



July 10, 2013

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JUL 10 2013

Honorable Chief Justice and Associate Justices of the
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

CLERK SUPREME COURT

Re: **Amicus Curiae Letter in Support of Issuing a “Grant and Hold” or “Grant and Transfer” Order on the Court’s Own Motion: *The Las Canoas Co. v. Kramer***, 216 Cal.App.4th 96 (May 7, 2013), Case Nos. S211651, B238729

Dear Honorable Justices:

Consumer Attorneys of California (“CAOC”) respectfully urges the Court to grant review on its own motion in *The Las Canoas Cos. v. Kramer*, Case No. S211651. See Cal. Rules of Ct., Rule 8.512, subd. (c)(1).

Las Canoas raises issues that overlap those presented in two cases now pending before this Court, *Zhang v. Superior Court (Cal. Cap. Ins.)*, Case No. S178542, and *Rose v. Bank of America*, Case No. S199074. *Las Canoas* is therefore appropriate for a “grant and hold” order pending resolution of *Zhang* and/or *Rose*, or alternatively, for a “grant and transfer” order following the Court’s anticipated decisions in *Zhang* and/or *Rose*, which are expected to be issued by the first week of August. See Cal. Rules of Court, Rules 8.500(b)(4), 8.512(d)(2).

Statement of Interest

Founded in 1962, CAOC is a voluntary non-profit membership organization of over 3,000 consumer attorneys practicing in California. Its members predominantly represent individuals subjected to consumer fraud, unlawful employment practices, personal injuries and insurance bad faith. CAOC’s members have taken a leading role in advancing and protecting the rights of consumers, employees and injured victims in both the courts and in the Legislature. This has often occurred through litigation invoking California’s Unfair Competition Law (Cal. Business & Professions Code §§ 17200 et seq.) (“UCL”).

CAOC has a substantive interest in upholding the public policies underlying the UCL for the benefit of the consumers and workers whom its members represent. CAOC has participated as amicus curiae in significant cases involving interpretation of the UCL, including *Kwikset Corp. v. Superior Court (Benson)*, 51 Cal.4th 310 (2011); *Clayworth v. Pfizer, Inc.*, 49 Cal.4th 758 (2010); *In re Tobacco II Cases*, 46 Cal.4th 298 (2009); and *Californians for Disability Rights v. Mervyn’s, LLC*, 39 Cal.4th 223 (2006).

**The *Las Canoas* Opinion Should be Taken Up as a “Grant and Hold”
Pending Resolution of *Zhang* and/or *Rose*, or as a “Grant and Transfer”
After Resolution of *Zhang* and/or *Rose***

On July 1, 2013, CAOC filed a request for depublication of the *Las Canoas* opinion. On July 5, 2013, this Court extended the time to grant review on the Court’s own motion. *See* Rule of Court 8.512(c)(1).

If the Court is disinclined to depublish the opinion, CAOC respectfully urges, as an alternative, that the Court consider issuing a “grant and hold” order pending resolution of *Zhang* and/or *Rose* (*see* Rule of Court 8.512(d)(2)), or a “grant and transfer” order after the opinions in *Zhang* and *Rose* are handed down (*see* Rule of Court 8.500(b)(4)).

The question raised in *Las Canoas* overlaps the issues raised in *Zhang* and *Rose*.

In *Las Canoas*, the question is whether the Court of Appeal may create a judicial exception to UCL liability in the absence of an express statutory safe harbor, such as this Court recognized in *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 180 (1999). The Court of Appeal in *Las Canoas* rejected a UCL claim brought for violation of Code of Civil Procedure section 2025.750(a), which requires court reporters to charge “reasonable” fees for copies of deposition transcripts. *Las Canoas*, slip op. at 3-4. Instead of considering the UCL or this Court’s precedents construing it, the Court of Appeal held that a motion in the original action was the sole remedy for that statutory violation—even though the statute itself contains no such limitation on UCL liability. *Id.*

In *Zhang* and *Rose*, this Court is considering questions that are closely connected to the question presented by *Las Canoas*.

In *Zhang*, the question is whether a UCL “fraudulent” prong claim is barred as a result of a previous ruling that the Unfair Insurance Practices Act carries no private right of action. The Court’s online docket summarizes the issue as follows:

This case presents the following issues: (1) Can an insured bring a cause of action against its insurer under the unfair competition law (Bus. & Prof. Code, § 17200) based on allegations that the insurer misrepresents and falsely advertises that it will promptly and properly pay covered claims when it has no intention of doing so? (2) Does *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287 bar such an action?

In *Rose*, the question is whether a UCL “unlawful” prong claim may proceed after the expiration of an explicit private right of action created by Congress. The issue presented there is summarized in the Court’s online docket:

Can a cause of action under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) be predicated on an alleged violation of the Truth in Savings Act

(12 U.S.C. § 4301 et seq.), despite Congress's repeal of the private right of action initially provided for under that Act?

Either or both of the Court's opinions in those cases can be expected to provide guidance for proper resolution of *Las Canoas*. All three cases involve the extent (if any) to which UCL claims may be barred by implication, in the absence of an express statutory safe harbor. A "grant and hold" or "grant and transfer" order will enable reconsideration of *Las Canoas* and will allow the Court of Appeal to issue a new opinion guided by this Court's precedents.

Conclusion

For the reasons discussed above, the Court is respectfully asked to issue a "grant and hold" order in *Las Canoas* pending resolution of *Zhang* and/or *Rose*, or to issue a "grant and transfer" order in *Las Canoas* after *Zhang* and *Rose* are decided.

Respectfully submitted,


Kimberly A. Kralowec
State Bar No. 163158

Enclosure

cc: See attached proof of service

PROOF OF SERVICE

I, the undersigned, hereby declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States; am over the age of 18 years; am employed by THE KRALOWEC LAW GROUP, located at 188 The Embarcadero, Suite 800, San Francisco, California 94105, whose principal attorney is a member of the State Bar of California and of the Bar of each Federal District Court within California; am not a party to the within action; and that I caused to be served a true and correct copy of the following documents in the manner indicated below:

1. AMICUS CURIAE LETTER IN SUPPORT OF ISSUING A “GRANT AND HOLD” OR “GRANT AND TRANSFER” ORDER ON THE COURT’S OWN MOTION; and
2. PROOF OF SERVICE.

By Mail: I placed a true copy of each document listed above in a sealed envelope addressed to each person listed below on this date. I then deposited that same envelope with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that upon motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.

California Court of Appeal,
2nd District, Division 6

California Court of Appeal
2nd District, Division 6
Court Place
200 East Santa Clara Street
Ventura, CA 93001

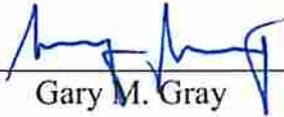
Counsel for Plaintiff and
Appellant The Las Canoas
Company, Inc. dba
Construction Plumbing

Daniel Eric Engel
6845 Amestoy Ave.
Lake Balboa, CA 91406

Counsel for Defendants and
Respondents Evelyn Hope
Kramer, Legalink, Inc., Merrill
Communications, LLC and
Wordwave, Inc.

Vince Mojica Verde
Ogletree, Deakins, Nash, Smoak & Stewart
695 Town Center Drive, Suite 1500
Costa Mesa, CA 92626

Executed July 10, 2013 at San Francisco, California.



Gary M. Gray