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September 8, 2009

Honorable Ronald M. George, Chief Justice
and the Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: *Yabsley v. Cingular Wireless LLC* (2009) Case No. B199287,
Letter Requesting Depublication
(California Rule of Court Rule 8.1125(a).)

Dear Chief Justice George and the Associate Justices:

Pursuant to Rule of Court 8.1125, I write to request depublication of the Court of Appeal's opinion in *Yabsley v. Cingular Wireless, LLC*, ___ Cal.App.4th ___, 2009 WL 2517246 (Aug. 19, 2009) (Case No. B198827). The opinion should be depublished for three separate reasons.

First, it relies heavily on the case of *Loeffler v. Target Corporation* (2009) 173 Cal. App. 4th 1229, which was wrongly decided and which presently itself is being considered for granting of Petition for Review or depublication by this Court. As the California Attorney General wrote to this Court in a Letter in Support of Petition for Review of the *Loeffler* opinion on July 6, 2009:

> "[T]he Court of Appeal decision opens up a loophole that would allow unscrupulous businesses to take advantage of consumers and collect greater sums from them than the consumers actually owe, free from the worry that they can be held accountable under California's consumer protection statutes. Under the Court of Appeal's decision in Loeffler, consumers are effectively left with no remedy because businesses can insulate themselves by deceptively calling these excess charges 'sales tax.'"

Letter in Support of Petition for Review, or Alternatively, Request for Depublication, California Attorney General Letter, at page 1 (Attached as Exhibit "1").

Second, the decision holds that a private plaintiff only has standing to bring a claim under the Unfair Competition Law (UCL) or False Advertising Law (FAL) if a law other than the UCL or FAL is violated. This effectively abrogates both the unfair and deceptive prongs of the UCL.

Third, the decision holds, directly contrary to Civil Code section 1782(d), that a demand letter is required before a plaintiff may pursue an action for injunctive relief under the Consumer Legal Remedies Act (CLRA).

I. The Interest of the Amici.

The Kick Law Firm, APC represents plaintiffs in complex civil litigation, including the plaintiffs in *McClain v. Sav-On Drugs et al.* Case No. BC325272 (*McClain)*, a putative class action pending in the Superior Court of Los Angeles County on behalf of California's diabetics. Glucose test strips and skin puncture lancets – medical supplies used by diabetics to check their blood sugar levels -- are exempt from sales tax pursuant to Revenue & Taxation Code § 6369 and California Board of Equalization Regulation 1591.1. The *McClain* case alleges that the defendant retailers nonetheless charged – and the diabetics paid -- sales tax reimbursement on the sales of glucose test strips and skin puncture lancets. The *McClain* plaintiffs seek recourse from retailers for the unlawfully-collected sales tax reimbursement pursuant to Bus. & Prof. C. § 17200.

Beyond the *McClain* case, The Kick Law Firm, APC represents consumers in a variety of cases alleging violation of Business & Professions Code section 17200 and the Consumer Legal Remedies Act.

II. *Yabsley* Should Be Depublished Because It Perpetuates The Errors Of The *Loeffler* Decision.

Yabsley's reliance on *Loeffler* not only presents the first reason why *Yabsley* needs to be depublished, but also underscores the importance of this Court acting to correct *Loeffler* as other Courts apparently are already starting to wrongly rely on it, thinking this Court has allowed it to stand.

Specifically, the Court of Appeal issued its opinion in *Yabsley* on August 19, 2009, which is exactly 61 days after the Petition for Review in *Loeffler* was filed on June 19, 2009. The *Yabsley* Court of Appeal likely believed that pursuant to California Rule of Court

8.512(b)(2), the Petition Review had been deemed denied. However, on August 20, 2009, this Court entered an order extending the time to grant or deny review in *Loeffler* (entered *nunc pro tunc* as of August 18, 2009).

Before the *Loeffler* decision was published, California courts for decades without any controversy entertained lawsuits by consumers alleging that retailers improperly collected sales tax reimbursement. *See, e.g., Livingston Rock & Gravel Co v. DeSalvo,* (1955) 136 Cal.App.2d 256, *Dell v. Superior Court (Mohan)* (2008) 159 Cal.App.th 911.

Ironically, even *Yabsley* itself is an example of this. In the Court of Appeal's original August 8, 2008, opinion in *Yabsley*, the Court affirmed the trial court based solely on its interpretation of California sales tax regulations, holding that Cingular had lawfully collected sales taxes reimbursement. August 8, 2008 Slip Op. at 8. (This opinion was withdrawn because the appellants had failed to notify the Attorney General of the appeal as required by Business & Professions Code section 17209).

The Court of Appeal's original opinion never once suggested that Yabsley would have been barred from bringing suit if the sales tax reimbursement had been collected *unlawfully*. Now, however, as a result of the publication of the *Loeffler* opinion subsequent to the first appellate opinion in *Yabsley*, *Yabsley* for the first time ever asserts exactly that. It perpetuates the erroneous holding of *Loeffler* that even where sales tax reimbursement has been unlawfully collected, consumers have no remedy.

Yabsley simply echoes *Loeffler's* fundamental flaw in reaching this new holding: both decisions interpret a constitutional provision which restricts lawsuits against the state to prohibit lawsuits based on private transactions.

Under California law, a retailer is responsible for paying sales tax, but may seek reimbursement from the customer. Civil Code section 1656.1 creates a rebuttable presumption that the consumer has agreed to reimburse the retailer when the sales tax is shown on the sales check. Thus, consumers pay sales tax reimbursement not because state law requires them to, but because they have agreed with the retailer that they will do so. This is a fundamentally private transaction, no different than any business passing on an expense to a customer.

Yabsley and *Loeffer* claim to rely upon California Constitution Article 13, Section 32, which provides that:

> No legal or equitable process shall issue in any proceeding in any court ***against this State or any officer thereof*** to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature.

(Emphasis added)

However, if words have meaning, then this constitutional provision which restricts suits "against this State or any officer thereof" cannot be interpreted to bar lawsuits by consumers against retailers. As *Yabsley* states, retailers who assess lawful sales tax in a manner prescribed by tax regulations may enjoy a safe harbor under the UCL. There is no need to resort to Article 13, Section 32 to reach that conclusion, and no need to expand a constitutional provision which by its terms only regulates lawsuits against the State and its officers.

Yabsley and *Loeffler* unfortunately also create the very situation that this Court so foresightfully warned against and decried in *Javor v. State Bd. of Equalization* (1974) 12 Cal.3d 790, 802-803 (1974) in which consumers who have unlawfully been charged sales tax would be left with no remedy:

> Under the procedure set up by the Board the retailer is the only one who can obtain a refund from the Board; yet, ***since the retailer cannot retain the refund himself, but must pay it over to his customer, the retailer has no particular incentive to request the refund on his own.*** Despite this lack of incentive, the Board has not required the retailer to refund the total excessive amount collected, but rather has merely allowed retailers to collect a refund when the retailer is compelled to pay a refund himself to a customer who has demanded it.
>
> Thus the entire burden is upon the customer. ***Unless the customer demands his refund, the money erroneously collected will remain with the Board, despite the fact that the customer is the one entitled to it.*** Moreover, the

> customer has been informed of this right solely by means of a general press release. The Board has not required the retailer to notify his customer that the refund is due and owing, even though the retailer has all the necessary information. ***In short under the procedure which it has established, the Board is very likely to become enriched at the expense of the customer to whom the amount of the excessive tax actually belongs.***

As long as *Yabsley* and *Loeffler* remain on the books, defendants will argue that what this Court forbade in *Javor* is nonetheless now the law.

III. *Yabsley* Should Be Depublished Because It Also Turns Longstanding Law Regarding The UCL On Its Head.

It has long been the law in California that Business & Professions Code section 17200 is written in the disjunctive, and that a violation of any one of the three prongs, unlawful, unfair or deceptive establishes a violation of the law:

> "Because Business & Professions Code section 17200 is written in the disjunctive, it establishes three varieties of unfair competition - acts or practices which are unlawful, or unfair, or fraudulent. 'In other words, ***a practice is prohibited as "unfair" or "deceptive" even if it is not "unlawful."***"

Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Company (1999) 20 Cal.4th 163 at 180.

The *Yabsley* opinion states that a plaintiff under the UCL does not have a "legally cognizable interest" in pursuing a claim *unless a law other than the UCL was violated.* *Yabsley* Slip Op. at 8. That is an extraordinary proposition because if true, it would effectively abolish the unfair and deceptive prongs of the UCL. It is, quite simply, a grossly incorrect statement of California unfair competition law.

IV. *Yabsley* Should Be Depublished Because It Also Misstates The Law Regarding The Consumer Legal Remedies Act.

The *Yabsley* opinion also states in a footnote that the plaintiff was unable to seek injunctive relief under the Consumer Legal Remedies Act, because "[t]he CLRA requires that before an action is filed, the consumer make demand on the retailer to modify the alleged deceptive practice." Slip Op; at 7-8 n4.

In fact, the plain language of the Consumer Legal Remedies Act, Civil Code section 1782(a), makes clear that the demand requirement is limited to actions for damages:

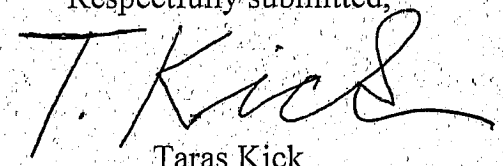
> "Thirty days or more prior to the commencement of an action for damages pursuant to this title, the consumer shall do the following: (1) notify the person [alleged to have violated the CLRA.]"

Further, Civil Code section 1782(d) expressly provides that: "An action for injunctive relief . . . may be commenced without compliance with subdivision (a)."

In fact, just recently, in the case of *Vasquez v. State of California* (2008) 45 Cal.4th 243, 245 (No. S143710), this Court modified its own opinion to correct a similar error, modifying the decision on December 17, 2008 so that it read: "A plaintiff suing under the Consumer Legal Remedies Act must notify the defendants of the particular violations alleged . . . at least 30 days before commencing an action for damages."

If *Yabsley* is not depublished, footnote 4 will be misused as precedent by litigants hoping to convince courts to ignore the plain language of section 1782(d) and apply a demand requirement for injunctive relief claims under the CLRA.

Respectfully submitted,



Taras Kick

EXHIBIT 1

EDMUND G. BROWN JR.
Attorney General

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DEPARTMENT OF JUSTICE

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July 6, 2009

Honorable Ronald M. George, Chief Justice
and the Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

RE: *Loeffler, et al. v. Target Corporation*, Case No. S173972
Letter in Support of Petition for Review or, Alternatively, Request for Depublication
(Cal. Rules of Court, Rules 8.500(g), 8.1125(a))

Dear Chief Justice George and the Associate Justices:

The Attorney General respectfully requests that the Court grant the Petition for Review in *Loeffler, et al. v. Target Corporation*, (2009) 173 Cal.App.4th 1229; *Loeffler*) or, alternatively, depublish the appellate court's opinion. In *Loeffler*, the appellate court in effect ruled that a consumer who alleges that a seller deceptively charged the consumer more than the consumer owed in a sales transaction cannot state a cause of action under California's Unfair Competition Law (UCL) (Bus. & Prof. Code § 17200 et seq.), if the seller labels the deceptively charged excess a "sales tax." The appellate court's decision bars a validly stated UCL cause of action from going forward by upholding the trial court's dismissal of the plaintiffs' complaint on a demurrer. The court did this by viewing this matter as a sales tax reimbursement case, rather than viewing it as a UCL action for return of money deceptively obtained.

Review is warranted in this case for two reasons. First, the Court of Appeal decision opens a loophole that would allow unscrupulous businesses to take advantage of consumers and collect greater sums from them than the consumers actually owe, free from the worry that they can be held accountable under California's consumer protection statutes and subject to the remedies provided by these laws. Under the Court of Appeal's decision in *Loeffler*, consumers are effectively left with no remedy because businesses can insulate themselves by deceptively calling these excess charges "sales tax." Second, the specific issue of whether a consumer can sue a retailer under Business and Professions Code section 17200 has never been directly addressed by this Court. The cases relied on by the Court of Appeal deal with the issue of whether the consumer is the person who is obligated to pay sales tax. Because he is not, those courts have decided the consumer cannot bring an action against the state for recovery of sales tax overpayments.

Further, if allowed to remain as precedent, the appellate decision threatens to hinder public actions brought by the Attorney General and other law enforcement agencies because courts may apply the appellate court's flawed analysis in public actions. Such a result would greatly undermine the deterrent effect of law enforcement actions against perpetrators of illegal sales schemes. It would allow defendants to often keep their ill-gotten gains. It would free them from the threat of injunctive provisions that halt their illegal activities. It would free them from the imposition of civil penalties in governmental civil prosecutions under the UCL and thus not deter others from engaging in similar conduct. Indeed, it gives unscrupulous sellers an advantage in the marketplace over honest competitors by allowing the wrongdoers to keep the profits made from sales that included deceptive charges.

There is a pressing need for the Court's guidance on these important questions and for uniformity in decisions. Accordingly, the Attorney General supports the Petition for Review or, alternatively, requests that the Court order depublication of the *Loeffler* opinion.

I. The Attorney General's Interest as Amicus Curiae

The Attorney General and other public prosecutors are specifically authorized to enforce the state's primary consumer protection laws, the UCL and the false advertising law (FAL) (Bus. & Prof. Code, § 17500 et seq.), on behalf of the People. (Bus. & Prof. Code, §§ 17204, 17536.) An appeal in a private action involving the UCL or the FAL, such as the appeal in this case, may have profound ramifications for law enforcement agencies, which regularly rely on these laws in combating a host of unfair, deceptive, and unlawful practices. As discussed above, the *Loeffler* court's interpretation of the standards for when a cause of action can be stated under the UCL, if applied in public actions, may have damaging effects on public prosecutions using those laws.

In addition, the Attorney General has a significant interest in ensuring that the state's consumer protection statutes are properly construed and applied in private actions. The Attorney General receives thousands of complaints each year and is not in a position to investigate and prosecute all or even a majority of them. Legitimate actions by private litigants are necessary to supplement law enforcement efforts and to vindicate consumers' rights. Where, as here, a Court of Appeal decision improperly prevents private actions from going forward, the Attorney General's limited resources are further strained.

II. The UCL and FAL Afford Consumers and Law-Abiding Businesses Broad Protections

The UCL and FAL protect consumers and law-abiding businesses by stopping unfair business practices and false advertising, by restoring money taken from victims of those unfair practices, and by deterring future unfair practices by making them unprofitable. The UCL and FAL accomplish these important purposes by empowering courts with broad authority to fashion injunctive and restitutionary relief once a UCL or FAL violation has been found (Bus. & Prof. Code, §§ 17203, 17535), and in civil prosecutions by law enforcement agencies, to impose civil

penalties. (Bus. & Prof. Code, §§ 17206, 17536.) Further, both the UCL and FAL provide that, "Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state." (Bus. & Prof. Code, §§ 17205, 17534.5.)

As this Court recently said, the "focus of the [UCL] is on the defendant's conduct," and not on whether consumers actually relied on a deceptive practice or not. (*In Re Tobacco II Cases*, (2009) __ Cal.4th __, No. S147345, 2009 WL 1362556, *14.) Without taking a position as to whether the plaintiffs in *Loeffler* will be able to prove their case, the Attorney General believes that they have stated a cause of action under the UCL sufficient to withstand a demurrer when, focusing on defendant's conduct, they allege that they paid money to defendant because, "Defendants [sic] falsely and illegally represented to members of the general public that it had the right to charge the sales tax . . . ." (Plaintiffs' Second Amended Complaint, paragraph 13.)

III. The *Loeffler* Decision Bars a Meritorious Private Action and Ignores Substantive UCL Law

The Attorney General has no issue with the appellate court's ruling that consumers are not the "taxpayer" of sales taxes (the retailer is) and so, under the California Revenue and Taxation Code, have no ability to take action against the State Board of Equalization (SBE) to recover a claimed overpayment of sales tax. But this correct holding does not lead to the appellate court's ultimate incorrect holding that consumers have no cause of action against a retailer who deceptively collects money from consumers and calls it "sales tax."

Here the plaintiffs have sued to recover money they claim the putative class members have illegally paid to the defendant retailer because of defendant's deceptive use of the label "sales tax" to justify the sum collected even though, according to plaintiffs, no sales tax is required to be paid by the retailer to the state on the particular sale. If appellants can prove their allegations, the activities of the retailer would fall within the purview of California's Unfair Competition Law.

California's UCL defines unfair competition to include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising, and any act prohibited by California's False Advertising Law, Business and Professions Code section 17500. (Bus. & Prof. Code, § 17200.) The UCL prohibits acts of unfair competition (Bus. & Prof. Code, § 17203), can be enforced by specified law enforcement agencies and the public (Bus. & Prof. Code, § 17204), gives the court authority to order the return of money acquired by means of unfair competition (Bus. & Prof. Code, § 17203) and, in actions brought by law enforcement agencies, provides for the assessment by the court of civil penalties (Bus. & Prof. Code, § 17206).

An unlawful business practice is anything that can properly be called a business practice and that at the same time is forbidden by law. (*Barquis v. Merchants Collection Assn.* (1972) 7

Cal.3d 94, 112.) The Legislature "intended . . . to enjoin wrongful business conduct in whatever context such activity might occur." (See, e.g., *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1266; *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 209-210.) Accordingly, [t]he unlawful practices prohibited by section 17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court made. (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839; see *State Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1102-1103.)

A violation of the FAL, also defined as a form of unfair competition under the UCL, makes it unlawful to use any statement that is known or, by the exercise of reasonable care, should be known to be untrue or misleading in the course of selling any property, goods, or services. The FAL, along with the fraudulent prong of the UCL, prohibit not only a statement which is false but also a statement which "although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public." (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 951.) A violation of the FAL necessarily violates the UCL. (*Ibid.*; *Children's Television, supra*, 35 Cal.3d at p. 210.) If a retailer has collected an amount of money from the consumer by calling it a sales tax when the retailer is under no obligation to remit sales tax on such purchases to the state, the practice seems to be deceptive and subject to remedial action under section 17200, if the plaintiff is able to prove the allegations.

Restitution under section 17203 of the UCL "is not solely 'intended to benefit the [victims] by the return of money, but instead is designed to penalize a defendant for past unlawful conduct and thereby deter future violations.'" (*People ex rel. Kennedy v. Beaumont Investment, Ltd.* (2003) 111 Cal.App.4th 102, 135, bracket in original, citing *People v. Toomey* (1984) 157 Cal.App.3d 1, 25-26; see *Bank of the West, supra*, 2 Cal.4th at p.1267 ["The purpose of such orders is 'to deter future violations of the unfair trade practice statute and to foreclose retention by the violator of its ill gotten gains.'. . ."].) Indeed, deterrence may be more effectively accomplished through restitution than through an injunction. (See *ABC International Traders, Inc. v. Matsushita Electric Corp.* (1997) 14 Cal.4th 1247, 1271.)

The Court of Appeal's decision effectively removes an unscrupulous seller's possible reticence not to charge his customers a bogus amount of money by calling it a "sales tax." The Court of Appeal says that the consumer is not devoid of relief because if a retailer, after it exhausts "its administrative remedies, prevails in a sales tax refund action against the Board, the retailer must refund associated sales tax reimbursement to customers." (*Loeffler, supra*, 173 Cal.App.4th at p. 1249.) But if a retailer is charging a fee that he is not entitled to collect by deceptively labeling it "sales tax," how likely is he to have passed the collected amount of money onto the SBE or petition the SBE for a sales tax reimbursement?

The Court of Appeal then said that consumers may also obtain a refund of excess sales tax reimbursement paid to retailers because the SBE may examine a retailer's tax returns or conduct an audit of the retailer's books and records on its own initiative, in response to a customer's complaint or to a retailer's claim. (*Id.* at 1250.) Again, this leaves the consumer with

having to rely on the SBE to collect an amount of money paid to the retailer because of the retailer's deception.

The Court of Appeal's response to the claim that it has stripped consumers of their rights under the UCL to redress unfair, unlawful and deceptive business practices is that "[t]hese arguments are better suited for the Legislature than the courts. [The California Constitution,] Article XIII, section 32, prohibits the courts from expanding the remedies expressly provided by the Legislature for sales tax refunds and associated sales tax reimbursement." (*Ibid;* brackets added.)[1] This statement overlooks that when deception, as opposed to a miscalculation, has occurred the Legislature has already provided a remedy for consumers—the UCL. The constitutional prohibition on the use of remedies other than those provided in the Revenue and Taxation Code relate to actions against the SBE by the retailer, who is the party obligated to pay sales taxes. As such, the retailer is the only party who can file for sales tax refunds by following the procedures set forth in the Code; the consumer/purchaser cannot file an action against the SBE under these provisions. But when the consumer/purchaser is the victim of an act which violates the UCL, the consumer can plead a cause of action under the UCL.

The Court of Appeal relied on several cases (*Pacific Gas & Electric Co. v. State Bd. of Equalization* (1980) 27 Cal.3d 277 and *Western Oil & Gas Assn. v. State Bd. of Equalization* (1987) 44 Cal.3d 208), to find that article XIII, section 32 of the California Constitution bars the plaintiffs' action. But in each of these cases the plaintiff was filing an action against the State by naming the SBE as the defendant. Article XIII, section 32, by its own language only applies to actions against the State and to actions which seek "to prevent or enjoin the collection of any tax." ("No legal or equitable provides process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax." *Ibid.*) Where a complaint filed under the UCL does neither, it should not be held to fall within the strictures of article XIII, section 32. A deception-based action against the person accused of having committed the deception does not affect the State's ability to collect taxes.[2]

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[1] While the Court of Appeal may say otherwise, the result of its decision is that the consumer has no remedy. Even if the SBE rules there has been an overpayment of sales tax, the last sentence of Revenue & Taxation Code section 6901.5, which the Court of Appeal relies on to say that consumers are not without remedies, says: "In the event of his or her [the retailer's] failure or refusal to do so [return the sales tax overpayment], the amount so paid, if knowingly or mistakenly computed by the person [the retailer] . . ., shall be remitted by that person [the retailer] to this state." (Rev. & Tax. Code, § 6901.5; brackets added.) Therefore, there is no assurance that any overpayments whether actual sales taxes or merely a deceptive charge styled as "sales tax" will ever be returned to the consumers that paid them.

[2] The Attorney General in this letter does not specifically address the question of the validity of plaintiffs' cause of action based on alleged violations of the Consumer Legal Remedies Act (CLRA; Civil Code sections 1750—1784) because section 1770, on which plaintiffs' claims are based states in pertinent part: "(a) The following unfair methods of competition and unfair or deceptive acts or practices . . . are unlawful: (1) . . . ." Thus, if plaintiffs can prove that

Additionally, the appellate court's reliance on *Decorative Carpets, Inc. v. State Board of Equalization* (1962) 58 Cal.2d 252 and *Javor v. State Board of Equalization* (1974) 12 Cal.3d 790 (*Loeffler, supra,* 173 Cal.App.4th at pp. 1243-1245), to say that plaintiffs' cannot state a cause of action under Revenue and Taxation Code section 6901.5, says nothing about whether plaintiffs can state a cause of action under Business and Professions Code section 17200. These cases deal, among other issues, with the question of who the tax payer of sales taxes is and both reiterate that it is the retailer and that is why only the retailer can bring an action against the SBE. Thus, in deciding those tax reimbursement cases those courts basically held that when the SBE orders a refund to the retailer/tax payer for sales taxes mistakenly collected from consumers, the SBE can condition the making of the refund on the retailer making refunds to its customers. Those cases did not contemplate a consumer bringing an action under section 17200 against a retailer for allegedly deceptively charging the consumer an extra amount of money, and in an attempt to justify the extra charge, labeling it a "sales tax."

Finally, the extension of the Court of Appeal's decision could result in a ruling that the Attorney General and district attorneys also cannot state a UCL cause of action against a retailer who deceptively charges consumers an amount which is more than they agreed to pay for an item if the excess amount is styled "sales tax."

IV. Conclusion

The Petition should be granted to ensure that consumers are not without a remedy under the UCL when they pay more than they should have for an item because the additional amount charged has deceptively been labeled a "sales tax." The purposes of the UCL, should be effectuated by allowing actions that will remove the wrongdoer's ill-gotten gains so that the plaintiff may recover his money and secure an injunction to prevent the wrongdoer from continuing to deceptively charge consumers more than they are required to pay. Such a result also further benefits the marketplace by placing all sellers on a level playing field.

If left as precedent, the opinion will prevent legitimate private lawsuits and potentially will undermine law enforcement actions to protect the public. Accordingly, the Attorney

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defendant committed any of the acts declared to be "unlawful" by Civil Code section 1770, they have also proven a violation of the UCL. As such, if plaintiffs' can legally state a cause of action under the UCL, they can also state a cause of action under the CLRA when a defendant has used deceptive methods to collect a payment in excess of what the consumer agreed to pay by deceptively labeling the excess payment a "sales tax."

General respectfully requests that the Court grant the Petition for Review or, alternatively, depublish the *Loeffler* opinion.

Sincerely,

ALBERT NORMAN SHELDEN
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

ANS:tl

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DECLARATION OF SERVICE

Case Name: **Kimberly Loeffler et al. v. Target Corporation** No.: S173972

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 6, 2009, I served the attached **LETTER IN SUPPORT OF PETITION FOR REVIEW OR, ALTERNATIVELY, REQUEST FOR DEPUBLICATION** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail system of the Office of the Attorney General, addressed as follows:

Leslie A. Bailey, Esq.
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Los Angeles, CA 90013

Superior Court of California
County of Los Angeles
Central District - Stanley Mosk Courthouse
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Los Angeles, CA 90012-3014

The Honorable Steve Cooley
District Attorney
LA County District Attorney's Office
210 West Temple Street, Suite 18000
Los Angeles, CA 90012-3210

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 6, 2009, at San Diego, California.

Tammy Larson
Declarant

Signature

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80377285.doc

PROOF OF SERVICE
SERVICE LIST

Yabsley v. Cingular Wireless
Court of Appeals Case No. B198827

I am employed by the Kick Law Firm, APC, in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 900 Wilshire Blvd, Suite 230, Los Angeles, California 90017.

On September 8, 2009, I served the foregoing documents described as **LETTER REQUESTING DEPUBLICATION** on the parties indicated below.

(SEE ATTACHED SERVICE LIST)

__X__ BY UNITED STATES MAIL – I deposited the sealed envelope with postage thereon fully prepaid in the United States mail at Los Angeles, California.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this September 8, 2009.

_____
Cristina Daco

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