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13 **IN THE UNITED STATES DISTRICT COURT**  
 14 **DISTRICT OF ARIZONA**

15	Stephen M. McKendry,	)	
16		)	
17	Plaintiff,	)	
18		)	NO. CV 96-0754-PHX-PGR
19	v.	)	
20		)	<b>MOTION FOR LEAVE TO</b>
21	General American Life Insurance)	)	<b>INTERVENE AND MEMORANDUM</b>
22	Company, et al.,	)	<b>IN SUPPORT THEREOF</b>
23		)	
24	Defendants.	)	<b>ORAL ARGUMENT REQUESTED</b>
25		)	
26		)	
27		)	
28		)	

29 Movants Consumer Action, Insurance Company Accountability Network,  
 30 and United Policyholders seek leave to intervene in this action pursuant to  
 31 Federal Rule of Civil Procedure 24(b) for the limited purpose of unsealing two  
 32 trial exhibits and Plaintiff's expert's testimony.

33 In support of this Motion, Movants submit the following Memorandum of  
 34 Points and Authorities and Declarations of Linda Sherry, Dan Lambe, and Amy

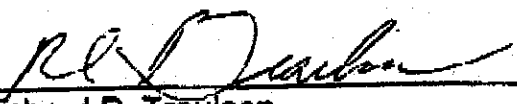
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Bach, which are being attached as exhibits. A proposed Order is attached. In addition, Movants are filing a Motion to Unseal Court Records to accompany this Motion to Intervene.

For the reasons stated in these papers, Movants respectfully request that they be permitted to intervene in this matter.

DATED this 29<sup>th</sup> day of March, 2001.

BEGAM, LEWIS, MARKS & WOLFE, P. A.

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**MEMORANDUM OF POINTS AND AUTHORITIES**

This Motion is submitted on behalf of three public interest groups that seek to intervene and unseal court records that may contain crucial evidence of insurance companies' wrongdoing.

1 During a jury trial on his claim that Defendants unlawfully terminated his  
2 disability insurance benefits, Mr. McKendry presented evidence and expert  
3 testimony that Defendants had entered into an arrangement that created a  
4 financial incentive to terminate the benefits of policyholders. If disclosed to the  
5 public, this evidence could provide proof and details of the arrangement.  
6 However, as detailed in Movants' accompanying Motion to Unseal Court  
7 Records and supporting submissions, the Court granted Defendants' oral  
8 motions during trial to seal two exhibits that provided proof of the arrangement.<sup>1</sup>

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11 Movants respectfully request that the Court permit them to intervene to  
12 unseal the Court record and permit public access to this important information.  
13

## 14 ARGUMENT

### 15 16 I. MOVANTS' INTERESTS ARE APPROPRIATE FOR INTERVENTION IN 17 THIS CASE.

18 The three Proposed Intervenors are organizations that have long acted in  
19 the public interest regarding the insurance industry.

20 Consumer Action is a non-profit organization with a national reputation for  
21 multilingual consumer education in the area of personal finance. [Exhibit A,  
22 Declaration of Linda Sherry, at ¶ 4]. Specifically, Consumer Action attempts to  
23 protect consumers from misleading and deceptive insurance practices. [Id.]  
24 Consumer Action fights for industry reform on the state and national level, [id. at  
25  
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28 <sup>1</sup> Movants' Motion to Unseal and the accompanying Memorandum of Points and  
Authorities details this issue in greater depth.

1 ¶ 6], and distributes educational publications on various subjects, including  
2 unfair insurance practices. [Id. at ¶ 5]. Last year, Consumer Action distributed  
3 more than one million of these publications through its network of community-  
4 based organizations. [Id.]

5  
6 The Insurance Company Accountability Network ("ICAN") is a project of  
7 Texas Citizen Action, a non-profit organization that seeks to end anti-consumer  
8 practices by the insurance industry. [Exhibit B, Declaration of Dan Lambe, at ¶  
9 4]. Specifically, ICAN seeks to curb insurance industry practices of unfairly  
10 paying legitimate claims or denying legitimate claims altogether. [Id.] Among  
11 other means of accomplishing this objective, ICAN publicizes bad-faith conduct  
12 within the insurance industry. In addition, it supports legislative reform of the  
13 industry. [Id.]

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16 United Policyholders is a non-profit organization dedicated to educating  
17 the public on insurance issues and consumer rights. [Exhibit C, Declaration of  
18 Amy Bach, at ¶ 3]. The organization has conducted educational meetings and  
19 workshops on insurance issues in Florida, Texas, and California, among other  
20 states, and representatives of United Policyholders frequently testify at  
21 legislative and other public hearings. [Id.] United Policyholders regularly  
22 obtains and provides information about insurance company practices to its  
23 supporters, legislators, courts, and other consumer groups. [Id.]

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26 These groups strongly endorse the public's right to know whether  
27 insurance companies are operating in good faith. It is the mission of each of  
28

1 these groups to gather information regarding unfair insurance practices. They  
2 disseminate such information to promote public and consumer education,  
3 [Exhibit A, ¶ 5; Exhibit B, ¶ 4; Exhibit C, ¶ 3] and use this information to better  
4 advocate for reform of the insurance industry. [Exhibit A, ¶ 6; Exhibit B, ¶ 4 ;  
5 Exhibit C, ¶¶ 3-5].  
6

7 Thus, all three groups have strong interests in unsealing the exhibits and  
8 testimony in the underlying litigation, which apparently provide proof of  
9 Defendants' potentially bad faith termination of Plaintiff's disability benefits.  
10 [Exhibit D, Trial Transcript ("Tr.") Vol. 10, at 1889:9-14, 1995:5-8 (summary of  
11 sealed testimony about sealed exhibit, presented during closing argument);  
12 Exhibit E, Tr. Vol. 7, June 3, 1999, at 1471:10-13 (testimony generally regarding  
13 sealed exhibit); *id.* at 1474:9-20, 1476:12-18, 1476:23-1477:1, 1478:12-18,  
14 1481:15-20 (same)].  
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18 Because this information would enhance Movants' public education and  
19 reform objectives, Movants' interests are appropriate for the limited intervention  
20 sought in this case.

21 **II. MOVANTS MEET THE LEGAL STANDARD FOR PERMISSION**  
22 **INTERVENTION.**

23 Movants request to intervene under Federal Rule of Civil Procedure 24(b).  
24

25 This Rule states, in pertinent part:

26 [A]nyone may be permitted to intervene in an action . . . when  
27 an applicant's claim or defense and the main action have a  
28 question of law or fact in common . . . . In exercising its  
discretion the court shall consider whether the intervention

1 will unduly delay or prejudice the adjudication of the rights of  
2 the original parties.

3 Fed. R. Civ. P. 24(b).

4 The Ninth Circuit has repeatedly held that permissive intervention is an  
5 appropriate means for a non-party to seek access to a judicial record in a civil  
6 case. San Jose Mercury News, Inc. v. United States D., 187 F.3d 1096, 1100  
7 (9<sup>th</sup> Cir. 1999) ("Nonparties seeking access to a judicial record in a civil case  
8 may do so by seeking permissive intervention under Rule 24(b)(2)."); Beckman  
9 Inds., Inc. v. International Ins. Co., 966 F.2d 470, 472 (9<sup>th</sup> Cir.) (noting "wide  
10 approval" of practice and holding that Rule 24(b) permits limited intervention for  
11 purpose of modifying protective order), cert. denied, 506 U.S. 868 (1992);  
12 accord In re Associated Press, 162 F.3d 503, 506 (7<sup>th</sup> Cir. 1998) (holding that  
13 "the most appropriate procedural mechanism by which to accomplish this task  
14 [of ensuring the right of access] is by permitting those who oppose the  
15 suppression of the material to intervene for that limited purpose," and citing  
16 other circuit cases in accord).

17 The standards for intervention are clearly satisfied here. The sealing  
18 orders at issue have violated Movants' right to inspect court records under the  
19 common-law and First Amendment. Movants' challenge to these orders plainly  
20 involves common questions of law and fact with this action.<sup>2</sup>

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28 <sup>2</sup> Movants' Motion to Unseal Court Records and the accompanying  
Memorandum addresses these points in greater depth.

1 Of particular significance to this Motion is the public interest in the  
2 underlying litigation, which courts have weighed in determining the  
3 appropriateness of intervention. See, e.g., Public Citizen v. Liggett Grp., Inc.,  
4 858 F.2d 775, 787 (1<sup>st</sup> Cir. 1988) (weighing importance of public health issue as  
5 factor favoring intervention when considering timeliness of motion to intervene to  
6 seek access), cert. denied, 488 U.S. 1030 (1989). Proof of the financial  
7 arrangement between the Defendants could potentially have direct relevance to  
8 consumers across the country. In addition, by exposing a potentially improper  
9 practice of the insurance industry, the evidence would benefit Movants' reform  
10 efforts.  
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13 Because of the value to the public interest that the evidence and  
14 testimony would provide if they were unsealed, the Court should permit Movants  
15 to intervene. As the Seventh Circuit recently stated regarding a case of public  
16 interest: "[T]he interest in publicity will go unprotected unless the media are  
17 interested in the case and move to unseal." Citizens First Nat'l Bank v.  
18 Cincinnati Ins. Co., 178 F.3d 943 (7<sup>th</sup> Cir. 1999).  
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## 21 CONCLUSION

22 For the foregoing reasons, Movants respectfully request that the Court  
23 grant their Motion to Intervene.  
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DATED this 29<sup>th</sup> day of March, 2001.

BEGAM, LEWIS, MARKS & WOLFE, P. A.

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ORIGINAL FILED WITH CLERK and COPY of the foregoing  
hand-delivered this 29 day of March, 2001; to:

The Honorable Paul G. Rosenblatt  
U.S. District Judge  
United States District Court  
District of Arizona  
230 North First Avenue  
Phoenix, AZ 85025

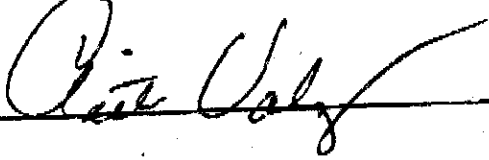
COPY of the foregoing mailed this  
29 day of March, 2001; to:

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