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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF ALAMEDA

SCOTT C. TURNER, an individual,

Plaintiff,

vs.

FARMERS GROUP, INC., FARMERS,
 INSURANCE EXCHANGE, MID-CENTURY
 INSURANCE COMPANY, FIRE
 UNDERWRITERS ASSOCIATION, FIRE
 INSURANCE EXCHANGE, TRUCK
 UNDERWRITERS ASSOCIATION and
 TRUCK INSURANCE EXCHANGE,

Defendants.

CASE NO.: RG03-078362

The Honorable Ronald Sabraw

REPLY MEMORANDUM IN SUPPORT
 OF DEFENDANTS' MOTION FOR
 JUDGMENT ON THE PLEADINGS AND
 REQUEST FOR STAY

(RE: PROPOSITION 64)

DATE: February 10, 2005
 TIME: 9:00 a.m.
 DEPT: 22

Complaint Filed: January 9, 2003
 1st Amended Complaint Filed: June 13, 2003
 2nd Amended Complaint Filed: Aug. 22, 2003

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REPLY MEMORANDUM

1
2 In a recent opinion in *Californians for Disability Rights v. Mervyn's, LLC* (the "CDR"
3 action), 2005 Cal. App. LEXIS 160 (2005), the First Appellate District of the California Court of
4 Appeal held that the new standing limitations of Proposition 64 do not apply to lawsuits filed before
5 its effective date of November 3, 2004. In so holding, the CDR court held that (1) the statutory
6 repeal rule did not apply; (2) that Proposition 64, if applied, would have improper "retroactive"
7 effect and, therefore, could not be applied in light of the absence of express provisions speaking to
8 retroactivity; and (3) that Proposition 64 and the revised UCL expressed no indication that it was
9 meant to apply to pending actions. Defendants respectfully submit that CDR was wrongly decided
10 on all three counts above.

11 As an initial matter, the CDR court misapplied controlling California Supreme Court and
12 statutory authority that demonstrably contradicts its conclusions. See, e.g., *Younger v. Sup. Ct.*, 21
13 Cal. 3d 102, 109-10 (1978); *Governing Bd. of Rialto Unified Sch. Dist. v. Mann*, 18 Cal. 3d 819,
14 829 (1977); Gov't Code § 9606. Moreover, Proposition 64 should be applied to pending cases
15 because (1) its application would have a "prospective," not a "retroactive," effect and, therefore, the
16 non-retroactivity presumption applied by the CDR court was inapplicable; and (2) its application to
17 pending cases comports with voter intent.

18 Finally, given the substantial significance and difference of opinion on this issue, as well
19 as the immediate and tangible impact this issue has on this action, Defendants respectfully request
20 that the Court, should it decide to deny their motion, temporarily stay further proceedings in this
21 action until further appellate guidance is offered by other jurisdictions. Based on our best
22 information, at least two other jurisdictions (as well as the Supreme Court) have either heard and/or
23 will imminently hear arguments on this issue. The issuance of an appellate opinion contrary to
24 CDR would undoubtedly lead to additional motion practice and a waste of this Court's and the
25 parties' time and resources.

1. INTRODUCTIONA. The Statutory Repeal Rule Applies to Proposition 64's Application Analysis

As repeatedly held by the California Supreme Court, it is "a general rule . . . that a cause of action or remedy dependent on a statute falls with the repeal of the statute, even after the action thereon is pending, in the absence of a saving clause in the repealing statute." *Governing Bd. of Rialto Unified Sch. Dist. v. Mann*, 18 Cal. 3d 819, 829 (1977) (quoting *Callet v. Alloto*, 210 Cal. 65, 67-68 (1930)); see *Younger v. Sup. Ct.*, 21 Cal. 3d 102, 108 (1978) ("the well settled rule that an action wholly dependent on statute abates if the statute is repealed without a saving clause"); *Southern Serv. Co. v. County of Los Angeles*, 15 Cal. 2d 1, 11-12 (1940) (repeal of purely statutory right to tax refund requires reversal of nonfinal judgment). This rule of law – i.e., the "statutory repeal" rule – is premised upon "[a] long well-established line of California decisions," and is based on the concept that "all statutory remedies are pursued with the full realization that the Legislature may abolish the right to recover at any time." *Mann*, 18 Cal. 3d at 829. Significantly, this rule of law is codified in the Government Code. See Cal. Gov't Code § 9606 ("Any statute may be repealed at any time, except where vested rights would be impaired. Persons acting under any statute act in contemplation of this power of repeal").

The statutory repeal rule of law applies where (1) the proceeding or claim is wholly dependent on statute; (2) the statutory authority for the proceeding or claim has been withdrawn through amendment or effective repeal; and (3) there is no final judgment in the action at the time the repealed is effective. See *Younger*, 21 Cal. 3d at 109-10. As discussed in the underlying moving brief and, undisputed by Plaintiffs, all three elements are met in this case.

With regards to this issue, however, the CDR court held that the holdings in *Tapia v. Sup. Ct.*, 53 Cal. 3d 282 (1991), and *Evangelatos v. Sup. Ct.*, 44 Cal. 3d 1188, control and require a retroactivity analysis of Proposition 64's impact on pending cases. See CDR, *supra* at *5-18. This holding completely disregards years of California Supreme Court cases applying the statutory repeal rule. See e.g., *Mann*, 18 Cal. 3d at 829 ("[A] repeal of [the] statute without a saving clause will terminate all pending actions based thereon.") (quoting *Southern Serv. Co.*, *supra* at 11-12; *Younger*, 21 Cal. 3d at 109 ("[A]n action wholly dependent on statute abates if the statute is

1 repealed without a saving clause before judgment is final."); *Brenton v. Metabolife Int'l, Inc.*, 116
2 Cal. App. 4th 679, 690 (2004) ("Where, as here, the Legislature has conferred a remedy and
3 withdraws it by amendment or repeal of the remedial statute, the new statutory scheme may be
4 applied to pending actions without triggering retrospectivity concerns."); *Cross v. Bonded*
5 *Adjustment Bureau*, 48 Cal. App. 4th 266, 275-76 (1996) ("It is well settled that when a cause of
6 action rests on a statute, the repeal of the statute destroys the right . . ."); *Beckman v. Thompson*, 4
7 Cal. App. 4th 481, 488-89 (1992) (a private party could not obtain dismissal for inconvenient forum
8 because the statute authorizing such dismissal had been repealed.).

9 Indeed, as early as 1916, the California Supreme Court, in noting the plethora of
10 authority supporting the statutory repeal rule noted, "[t]he books are so full of cases illustrating this
11 principle that the only difficulty is in making a selection." *Moss v. Smith*, 171 Cal. 777, 789 (1916).

12 The CDR court also ignored the well-settled principle that the statutory repeal rule is
13 separate and distinct from the analysis at issue in *Evangelatos* and *Tapia*. See, e.g., *Physicians*
14 *Comm. for Responsible Med. v. Tyson Foods, Inc.*, 119 Cal. App. 4th 120, 125 (2004) ("The repeal
15 of a statutory right or remedy . . . presents entirely distinct issues from that of the prospective or
16 retroactive application of a statute"); *Northern Cal. Carpenters Reg'l Council*, 124 Cal. App. 4th at
17 301-02; see also *Beckman v. Thompson*, 4 Cal. App. 4th 481, 488-89 (1992) ("[T]he general rule
18 that statutes are presumed to operate prospectively in the absence of express legislative declaration
19 is not applicable here," because "we deal here with a repeal, not a 'retroactive' application of a new
20 statute."); see also Witkin, Summary of California Law § 497 (9th ed. 1988).

21 This distinction was affirmed by the Supreme Court in *Mann* and *Younger* where it
22 rejected an attempt by the plaintiffs there to urge reliance upon a *Tapia/Evangelatos* line of
23 analysis. The Supreme Court ruled that "[a] long well-established line of California decisions
24 [applying the statutory repeal rule] conclusively refutes plaintiff's contention." *Mann*, 18 Cal. 3d at
25 829. The Supreme Court further explained that "[a]lthough the courts normally construe statutes to
26 operate prospectively, the courts correlatively hold under common law that when a pending action
27 rests solely on a statutory basis, and when no rights have vested under the statute, 'a repeal of [the]
28 statute without a saving clause will terminate all pending actions thereon.'" *Id.*

1 Significantly, the Supreme Court in *Younger* dictated that the "only legislative intent
2 relevant" where an amendment effects a repeal of former statutory authority "would be a
3 determination to save" pending actions "from the ordinary effect of repeal illustrated in cases such
4 as Mann." *Younger*, 21 Cal. 3d at 11). The high Court further held that "no such intent [to save
5 pending actions] appears" where the amendment "contains no express saving clause." *Id.*
6 Proposition 64 has no such savings clause. As such, there is no expressed intent that individuals
7 like Plaintiff may be able to continue to have standing in this action. *Id.*

8 Significantly, in finding that the statutory repeal rule did not apply, the *CDR* court relied
9 upon certain language from *Landgraf*:

10 "The argument exposes a seeming conflict in canons of statutory
11 interpretation. On the one hand, legislative enactments are presumed to
12 operate prospectively. On the other hand, a court should apply the law in
13 effect at the time it renders its decision, including recent statutory
14 amendments. The United States Supreme Court has acknowledged this
15 seeming conflict, and provided a reconciliation. (*Landgraf v. U.S. Film
Products*, supra, 511 U.S. at pp. 263-280.) *As the high court explained,
the presumption of prospectivity is the controlling principle. (Ibid.;
accord Evangelatos v. Superior Court*, supra, 44 Cal.3d at pp. 1207-
1208.)"

16 *CDR*, supra at *12-13 (emphasis added).

17 The *CDR* court, however, over-emphasized the primacy of the "presumption of
18 prospectivity" analysis in examining the impact of new laws. As discussed in *Landgraf*, the
19 Supreme Court made clear that an analysis of the effect of a statute did not *first* require the reliance
20 upon the non-retroactivity presumption, but instead:

21 "When a case implicates a federal statute enacted after the events in suit,
22 the court's first task is to determine whether Congress has expressly
23 prescribed the statute's proper reach. If Congress has done so, of course,
there is no need to resort to judicial default rules."

24 *Landgraf*, supra at 280 (emphasis added).

25 Accordingly, prior to relying upon judicial default rules (such as the non-retroactivity
26 presumption analysis), the *Landgraf* court first looks to the statute's prescribed reach. After a
27 finding that the statute is not clear in its reach, the court then inquires into whether it would operate
28 retroactively. *See id.* Then, if it is found to have such effect, it applies the presumption, unless
contrary intent is present to have it applied retroactively. *See id.*

1 Here, as discussed in the moving papers and further below, the terms of Proposition 64
2 and the revised UCL expressly reaches to pending cases and to the immediate removal of standing
3 for those bringing a claim under the UCL without demonstrating an injury-in-fact. (*See infra*, pp. 8-
4 10 (explaining that Proposition 64 and the UCC's use of the terms "prosecute" and "pursue" refer to
5 all aspects of the litigation from filing to conclusion).) Because there is no "savings clause"
6 permitting Plaintiff to continue to prosecute the current action without satisfying the new standing
7 requirements, no further inquiry is necessary in determining that Plaintiff's right to continue to
8 prosecute this action terminates immediately. *See Mann, supra* at 829; *Younger, supra* at 110.

9
10 **B. Proposition 64 is Not Retroactive in Character**

11 Even assuming *arguendo* that the non-retroactive presumption analysis employed in the
12 *Tapia/Evangelatos* cases applies, this analytical approach does not limit Proposition 64's
13 applicability to pending cases. Specifically, applying Proposition 64 to pending cases is a
14 "prospective" application of the statute and, therefore, any non-retroactive presumption against its
15 effect is inapplicable. It is in this respect that the CDR court holding is flawed.

16 Specifically, in analyzing whether Proposition 64 would be improperly retroactive if
17 applied to pending cases, the CDR court noted that, "[i]n determining whether a new law has
18 retroactive effect, we must consider 'the nature and extent of the change in the law and the degree
19 of connection between the operation of the new rule and a relevant past event.'" *CDR, supra* at *17
20 (citing *Landgraf, supra* at 270). Critically, however, the CDR court applied the wrong
21 considerations in making this analysis. Instead of considering whether the new law changes the
22 legal consequences of past conduct, the CDR court considered, what it deemed, "familiar
23 considerations of fair notice, reasonable reliance, and settled expectations." (*Ibid.*) *Id.*

24 Relying on these criteria, the CDR court found that application of Proposition 64 to
25 pending litigation would be improperly "retroactive" because it would deny "parties fair notice and
26 defeat[ed] their reasonable reliance and settled expectations." *CDR, supra* at *17. Specifically, the
27 court held that it would deny the plaintiff "the opportunity to seek the intervention of a public
28

1 prosecutor or to obtain the participation of a representative member of its organization who may
2 have suffered monetary loss from the alleged unlawful business practices." *CDR, supra* at *18.

3 The analytical approach taken by the *CDR* court is, undeniably, not the test for
4 retroactivity. Contrary to the *CDR* court's analysis, the *Landgraf* court did not imply that *any*
5 *expectations or reliance by plaintiffs should "guide" the retroactivity analysis in the manner*
6 *employed above*. Instead, as noted by the Supreme Court:

7 "A statute does not operate 'retrospectively' merely because it is applied
8 in a case arising from conduct antedating the statute's enactment [] or
9 *upsets expectations based in prior law.*"

10 *Landgraf, supra* at 269 (emphasis added).

11 Instead, the "familiar considerations of fair notice, reasonable reliance, and settled
12 expectations" identified by the Supreme Court in *Landgraf* concerned circumstances where a new
13 statute *adversely burdened a private right* (particularly contract and property rights). *See id.* at
14 270-72. For purposes of determining whether applying a new law to pending litigation would be
15 impermissibly retroactive, the relevant "expectation" underlying the presumption against
16 retroactivity is "the unfairness of imposing new burdens on persons after the fact." *Id.* at 270.

17 It is this underlying basis for the presumption that underlies the actual (and in *CDR*,
18 *unused*) test for retroactivity. As plainly stated in *Landgraf*, *Tapia*, and *Evangelatos*, a statute is
19 improperly retroactive if it changes the legal consequences of a party's past conduct by, for
20 example, creating a new cause of action or depriving a defendant of a defense on the merits. *See*
21 *Landgraf, supra* at 269 n. 23; *Tapia, supra* at 288-89; *Evangelatos, supra* at 1225; *see also*
22 *Landgraf, supra* at 268 ("every statute, which takes away or impairs vested rights acquired under
23 existing laws, or creates a new obligation, imposes a new duty, or attaches a disability, in respect to
24 transactions or considerations already past, must be deemed retrospective."). In contrast, "a law
25 governing the conduct of trials is being applied 'prospectively' when it is applied to a trial occurring
26 after the law's effective date, regardless of when . . . the underlying cause of action arose." *Tapia,*
27 *supra* at 289. Therefore, "it is a misnomer to designate [such statutes] as having retrospective
28 effect." *Tapia*, 53 Cal. 3d at 288 (quoting *Morris v. Pacific Elec. Ry. Co.*, 2 Cal. 3d 764, 768
(1935)).

1 The application of Proposition 64 does not impose any new or different liabilities, and
2 does not otherwise change the legal consequences of Defendants' alleged past conduct. If
3 Defendants' alleged conduct violated the UCL, they could still be held liable through lawsuits
4 brought by the California Attorney General, local public officials or private plaintiffs who can
5 demonstrate injury in fact and loss of money or property. (Ex. A to the Request for Judicial Notice
6 ("RJN"), submitted concurrently with underlying motion for judgment on the pleadings; Section 3
7 (amending Section 17204 of the UCL); *see id.*, Section 1(e).) Defendants' alleged liability is
8 unaffected by Proposition 64's application to pending cases.

9 Proposition 64 simply changes the showing that must be made to prosecute UCL actions
10 on or after November 3, 2004. Prior to that date, a plaintiff did not have to plead and prove injury
11 in fact and the loss of money or property in order to prosecute a UCL claim; after that date, a
12 plaintiff must satisfy these requirements in order to continue to prosecute such a claim. (RJN Ex.
13 A, Section 3 (amending Section 17204 of the UCL) ("Actions for any relief pursuant to this chapter
14 shall be prosecuted exclusively" by the various governmental actors as well as private parties who
15 suffered injury in fact and lost money or property as a result of unfair competition.) As such,
16 Proposition 64 does not affect whether Plaintiff had standing to maintain this action in the past, but
17 it does require him to now satisfy the new standing requirements of the UCL.

18 Interestingly, in explaining how Plaintiff would be denied "fair notice and defeat [his]
19 reasonable reliance and settled expectations" — which, again *is not* the test for retroactivity — the
20 CDR court was not concerned that Plaintiff would not be able to proceed with its current action, but
21 instead, stated that the plaintiff would be denied "the opportunity to seek the intervention of a public
22 prosecutor or to obtain the participation of a representative member of its organization who may
23 have suffered monetary loss from the alleged unlawful business practices." *CDR, supra* at *18.
24 This denied "opportunity" does not evince a changed legal consequence of a previous act or
25 deprivation of a vested right as contemplated by any of the relevant cases on this issue. *See*
26 *Landgraf, supra* at 268-69; *Tapia, supra* at 288-89; *Evangelatos, supra* at 1225.

27 Significantly, if Defendants' alleged conduct violated the UCL, they could still be held
28 liable for this conduct through lawsuits brought by the California Attorney General, local public

1 officials, or private plaintiffs who can demonstrate injury in fact under Proposition 64.¹ Further,
 2 Plaintiff cannot show that he will be harmed in any way by the application of Proposition 64 as he
 3 never had any basis for individual recovery, let alone any vested right to individual recovery. (Also,
 4 to the extent that there is a statute of limitations issue, this issue could be easily addressed by the
 5 Court's suggestion in its tentative order that reasonable time be allowed to provide the attorney
 6 general or other public official to now step in and prosecute this action.)

7 In reality, the amended standing requirements of the UCL, as effected by Proposition 64,
 8 are merely procedural changes that immediately apply, no matter the status of an action. *See, e.g.,*
 9 *Parsons v. Tickner*, 31 Cal. App. 4th 1513, 1523 (1995) (finding that plaintiff's standing to pursue a
 10 claim "is now governed by the [new law.]"); *Hogan v. Ingold*, 38 Cal. 2d 802, 811, n. 2 (1952)
 11 (change in the law affecting ability to bring a suit to pending action). As discussed in the moving
 12 brief, there is no presumption against retroactive application for procedural changes in the law, as
 13 there is no vested right in existing rules of procedure and remedies. *Los Angeles v. Oliver*, 102 Cal.
 14 App. 299, 311 (1929); *Robertson v. Rodriguez*, 36 Cal. App. 4th 347, 356 (1995); *see also Brenton*,
 15 *supra* at 689 ("Applying changed procedural statutes to the conduct of existing litigation . . .
 16 involves no improper retrospective application because the statute addresses conduct in the future.")

17 Because Proposition 64 makes only procedural prospective changes to the UCL and such
 18 changes do not impact or deprive Plaintiff of a vested right, Proposition 64 applies to this pending
 19 action and requires its dismissal.

20
 21 C. Contrary to CDR, Proposition 64 Evinces a Voter Intent to Have the New UCL
 22 Standing Requirements Immediately Apply to All Actions

23 The CDR court also held that Proposition 64 is "wholly silent" on "retrospectivity."
 24 CDR, *supra* at *6. Further, it held that: "When read as a whole, the only fair conclusion is that the
 25 question of whether Proposition 64 applies to pending lawsuits was not presented to, nor considered
 26 by, the electorate." CDR, *supra* at *6-7. Again, respectfully, the CDR court is incorrect.

27
 28 ¹ Proposition 64 also leaves intact the ability of an injured plaintiff to file a claim as a class action
 and recover attorney's fees under CCF § 1021.5.

1 While it is true that the term "retrospectivity" was never mentioned in Proposition 64 or
2 in the changes to the UCL, both are replete with words and phrases that make clear that Proposition
3 64's changes were meant to apply to pending actions.

4 Specifically, under the standing requirements of section 17204 of the UCL, a claim "shall
5 be prosecuted exclusively" by "any person who has suffered injury in fact and has lost money or
6 property as a result of such unfair competition." Courts have recognized that the plain meaning of
7 the term "prosecution" is "sufficiently comprehensive so as to include every step in an action from
8 its commencement to its final determination." *Marler v. Muni. Ct.*, 110 Cal. App. 3d 155, 160-161
9 (1980); *see also Ramos v. Sup. Ct.*, 32 Cal. 3d 26, 36 (1982) (same); *Melancon v. Sup. Ct.*, 42 Cal.
10 2d 698, 707-08 (1954) ("Petitioner further urges that he is entitled to proceed with the depositions
11 he seeks ... even though he has not as yet complied with the order for the posting of security. It
12 seems clear, however, that the taking of depositions for such purpose would constitute a step in the
13 'prosecution' of the action and therefore falls within the stay provisions of section 834.").

14 As also noted by the Court in its tentative order, this broad meaning of "prosecution" is
15 implied in Section 583.110 *et seq.* of the California Civil Procedure Code, particularly Section
16 583.420 (permitting dismissal of action for delay in prosecution), and Rule 373 of the California
17 Rules of Court (permitting motion to dismiss action for lack of prosecution). The word
18 "prosecution" in these statutes and rules of court contemplate all aspects of litigation up until
19 conclusion of a case.

20 Also, as discussed in the moving papers, legal and general use dictionaries also define
21 prosecute broadly to include not only the commencement of an action, but its termination. *See*
22 *Black's Law Dictionary*, at p. 1221 (6th ed. 1990) ("To 'prosecute' an action is not merely to
23 commence it, but includes following it to its ultimate conclusion") (attached as exhibit C to RJN);
24 *Merriam-Webster's 10th Collegiate Dictionary*, p. 939 (1993) (defining "prosecute" as "to follow to
25 the end; pursue until finished") (attached as exhibit D to RJN). Proposition 64's effect on pending
26 cases is also consistent with the requirement that a person "may pursue" representative claims only
27 if he or she satisfies the requirements associated with class actions, as well as the voters' declared
28 intention "to eliminate frivolous unfair competition lawsuits" by dictating that only certain

1 governmental officials "be authorized to file and prosecute actions on behalf of the general public."
2 RJN Ex. A, Section 1(d), (f), Section 2; see also RJN Ex. D, p. 950 ("pursue" defined as "to find or
3 employ measures to obtain or accomplish goal;" "to proceed along" or "to follow up or proceed
4 with"). Given the actual text of the UCL as amended by Proposition 64, the UCL's new standing
5 provisions immediately apply to Plaintiff's ongoing prosecution of this case.

6 Relevant to the continued litigation of this action, Proposition 64 undeniably permits
7 individuals to "prosecute" a claim under the UCL on behalf of the general public only if they have
8 suffered injury-in-fact and can demonstrate class certification bases. Because "prosecution" of an
9 action refers to the entirety of a litigation of an action until conclusion, it must be understood by
10 those who drafted and voted for Proposition 64 that its changes apply to all on-going actions. If
11 Proposition 64 was only meant to apply to future filings of these actions, the UCL would have been
12 amended to only permit individuals who have suffered injury in fact to "file," not "prosecute," these
13 actions on behalf of the general public. Proposition 64 did not effect that change.

14
15 **2. THIS CASE SHOULD BE STAYED PENDING FURTHER APPELLATE REVIEW**

16 As the Court is undoubtedly aware, the issue of whether Proposition 64 applies to
17 pending cases is currently fertile ground for substantial differences of opinion. While the First
18 Appellate District has issued its ruling in *CDR*, further appellate opinions are immediately
19 forthcoming. Based on our best information, the Third Appellate District has a hearing on this issue
20 later this month (on March 21, 2005 in *Fair Business America, LLC v. Mattel, Inc.*, Third Appellate
21 District, case no. C044134), while the Fourth Appellate District also has two additional hearings on
22 February 17, 2005 in *Lytwyn v. Fry's Electronics, Inc.*, Fourth Appellate District, Division One,
23 Case No. D042401 (Benke, Nares & Aaron, JJ.), and *Biven v. Corel, Inc.*, Fourth Appellate District,
24 Division One, case no. D043407 (Haller, O'Rourke & Aaron, JJ.). It is also our understanding the
25 California Supreme Court has received briefing on this issue.

26 To the extent that any of these appellate courts come to a conclusion that is contrary to
27 that of *CDR*, Plaintiff's standing and the viability of this action will continue to remain in question.
28 Since this issue is of such import and that issuance of further contrary appellate opinions will

undoubtedly result in further motion practice and hearings, Defendants respectfully request that the Court, should it decide to deny this motion, temporarily stay this action pending further appellate guidance, including that of the California Supreme Court. Such a stay would avoid needless expenditure of time and resources by the Court and the parties in the litigation of this action.

3. CONCLUSION

In enacting Proposition 64, California voters put an end to those features of California's unfair competition law that led to abusive and frivolous lawsuits (i.e., "private attorney general" or "nonclass class" actions). Whether viewed as a repeal of the provisions allowing such actions or as a prospective application of new standing requirements, Proposition 64 precludes continued prosecution of this case. Thus, the Court should grant this motion for judgment on the pleadings.

Alternatively, if the Court is inclined to deny this motion, Defendants respectfully request a temporary stay of further proceedings in this action and/or a delay of the Court's issuance of an order on this motion pending further appellate guidance on this issue.

Dated: February 7, 2005

BARGER & WOLEN LLP

By: 

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Underwriters Association, Fire Insurance
Exchange, Truck Underwriters
Association, Truck Insurance Exchange,
and Farmers Group, Inc.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Sedgwick, Detert, Moran & Arnold, One Embarcadero Center, 16th Floor, San Francisco, California 94111-3628. On February 7, 2005, I served the within documents described as:

REPLY IN SUPPORT OF STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S MOTION FOR JUDGMENT ON THE PLEADINGS

JOINDER IN DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS AND REQUEST FOR STAY

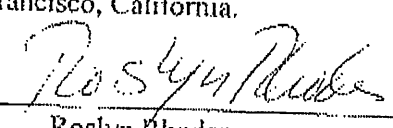
- ☒ by transmitting via facsimile the document listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via Federal Express.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 7, 2005, at San Francisco, California.


Roslyn Rhodes

SEDGWICK
DETERT, MORAN & ARNOLD