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**TESTIMONY OF DANIEL EBIHARA  
IN SUPPORT OF A.B. 40**

AB 40 provides protection to individuals who timely assert their rights, but for purely technical reasons have had their case dismissed. This protection currently exists in a majority of states, including every state that surrounds Nevada. Arizona, New Mexico, California, Colorado and Utah have all passed similar savings provisions.<sup>1</sup>

This legislation is applicable to every federal claim which asserts both a violation of federal and state laws. In one case in particular, I represented a young woman with a learning disability who was coerced into purchasing a vehicle which in no way could she afford. The dealership knew she had a learning disability and, instead of accommodating her impairments, intentionally manipulated her into signing a contract. This case presented both a violation of the federal Americans with Disabilities Act (ADA) as well as fraud, deceptive trade practices, and other state law claims. The complaint was filed in federal court originally, but, because there was a chance that her federal claims would not prevail and as there is no means for a case in federal court to be transferred to state court, a similar state court case had to be filed in order to prevent the entire action from being dismissed if federal jurisdiction was lost.

If the federal causes of action are dismissed for whatever reason (and there could be dozens of reasons which have nothing to do with the merits of the case), then the federal court could dismiss the entire case, including the state causes of action. If, in the meantime, the statute of limitations has expired, then, under current law, the case cannot be re-filed in state court. As a result, a meritorious claim, which was timely filed, is never heard on its merits. This result is contrary to the intent and purpose of our judicial system.

As stated above, a prudent attorney must simultaneously file an identical cases in both state and federal court to protect against this very scenario. The result would be a plaintiff being forced to file and a defendant being forced to defend two cases in two different courts over the same transaction.

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<sup>1/</sup> In a brief review of other states which have passed savings provisions to the statute of limitations, I found 26 states which have passed similar laws. This list is by no means exhaustive. The states are as follows: Alaska, Arkansas, Arizona, California, Connecticut, Georgia, Indiana, Iowa, Kansas, Kentucky, Main, Massachusetts, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, and Virginia.

The intent and effect of AB 40 is to promote judicial economy. A person who is attempting to vindicate his or her rights in court may be faced with a number of different venues when filing a claim. With the increasing number of federal laws as well as the complicated rules regarding choice of law, a person may be required to file his or her case in more than one jurisdiction in order to be sure that the action is maintained in the appropriate venue.

A.B. 40 will help reduce court congestion and require parties to focus on the jurisdictional as well as other technical issues quickly so that litigation of the merits of a case can proceed. A defendant in a case who has a technical defense in a court action may choose to use protracted litigation tactics to delay a hearing until after the applicable statute of limitations has run in order to foreclose the possibility of re-filing the action. Such dilatory measures would be avoided if the defendant knew that a trial on the merits could still be obtained. Additionally, courts would be more likely to dismiss cases if they knew that a more appropriate venue was available or that a case could be filed without violating technical rules.

It is for these reasons of relieving court congestion and promoting trial on the merits that the majority of states have adopted savings provisions tolling the statute of limitations during the pendency of a timely filed suit.