



NATURAL RESOURCES DEFENSE COUNCIL

May 11, 2009

*By Hand Delivery*

The Honorable Ronald M. George, Chief Justice  
The Associate Justices  
The Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4783

Re: *Kwikset Corp. v. Superior Court (Benson)*, No. S171845  
Letter Supporting Petition for Review as *Amici Curiae*

To the Chief Justice and Associate Justices of the Supreme Court:

Pursuant to California Rule of Court 8.500(g), we write on behalf of Environment California, Natural Resources Defense Council, Inc., and Sierra Club in support of the petition for review in *Kwikset Corp. v. Superior Court (Benson)*, No. S171845.

Environment California is a statewide, citizen-based environmental advocacy organization with over 30 years of success in tackling California's biggest environmental problems. Environment California has 70,000 citizen members throughout the state, 150,000 internet activists, three program offices in Sacramento, San Francisco and Los Angeles as well as several citizen campaign offices from San Diego to Santa Cruz.

Natural Resources Defense Council, Inc. ("NRDC") is a non-profit organization with more than 90,000 members in California and more than 500,000 members nationwide. NRDC's staff of scientists, lawyers, and other experts work to protect public health and the environment out of offices in San Francisco, Los Angeles, New York, Washington, D.C., Chicago, and Beijing, China.

The Sierra Club is non-profit public benefit corporation, incorporated in California, with over 750,000 members nationwide, and over 200,000 members who live in California. The Sierra Club's mission includes promotion of the responsible use of the earth's ecosystems and resources, and education of the public about the need to protect and restore the quality of

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the natural and human environment. As one of the largest environmental organizations in California, the Sierra Club is involved in myriad environmental policy issues throughout the state, including educating consumers about the value of purchasing “environmentally friendly” products and services and thereby reducing their individual and collective impacts on the environment.

Our organizations have a strong interest in the proper interpretation of California’s consumer protection statutes, including the Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 *et seq.*) and the False Advertising Law (FAL) (Bus. & Prof. Code, § 17500 *et seq.*). We are concerned that the Court of Appeal’s ruling in *Kwikset* would eliminate meritorious lawsuits brought under the UCL and FAL to stop companies from falsely advertising the alleged environmental benefits of their products.

American consumers are increasingly becoming environmentally conscious, and Californians are at the forefront of this trend. As the United States – and Californians – strive to become less dependent on pollution-causing fossil fuels, clean the water and air, and preserve our natural resources, a new wave of “green” consumers are making many purchasing decisions based on environmental product claims. There are a growing number of organizations, websites, and newsletters devoted to informing consumers how to make environmentally conscious choices in the marketplace. Increasingly, consumers are seeking to purchase cleaner, more efficient products and to support green jobs and green businesses.

The *Kwikset* decision, if allowed to stand, would inappropriately restrict consumer protection actions to address false “green labeling.” Companies could take unfair advantage of consumers and unfairly compete with other companies by falsely advertising their products as “organic,” “biodegradable,” “phosphorous-free,” “non-toxic,” “made from 100% recycled materials,” “all-natural,” and the like, knowing that private purchasers who were misled into buying the products by such misrepresentations would have little recourse under state law.

The *Kwikset* Court took an unjustifiably narrow view of California’s consumer protection statutes, essentially drafting into Proposition 64 a requirement to establish damages in the form of a market price differential or a product defect in order to establish standing to bring a UCL or FAL action.

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Yet many consumers make purchasing decisions based on the environmental claims made by the product manufacturer, not the price or effectiveness of the product. For example, if a consumer seeks to avoid personal use of phosphorous (a major water pollutant) by purchasing a dishwashing or laundry detergent labeled "phosphorous-free," and if that label is false, then that consumer has been deceived into buying an unwanted product. That consumer should have standing under Proposition 64 because the consumer "lost" money by being induced to pay for a product that was falsely represented to be something different than it was. That is so even if the product was not otherwise defective and was not sold at a premium over other products available in the marketplace.

False advertising may not necessarily be intended to extract a premium on individual product sales. False advertising may instead be intended to sell more products. As consumers become more environmentally conscious in their purchasing decisions, the threat of this false green advertising becomes greater. Unfortunately, the Court of Appeal's interpretation discounts or ignores the resulting harm to people who purchase a product because of false labeling.

Neither the language of Proposition 64 nor its ballot materials informed California voters that the initiative would strip them of the right to stop companies from making false environmental claims about products that the consumers purchase on the basis of those false representations. We therefore respectfully request that this Court grant review to settle the threshold question of who has standing to enforce California's consumer protection statutes.


Respectfully submitted,




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## DECLARATION OF SERVICE BY MAIL

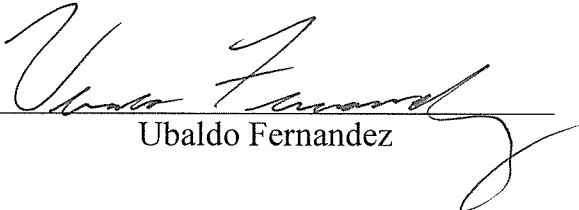
I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the Alameda County, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 111 Sutter Street, 20<sup>th</sup> Floor, San Francisco, California, 94104-4540.

2. That on May 11, 2009, declarant served the **AMICUS CURIAE LETTER SUPPORTING PETITION FOR REVIEW** by depositing a true copy thereof in a United States mailbox at San Francisco, CA in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11<sup>th</sup> day of May, 2009, at San Francisco, California.

  
Ubaldo Fernandez

**KWIKSET (AMICUS CURIAE)**

Service List - 05/11/2009

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