

No. SO48811

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IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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NIDA ENGALLA, ET AL.,  
Petitioners, Respondents, and Cross-Appellants,

v.

THE PERMANENTE MEDICAL GROUP, INC., ET AL.,  
Defendants and Appellants.

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After the August 3, 1995, Decision of the Court of Appeal  
First District, Division Two  
Reversing Order of the Alameda County Superior Court  
The Honorable Joanne Parrilli  
Court of Appeal No. AO62642  
Superior Court No. H154976-4

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BRIEF OF AMICUS CURIAE UNITED POLICYHOLDERS  
ON BEHALF OF THE PETITIONERS

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## STATEMENT

The Amicus adopts the Issues Presented, Statement of the Case, and Statement of Facts as set forth in the Petitioners' Opening Brief on the Merits ("Opening Brief").

## INTRODUCTION

Where binding arbitration of all disputes is mandated in a contract of adhesion, courts must take responsibility for ensuring that such arbitrations are conducted in fair and neutral forums. This brief will discuss the critical importance of judicial oversight and appropriate safeguards in this context.

Where, as here, a commercial entity drafts a contract that mandates arbitration of all disputes and mandates the terms and administration of the arbitration process, and where that party has a financial stake in the outcome of the very process it has designed, there is a grave danger that the process will favor the designer -- the commercial entity.

For this reason, we ask this Court to find that it is within the purview of the judiciary to review the fairness and neutrality of mandatory arbitration systems whose parameters and administration terms are defined in contracts of adhesion.

In undertaking such a review in the instant case, the Court will find that Kaiser's<sup>1</sup> system of mandatory arbitration is inherently unfair and consequently should hold that the

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1. The Defendants in this case are Kaiser Foundation Health Plan Inc., Kaiser Foundation Hospitals and The Permanente Group Inc. and are collectively referred to herein as "Kaiser."