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Superior Court of California  
County of San Bernardino  
351 N. Arrowhead Avenue, Dept. S-2  
San Bernardino, California 92415-0240

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JAN 2005

*David A. Anderson*  
Deputy

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

Coordination Proceeding Special Title  
(Rule 1550(b))

Case No.: JCCP No. 4336

BLOUSSANT CASES

STATEMENT OF DECISION RE:  
DEFENDANT'S MOTION FOR  
JUDGMENT ON THE PLEADINGS

This Document Relates To:

*People of the State of California v.  
Wellquest International, Inc., Super. Ct.  
San Bernardino No. SCVSS 094-240*

*Jill Kolstedt v. Wellquest International,  
Inc., Super. Ct. Los Angeles No. BC  
260714*

*Teachers for Truth in Advertising v.  
Wellquest International, Inc., Super. Ct.  
Los Angeles, No. BC 287594*

Defendant's Motion for Judgment on the Pleadings was heard on January 5,  
2005. Following oral argument the matter was taken under submission and the Court  
now rules.

With respect to the requests for judicial notice, the Court takes judicial notice of  
decisions of other Superior Courts in the State of California with respect to the issue of

1 retroactivity of Proposition 64. The Court observes that those decisions are not binding  
2 on this Court.

3 Proposition 64 was passed by California voters on November 2<sup>nd</sup>, 2004. The  
4 amendments to California Law took effect the following day (Cal. Constitution Article II,  
5 Section 10(a).) Those amendments changed the standing requirements of the Unfair  
6 Competition Laws (UCL) by changing three sections of the Business and Professions  
7 Code. Those code sections, as now amended, provide that private individuals may  
8 pursue claims under the unfair competition law only where the Plaintiff has suffered  
9 injury in fact and has lost money or property as a result of such unfair competition.  
10 (California Business and Professions Code § 17204.) Representative claims may be  
11 pursued now, only if the claimant meets the standing requirements of § 17204 and  
12 complies with § 382 of the California Code of Civil Procedure.

13 Defendant's contend, by way of motion for judgment on the pleadings, that the  
14 claims of Jill Kolstedt and those representative causes of action in the case entitled Jill  
15 Kolstedt v. Wellquest and the representative claims in the case entitled Teachers for  
16 Truth in Advertising v. Wellquest are defeated by way of the changes in the law  
17 implemented by Proposition 64.


18 When interpreting the effect of an initiative, Courts supply the same principles as  
19 those governing statutory construction. People v. Canty (2004) 32 Cal. 4<sup>th</sup> 1266, 1276.  
20 When the voters amend a statute, any omitted sections are deemed repealed (see  
21 California Government Code § 9605), and where a right or remedy depends on a  
22 statute, "the repeal of the statute without a savings clause destroys such a right."  
23 Beckman v. Thompson (1992) 4 Cal. App. 4<sup>th</sup> 481, 489. When a remedial statute is  
24 amended prior to a final judgment, the "Court will apply the law in force at the time of the  
25 decision." Brenton v. Metabolife International, Inc. (2004) 116 Cal. App. 4<sup>th</sup> 679, 690;  
26 Beckman, supra, at page 489.

27 Both Kolstedts and Teachers rights to sue in a representative capacity depended  
28 entirely upon the Unfair Competition Law and were not based on common law (see

1 Bank of the West v. Superior Court (1992) 2 Cal. 4<sup>th</sup> 1254, 1263-64). Proposition 64  
2 repealed the standing of private persons who suffer no injury in fact to sue under the  
3 Unfair Competition Law. Proposition 64 contains no savings clause. Because a  
4 statutory right to sue is not a "vested right", no exception to the repeal doctrine applies  
5 (see Governing Board of Rialto Unified School District v. Mann (1977) 18 Cal. 3<sup>rd</sup> 819,  
6 822-829 (statutory right to sue not a vested right)); S. Serv. Co. v. County of Los  
7 Angeles (1940) 15 Cal. 2<sup>nd</sup> 1, 12 (finding an exception to the repeal doctrine only where  
8 a vested right is impaired).

9         The rule of Statutory Repeal renders Plaintiff's arguments relative to legislative  
10 intent analysis moot. In the absence of a savings clause, as in this case, repeals are  
11 presumed immediately applicable to all pending cases (Mann, supra, 18 Cal. 3<sup>rd</sup> at 829).  
12 The passage of Proposition 64 eliminated Kolstedts and Teachers (in a representative  
13 capacity) standing as of November 3, 2004. Defendant's motion for judgment on the  
14 pleadings is therefore granted.

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16         Dated this 19<sup>th</sup> of January, 2005.

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22         CHRISTOPHER J. WARNER  
23         Judge of the Superior Court  
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

In re: THE BLOUSSANT CASES

CASE NO.: JCCP No. 4336

DECLARATION OF SERVICE BY MAIL

My business address is: 351 N. Arrowhead Avenue, 3rd Floor, San Bernardino, California 92415-0240. I hereby declare that I am a citizen of the United States, over the age of 18, employed in the above-named county, and not a party to nor interested in this proceeding. On January 20, 2005, I deposited in the United States mail at San Bernardino, California, a sealed envelope (postage prepaid) which contained a true copy of the attached:

**NAME OF DOCUMENT:** STATEMENT OF DECISION RE: DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS

which was addressed as follows:

Name and Address of Person(s) Served:

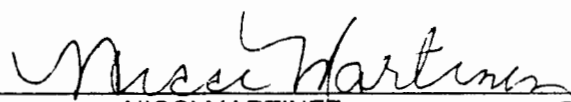
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At the time of mailing this notice there was regular communication between the place of mailing and the place(s) to which this notice was addressed.

I declare under penalty of perjury the foregoing to be true and correct.

DATED: January 20, 2005

BY:   
NICCI MARTINEZ  
Judicial Secretary