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October 13, 2011

VIA FEDERAL EXPRESS

Hon. Tani Cantil-Sakauye, Chief Justice
and the Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: ***Bullock v. Philip Morris, USA, Inc.***
Supreme Court Case No. S196763
Amicus Curiae Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

Under rule 8.500(g) of the California Rules of Court, amicus curiae the Chamber of Commerce of the United States of America writes in support of Philip Morris USA, Inc.'s petition for review in this case.

Philip Morris's petition for review raises two issues, both of which present important questions of statewide concern. We focus this letter, however, on the first issue presented: Whether a defendant's financial condition can overcome the presumption that a punitive damages award exceeding a single-digit ratio to compensatory damages violates the due process clause of the Fourteenth Amendment.

The Court of Appeal majority opinion adopts the novel theory that, in cases involving large corporate defendants, an $850,000 compensatory damage award can be considered "small," and can therefore support a higher punitive-to-compensatory damages ratio. This court should grant review to disapprove this unprecedented theory, which, as noted by the dissenting opinion, creates a conflict with other opinions in California and elsewhere. Review is necessary both "to secure uniformity of decision" and "to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).)

INTEREST OF AMICUS CURIAE

The Chamber is the world's largest federation of business, trade, and professional organizations, representing 300,000 direct members and indirectly representing the interests of more than three million businesses and corporations of every size, from every sector, and in every geographic region of the country. In particular, the Chamber has thousands of members in California and thousands more

who conduct substantial business in the state. For that reason, the Chamber and its members have a significant interest in the sound and equitable administration of punitive damages claims in the California courts.

The Chamber routinely advocates the interests of the business community in courts across the nation by filing amicus curiae briefs in cases involving issues of vital concern. In fulfilling that role, the Chamber has appeared many times before this court and the California Court of Appeal. This letter marks the third time the Chamber has asked this court to grant review in this matter.

WHY REVIEW SHOULD BE GRANTED

As this court has previously recognized, a punitive-to-compensatory damages ratio significantly greater than 9 or 10 to 1 is presumptively invalid. (*Simon v. San Paolo U.S. Holding Co., Inc.* (2005) 35 Cal.4th 1159, 1182 (*Simon*).) And when compensatory damages are substantial, lesser ratios " 'can reach the outermost limit of the due process guarantee.' " (*Ibid.*, quoting *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 425-426 [123 S.Ct. 1513, 155 L.Ed.2d 585 (*State Farm*).)

But the single-digit ratio limit is not an absolute rule. Higher ratios may be permissible in cases where a particularly egregious act results in a " 'small' " amount of compensatory damages. (*State Farm*, 538 U.S. at p. 425.) The application of that exception to the single-digit ratio limit is at issue here.

The Court of Appeal's majority opinion applied that exception to this case, under the surprising premise that the $850,000 in compensatory damages awarded in this case was " ' "a small amount." ' " (Typed opn., 29, quoting *State Farm*, *supra*, 538 U.S. at p. 425.) Although a nearly $1 million damages award would ordinarily be viewed as a significant sum, the court concluded it was small "relative to Philip Morris's financial condition." (*Ibid.*)

The majority's reasoning is novel in at least two respects. To the Chamber's knowledge, no opinion in California or elsewhere has ever previously held that a defendant's financial condition is relevant to the issue of whether a compensatory damages award is "small" for purposes of a ratio analysis. Nor is the Chamber aware of any opinion holding that a sum as large as $850,000 could be considered small under any rationale. To the contrary, many courts have found much smaller compensatory damages awards to be "substantial" within the meaning of *State Farm*. (See, e.g., *Bennett v. American Medical Response, Inc.* (9th Cir., Mar. 27, 2007, Nos. 05-34575, 05-

35495) 2007 WL 900989, at p.*2 [nonpub. opn.] (*Bennett*) ["The district court's award of $100,000 in compensatory damages . . . was both substantial [under *State Farm*] and represented full compensation"]; *Bridgeport Music, Inc. v. Justin Combs Pub.* (6th Cir. 2007) 507 F.3d 470, 489 (*Bridgeport*) [compensatory damages award of $366,939 was "a substantial compensatory damages award" within the meaning of *State Farm*]; *Bach v. First Union Nat. Bank* (6th Cir. 2007) 486 F.3d 150, 156-157 (*Bach*) [finding $400,000 compensatory damages to be "substantial" and remitting punitive damages to no more than that amount].)[1]

And many of those cases have involved large corporate defendants. For example, American Medical Response, Inc., the defendant in *Bennett*, is the largest private ambulance company in the nation, with nearly 17,000 employees. (American Medical Response, About AMR http://www.amr.net/About-AMR.aspx [as of Oct. 10, 2011].) UMG Recordings, Inc., one of the defendants in *Bridgeport*, is part of Universal Music Group, the world's largest music content company. (Universal Music Group, Overview, http://www.universalmusic.com/overview [as of Oct. 10, 2011].) First Union National Bank, the defendant in *Bach*, merged with Wachovia and had $707 billion in assets at the time *Bach* was decided. (*Bach*, *supra*, 486 F.3d at p. 155, fn. 2.) And yet none of these courts held that the six-figure compensatory damage awards in those cases were small in relation to the defendant's wealth.

In addition, the majority opinion directly conflicts with another published opinion involving a nearly identical set of facts—*Boeken v. Philip Morris, Inc.* (2005) 127 Cal.App.4th 1640. In that case, another lawsuit by a smoker against Philip

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[1] See also *Williams v. ConAgra Poultry Co.* (8th Cir. 2004) 378 F.3d 790, 799 [remitting punitive damages award to an amount equal to compensatory damage award of $600,000]; *Casumpang v. International Longshore & Warehouse* (D.Hawai'i 2005) 411 F.Supp.2d 1201, 1220-1222 [$240,000 compensatory damages award was "substantial" within meaning of *State Farm*]; *Grassilli v. Barr* (2006) 142 Cal.App.4th 1260, 1289-1290 [$500,000 compensatory damages award was not "small"]; *Harris v. Archer* (Tex.Ct.App. 2004) 134 S.W.3d 411, 438 [$101,947 compensatory damages award was "not insubstantial" within the meaning of *State Farm*]; *Daka, Inc. v. McCrae* (D.C. 2003) 839 A.2d 682, 699 [compensatory damages award of $187,500 is " 'substantial' " within the meaning of *State Farm*]; *Roth v. Farner-Bocken Co.* (S.D. 2003) 667 N.W.2d 651, 669 [compensatory damages award of $25,000 was "substantial" within the meaning of *State Farm*].

Morris, the punitive-to-compensatory ratio was 18-to-1 after the trial court reduced the punitive damages on posttrial motions. (*Id.* at p. 1650.) The *Boeken* court remitted the award, holding that a ratio in excess of single digits would violate due process. (*Id.* at p. 1703.) Although the amount of compensatory damages in *Boeken* ($5.5 million) was larger than the compensatory damages award in this case, it was still small in relation to Philip Morris's net worth. And yet the Court of Appeal did not hold, as the majority opinion did here, that a double-digit ratio was permissible due to Philip Morris's wealth. Rather, the Court of Appeal held that "more than a single digit multiplier is not justified." (*Ibid.*) *Boeken* cannot be reconciled with the Court of Appeal's majority opinion in this case.

The conflict between *Boeken* and the majority opinion here will leave California's trial courts guessing about whether the presumption against double-digit ratios applies to punitive damages claims against large corporate defendants. The result will be an unpredictable system in which some courts will adhere to the single-digit presumption without regard to the defendant's wealth, while other courts will disregard the presumption in cases involving large corporations.

The Supreme Court of the United States has repeatedly warned against the arbitrary deprivation of property than can occur through excessive punitive damages awards. (See, e.g., *Philip Morris USA v. Williams* (2007) 549 U.S. 346, 352 [127 S.Ct. 1057, 166 L.Ed.2d 940] [a state's punitive damages system "may threaten 'arbitrary punishments,' i.e., punishments that reflect not an 'application of law' but 'a decisionmaker's caprice' "]; *State Farm*, *supra*, 538 U.S. at p. 417, quoting *Honda Motor Co. v. Oberg* (1994) 512 U.S. 415, 432 [114 S.Ct. 2331, 129 L.Ed.2d 336] [" '[p]unitive damages pose an acute danger of arbitrary deprivation of property' "].) It is the height of arbitrariness for defendants who engage in comparable conduct and cause comparable damages to be subject to vastly different punitive sanctions. And yet that is exactly the result that flows from the Court of Appeal's majority opinion in this case.

Constitutional issues aside, the arbitrary imposition of punitive damages in California is bad public policy. It creates intolerable legal uncertainty for businesses operating in California, and harms the state's economy by putting California at a competitive disadvantage with respect to every other state, none of which has adopted the sort of reasoning employed by the Court of Appeal majority in this case.

For these reasons, the Chamber respectfully requests that this court grant review to settle the important question of whether a defendant's financial condition can be used to overcome the presumption that a double-digit ratio is unconstitutional.

Respectfully submitted,

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cc: See attached Proof of Service

PROOF OF SERVICE

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 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

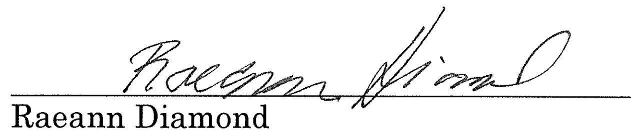
On October 13, 2011, I served true copies of the following document(s) described as **AMICUS LETTER IN SUPPORT OF PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

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 Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the 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 declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 13, 2011, at Encino, California.



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