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December 10, 2024

Hon. Julia C. Kelety, Associate Justice
Hon. Joan K. Irion, Acting Presiding Justice
Hon. Jose S. Castillo, Associate Justice
California Court of Appeal
Fourth Appellate District, Division One
750 B Street, Suite 300
San Diego, CA 92101

RE: *Lindsay v. Patenaude & Felix, APC et al.*, No. D082750 (filed Nov. 27, 2024)

Dear Justices Kelety, Irion, and Castillo:

The Center for Consumer Law and Economic Justice at UC Berkeley School of Law respectfully requests that this Court certify its opinion in *Lindsay v. Patenaude & Felix, APC et al.*, No. D082750 (filed Nov. 27, 2024), for publication. The decision provides much-needed clarification on the application of the public interest exception to anti-SLAPP motions in cases involving systemic consumer harms, particularly abusive debt collection practices tied to private student loans. Given its value to future courts and litigants, and its contribution to matters of significant public interest, the opinion "should be certified for publication in the Official Reports." (Cal. Rules of Court, rule 8.1105(c).)

The case involves a growing and troubling trend in debt collection litigation: the increasing tactical use of anti-SLAPP motions by debt collectors to stymie legitimate counterclaims brought by consumers. These motions have been weaponized to delay or entirely prevent judicial scrutiny of unlawful and abusive practices, which include filing baseless lawsuits, submitting falsified evidence, and continuing collection efforts even after lawsuits have been dismissed. This delaying tactic is particularly harmful in the context of private student loans, where borrowers often face complex and opaque collection processes. It also undermines the California Private Student Loan Collections Reform Act (AB 424, 2021), which was specifically designed to protect borrowers from such abusive practices.

By certifying this opinion for publication, this Court can provide essential guidance to trial courts and litigants on the proper application of the public interest exception under Code of Civil Procedure section 425.17(b). In doing so, it would reaffirm the critical role of private enforcement in curbing systemic consumer harms and ensure that anti-SLAPP protections are not misused to shield unlawful debt collection practices from accountability.

I. Statement of Interest

The Center for Consumer Law and Economic Justice is a research and advocacy organization housed at the University of California, Berkeley, School of Law. The Center works

to enhance the study, practice, and development of consumer law and policy, with a particular focus on addressing inequities in the marketplace that harm vulnerable individuals. The rise in tactical anti-SLAPP motions brought by debt collectors—often aimed at legitimate counterclaims under California's consumer protection laws—threatens to erode statutory protections for borrowers. Published appellate opinions are essential to curbing these abuses and ensuring that borrowers can effectively exercise their rights.

II. The Opinion Should Be Published Because It Meets the Standards Set Forth in Rule 8.1105(c)

California Rules of Court, rule 8.1105(c) specifies that if an opinion meets any one of the nine standards listed in the rule, that opinion "should" be certified for publication. The *Lindsay* opinion meets at least four of these criteria.

A. The Opinion Applies an Existing Rule of Law to a New and Significant Set of Facts (Rule 8.1105(c)(2))

The *Lindsay* opinion applies the public interest exception under Code of Civil Procedure section 425.17(b) to a novel fact pattern involving a consumer class action against debt collectors accused of systemic abuses, including filing baseless lawsuits and falsifying evidence. This application significantly extends and clarifies existing precedent, such as *Tourgeman v. Nelson & Kennard* (2014) 222 Cal.App.4th 1447, which addressed the public interest exception in a narrower context.

In *Lindsay*, the Court found that Patenaude and Transworld engaged in conduct that constituted a fraud on both the courts and the consumers they targeted. The opinion highlights that the defendants relied on a business model of "flooding state courts with baseless lawsuits and obtaining default judgments" and falsified evidence to support unprovable claims. (Slip opn., p. 6.) This fact pattern, particularly the alleged use of falsified evidence and post-dismissal collection efforts, is distinct from prior published cases addressing section 425.17(b) and underscores the importance of protecting consumers from such systemic abuses.

By holding that the public interest exception applies even when the plaintiff seeks damages on behalf of a class, *Lindsay* broadens the application of the exception to encompass cases that directly challenge fraudulent business practices targeting vulnerable groups. The decision offers clear guidance on the application of section 425.17(b) to a type of conduct—debt collection abuses—that is both widespread (encompassing at least a quarter of the entire civil docket in California courts[1]) and uniquely harmful.

B. The Opinion Explains and Clarifies Existing Law (Rule 8.1105(c)(3))

The *Lindsay* opinion provides a compelling and thorough clarification of the public interest exception to the anti-SLAPP statute, correcting the trial court's erroneous conclusion that seeking damages precludes reliance on the exception. As the decision explains: "California

[1] Pew Charitable Trusts, *How Debt Collectors Are Transforming the Business of State Courts* (May 2020) p. 8 https://perma.cc/54YK-9AAT.

courts are clear that plaintiffs can still invoke the public interest exemption even if their lawsuit seeks monetary relief." (Slip opn., p. 10, citing *Batis v. Dun & Bradstreet Holdings, Inc.* (2024) 106 F.4th 932, 936.) This clarification ensures that class actions aimed at addressing systemic abuses are not improperly excluded from the exception.

The opinion also emphasizes that Lindsay's lawsuit did not seek relief that was "greater than or different from" that sought on behalf of the putative class or the general public. (Slip opn., p. 12.) Citing *Tourgeman*, this Court reiterated that the public interest exception is satisfied when a complaint seeks remedies for violations affecting the public at large, even if those remedies include damages. (Slip opn., pp. 10-11.) This clarification preserves the ability of consumer plaintiffs to band together without fear of being excluded from the exception based on the remedies sought.

Furthermore, the opinion draws a critical distinction between cases like *Club Members for an Honest Election v. Sierra Club* (2008) 45 Cal.4th 309, where plaintiffs sought relief to directly benefit themselves, and class actions like Lindsay's, where the remedies sought benefit a broader public. (Slip opn., p. 11, n. 5.) This detailed analysis corrects a common misinterpretation of section 425.17(b) and provides a valuable precedent for future cases involving consumer protection claims.

C. The Opinion Addresses a Legal Issue of Continuing Public Interest (Rule 8.1105(c)(6))

In addition, the *Lindsay* opinion addresses an issue of significant public interest: the rise in abusive debt collection practices, particularly those involving private student loans. As this Court noted, the defendants' conduct included "engaging in the unauthorized practice of law" and pursuing baseless lawsuits to secure default judgments. (Slip opn., pp. 4.) These tactics disproportionately harm vulnerable borrowers, particularly those with private student loan debt, a group often targeted due to the lack of federal remedies for their injuries.

This issue is particularly pressing given the increasing tactical use of anti-SLAPP motions by debt collectors to evade accountability for their actions. As the Court observed, Transworld and Patenaude filed anti-SLAPP motions in an effort to dismiss claims that directly challenged their fraudulent and abusive practices. (Slip opn., pp. 4–7.) By clarifying that the public interest exception applies to such cases, the *Lindsay* opinion ensures that borrowers can continue to bring counterclaims against debt collectors when those claims are merited.

Moreover, the opinion safeguards the intent of the California Private Student Loan Collections Reform Act by reinforcing the ability of private enforcement actions to address systemic abuses in the student loan market. By addressing these critical issues, *Lindsay* provides a roadmap for trial courts and practitioners navigating the intersection of anti-SLAPP law and consumer protection.

D. The Opinion Contributes to the Legal Literature on Anti-SLAPP and Consumer Protection Laws (Rule 8.1105(c)(7))

Finally, the *Lindsay* opinion makes a significant contribution to the understanding of the public interest exception under section 425.17(b) and its application to consumer protection

cases. The opinion offers a helpful analysis of the legislative intent behind the exception, emphasizing its role in curbing "disturbing abuse" of anti-SLAPP motions. (Slip opn., p. 3, citing CCP § 425.17, subd. (a).)

The opinion's detailed discussion of the three statutory conditions under section 425.17(b) provides valuable guidance for future litigants and courts. For example, the Court's analysis of the "disproportionate financial burden" condition highlights the significant litigation costs faced by plaintiffs like Lindsay in pursuing claims that confer a broader public benefit. (Slip opn., pp. 13-16.) This analysis underscores the importance of private enforcement actions in addressing systemic harms and ensures that anti-SLAPP protections are not used to undermine statutory rights.

Finally, *Lindsay* builds on and extends precedent, such as *Tourgeman*, by applying the public interest exception to a class action involving serious debt collection abuses. This application enriches the legal literature by providing a concrete example of how the exception operates in the context of consumer class actions, filling a gap in the existing body of case law.

III. Conclusion

The *Lindsay* opinion meets multiple criteria for publication under Rule 8.1105(c). It applies existing law to a new fact pattern, clarifies critical aspects of the public interest exception, addresses a pressing issue of public interest, and contributes meaningfully to the legal literature on anti-SLAPP and consumer protection law. Publication of the opinion would provide essential guidance to courts and practitioners while preserving consumers' ability to hold debt collectors accountable.

For these reasons, we respectfully urge this Court to certify the opinion for publication.

Respectfully submitted,

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