum in the case law as to the responsibility of life insurers for the wrongdoing of their non-exclusive independent agents. It would allow life insurers to continue to argue that they are absolved of any responsibility for the acts and omissions of the agents who brought them substantial benefits through the premiums they collected. This would have devastating consequences for investors and retirees who have been convinced by unscrupulous life insurance agents to invest their life savings and retirement monies into unsuitable life insurance products. It would leave many California investors and retirees without any viable means of recovery for their losses in situations where life insurance agents, who are not required to carry insurance or maintain minimum capitalization, lack sufficient assets or insurance coverage to compensate victims for their losses.

Indeed, NWL does not assert that the *Williams* Opinion fails to meet the standards for publication. Instead, it argues that the *Williams* Opinion should be depublished because it fundamentally changes and misapplies California law. NWL's argument is incorrect. The *Williams* Opinion is fully supported by California statutes and California case law, and adheres to this Court's guidance. The *Williams* Opinion correctly applies the plain language of California Insurance Code Sections 32, 33 & 1704, this Court's opinion in *O'Riordan v. Federal Kemper Life Assurance Co.* (2005) 36 Cal.4th 281, 288, and basic tenets of agent-principal liability, to the facts at hand, as it was instructed to do in this Court's transfer order of September 21, 2021.

First, the *Williams* Opinion recognizes that life insurance agents are treated differently than agents selling other classes of insurance under Cal. Insurance Code Sections 31, 32, 33, 1704 and 1704.5. (78 Cal. App.5th at 526-527.) That is not a misapplication of the law. The California Insurance Code sections cited in the *Williams* Opinion are unambiguous. Those statutes reflect the California Legislature's definitions of "agent" and "broker" in the insurance context, and its determination that life insurance is regulated differently than other types of insurance. Specifically, life insurance agents are defined as life insurance licensees who are authorized to act as a life agent on behalf of a life insurer to transact life insurance business. (Cal. Insurance Code § 32.) The definition of insurance brokers explicitly excludes persons who transact life insurance. (Cal. Insurance Code § 33.) Cal. Insurance Code §§ 1704(a) and 1731 provide that a person who is appointed to and who solicits life, health, or disability insurance business on behalf of a variety of different insurance carriers is an agent of each of those carriers. Cal. Insurance Code § 1704.5 provides in relevant part:

> [A] licensed life agent may present a proposal for insurance to a prospective policyholder on behalf of a life insurer for which the life agent is not specifically appointed, and may also transmit an application for insurance to that insurer. If a policy of insurance is issued pursuant to that application, the insurer is considered to have authorized the agent to act on its behalf, **and the insurer is responsible for all actions of the agent that relate to the application and policy as if the agent had been duly appointed for the insurer**. (Emphasis added)

In short, the *Williams* opinion simply holds what is obvious from the plain language of the California Insurance Code, which is that individuals who transact life insurance business in California are agents of each of the insurers for whom they are appointed and on whose behalf they transact business.

Second, the *Williams* Opinion also correctly applies California law regarding agent-principal liability. It has long been the law in California that a principal who puts an agent in a position that enables the agent, while apparently acting within his authority, to commit an act of wrongdoing upon another is subject to liability to such persons for that wrongdoing. (Civil Code §§ 2332 & 2338; *Rutherford v. The Rideout Bank* (1938) 11 Cal.2d 479, 483-484, quoting the Restatement of the Law of Agency Sections 261 & 262; *Bayuk v. Edson* (1965) 236 Cal. App.2d 309, 314; *Reusche v. California Pacific Title Insurance Company* (1965) 231 Cal. App.2d 731, 736; *California Motor Express, Ltd. v. Chowchilla Union High School District* (1962) 202 Cal. App.2d 314, 318; *Grigsby v. Hagler* (1938) 25 Cal. App.2d 714, 715-716.) In that regard, the principal is subject to liability even if he is entirely innocent, has received no benefit from the transaction and the agent has acted solely for his own purposes. (*Rutherford, supra,* 11 Cal.2d at 484; *Reusche, supra,* 231 Cal. App.2d at 736; *California Motor, supra,* 202 Cal. App.2d at 318; *Gift v. Ahrnke* (1951) 107 Cal. App.2d 614, 622.) Knowledge of the agent's wrongdoing is imputed to the principal, as a matter of law. (*Powell v. Goldsmith* (1984) 152 Cal. App.3d 746, 751; *Lewis v. McClure* (1932) 127 Cal. App. 439, 450.) As the authorities above hold, a principal is responsible for its agent's wrongdoing, and knowledge of the agent's wrongdoing is imputed to the principal. Accordingly, the *Williams* Opinion does not depart from California law in holding that: NWL is vicariously liable for the negligence of its agent Pantaleoni in procuring an unsuitable annuity for Mr. Williams; and knowledge of Pantaleoni's wrongdoing is imputed to NWL. (78 Cal. App.5th at 525-526.)

Third, NWL also takes issue with the *Williams'* court's holding that NWL was not insulated from liability by its contract with Pantaleoni or its compliance bulletins. Once again, the *Williams* court was correctly following California precedent on this issue. The California courts hold that, in the absence of notice, actual or constructive, to the insured of any limitations upon such agent's authority, a general agent of an insurer may bind the company by any acts, agreements or representations that are within the ordinary scope and limits of the insurance business entrusted to him, although they are in violation of private instructions or restrictions upon his authority. (See e.g. *Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) 188 Cal. App.4th 401, 426 [holding that an insurer was liable for its agent's breach of contract despite the agent's violations of the insurer's written guidelines, because the insured was not informed of those limitations]; *R & B Auto Center, Inc. v. Farmers Group* (2006) 140 Cal. App.4th 327, 344 [restating the general rule cited above, and holding that an insurer could be held liable for its agent's misrepresentations that were made in the course of soliciting an insurance policy]*; Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal. App.4th 847, 874 [citing the general rule in holding that an insurer was liable for its agent's negligent misinterpretation of a policy provision]*; Troost v. Estate of DeBoer* (1984) 155 Cal. App.3d 289, 298 [citing the general rule as authority for its holding that the agent was an agent of both the insurer and the insured; *Lange v. Curtin* (1936) 11 Cal. App.2d 161, 169 [holding that a principal is bound by the unauthorized acts of his agent which caused loss to an innocent third party unless the limitations of the agency are known or can be readily ascertained].) The *Williams* Opinion relies upon many of the same authorities which are discussed above. (78 Cal. App.5th at 527-528.) There is no valid basis for NWL's assertion that the *Williams* Opinion misapplied or misinterpreted those authorities.

Lastly, NWL asserts that the *Williams* Opinion conflicts with existing case law which holds that an insurer is entitled to rely on an insured's signed representations. In reality, there is no such ambiguity. The trier of fact made factual findings that Pantaleoni had falsified Mr. Williams' annual income, net worth, and liquid net worth on the NWL suitability questionnaire. (78 Cal. App.5th at 525.) The *Williams* Opinion holds that knowledge of Pantaleoni's misrepresentations regarding Mr. Williams' financial status was imputed to NWL because Pantaleoni was NWL's agent. (*Id.* at 525-526.) As discussed above, this holding is consistent with decades of California case law, not in conflict with it. The two cases cited by NWL, *Am. Way Cellular v. Travelers Prop, Cas. Co. of Am.* (2013) 216 Cal. App.4th 1040 and *Robinson v. Occidental*

Life Ins. Co. (1955) 131 Cal. App.2d 581, are inapposite. Neither of those cases concerned an agent who had falsified material information on an application, as Pantaleoni did here. In addition, the vicarious liability of an insurer for the wrongdoing of its agent was not at issue in *Am. Way* or in *Robinson.* Opinions are only authorities for points that were actually considered and decided therein. (*Santisas v. Goodin* (1998) 17 Cal.4th 599, 620.)

In summary, the *Williams* Opinion makes the important clarification that life insurers are vicariously liable for the wrongdoing of their independent non-exclusive life insurance agents. Its holding is entirely consistent with California law and with this Court's September 22, 2021 transfer order. For the foregoing reasons and authorities, PIABA urges this honorable court to deny National Western Life Insurance Company's request for depublication of the opinion in the matter of *Williams v. National Western Life Insurance Co.,* (5/10/22) 78 Cal. App.5th 500.

Very Truly Yours,

Melinda Jane Steuer
On behalf of PIABA