No. S_________

IN THE
SUPREME COURT OF CALIFORNIA

KWIKSET CORPORATION et al.,
Petitioners,

vs.

THE SUPERIOR COURT OF ORANGE COUNTY,
Respondent,

JAMES BENSON et al.,
Real Parties in Interest.

Fourth Appellate District, Division Three, No. G040675
Orange County Superior Court No. 00CC01275
The Honorable David C. Velasquez

PETITION FOR REVIEW

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I. ISSUES FOR REVIEW

A. What is the meaning of "injury in fact" and "lost money or property as a result of" unfair competition or false advertising, as used in the Unfair Competition Law (Bus. & Prof. Code, § 17204) (UCL) and the False Advertising Law (Bus. & Prof. Code, § 17535) (FAL), as amended by Proposition 64?

B. Are the new standing requirements satisfied in a false advertising case where plaintiffs allege that as a result of defendant's material misrepresentations, plaintiffs spent money and received a product they did not want, or, as the Court of Appeal held, must plaintiffs also allege that the product was "defective, or not worth the purchase price they paid, or cost more than similar products" not falsely represented? (Opinion (Op.) 9.)

C. Should plaintiffs be allowed to amend their complaint following the reversal of the trial court's order overruling defendants' demurrer, in order to conform their complaint to the appellate court's newly-articulated legal standard, where they demonstrated that the trial court record contains facts sufficient to meet that standard?

II. INTRODUCTION

This Court may grant review "to secure uniformity of decision or to settle an important question of law." (Cal. Rules of Court, rule 8.500(b)(1).) Review is warranted here for both reasons.

This case appears before the Court for the second time, having previously been accepted for grant-and-hold review pending the decisions in *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223 (*Mervyn's*), and *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235 (*Branick*). Plaintiffs now respectfully ask this Court to review and reverse the February 25, 2009 published decision in this matter of Division Three of the Fourth Appellate District. Issuing a writ of mandate, the appellate panel vacated the trial court's order overruling defendants' demurrer, nullified the pre-Proposition 64 judgment on the merits in plaintiffs' favor, and dismissed plaintiffs' post-initiative Second Amended Complaint (SAC) without leave to amend.

The panel concluded plaintiffs lack standing because they have not adequately pled that they "lost money or property as a result of" defendants' proven FAL violations. The court accepted that plaintiffs had purchased products as a result of defendants' false advertising. Nevertheless, it mandated that consumers deceived by material misrepresentations about a product's origins also must plead (and prove) that the product purchased is defective or otherwise not worth the price paid. In other words, just to get before a court, consumers suing for false advertising must now allege and prove facts that bear no relationship to the claim asserted, and must establish injury and "damages" akin to that required in product defect or certain other tort cases, even though these are not elements of a FAL claim.

This reading of Proposition 64 frankly is derived from whole cloth. It finds no support in the initiative's language or purpose, and contravenes decades of UCL jurisprudence, much of it from this Court. It effectively guts

the important substantive rights that the voters explicitly sought to protect, as well as the ability of consumers to bring private enforcement actions that have long been a bedrock of consumer protection in California. Review is warranted to correct the panel's fundamentally flawed legal analysis, and to protect the continued vitality of the laws safeguarding consumers and businesses from unfair competition and false advertising.

Review is also appropriate in this case, and at this time, because the standing requirements have been the subject of intermediate appellate review for several years, and the body of law that has emerged lacks cohesion and consistency. Allegations that would satisfy the standing requirements in one court have been deemed insufficient in another. The fair and effective administration of justice should not depend on where the lawsuit is filed. Without guidance from this Court, litigants and the lower California courts, as well as federal courts that are now handling UCL and FAL cases with increasing frequency, will continue to struggle over the proper interpretation of these statutes' threshold standing requirements.

Plaintiff James Benson originally filed this action in 2000 on behalf of the general public, which the FAL then allowed. He alleged that defendants Kwikset Corporation and Black & Decker Corporation (collectively, Kwikset or defendants), seeking to exploit the patriotism of American consumers, violated the FAL, the UCL and Business and Professions Code section 17533.7, by falsely labeling their locksets as "Made in U.S.A.," when they actually were substantially made with foreign parts and labor. After a bench trial, the court agreed with Benson, entered judgment in his favor, and awarded injunctive relief and attorney's fees.

The Court of Appeal initially affirmed the judgment in 2004 but then granted rehearing on an ancillary issue and held the case. Proposition 64 was approved while the appeal was pending. On remand after this Court's decisions in *Mervyn's* and *Branick* in 2006, Benson amended the complaint to

add new standing allegations and plaintiffs. Kwikset's initial attempts to undo the judgment and the trial court's subsequent approval of the amended complaint were unsuccessful. Finally, in 2008, Kwikset filed a writ petition urging the Court of Appeal to consider whether the SAC adequately alleged that plaintiffs had "suffered injury in fact and . . . lost money or property as a result of" defendants' illegal conduct. (Bus. & Prof. Code, §§ 17204, 17535.)

Reaching out on a writ to address this question, the same appellate panel that had affirmed Kwikset's liability three times ultimately ordered the case dismissed, without leave to amend, for lack of standing. It concluded that to maintain standing under Proposition 64, it was not sufficient for plaintiffs to allege that as a result of defendants' material misrepresentations, plaintiffs purchased products they did not want (i.e., foreign-made locksets). Rather, plaintiffs also had to allege and prove that the locksets were of inferior quality, did not function properly, or were sold at a premium over non-misrepresented locksets. (Op. 9.) Under this formulation of the "lost money" requirement, a defendant cannot be held accountable to consumers for falsely advertising a product unless that individual can allege and prove some other complaint about the product's operation or quality having nothing to do with the claimed FAL violation.

The notion that Proposition 64 imported concepts of product defect or other tort-style injury into the standing requirements for a false advertising claim is belied by the language and intent of the initiative and the overall statutory scheme of the UCL and FAL. It flies in the face of this Court's repeated affirmations that these laws do not incorporate the same elements as most tort claims. (See, e.g., *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1146 (*Korea Supply*).) It also disregards this Court's admonition that "[n]othing a business might lawfully do before Proposition 64 is unlawful now, and nothing earlier forbidden is now permitted." (*Mervyn's*, *supra*, 39 Cal.4th at p. 232.)

California law today prohibits "untrue or misleading" advertising, just as it did before Proposition 64. (Bus. & Prof. Code, § 17500.) The specific allegations of product defect or price differential required by the panel here cannot be reconciled with the plain language of the false advertising statute, as amended, because those injuries have no relation to the alleged misconduct. Such harm is not incurred "as a result of a violation of" the FAL – i.e., the making of a false statement. (*Id.*, § 17535.) If the panel is correct, false advertising plaintiffs would have to plead and prove, just for standing purposes, far more than they need to plead and prove to establish FAL liability. For this reason, the panel's interpretation of the standing requirements creates a formidable barrier to the courthouse door that few, if any, FAL plaintiffs could hurdle. By the same token, it virtually immunizes a wide variety of illegal conduct that the FAL and UCL were designed to remedy and deter. The panel's rationale provides manufacturers with license to misrepresent their products and reap windfall profits from their false advertising, so long as their products have some utility. Indeed, as a result of the court's decision, Kwikset essentially gets a free pass, notwithstanding its proven violations of law.

That is a result the voters never intended, and in fact, sought to guard against, when they passed Proposition 64. The focused target of the measure were those few Trevor Law-type attorneys who were perceived as abusing the broad standing requirements of the former UCL. The initiative addressed these abuses by requiring UCL and FAL plaintiffs to allege that they have been personally affected by defendants' misconduct. Significantly, the voters explicitly preserved the right of individuals to pursue meritorious claims where they "used the defendant's product or service, viewed the defendant's advertising, or had any other business dealing with the defendant" (Proposition 64, § 1(b)(3)), and were "injured in fact under the standing requirements of the United States Constitution." (*Id.*, § 1(e).)

Plaintiffs here satisfy these prerequisites, as well as the plain meaning of the statute's language conferring standing on those who "have lost money or property as a result of" the illegal and deceptive conduct. Simply stated, based on defendants' material misrepresentations, plaintiffs spent money out of pocket for a product they did not get, and got a product they did not want. Proposition 64 requires nothing more for private consumer standing to enforce the FAL and UCL.

III. STATEMENT OF THE CASE

A. Pre-Proposition 64: The Case Is Tried on the Merits, Resulting in a Judgment for Benson

Benson filed this action on January 21, 2000, alleging that Kwikset violated the FAL, the UCL, and two statutes independently actionable under the UCL – California's "Made in U.S.A." statute (Bus. & Prof. Code, § 17533.7) and the Consumers Legal Remedies Act (Cal. Civ. Code, § 1770 et seq.) – by illegally marketing their products (locksets) as "Made in U.S.A.," when the merchandise in fact was substantially made with foreign parts and labor. (Volume 1, Exhibits in Support of Petition for Writ of Mandate 91-103 (hereinafter __ Exs. __).)

The parties fully litigated the case, and a bench trial was held in December 2001. On May 23, 2002, the trial judge, the Honorable Raymond J. Ikola (now an appellate justice), issued his Statement of Decision and entered judgment in Benson's favor. Judge Ikola found that Kwikset had violated the statutes with respect to more than two dozen of its products. (2 Exs. 266-273.) The court awarded Benson injunctive relief: (1) prohibiting defendants from mislabeling their locksets, and (2) directing that they notify the commercial sellers of their locksets that they could return any falsely labeled locksets remaining in their inventories for a refund or exchange them for correctly labeled products. (2 Exs. 273-275.) In the exercise of its equitable discretion, the court declined to award restitution to past purchasers of the locksets. (2 Exs. 275.) In its Final Judgment, the court also awarded Benson attorneys' fees. (2 Exs. 278.)

B. Post-Proposition 64: The Court of Appeal Affirms the Merits Judgment, but Remands to Allow Benson to Amend in Light of the New Law

Kwikset appealed the trial court's judgment, and on June 30, 2004, the Court of Appeal issued a 2-1 opinion (with Presiding Justice Sills dissenting) that affirmed the judgment in its entirety. (*Benson v. Kwikset Corporation*

(2004) 120 Cal.App.4th 301 [depublished by grant of rehearing].) The Court denied Kwikset's petition for rehearing, but then granted rehearing on its own motion to review a non-merits ruling concerning certain litigation costs. (See *Benson v. Kwikset Corporation* (July 29, 2004, No. G030956) 2004 Cal. App. Lexis 1274.)

While the Court of Appeal was considering that issue, California voters passed Proposition 64 on November 2, 2004. On November 16, 2004, Kwikset filed a motion with the Court of Appeal to vacate the judgment and dismiss the case, arguing that Benson lacked standing to maintain his claims, as amended by the initiative. In February 2005, the Court of Appeal issued an opinion that again affirmed the correctness of the trial court's ruling on the merits. It nevertheless vacated the judgment based on its conclusion that Proposition 64's changes to the standing requirements applied to this action. (See *Benson v. Kwikset Corporation* (2005) 126 Cal.App.4th 887, 897-898 [depublished by grant of review].) The Court of Appeal also concluded that plaintiff should be afforded an opportunity to amend the complaint to add allegations sufficient to satisfy the initiative's new standing requirements. (*Id.* at pp. 907-908, 926.)

This Court granted plaintiffs' petition seeking review of the ruling that Proposition 64 applied to this action. It deferred further action, and later, after issuing its decisions in *Mervyn's* and *Branick*, remanded this action to the Court of Appeal with directions to reconsider in light of *Branick*. (See *Benson v. Kwikset Corporation* (April 11, 2007, No. S132443) 2007 Cal. Lexis 3728, and *Benson v. Kwikset Corporation* (April 23, 2007, No. S132443) 2007 Cal. Lexis 6537.)

On June 29, 2007, the Court of Appeal issued its opinion reinstating its earlier decision affirming the trial court's judgment in its entirety, but remanding the case for the limited purpose of determining whether the requirements of Proposition 64 can be met. (*Benson v. Kwikset Corporation* (2007) 152 Cal.App.4th 1254, 1266). The court instructed that if those

requirements are met, "the original judgment shall be reimposed and the balance of our opinion shall stand as resolution of the issues previously raised by the parties." (*Id.* at p. 1264.)

C. At the Invitation of One Justice, Kwikset Seeks to Undo the Judgment by Focusing Appellate Review on the "Injury in Fact" Standing Requirement

On October 4, 2007, Benson moved for leave to file a First Amended Complaint (FAC) to add the allegations required by Proposition 64. (1 Exs. 1-29.) Among other things, the FAC added new plaintiffs, including Al Snook, Christina Grecco and Chris Wilson. (1 Exs. 20-21.) All the plaintiffs, including Benson, alleged that had they known about defendants' misrepresentations, they would not have purchased the locksets. (1 Exs. 19-21.) Plaintiffs sought only the equitable relief already awarded by the trial court. (1 Ex. 28.)

The trial court granted Benson's motion to amend (2 Exs. 209-230, 232-233), and on December 14, 2007, Kwikset petitioned the Court of Appeal for a writ of mandate overturning that order. Two weeks later, the same panel that had affirmed the trial court's judgment months earlier summarily (and unanimously) denied Kwikset's writ petition. (See Order in *Kwikset Corporation v. Superior Court* (December 26, 2007), No. G039685, available at www.courtinfo.ca.gov.)

Immediately thereafter, Kwikset demurred to the new complaint and the trial court promptly overruled their demurrer. (2 Exs. 235-254, 360-381; 3 Exs. 382-385.) On March 3, 2008, Kwikset again petitioned the Court of Appeal for a writ of mandate seeking to reverse that order. One week later, the same panel again denied the petition unanimously. (3 Exs. 533.) This time, however, Presiding Justice Sills essentially instructed Kwikset on how to file a successful writ petition. He wrote separately to express his view that he voted to deny the petition "only because it is not based on the issue of whether plaintiff suffered 'injury in fact,'" an issue that the Presiding Justice stated had

been addressed in the court's recent decision in *Hall v. Time Inc.* (2008) 158 Cal.App.4th 847 (*Hall*), but remained "open for adjudication" in the case before him. (3 Exs. 533-534.)

Taking their cue from Presiding Justice Sills' unusual concurrence, defendants thereafter filed a motion for judgment on the pleadings, seeking dismissal of the FAC on the ground that plaintiff had not sufficiently alleged "injury in fact" as interpreted in the *Hall* decision. (3 Exs. 391-396.) In an effort to address any concerns about the sufficiency of their pleading, plaintiffs sought leave to file the SAC to add further details to their post-Proposition 64 standing allegations. (3 Exs. 426-457).

Specifically, the SAC added allegations that each plaintiff "saw and read Defendants' misrepresentations that the locksets were 'Made in U.S.A.' at the time he [or she] purchased the locksets and relied on such misrepresentations in deciding to purchase and in purchasing them." (3 Exs. 447-449.) Further, plaintiffs alleged that each "was induced to purchase and did purchase Defendants' locksets due to the false representation that they were 'Made in U.S.A.' and would not have purchased them if they had not been so misrepresented." (3 Exs. 447-449.) Finally, plaintiffs alleged that "[i]n purchasing Defendants' locksets," they were "provided with products falsely advertised as 'Made in U.S.A.,' deceiving [them] and causing [them] to buy products [they] did not want." (3 Exs. 447-449.) These misrepresentations caused plaintiffs "to spend and lose the money [they] paid for the locksets," and to "suffer[] injury and loss of money as a result of Defendants' conduct adjudicated to be unlawful." (3 Exs. 448-449.)

Plaintiffs' motion for leave to file the SAC was not opposed by Kwikset. The trial court granted the motion on May 15, 2008. (3 Exs. 493-494.) A month later, Kwikset demurred to the SAC, asserting that plaintiffs had failed to allege facts sufficient to demonstrate that they suffered injury in fact and lost money or property as a result of defendants' misrepresentations.

(3 Exs. 506-510.) The trial court rejected those contentions and overruled the demurrer on July 10, 2008. (3 Exs. 606-608.)

Kwikset thereafter filed its third post-Proposition 64 writ petition, asking the Court of Appeal to reverse the trial court's decision upholding the SAC. While that petition was pending, the parties engaged in discovery, Kwikset filed its answer to the SAC, and the trial court set a date for trial of the Proposition 64-related issues. Kwikset's petition was again assigned to the same three justices who had considered and resolved the prior appeal and writ proceedings in this case. On August 29, 2008, that panel issued an Order to Show Cause indicating that it would consider the petition, and also stayed the trial scheduled to take place just a few months later.

D. The Court of Appeal Orders the Case Dismissed Without Leave to Amend, Notwithstanding the Proven Violations and Its New Articulation of FAL Standing

On February 25, 2009, the Court of Appeal issued its decision reversing the trial court's order overruling Kwikset's demurrer, and denying plaintiffs leave to amend. The court first held that the "injury in fact" test was satisfied (notwithstanding Presiding Justice Sills' earlier doubts on that question), because plaintiffs' allegations that they purchased defendants' locksets based on defendants' misrepresentations sufficiently pled the invasion of a legally protected interest. (Op. 9.)

The court held, however, that plaintiffs had failed to adequately allege that they "lost money or property as a result of" the misrepresentations. The panel recognized that plaintiffs alleged "'[d]efendants' . . . misrepresentations caused [them] to spend and lose the money . . . paid for the locksets.'" (Op. 9.) But that is not enough, the court found, because plaintiffs "received locksets in return." (Op. 9.)

> [Plaintiffs] do not allege the locksets were defective, or not worth the purchase price they paid, or cost more than similar products without false country of origin labels. Nor have real

> parties alleged the locksets purchased either were of inferior quality or failed to perform as expected.

(Op. 9.) Without such allegations, the court concluded, plaintiffs have not pled the type of actual economic injury required by Proposition 64. (Op. 9.) Because plaintiffs had not made any complaint about the cost, quality or operation of the locksets, the panel reasoned, they "received the benefit of their bargain," and consequently, have not "lost money or property as a result of" defendants' false representations about the locksets' origins. (Op. 11.)

Finally, even though Kwikset's demurrer had been overruled in the trial court, the appellate panel flatly denied plaintiffs' request for leave to amend. The court rejected outright plaintiffs' offer of proof, both in their return to the writ petition and in their subsequent petition for rehearing, indicating that the trial court record contained facts sufficient to meet the panel's newly-articulated interpretation of the standing rules. (See Op. 13-14; Order Denying Rehearing Petition dated March 18, 2009.)

IV. REASONS TO GRANT REVIEW

A. The Meaning of Proposition 64's Standing Requirements Is a Critical Issue Worthy of This Court's Review at This Time

1. This Case Presents an Ideal Opportunity for This Court to Address Key Unresolved Questions Regarding the Scope of the Initiative's Amendments

After its passage in 2004, Proposition 64 generated an explosion in litigation as the trial and intermediate appellate courts began to wrestle with the scope of the initiative's impact on California's unique consumer protection laws. From the outset, this Court recognized the importance of the legal questions raised by the new law, and has not hesitated to grant review in appropriate cases. Indeed, it previously accepted grant-and-hold review in this case. This controversy now presents, in a compelling factual setting, new and important Proposition 64-related questions warranting this Court's review.

Having determined that the initiative applied to then-pending actions (*Mervyn's*), and that amendments may be allowed to conform pleadings to the initiative's requirements (*Branick*), this Court has turned its attention to the substantive elements of the measure. At issue now is the meaning and scope of Proposition 64's requirement that a UCL or FAL plaintiff must have "suffered injury in fact and lost money or property as a result of" the alleged violation. (Bus. & Prof. Code, §§ 17204 and 17535, as amended.) The Court is poised to issue its decision in *In re Tobacco II Cases*, No. S147345 (concerning whether the amendments include a reliance element and apply to all class members), and is considering *Clayworth v. Pfizer, Inc.*, No. S166435 (concerning, inter alia, whether a person who has recovered overcharges on goods and services from a third person has suffered "injury in fact" and "lost money or property"). The Court also has accepted grant-and-hold review in a number of other cases pending these decisions.

But to plaintiffs' knowledge, none of these cases raises the issue that is directly presented here: Whether a plaintiff seeking to prosecute a false advertising claim satisfies the standing requirements by alleging that he purchased a product he did not want as a result of defendant's material misrepresentations, or whether, as the Court of Appeal here concluded, he must also be able to allege, in effect, tort-style injury and "damages" (i.e., that the product was not worth what he paid for it).[1]

This issue is ripe for review in this case, and at this time, for a number of reasons. First, the lower courts are erroneously interpreting the standing requirements in a manner that compels dismissal of even meritorious UCL and FAL lawsuits – the very types of private actions the voters, in approving Proposition 64, explicitly sought to protect. The preamble to the initiative affirmed that: "This state's unfair competition laws set forth in Sections 17200 and 17500 of the Business and Professions Code are intended to protect California businesses and consumers from unlawful, unfair, and fraudulent business practices." (Proposition 64, § 1 (a).) It went on to declare that it was "the intent of the California voters in enacting this act is to eliminate frivolous unfair competition lawsuits," while still protecting the right of individuals to seek relief for meritorious claims when they have been directly affected by the alleged wrongdoing. (*Id.*, §§ 1(b), (d).) This case falls in the latter category.

As noted previously, this lawsuit was successfully tried to a plaintiff's verdict before the initiative was passed. The trial court found that Kwikset had violated the consumer protection laws and the "Made in U.S.A." statute

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[1] This Court accepted grant-and-hold review in *O'Brien v. Camisasca Automotive Manufacturing, Inc.*, No. S163207, pending the decision in *In re Tobacco II Cases*, No. S147345. Although *O'Brien* also involves false "Made in U.S.A." representations, its facts differ from those here in significant respects, including that the plaintiff in *O'Brien* admittedly did not read or rely upon any of the alleged misrepresentations.

with respect to many of its products. (2 Exs. 266-273.) After a careful balancing of the equities, the court fashioned appropriate injunctive relief. The court did not award restitution, but that was not because the claims were not meritorious. The court simply determined that restitution was not warranted, after weighing all the relevant considerations, including that restitution would be difficult to administer and defendants had already taken steps to correct the unlawful labeling of their products. (1 Exs. 275.)

In sum, this decidedly is not the kind of abusive lawsuit targeted by Proposition 64. Yet, as more fully explained below, by incorporating into the FAL and UCL what amounts to new injury and "damages" elements unrelated to the wrongful practice at issue, the Court of Appeal's decision threatens to dismantle a carefully considered and fully supported remedy to correct defendants' clear-cut violations of law and deter future wrongdoing. Further compounding this error, and in violation of the longstanding precepts affirmed in *Branick, supra*, 39 Cal.4th 235, the panel unjustifiably denied plaintiffs any opportunity to preserve the favorable judgment by amending their complaint to add allegations sufficient to meet the court's new (albeit incorrect) legal standard. Put another way, the Court of Appeal has immunized Kwikset's proven violations, even though the voters sought to protect meritorious actions like this one in approving Proposition 64. Even worse, the court's published opinion has set a dangerous precedent that other defendants who have violated the FAL and UCL may use to escape liability with impunity.

Second, the issues presented here have been working their way through the trial and intermediate appellate courts from the time of the initiative's passage over four years ago. As detailed here, the lower courts have been unable to reach consensus on what it means to "los[e] money or property as a result of" the alleged FAL or UCL violation, or on the interplay between that requirement of the initiative and the "injury in fact" test. This lack of consistency is an independent reason warranting review. (See § IV.B, *post*.)

It also highlights that the "lost money or property" language has been and will continue to be a central focus of Proposition-64 related litigation, and that the time has come for this Court to provide guidance on the subject.

A third factor demonstrating the importance of this issue and militating strongly in favor of review is the extent to which the federal courts are now interpreting Proposition 64's standing requirements as a consequence of the Class Action Fairness Act of 2005 (28 U.S.C. § 1332 et seq., as amended) (CAFA). Under CAFA, class actions alleging UCL or FAL claims are increasingly being filed with (or removed to) the federal district courts. In the absence of controlling guidance from this Court on scope and meaning of the initiative's standing requirements, the federal courts have had to "guess" how the Court would rule on those issues. As illustrated below (§ IV.B, *post*), federal judges, like their state court colleagues, have adopted varying approaches to these inquiries, which has only added to the unsettled, confusing body of law that now exists. These federal decisions are then often cited by the state courts (as they were here), further clouding the jurisprudence. Because of the increasing role of the federal courts in overseeing UCL and FAL class actions, input from this Court is now more critical than ever.

2. The Court of Appeal's Ruling Is Inconsistent with This Court's Precedent and Basic Rules of Statutory Construction

To deter perceived abuses of the broad protections provided under the UCL and FAL as then constituted, the voters, in approving Proposition 64, changed the standing rules to require that those bringing such claims demonstrate that they were personally affected by the wrongful conduct. (See Proposition 64, §§ 1(b), (e).) Notably, however, the voters left undisturbed the law's prohibitions against "unlawful," "unfair" and "fraudulent" business practices, and false advertising. (See Bus. & Prof. Code, §§ 17200, 17500.)

As this Court observed: "The measure left entirely unchanged the substantive rules governing business and competitive conduct. Nothing a

business might lawfully do before Proposition 64 is unlawful now, and nothing earlier forbidden is now permitted." (*Mervyn's*, *supra*, 39 Cal.4th at p. 232.) This Court has also recognized that Proposition 64 did not change another fundamental feature of these laws – that "'restitution is the only monetary remedy expressly authorized'" by the statutes. (*Korea Supply*, *supra*, 29 Cal.4th at p. 1146, citation omitted.) "Now, as before, no one may recover damages under the UCL." (See *Mervyn's*, *supra*, 39 Cal.4th at p. 232.)

The Court of Appeal, however, acknowledged none of this precedent. Instead, the panel held that, to sufficiently plead "lost money or property as a result of" defendants' illegal labeling of the locksets, plaintiffs had to allege more than payment of money resulting from defendant's misconduct. They had to allege specifically that the locksets were of inferior quality, were defective, or cost more than non-misrepresented locksets. (Op. 9.) According to the court, plaintiffs cannot establish "actual economic injury" of the type the court deemed necessary to maintain standing because they cannot allege and prove that what they actually received was of a lesser quality or market value, measurable in dollars, than what they thought they had paid for. (Op. 9-10.) Because plaintiffs wanted locksets, and got locksets, and made no other "complaint about the cost, quality or operation of the mislabeled locksets they purchased," the court concluded that they "received the benefit of their bargain." (Op. 9, 11.) This formulation ignores that plaintiffs did not get the locksets they paid for – ones made in America. Moreover, neither the language of nor the intention behind the new standing requirements supports the panel's interpretation.

The Court of Appeal correctly recognized that its task in determining the meaning of "lost money or property" was to discern the intent of the voters, first by looking to the language used and "'giving the words their ordinary meaning.'" (Op. 7, citing *Professional Engineers in California*