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May 8, 2009

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

Re: *Kwikset Corp. v. Superior Court (Benson)*
California Supreme Court Case No. S171845
Amicus Curiae Letter in Support of Petition for Review

To The Honorable Chief Justice and Associate Justices of the California Supreme Court:

The National Association of Consumer Advocates and the National Consumer Law Center respectfully request that the Court grant review of *Kwikset Corp. v. Superior Court (Benson)* (2009) 171 Cal.App.4th 645. The *Kwikset* decision merits review by this Court because it emasculates the liability provisions of both the Unfair Competition Law ("UCL") (Bus. & Prof. Code § 17200 *et seq.*) and the False Advertising Law ("FAL") (Bus. & Prof. Code § 17500 *et seq.*). It also adopts a pleading standard at odds with this Court's opinions construing those statutes and other claims. Review by this Court is essential to address these important issues.

I. STATEMENT OF INTEREST

The National Association of Consumer Advocates ("NACA") is a nationwide, nonprofit corporation with over 1,000 members who are private and public sector attorneys, legal services attorneys, law professors, law students and non-attorney consumer advocates, whose practices or interests primarily involve the protection and representation of consumers. Its mission is to promote justice for all consumers. NACA is dedicated to the furtherance of ethical and professional representation of consumers. Its *Standards and Guidelines For Litigating and Settling Consumer Class Actions* may be found at 176 F.R.D. 375 (1998), and www.naca.net/ at the bottom of the main page. About 150 of NACA's members are California consumer attorneys or non-attorney advocates who regularly represent and advocate for consumers residing in California. Included within these cases are numerous cases brought under California's UCL and FAL against entities which market and sell consumer products like those at issue in this case. Therefore, NACA has a substantial interest in resolution of the issues raised by this case. NACA believes that additional briefing will be helpful to the Court on matters not fully addressed by the parties themselves.

The National Consumer Law Center ("NCLC") is a public interest, non profit law office established in 1969 and incorporated in 1971, with its main office in Boston, MA and a separate

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office in Washington DC. It is a national research and advocacy organization focusing specifically on the legal needs of low income, financially distressed and elderly consumers. Pursuant to California Rules of Court, rule 8.208, amicus curiae NCLC hereby states that no entity of person has an ownership interest of 10% or more in NCLC and NCLC knows of no person or entity that has a financial or other interest in the outcome of the proceeding under Rule 8.208.

NCLC works to defend the rights of low-income consumers and to advance economic justice. We concentrate on working for fairness in financial services, wealth building and financial health, a stop to predatory lending and consumer fraud, and protection of basic energy and utility services for low income families. NCLC devotes special attention to vulnerable populations including immigrants, elders, homeowners, former welfare recipients, victims of domestic violence, military personnel, and others, on issues from access to justice, auto fraud, bankruptcy, credit cards, debt collection abuse, predatory lending, mortgage and payday lending, refund anticipation loans, Social Security, and more.

II. REASONS FOR REVIEW

This appeal presents the question whether, in the private enforcement setting, Proposition 64 abolished the standard this Court established 28 years ago in *Fletcher v. Security Pacific National Bank* (1979) 23 Cal.3d 442 for obtaining remedial orders under the UCL and the FAL. The Court has consistently held since *Fletcher* that these statutes empower the courts, in the exercise of discretion, to order equitable relief to consumers based simply on proof that the business violated a statutory prohibition on false advertising. No causal connection between the transaction and any harm or compensable injury to a consumer need be shown to support a restitution award.

Replacing this traditional "transactional nexus" standard with a proximate cause requirement borrowed from tort law, or the more stringent subjective reliance requirement of common law fraud, would profoundly affect the vitality of the UCL and the FAL. Neither the language nor the intent of Proposition 64 supports this transformation of UCL and FAL jurisprudence.

Both public prosecutors and private parties can enforce the UCL and the FAL. Public prosecution of California's consumer protection laws is a useful goal.[1] In practice, though, as overworked public prosecutors themselves will testify, criminal justice priorities and limited financial resources, particularly in times of serious recession and budgetary shortfalls, prevent the

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[1] Likewise, when asked what he thought about Western civilization, Ghandi is reputed to have replied: "It would be a good idea!" (*See, e.g.*, "Quotations Page" available at http://www.sccs.swarthmore.edu/users/01/kyla/quotations/g.html (as of April 20, 2007).)

Attorney General and other public prosecutors from taking a leading role in consumer law enforcement.

During the Proposition 64 election campaign, California's highest ranking public consumer attorney, Senior Assistant Attorney General Herschel Elkins, was candid that public prosecutors do not have the resources to enforce the state's consumer protection laws:

> Alan Zaremberg, president of the California Chamber of Commerce, said passage of the initiative wouldn't keep cases with merit from going forward under other laws. [¶] "If there is a problem, you can call the district attorney," he said. "If they are selling meat that is out of date, he can go stop it." [¶] But several current and former prosecutors scoff at Zaremberg's statement. [¶] "The attorney general's office and the district attorney do not have enough staff – and never will – to solve all the problems of deceptions in business practices," Elkins said.

("Initiative Seeks Curbs on Consumer Lawsuits," Los Angeles Times (June 6, 2004).)

Private individual cases are likewise no match for today's aggressive advertising and marketing practices. In *Fletcher*, the plaintiff was overcharged $2.56 in interest on a loan. (*Fletcher*, *supra*, 23 Cal.3d at 447.) Similarly, an individual smoker's receipts for cigarettes would not add up to enough to embolden even the most idealistic among the bar to charge the advancing onslaught of tobacco industry lawyers. The same is true of individual pursuit in the vast majority of consumer transactions that are essential to the everyday lives of Californians: the providers of consumer goods and services, automobile purchases and financing, home purchases and financing, credit cards, bank accounts, and insurance, to name but a few.

In striking down class action bans in low and moderate stake consumer cases, this Court again recognized the importance of class actions to effective consumer law enforcement. In *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148, the Court said:

> Class action and arbitration waivers are not, in the abstract, exculpatory clauses. But because, as discussed above, damages in consumer cases are often small and because "'[a] company which wrongfully exacts a dollar from each of millions of customers will reap a handsome profit'" (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 446), "'the class action is often the only effective way to halt and redress such exploitation.'" (*Ibid.*)

(*Id.* at 161; *see also Kraus v. Trinity Management Services, Inc.* (2000) 23 Cal.4th 116, 126 ["Class actions . . . make it economically feasible to sue when individual claims are too small to justify the expense of litigation, and thereby encourage attorneys to undertake private enforcement actions"].)

The Court of Appeal in *Kwikset* interpreted Proposition 64 as replacing *Fletcher*'s transactional nexus with tort law causation requirements. It overturned the trial court's sensible and correct ruling to overrule the demurrer that the alleged deception caused the plaintiffs to purchase the locks they did not want. (171 Cal.App.4th at 651.) The Court of Appeal's decision requires plaintiffs to allege and prove not only injury, loss of money or property and the legality, unfair, or fraudulent nature of the practice, but also that the product at issue was inferior or could not be found elsewhere in the market for a lesser price. (*Id.* at 653-54.) This last element has never been required by this Court and obviates the broad liability, limited remedy nature of these two statutory schemes. (*See Stop Youth Addiction v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 562-63.) Leaving that decision in place will seriously discourage private litigants from pursuing deceptive practice cases under the UCL and the FAL and undermine the key roles these statutes play in combating affirmative misrepresentations and false advertising in the marketing and sale of products and services to millions of consumers throughout California. Such a result would embolden the worst marketing practices and leave Californians even more exposed and vulnerable to them.

III. ARGUMENT

Almost 30 years ago, this Court announced the transactional nexus standard in *Fletcher* to obtain injunctive and restitutionary relief under the UCL and the FAL. This standard is rooted in the preventative and deterrent regulatory regime these statutes establish. This regime has been held "parallel" to the regulatory jurisdiction of Federal Trade Commission under the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45(a). Tort law, on the other hand, is primarily compensatory, not preventative and deterrent. Tort concepts such as proximate cause and reliance are foreign to this Court's UCL and FAL jurisprudence.

The UCL and the FAL are intended to protect consumers by preventing deceptive practices before they occur. Unlike tort law, they are not intended to compensate victims after an injury. Injunctive relief under the UCL and the FAL is intended to halt ongoing practices that violate the statutory prohibitions. Administrative ease and streamlined procedures effectuate this scheme, free of the normal burden and complexity of tort causation and damages proof requirements.

This Court has repeatedly recognized the importance of class action enforcement of California's consumer protection laws. Importing proximate cause and/or reliance into the UCL or the FAL would thwart the certification of class actions in a wide range of deceptive advertising cases and undermine the effective enforcement of these laws.

The voters' intention is paramount in interpreting Proposition 64. There is no evidence they intended Proposition 64 to eliminate the transactional nexus standard. Their single-minded

intention was to stop Trevor Law-type representative actions.[2] There is no evidence that the voters intended to change the standard established by *Fletcher* and embraced since then by the courts.

Proposition 64 did not amend the language of sections 17203 or 17535 on which *Fletcher* was based. Proposition 64 did not draw any distinction between the remedial powers of the courts in cases brought by private litigants, as opposed to public prosecutors. Indeed, as this Court recently emphasized in *Californians for Disability Rights v. Mervyn's LLC* (2006) 39 Cal.4th 223, 232, Proposition 64 "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." There is no basis in the statutory language of sections 17203 and 17535 for distinguishing between the remedial powers of the courts in private as opposed to public cases. The remedial scheme for injunctive and restitutionary relief remains intact and applies to all cases brought under the UCL and the FAL, public and private alike.

A plaintiff who has bought a product or service from a defendant who has violated the UCL or the FAL will easily satisfy the "standing" requirements imposed by Proposition 64. Although the standing requirements apply only to the named plaintiff, all members of a class of purchasers of the product or service in question will, as a practical matter, also meet these requirements.

The importation of tort causation into the UCL or the FAL would mark a radical departure from this Court's historic jurisprudence interpreting those statutes. There is nothing in the language of Proposition 64 to indicate that the voters intended the revolutionary result of overturning *Fletcher* and its progeny and fundamentally changing the character of these laws, to the detriment of the consumers who voted both for and against the initiative.

A. The Traditional Nexus for Liability Requires Only Proof of a Violation of the UCL or the FAL and Money Paid or Property Given to the Defendant in the Same Transaction.

Appellants' remedy in this case is an injunction. Prior to Proposition 64, public

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[2] (*See, e.g., People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1317 [discussing how in recent years, the UCL became prone to the sort of abuse "which made the Trevor Law Group a household name in California in 2002 and 2003. The abuse [was] a kind of legal shakedown scheme: Attorneys form[ed] a front 'watchdog' or 'consumer' organization. They scour[ed] public records on the Internet for what [were] often ridiculously minor violations of some regulation or law by a small business, and sue[d] that business in the name of the front organization."].)

prosecutors and private enforcers alike had only to establish a transactional nexus to make a case for restitution. "Causation" (if it can be called that) for purposes of a restitution order under the UCL and the FAL required only that the consumer buy goods or services from the defendant in a transaction that violated the acts. The acts did not require any other nexus between the violation and the payment of money, or any proof of harm.

Fletcher, the seminal case, has been consistently reaffirmed and followed by this Court. (*E.g.*, *Cortez v. Purolator Air Filtration Prods. Co.* (2000) 23 Cal.4th 163, 177; *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211.) *Fletcher* established that transactional causation is sufficiently established by proof of only two elements:

- The defendant's violation of section 17200 or 17500; and
- Money or property paid or property given by the consumer to the defendant.

(*Fletcher*, *supra*, 23 Cal.3d at 449.)

In *Fletcher*, plaintiff alleged that Security Pacific National Bank had violated the FAL by advertising "per annum" interest rates, when the bank was in fact computing interest based on a 360-day year. The Court had previously held that this practice violated the FAL because "quoting as a 'per annum' rate interest computed on the basis of a 360-day year is likely to mislead and deceive a bank's potential borrowers." (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 876.) Accordingly, the practice could be enjoined.

Fletcher presented the review of denial of a class certification order in a case seeking restitution under section 17535 for the same practice.[3] The trial court had denied certification because "the knowledge of each borrower . . . must be determined separately for each loan," and that "if a separate determination were necessary for each class member, maintenance of the action as a class action would be neither feasible nor efficient." (*Fletcher*, *supra*, 23 Cal.3d at 446.)

In an argument of which the Court of Appeal's opinion in this case is reminiscent (see footnote 5, above), Security Pacific argued that section 17535 "refers to money 'which may have been acquired by means of any . . . [illegal] practice,' . . . [and] that individual proof of each transaction must be established to determine if the money was obtained by such means."

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[3] Section 17535 of the FAL then provided, in pertinent part: "The court may make such orders . . . as may be necessary to prevent the use or employment . . . of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice in this chapter declared to be unlawful." The same language appears today in section 17535 and in section 17203 of the UCL.

(*Fletcher*, *supra*, 23 Cal.3d at 450.) This Court rejected the argument. The Court held that the "by means of" language that still appears in section 17535 (and still also in section 17203) requires no showing of proximate causation or reliance. Plaintiff need only prove that the defendant violated the statutory prohibition on false advertising and received money from consumers in the transaction.

Fletcher posited deterrence, not compensation, as the basis for dispensing with causation under the UCL and the FAL. *Fletcher*'s recognition of the primacy of deterrence and prevention reflects the regulatory character of the UCL and the FAL, and their "parallelism"[4] to section 5 of the FTC Act (15 U.S.C. § 45(a)). The UCL is among the "Little FTC Acts" which, like the FTC Act, extended the regulation of unfair competition law to protect consumers as well as competitors. (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.) "In view of the similarity of language and obvious identity of purpose of [the UCL and the FTC Act], decisions of the federal court on the subject are more than ordinarily persuasive." (*Cel-Tech Communications, Inc.*, *supra*, 20 Cal.4th at 185-186, quoting *People ex rel. Mosk v. National Research Co.* (1962) 201 Cal.App.2d 765, 773; *see also Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 507 ["no good reason" to depart from the FTC's interpretation].)

Like the FTC Act, the UCL and the FAL are regulatory, not compensatory, legislative schemes. Unlike tort law, they are not intended to make consumers whole after injury, but to protect them by preventing undesirable business conduct from occurring. The twin remedies of injunction and restitution accomplish this by prevention and deterrence.[5] Injunctive relief

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[4] (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.* (1999) 20 Cal.4th 163, 185.)

[5] (*Kraus v. Trinity Management Servs.*, *supra*, 23 Cal.4th at 145-46 ["The trial court's order is "necessary to prevent" future unfair competition because, as we have recognized, an "'injunction against future violations, while of some deterrent force, is only a partial remedy.'"]; *Bank of the West v. Superior Court*, *supra*, 2 Cal.4th at 1267 ["If insurance coverage were available for monetary awards under the Unfair Business Practices Act, a person found to have violated the act would simply shift the loss to his insurer and, in effect, retain the proceeds of his unlawful conduct. Such a result would be inconsistent with the act's deterrent purpose."]; *McConnell v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1983) 33 Cal.3d 816, 821 ["Section 17535 of the Business and Professions Code vests the trial court with broad authority to fashion a remedy that will prevent unfair trade practices and will deter the defendant and others from engaging in such practices in the future. The provision of the section for restitution of property acquired by means of illegal practices provides such deterrence."]; *People v. Beaumont Investment, Ltd.* (2003) 111 Cal.App.4th 102, 135 ["[S]tatutory restitution is not solely 'intended to benefit the [victims] by the return of money, but instead is designed to penalize a defendant for past unlawful conduct and thereby deter future violations.'"]; *People ex rel. Lockyer v. Fremont Life Ins. Co.* (2002)

specifically prevents ongoing practices that violate the statutory prohibitions. Restitution deters those same practices by undermining the financial incentives to commit them.

The regulatory character of the UCL and the FAL is reflected in this limited remedial scheme. "[T]he Legislature deliberately traded the attributes of tort law for speed and administrative simplicity." (*Bank of the West v. Superior Court, supra*, 2 Cal.4th at 1266-67.) "To permit individual claims for damages to be pursued as part of such a procedure would tend to thwart this objective by requiring the court to deal with damage issues of a higher order of complexity." (*Dean Witter Reynolds, Inc. v. Superior Court* (1989) 211 Cal.App.3d 758, 774; *Stop Youth Addiction v. Lucky Stores, supra*, 17 Cal. 4th at 579-80, Baxter, J., concurring.)

The profits that law violators reap from deceptive advertising tempt law-abiding businesses to break the law in order to keep up. By empowering the courts to enjoin such practices and order payment of restitution where appropriate in false advertising transactions, *Fletcher* sends the message to law-abiding businesses that they will gain nothing by committing the same acts. *Fletcher* thus establishes the legal equivalent of the penalty box in ice hockey. It is not sitting in the box that counts so much as the prospect of having to do so, enabling the other team's power play.

In the current competitive environment, building and maintaining substantial "market share" has become central to long-term competitive viability. The market share imperative tempts reputable businesses to engage in the practices of their least ethical competitors – to join "the race to the bottom" – lest they lose share to them. The absence of vigilant public prosecution encourages violations of the false advertising laws by making law-breaking less risky and more profitable. Likewise, importing compensatory proof requirements into the UCL's historical regime of deterrence would, as the Court recognized 28 years ago in *Fletcher*, encourage violations by impeding class certifications and amplifying the net expected gain from violating the law.

"Unfair Competition Law" may seem like a misnomer for consumer class actions under the UCL and the FAL. But a business making a rational decision whether to obey the law and lose market share, or to violate it and gain share, will take account of litigation risk. Class actions are thus a mainstay against the race to the bottom that impels even fairminded businesses to abandon principle to keep up with their least scrupulous competitors.

This case arose in the immediate aftermath of "9/11," when buying American-made products – "Made in America" – became more than a mere slogan. President Bush and his

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104 Cal.App.4th 508, 531 ["Appellant first argues that across-the board restitution may not be ordered without proof that all consumers were deprived of money or property as a result of an unfair business practice. This position directly contradicts the holding of [*Fletcher*]."].)

administration went so far in the immediate aftermath of that horrific attack to condemn the sale and consumption of french fries because that food item originated in France, which was not fully supportive of the United States invasion of Iraq. The allegations and trial evidence against Kwikset in this case belie the bedrock principle underlying the UCL, that it is a free and competitive market that is the overarching goal of the legislation. To require that a private plaintiff under the UCL and the FAL plead and prove more than the core misrepresentation, coupled with the loss of money stemming from the plaintiff's purchase of the misrepresented item, does violence to these two salutary statutes and will jettison their invocation solely to the public prosecutors in California who are incapable, financially and otherwise, from affording necessary protection to the millions of Californians subject to false advertising and misrepresentation about goods and services.

Without significant discussion, the Court of Appeal turned its back on more than 30 years of deterrence jurisprudence traceable to *Fletcher*. This Court should grant review to consider the issues at the depth their importance requires.

B. *Kwikset* Threatens the Uniformity of Decisions by Requiring Pleading with Specificity Where this Court has Previously Held Otherwise.

The Court of Appeal's analysis of the sufficiency of the allegations in the amended complaint also ignores and undermines this Court's holding in *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26 that pleading with specific facts is not required. (*Quelimane*, 19 Cal.4th at 46-47.) Additionally, the analysis contradicts the principle in *Quelimane* that at demurrer stage, litigation is not designed to "test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading. . . 'the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.'" (*Id.* at 47, quoting *Committee on Children's Television, Inc. v. General Foods Corp.*, *supra*, 35 Cal.3d at 213-14.)

More recently, in *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, this Court held that courts considering demurrers must "[a]ssume as true all facts alleged in the complaint." (*Id.* at 475, citing *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) In her concurring opinion in *Sheehan*, Justice Werdegar stated that sustaining a demurrer without leave to amend is permissible, "only if the complaint fails to state a cause of action under any possible legal theory. [Citation.]" (*Id.* at 476-77.) Otherwise, "'unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion.' *Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322." (*Id.* at 1003, Werdegar J. concurring.) Because the plaintiff could amend the complaint to satisfy the standing requirements of Proposition 64, it was erroneous to sustain the demurrer without leave to amend.

The Court of Appeal disregards *Quelimane* by overlooking numerous allegations of both pecuniary loss and loss of other rights pled in the complaint. The allegation of injury by loss of rights is ignored altogether and the direct allegation of monetary damage is glossed over as the opinion holds there was no loss of money because the plaintiffs did not allege that they could not have purchased the product at issue from some competitor of Kwikset at a lesser price. (*Kwikset*, 171 Cal.App.4th at 654-55.) This analysis is inapposite, however, because the complaint sufficiently alleged a causal link between the misrepresentations about the quality of the product and the resulting monetary loss from purchasing it.

The Court reached an improper factual conclusion in the highly unusual circumstances of this case without giving appropriate weight and deference to the specific allegations in the amended complaint, which it is obligated to do by this Court's jurisprudence. Again, the disregard of this Court's opinions in *Sheehan*, *Quelimane*, and *Children's Television* creates inconsistent decisions.

The Court of Appeal's decision in this case not only does violence to this Court's requirements announced in *Sheehan* and *Quelimane* that complaints may be amended to respond to demurrers where any possible theory of recovery can be alleged, but is also reminiscent of the chain of events described in excruciating detail in *Harr, A Civil Action* (Knopf Doubleday 1996). In the litigation that formed the basis for that book – a case describing litigation concerning ground water contamination said to have caused the deaths of children – after the settlement with one defendant and a trial with the other, the prevailing defendant at trial moved for sanctions against the plaintiff's lawyer under Federal Rule of Civil Procedure 11, alleging that the plaintiff did not have possession of the evidence he introduced at trial at the time he made the allegations in the complaint and therefore had no probable cause to make them. In this case, of course, plaintiff not only prevailed at trial on his false advertising claims, but on appeal, a result later overturned through dismissal of the complaint following the enactment of Proposition 64 and its bizarre application by the Court of Appeal.

IV. CONCLUSION

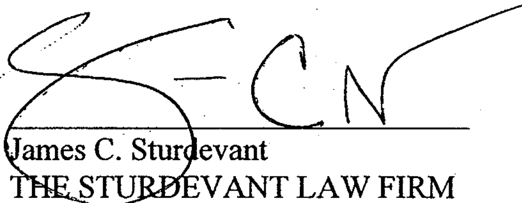
Thirty-five years ago, Justice Tobriner wrote: "We conclude that in a society which enlists a variety of psychological and advertising stimulants to induce the consumption of goods, consumers, rather than competitors, need the greatest protection from sharp business practices." (*Barquis v. Merchants Collection Association* (1972) 7 Cal.3d 94, 111.) For all the changes

since then, these words ring equally true today, and particularly for Americans in the immediate aftermath of "9/11." *Amici* request that Court grant the Petition for Review.

Respectfully submitted,

THE STURDEVANT LAW FIRM,
A Professional Corporation

LEVY, RAM & OLSON LLP

By: 

James C. Sturdevant
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PROOF OF SERVICE

I, the undersigned, declare that I am a citizen of the United States, over the age of 18 years, employed in the City and County of San Francisco, California, and not a party to the within action. My business address is 354 Pine Street, Fourth Floor, San Francisco, California 94104.

On **May 8, 2009**, I caused the within document entitled below to be served on the parties in this action listed below by placing true and correct copies thereof in sealed envelopes and causing them to be served, as stated:

Letter to The Honorable Ronald M. George, Chief Justice and The Honorable Associate Justices of the Supreme Court of California

By U.S. Mail:

I am also readily familiar with The Sturdevant Law Firm's practice for collection and processing of documents for ***mailing*** with the ***United States Postal Service***, being that the documents are deposited with the United States Postal Service with postage thereon fully prepaid the same day as the day of collection in the ordinary course of business. The parties listed below are being served today by U.S. Mail.

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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 8, 2009, at San Francisco, California.

Béla Nuss