No. S224086

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

SHARON MCGILL, an individual,
Petitioner,

v.

CITIBANK, N.A.,
Respondent.

AFTER DECISION BY THE COURT OF APPEAL,
FOURTH APPELLATE DISTRICT, DIVISION THREE
CASE G049838

FROM THE SUPERIOR COURT,
COUNTY OF RIVERSIDE,
CASE NO. RIC1109398, ASSIGNED FOR ALL PURPOSES
TO JUDGE PRO TEM JOHN W. VINEYARD,
DEPARTMENT 12

REPLY IN SUPPORT OF THE PETITION FOR REVIEW OR, IN THE ALTERNATIVE, FOR A GRANT AND TRANSFER ORDER

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INTRODUCTION

Citibank , N.A. provides no valid reason to deny Sharon McGill's Petition for Review. Positing a limitless view of preemption under the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. ("FAA") in its answer, Citibank misconstrues *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. __ [131 S.Ct. 1740] and the reach of the FAA. By simply reciting general principles from *Concepcion* regarding preemption when a state law "prohibits outright" arbitration of a particular type of claim, Citibank fails to recognize any limit on FAA preemption, examples of which were recognized by this Court's recent decisions in *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109 and *Iskanian v. CLS Transportation Los Angeles LLC* (2014) 59 Cal.4th 348. Review is necessary to reconcile the Court of Appeal's opinion with these cases and the principles embodied in them, and definitively to resolve the continuing viability of this Court's decisions *Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th 1066 and *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 30.

The United States Supreme Court has not squarely addressed whether the FAA preempts state law rules precluding the arbitration of statutory public injunction claims. However, the Supreme Court has articulated limits on FAA preemption—limits entirely consistent with the holdings of *Broughton* and *Cruz*. By forcing public injunctive relief claims into arbitration, the Court of Appeal's decision effectively strips McGill and other consumers of their right to pursue these specific statutory rights and remedies, as the arbitral forum cannot accommodate a public injunction. The decision below therefore results in the complete loss of the right to pursue a statutory remedy in violation of Supreme Court precedent. (*American Express Co. v. Italian Colors Restaurant* (2013) 570 U.S. __ [133 S.Ct. 2304, 2310] ("*Italian Colors*") (stating that arbitration agreements may not force a "prospective waiver of a party's *right to pursue*

statutory remedies.").)

Separately, even if Citibank's arbitration agreement did not *effectively* waive Petitioner's right to pursue her right to public injunctive relief due to the inherent incompatibility of that relief with the arbitral forum, it *expressly* waives such relief, in direct violation of United States and California Supreme Court precedent. And contrary to Citibank's "waiver" argument, this Court has the authority to address this issue because it is a matter of public importance that is also based on undisputed facts.

Review is necessary because the Court of Appeal decision finding that *Broughton* and *Cruz* are abrogated conflicts with its sister courts that have followed these cases, which Citibank completely ignores, and highlights the conflict between the Ninth Circuit and *Broughton* and *Cruz*—which this Court should take the opportunity to resolve. In the alternative, Citibank has provided no basis for this Court not to exercise its authority to vacate the Court of Appeal's decision and to issue a grant and transfer order directing the Court of Appeal to apply *Broughton* and *Cruz* and affirm the trial court's ruling, or if they are determined to have been abrogated to any extent, to apply the unconscionability analysis of *Sonic-Calabasas II.*

ARGUMENT

I. CITIBANK IGNORES THE CONFLICT BETWEEN THIS COURT'S RECENT JURISPRUDENCE AND THE COURT OF APPEAL'S DECISION

Citibank argues that *Broughton* and *Cruz* are preempted by the FAA based on *Concepcion*'s abrogation of the *Discover Bank* rule, which Citibank contends is indistinguishable from the *Broughton-Cruz* rule. (Answer at p.6 ["There is no sound legal basis to distinguish between the Broughton/Cruz rule and the Discover Bank rule."].) Citibank is mistaken, and misconstrues *Concepcion*, the reach of the FAA, and recent California

Supreme Court jurisprudence in several ways.

First, *Concepcion* did not address whether an actual right to pursue a statutory remedy can be completely waived simply by use of an arbitration agreement. Instead, *Concepcion* addressed whether a state law rule requiring the availability of class action procedures, notwithstanding a waiver in an arbitration agreement to the contrary, is preempted by the FAA. *Concepcion* held that the *Discover Bank* rule is preempted by the FAA because that rule required *procedures*—specifically, class action procedures—that interfere with "fundamental attributes of arbitration" such as relative informality, increased efficiency, speedy resolution of claims, and relatively lesser potential monetary liability to the defendant. (*Concepcion, supra,* 131 S.Ct. at pp. 1148-1153.) Here, unlike *Concepcion,* the availability of class action *procedures* is not at stake. What is at stake is the availability of a *substantive statutory right* to pursue a guaranteed remedy, which is preserved in a long line of U.S. Supreme Court authority (see *infra* at Section I.) The *Discover Bank* rule does not encompass this subject in any manner, nor has *Concepcion* or any Supreme Court case determined whether the FAA preempts state rules precluding the arbitration of statutorily-based public injunction claims.

Second, Citibank fails to grapple with the proper FAA preemption inquiry as articulated by this Court. As this Court emphasized in *Sonic-Calabasas II,*"the dispositive rationale for *Concepcion*'s preemption holding is that class proceedings interfere with 'fundamental attributes of arbitration.'" (*Sonic-Calabasas II, supra,* 57 Cal.4th at p. 1166; see also *Concepcion, supra,* 131 S.Ct. at p. 1751 [discussing the class action's procedural rigor and requirement of formality and finding this to be incompatible with the fundamental attributes of arbitration].) Rather than the boundless view of FAA preemption as advocated by Citibank this Court's preemption inquiry has focused on whether a state law interferes

with the *fundamental attributes* of arbitration—not just "arbitration" broadly: "Although *Concepcion* says state law cannot require a procedure that undermines fundamental attributes of arbitration 'even if it is desirable for unrelated reasons [citations],' this does not mean the FAA preempts generally applicable state laws that do *not* undermine the fundamental attributes of arbitration." (*Sonic-Calabasas II, supra,* 57 Cal.4th at p. 1151 [emphasis in original].) Citibank misses this point entirely. If arbitration were to occur regarding the merits of a plaintiff's consumer claims, with the trial court retaining jurisdiction of the action following the arbitration to award and oversee a public injunction, if appropriate, this would not interfere with any "fundamental attributes of arbitration," and the Court of Appeal made no findings to the contrary. Nor is any such finding possible given that a public injunction is only a remedy that may be issued following a finding on the merits. Citibank's misguided reading of *Concepcion* does not support the denial of review.

Third, despite Citibank's argument to the contrary, none of *Concepcion*'s "progeny" compels a denial of review here. Citibank cites *Marmet Health Care Ctr., Inc. v. Brown* (2012) 132 S.Ct. 1201, to support the FAA's preemption of "state public policy justifications." However, in the Court's four-page per curium *Marmet* opinion, the Court merely applied a rule established in *Southland Corp. v. Keating* (1984) 465 U.S. 1, barring states from categorically exempting claims from arbitration, this time addressing private tort claims against nursing homes. *Marmet* broke no new ground.

In fact, both *Broughton* and *Cruz* were careful to examine *Southland* and reconcile their rulings with this precedent. (See *Broughton, supra,* 21 Cal.4th at pp. 1074-76, 1082-83; *Cruz, supra,* 30 Cal.4th at p. 31.) Key to these rulings is that the *Southland* rule is not absolute. Indeed, this Court in *Broughton* recognized the fact that the United States Supreme Court has

acknowledged a clear limit on the *Southland* preemption rule, namely that "not . . .all controversies implicating statutory rights are suitable for arbitration." (*Mitsubishi Motors* (1985) 473 U.S. 614, 627.) Unlike the private tort claims in *Marmet* that were held to be arbitrable notwithstanding the West Virginia Supreme Court's ruling, forcing claims seeking public injunctive relief under California's consumer protection statutes into arbitration means that this remedy will effectively be lost due to the arbitral forum's inability to grant such relief. (See *Broughton, supra,* 21 Cal.4th at p. 1081 [noting the "institutional shortcomings" of the arbitral forum with respect to public injunctions.) Such a consequence would run afoul of *Italian Colors*, since, as stated in that case, an arbitration agreement may not force a "prospective waiver of a party's *right to pursue* statutory remedies." (*Italian Colors, supra,* 133 S.Ct. 2304, 2310 [citations and quotations omitted, emphasis in the original].) Far from aiding Citibank, *Italian Colors* (which it cites in support of its position) underscores this chief limitation on FAA preemption.

Fourth, Citibank mistakenly contends that *Iskanian* both embodies Citibank's conception of boundless FAA preemption and actually supports the denial of review. But rather than support Citibank's arguments, *Iskanian* illustrates why review is required. Foremost, as here, in *Iskanian* the Court of Appeal had held that a decision of this Court, *Gentry v. Super. Ct.* (2007) 42 Cal.4th 443, was preempted by the FAA. (See *Iskanian v. CLS Transportation Los Angeles, LLC* (2013) 206 Cal.App.4th 949, 959, *Review granted.*) The intermediate court's decision in *Iskanian* was inconsistent with the principles of vertical stare decisis,[1] and this Court properly granted review in that case to determine, on its own, whether its

[1] "[D]ecisions of this court are binding upon and must be followed by all the state courts of California." (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

own prior decision had indeed been abrogated by the reasoning of a subsequent United States Supreme Court decision.

Moreover, to the extent that Citibank relies on *Iskanian*'s overruling of *Gentry* to conclude that review is unnecessary, that position ignores not only that that is a merits argument, and not a reason to deny review, but also ignores the stark differences between *Gentry* and *Broughton/Cruz*. Like *Discover Bank*, *Gentry* promulgated a rule that sought to make available class action procedures despite a waiver to the contrary in an arbitration agreement. (*Gentry*, *supra*, 42 Cal.4th at p. 463.) While the *Gentry* court believed such a rule to be more effective in vindicating underlying substantive rights, this Court in *Iskanian* held that *Gentry*'s rule, like the rule in *Discover Bank*, was afflicted with the central infirmity: that it "interfered with the primary attributes of arbitration." (*Iskanian*, *supra*, 59 Cal.4th at p. 364 [citation omitted].) Thus, the rationale of *Iskanian*'s *Gentry* analysis is inapplicable here, since Citibank makes no claim that the *Broughton-Cruz* rule interferes with the fundamental arbitration attributes of speed and efficiency. Certainly, nothing in that portion of *Iskanian* would counsel against granting review in this case.

And in focusing only on the abrogated *Gentry* analysis, Citibank would have this Court ignore the rest of the *Iskanian* opinion, which finds waivers of PAGA claims unenforceable and acknowledges certain critical limits to FAA preemption. *Iskanian* viewed *Concepcion* more narrowly than Citibank suggests, finding that the FAA applies only to private disputes and does not preempt "public enforcement actions," such as suits for civil penalties pursuant to PAGA. (*Iskanian*, *supra*, 59 Cal.4th at p. 388.) Similarly, the pursuit of public injunctive relief under California consumer protection statutes falls squarely within the "public enforcement action" exception to FAA coverage, as the California Supreme Court has recognized that plaintiffs pursuing public injunctive relief under the UCL,

CLRA, and FAL[2] on behalf of the general public do so as *bona fide* private attorneys general seeking "not to resolve a private dispute but to remedy a public wrong." (*Broughton, supra*, 21 Cal.4th at pp. 1079-80.) In addition, *Iskanian* also recognized the limit to preemption as expressed in *Italian Colors*, when "a provision in an arbitration agreement forbid[s] the assertion of certain statutory rights." (*Iskanian, supra*, 59 Cal.4th at p. 395 [Chin, J. concurring] [citing *Italian Colors, supra*, 133 S.Ct. at p. 2310].) Under that rationale, the *Broughton-Cruz* rule is protected from preemption because forcing claims seeking public injunctive relief into arbitration is tantamount to a prospective waiver. In any event, review is necessary to examine and determine the applicability of these FAA limitations and to resolve the conflict between the Court of Appeal's decision and this Court's recent contrary precedent.

Fifth, Citibank fails rebut the existence of a court split. In attempting to argue that the law is settled and that courts "agree" on whether *Broughton* and *Cruz* are preempted, Citibank merely relies on string cites to non-binding federal cases. (Answer at pp. 8-9; see *People v. Williams* (2013) 56 Cal.4th 630, 688 [decisions of federal circuit courts are not binding]; *People v. Leonard* (2007) 40 Cal.4th 1370 [same].) And the single California case it cites, *Nelsen v. Legacy Partners Residential, Inc.* (2012) 207 Cal.App.4th 1115, was even questioned by the Court of Appeal in the decision below. (See *McGill v. Citibank* (2014) 232 Cal.App.4th 753, 765-766.) This is because any arguments based on *Broughton* and/or *Cruz* had been forfeited by the appellant in *Nelsen*, rendering any discussion of the issue by the *Nelson* court pure dicta. (See *Nelsen, supra*,

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[2] These statutes are the Unfair Competition Law, Cal. Bus. & Prof. Code §§17200 et seq. ("UCL"), False Advertising Law, Cal. Bus. & Prof. Code §§17500 et seq. ("FAL"), and Consumer Legal Remedies Act, Cal. Civ. Code §§1750 et seq. ("CLRA").

232 Cal.App.4th at p. 1136.) Further, *Nelsen* relied on a Ninth Circuit opinion that was later vacated by *Kilgore v. Keybank, N.A.* (9th Cir. 2013) 718 F.3d 1052 (*Kilgore II*). *Kilgore II* declined even to address whether the *Broughton-Cruz* rule was preempted, finding that the applicable claims fell outside the *Broughton-Cruz* rule. *Nelson* is thus unavailing.

Tellingly, Citibank also ignores *Brown v. Ralphs Grocery Company* (2011) 197 Cal.App.4th 489, which issued after *Concepcion* and adopted the rationale of *Broughton* and *Cruz* for its holding that representative PAGA actions cannot be waived via arbitration agreements and that that rule does not conflict with the FAA's purposes. (See *Brown, supra,* 197 Cal.App.4th at p. 1082 ["Here, the relief is in large part 'for the benefit of the general public rather than the party bringing the action' (*Broughton, supra,* 21 Cal.4th at p.1082), just as the claims for public injunctive relief in *Broughton* and *Cruz, supra,* 30 Cal.4th 303."] [footnote omitted].) Nor does Citibank mention the other California cases that have followed *Broughton* and *Cruz* since their issuance, with which the Court of Appeal opinion here is now in conflict. (See, e.g., *Clark v. First Union Securities, Inc.* (2007) 153 Cal.App.4th 1595, 1607; *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 95 fn. 14; *Coast Plaza Doctors Hospital v. Blue Cross of California,* (2000) 83 Cal.App.4th 677, 692].)

Indeed, by relying on contrary federal cases, including *Ferguson v. Corinthian Colleges, Inc.* (9th Cir. 2013) 733 F.3d 928, Citibank only highlights the fact that there is an inescapable conflict between the Ninth Circuit and this Court's precedent—a conflict that further counsels for a decision from this Court. This Court thus will have the opportunity to secure uniformity of decision as well as settle an important issue of California law by addressing the viability of the *Broughton-Cruz* rule. In the absence of California Supreme Court review, lower courts will lack certainty or clear guidance as to whether they should continue to follow

Broughton and *Cruz*, binding California Supreme Court precedent, or rely on the Ninth Circuit's misguided approach endorsed by the Court of Appeal.

II. THIS COURT HAS THE AUTHORITY TO REVIEW ANY ISSUES RAISED IN THE PETITION, INCLUDING MCGILL'S ARGUMENT THAT THE ARBITRATION AGREEMENT UNLAWFULFULLY PROHIBITS PUBLIC INJUNCTIONS FROM BEING AWARDED IN ANY FORUM, WHICH IS A PURE ISSUE OF LAW AND A MATTER OF PUBLIC INTEREST

This Court's power of decision extends to any issue presented by the case. (See Cal. Rules of Court, rule 8.516(b)(1) ["The Supreme Court may decide *any* issues that are raised or fairly included in the petition or answer."] [emphasis added].) This necessarily includes McGill's argument that Citibank's arbitration agreement expressly prohibits public injunctions from being awarded in any forum, in violation of federal and state Supreme Court precedent. Contrary to the non-waiver principles enunciated in *Armendariz v. Found. Health Psychare Svcs.* (2000) 24 Cal.4th 83, 103 and *Italian Colors*, courts cannot enforce terms in any agreement, whether arbitration or otherwise, that prospectively waive a claimant's right to pursue a statutory remedy in any forum. (*Armendariz, supra*, 24 Cal.4th at p. 103 [the "full range" of statutory remedies must be made available to preserve the "substantive and remedial provisions of the statute"]; *Italian Colors, supra*, 133 S.Ct. at p. 2310 [courts cannot enforce terms that would force the prospective waiver of a party's "right to pursue statutory remedies."].) Prospectively barring the right to pursue public injunctive relief violates this limitation, emasculating the "substantive and remedial provisions" of the CLRA, the UCL, and the FAL, which target deceptive practices in order to protect consumers.

Citibank argues that this Court should not review this issue because McGill procedurally waived it, as the Court of Appeal mistakenly found.

(Answer at p. 10-11.) Yet Citibank fails to address clear authority finding *no waiver* when the issue is a matter of public importance and is one of law based on undisputed facts. (See, e.g., *Cedars-Sinai Med. Ctr. v. Super. Ct.* (1998) 18 Cal.4th 1, 6 [finding no waiver of whether the court should recognize a tort remedy for acts of spoliation because "[i]t is an issue of law that does not turn on the facts of this case, it is a significant issue of widespread importance, and it is in the public interest to decide the issue at this time."].) Indeed, in *Cedars-Sinai Med. Ctr.*, the California Supreme Court rejected a waiver argument and remarked that "[t]his is not the first occasion on which we have addressed a dispositive issue not raised by the parties below."[3] (*Cedars-Sinai Med. Ctr.*, *supra*, 18 Cal.4th at p. 6 [citing cases].) The California Supreme Court in *Cedars-Sinai Med. Ctr.* found that the petition for review "squarely raised the issue," and given that it was a matter of public interest not turning on the facts of the case, proceeded to decide the issue after granting review. (*Ibid.*)

The language of Citibank's arbitration agreement, which plainly prohibits any arbitrator from awarding public injunctive relief, is not in question; thus, there is no factual dispute. (1 CT 109-110 [providing that the "arbitrator will not award relief for or against anyone who is not a party," that "the arbitrator may award relief only on an individual (non-class, non-representative) basis," and that an award in arbitration "shall determine the rights and obligations between the named parties only . . . and shall not have any bearing on the rights and obligations of any other person, or on the resolution of any other dispute"].) The issue raised in the Petition rests solely on a question of law, which is whether such a waiver is

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[3] Here, McGill *did* raise this issue below at oral argument and it was the primary basis for her petition for rehearing, which was denied by the Court of Appeal. (See Order Denying Petition For Rehearing, Exh. A to Answer.)

permitted under California law and, if not, whether such a rule is preempted by the FAA. This issue is clearly a matter of public interest. The issue therefore was not waived because parties may advance new theories "when the issue posed is purely a question of law based on undisputed facts, and involves important questions of public policy." (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 654, fn. 3; *Cedars-Sinai Med. Ctr.*, *supra*, 18 Cal.4th at p. 6.)

Citibank wholly ignores this notable rule permitting review of issues of public importance on questions of law based on undisputed evidence. The authority cited by the Court of Appeal and repeated by Citibank to support waiver fails even to mention this well-established exception to waiver. (See Answer at p. 11 [citing *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1092 and *Acquire II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 978, fn. 12].)

The Court of Appeal also erred in finding that the "express waiver" argument had been disavowed by McGill. The Court of Appeal glommed onto a single sentence in a supplemental letter brief filed July 23, 2014, in order to refuse to address the substance of the argument squarely raised at oral argument and in McGill's petition for rehearing. (See Order Denying Petition For Rehearing at p. 2, Exh. A to Answer.) However, any such alleged "disavowal" was a simple misstatement. There is no factual dispute surrounding the language of the arbitration agreement, which precludes an arbitrator from awarding a public injunction. (See 1 CT 109-110.) Tellingly, in its waiver analysis in its Answer, Citibank does not deny that its arbitration agreement expressly bars an arbitrator from awarding a public injunction. (See Answer at pp. 10-11).

Therefore, McGill did not waive this issue. Even if this Court were to find that McGill did not properly raise it below, this Court still possesses the power to review this issue in its discretion. (Cal. Rules of Court, rule.

8.516(b)(1).) "There are sound policy reasons supporting our discretion to consider all of the issues presented by a case, and we have used this discretion in the past to resolve issues of public importance." (*Cedars-Sinai Med. Ctr.*, *supra*, 18 Cal.4th at p. 7, fn. 2.) If necessary, such discretion should be applied here. The availability of the statutory public injunction remedy involves an important public right that may not be completely foreclosed via an arbitration agreement. This is an issue of pure law, is of public importance, and is based on undisputed evidence, and as such is ripe for review.

III. IN THE ALTERNATIVE, THE COURT SHOULD ISSUE A GRANT AND TRANSFER ORDER

Citibank provides no valid reason to deny a grant and transfer request as an alternative here, which would direct the Court of Appeal to apply *Broughton* and *Cruz*, or if they are found abrogated in any manner, apply an unconscionability analysis under *Sonic-Calabasas II.* Citibank's only argument for denying a grant and transfer to the Court of Appeal to apply *Broughton* and *Cruz* is that this request "ignores" *Concepcion*, which requires a "re-evaluation" of those cases. (Answer at p. 12.) Of course, plenary review would provide precisely the opportunity for this Court to engage in that "re-evaluation." But if the Court does not grant plenary review, *Concepcion*'s application in the instant case is doubtful, and certainly not clear enough to warrant a departure from normal rules of vertical stare decisis. As discussed above, *Concepcion* concerned only whether states can require the availability of class action procedures in arbitration notwithstanding a class action waiver. Here, the availability of the class action (or any other) procedure for resolving underlying substantive claims is not at issue. Rather, what is at issue is whether a substantive statutory right is available—the right to public injunctive relief. Thus, if the Court declines to exercise plenary review, the lower California

courts may not simply deem *Broughton* and *Cruz* to have been abrogated.

Likewise unavailing, Citibank's only argument against a grant and transfer based on the unconscionability analysis in *Sonic-Calabasas II* is that the Court of Appeal already reviewed *Sonic-Calabasas II*. (Answer pp. 12-13.) However, the parties did not brief the impact of *Sonic-Calabasas II*, and the Court of Appeal did not perform any analysis on whether the arbitration agreement was unconscionable under *Sonic-Calabasas II*. The portion of the Court of Appeal opinion that Citibank recites for its contention only reflects that the Court of Appeal summarized the holdings of *Sonic-Calabasas I* and *Sonic-Calabasas II*. (*Id.*) In fact, the Court of Appeal did not in any manner conduct any type of unconscionability analysis pursuant to *Sonic-Calabasas II*. (See generally *McGill*, *supra*, 232 Cal.App.4th 753.) *Sonic-Calabasas II* reaffirmed the principle that courts must conduct a rigorous unconscionability analysis to ensure the "fundamental fairness of the bargain." (*Sonic-Calabasas II*, *supra*, 57 Cal.4th at p. 1125.) At the same time, it articulated new ground rules for unconscionability in the wake of *Concepcion*, and explicitly characterized its holding as a new inquiry. (See, e.g., *Sonic-Calabasas II*, *supra*, 57 Cal.4th at pp. 1149, 1157.) The new unnconscionability inquiry holds that any contractual term that affects statutory benefits, such as a provision that prospectively waives the benefits of a Berman hearing, is subject to an unconscionability inquiry. No such inquiry was performed here on the prospective waiver of the right to pursue public injunctive relief under California's consumer protection statutes.

If this Court finds the *Broughton-Cruz* rule no longer viable, this Court should therefore issue a grant and transfer order directing the Court of Appeal to apply the new unconscionability analysis articulated by *Sonic-Calabasas II*. (Cal. Rules of Court, rule 8.500(b)(4); *Id.* at rule 8.528(d) ["After ordering review, the Supreme Court may transfer the cause to a

Court of Appeal without decision but with instructions to conduct such proceedings as the Supreme Court orders."].). Citibank has provided no valid ground for denying such a request.

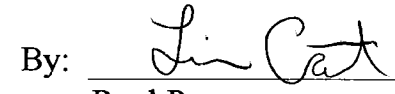
CONCLUSION

For the foregoing reasons, McGill respectfully requests that this Court grant plenary review of the Court of Appeal's decision. In the alternative, McGill requests that this Court issue a grant and transfer order, granting review of the Court of Appeal decision and transferring the case back to that court with instructions to apply *Broughton* and *Cruz* and affirm the trial court. If *Broughton* and/or *Cruz* are found to be abrogated, this Court should issue a grant and transfer order based on *Sonic-Calabasas II's* unconscionability analysis.

Dated: March 9, 2015

Respectfully submitted,

Capstone Law APC

By: 

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CERTIFICATE OF WORD COUNT

Counsel of record hereby certifies that, pursuant to the California Rules of Court, Rule 8.504(d)(1) and 8.490, the enclosed Reply In Support of the Petition for Review was produced using 13-point Times New Roman type style and contains 4,179 words. In arriving at that number, counsel has used Microsoft Word's "Word Count" function.

Dated: March 9, 2015

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