IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S131798

CALIFORNIANS FOR DISABILITY RIGHTS,
Plaintiff and Appellant,

v.

MERVYNS, LLC,
Defendant and Respondent.

After an Opinion by the Court of Appeal,
First Appellate District, Division Four
(Case No. A106199)

On Appeal from the Superior Court of Alameda County
(Case No. 2002-051738, Honorable Henry E. Needham, Jr., Judge)

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CENTRAL CALIFORNIA CITIZENS AGAINST LAWSUIT ABUSE IN SUPPORT OF RESPONDENT MERVYNS, LLC

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INTRODUCTION AND SUMMARY OF ARGUMENT

The passage of Proposition 64 was the culmination of near-universal criticism of the standing provision of California's unfair competition law (UCL),[1] essentially a "no-standing" provision that was unique to the state. The no-standing provision opened the court doors and precious judicial resources to *any* private party with a complaint against a business it accused of unfair, unlawful, or misleading acts or practices—whether or not that party was actually injured. Proposition 64 represents nothing short of a long-anticipated and widely desired cure for a flawed standing rule, a rule rejected by almost all states with otherwise similar unfair competition statutes.

From a public policy perspective, the choice is not between two neutral sets of standing rules. The choice is between a flawed standing provision, on the one hand, and the sound and traditional standing requirements of Proposition 64, on the other. Given that choice, the question for this Court is: Should it exempt pending cases from Proposition 64's obvious improvements on the UCL, or should it apply the initiative's reforms to pending cases? In light of the constitutional sanctity of the people's initiative power, the purpose of Proposition 64 to remedy a badly flawed law, and the balance of the equities, the answer is "yes." This Court should reverse the decision of the

[1] As used in this brief, "unfair competition law" or UCL refers generally to the prohibitions and remedies provided in California Business & Professions Code sections 17200, *et seq.*, and 17500, *et seq.*

court of appeal with instructions to grant Mervyn's motion to dismiss.

ARGUMENT

I

THE VOTERS' DECISION THROUGH PROPOSITION 64 TO REFORM THE UCL'S UNIQUELY FLAWED STANDING PROVISION SHOULD BE GIVEN THE BROADEST APPLICATION

A. The UCL's No-Standing Provision Was Badly Flawed

A comparison of the state of affairs in California unfair competition law before and after the enactment of Proposition 64 reveals a stark dichotomy between a very flawed set of standing rules—almost universally recognized as such—and a set of traditional and meaningful standing rules. *See*, *e.g.*, Eliot G. Disner & Noah E. Jussim, *So Unfair and Foul*, L.A. Law., Nov. 2003, at 42, 43-44 (describing the broad consensus regarding the flaws of the UCL's former no-standing provision). Before voters passed Proposition 64, the UCL conferred standing to any private party who wanted to sue a business for any "unlawful, unfair or fraudulent business act or practice" or any "unfair, deceptive, untrue or misleading advertising," when acting "for the interests of itself, its members, or the general public." *See* Cal. Bus. & Prof. Code §§ 17203-17204, 17535, *amended by* Proposition 64 (2004). A private party bringing a UCL action was not required to be a competitor of the defendant or to show injury or damage. *Id.*; *Comm. on Children's Television*, *Inc. v. Gen.*

Foods Corp., 35 Cal. 3d 197, 209 (1983). Uninjured private parties representing the "general public" did not have to meet any of the extensive requirements of state or federal class action procedure. Cal. Bus. & Prof. Code §§ 17204, 17535, *amended by* Proposition 64. Besides private parties, the Attorney General and other government attorneys had standing to sue businesses for violations prohibited under the UCL. Cal. Bus. & Prof. Code §§ 17203, 17204, 17535, *amended by* Proposition 64.

Proposition 64 amended the UCL to require a private plaintiff to show that he or she "has suffered injury in fact and has lost money or property." Proposition 64 §§ 3, 5. Proposition 64 further added the requirement that a private party pursuing representative claims or relief on behalf of others must meet the new standing requirements of personal injury *and* the requirements for class action certification under state law. Proposition 64 §§ 2, 5. Proposition 64 did not affect the standing requirements of government prosecutors. By introducing meaningful standing requirements, Proposition 64 remedied the UCL's most significant flaw.

The former UCL's no-standing provision ran afoul of California's traditional standing rules and the policies they served. Only a "real party in interest"—someone who can show actual injury—normally has standing to sue a private entity in a California court. Cal. Code of Civ. Proc. § 367; *Blumhorst v. Jewish Family Services of L.A.*, 126 Cal. App. 4th 993, 1001

(2005) (a litigant invoking judicial process must have a real interest in the ultimate adjudication, having suffered (or about to suffer) "any injury of sufficient magnitude reasonably to assure that all of the relevant facts and issues will be adequately presented"). Even standing in "taxpayer" and "citizen" suits against government entities requires plaintiffs to prove some minimal nexus to the government activity they seek to enjoin, whether it is citizenship, residency, or the payment of taxes. Cal. Code of Civ. Proc. § 526a; *Green v. Obledo*, 29 Cal. 3d 126, 144 (1981).

Requiring actual injury for a private plaintiff to have standing to sue serves prudential and constitutional policies. Those policies include conserving judicial resources, optimizing judicial decisionmaking, and promoting fairness. *See* Erwin Chemerinsky, *Constitutional Law: Principles and Policies* 50-51 (2d ed. 2002) (describing these policies as underlying the justiciability doctrines, including standing). The former UCL's failure to require injury or class-action certification before private litigants could sue undermined these policies.

First, the California court system was forced to adjudicate many more UCL lawsuits (often frivolous ones) than it otherwise would have if there had been meaningful standing requirements on private litigants. Robert C. Fellmeth, California Law Revision Comm'n, *California's Unfair Competition Act: Conundrums and Confusions* 248 n.92 (Jan. 1995) (reporting in 1995 that

no state "appears to have a comparable volume of pled unfair competition causes of action" as California, and that "the breadth of Section 17200 makes it a natural cause of action to append to many civil complaints involving business or consumer disputes"). The lawsuits of non-injured plaintiffs undoubtedly consumed the limited resources of the court system, including the time and energy of judges, judicial staff, and *injured* litigants competing for those same limited resources. *Cf.*, *e.g.*, *Friends of the Earth*, *Inc. v. Laidlaw Envtl. Services (TOC)*, *Inc.*, 528 U.S. 167, 191 (2000) ("Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake."); *Peoples Gas, Light & Coke Co. v. USPS*, 658 F.2d 1182, 1201 n.21 (7th Cir. 1981) ("[W]hile the denial of standing has the effect of removing a case from the reach of judicial determination, its function is to ration scarce judicial resources.").

The non-injured plaintiffs' lawsuits under UCL also harmed California's business environment. A study released by the California Business Roundtable prior to Proposition 64's enactment found that 55% of California companies had plans to move jobs out of California, and about 50% said their policy was to avoid *adding* jobs to California. *See* Bain & Co., California Bus. Roundtable, *California Competitiveness Project: Assessment of California Competitiveness* 2-3 (Feb. 2004). The study reported that the

cost of doing business in California was 30% higher than in other western states. *Id.* A full 100% of business executives told the Business Roundtable that they viewed California's business climate less favorably than that of other states. *Id.* The UCL was a leading cause of businesses' reluctance to engage in the California economy. *See* California Bus. Roundtable, *California Competitiveness Project: Preliminary Recommendations* 2 (Feb. 2004).

The exploitation of judicial resources by uninjured private plaintiffs and the resulting harm done to small businesses were highlighted by a 2003 scandal. The Attorney General sued to stop the now-infamous Trevor Law Group from exploiting UCL's lack of standing requirement through "a kind of legal shakedown scheme," whereby "[a]ttorneys form[ed] a front 'watchdog' or 'consumer' organization . . . [t]o scour public records on the Internet for what are 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." *People ex rel. Lockyer v. Brar*, 115 Cal. App. 4th 1315, 1317 (2004). Thanks to its wide-open standing for private litigants, the UCL had degenerated into a feeding frenzy for attorneys who used the law to shake down California businesses and chase jobs out of California. Indeed, the "shakedown" crisis—symbolized by the Trevor Law Group scandal—prompted serious bipartisan efforts to change the UCL, after attempts in the past had failed to provide a meaningful standing requirement for private litigants. Nancy

McCarthy, *Alleged Abuses Prompt Review of Consumer Law*, Cal. B. J., Feb. 2003[2] ("Eight attempts in recent years to reform the law have failed, primarily due to opposition from the Consumer Attorneys, who argue that [the UCL] is a good law being misused by unethical attorneys."). Even those more recent efforts failed, however, and it was not until the voters passed Proposition 64 that the UCL's no-standing rule was rectified.

Second, a non-injured plaintiff in a UCL action lacked the incentives of an injured plaintiff—one with a monetary or emotional stake in the outcome of the litigation—to vigorously prosecute his or her claim. If a business truly is guilty of an unfair business practice under the UCL, the courts have no better litigant to rely on for an exhaustive investigation of all relevant facts and the presentation of all viable arguments than a litigant who actually has been injured by that violation, particularly when that litigant seeks to represent a class of similarly situated victims. This Court has recognized this fundamental shortfall in non-injured plaintiff suits and has specifically cited it as the main problem that a meaningful standing requirement is meant to solve: "The purpose of a standing requirement is to ensure that the courts will decide only actual controversies between parties with a sufficient interest in the subject matter of the dispute to press their case with vigor." *Common Cause of Cal.*

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[2] *Available at* http://calbar.ca.gov/state/calbar/calbar_cbj.jsp?sCategoryPath=/Home/Attorney%20Resources/California%20Bar%20Journal/February2003&sCatHtmlPath=cbj/02_TH_1_Abuses.html&sCatHtmlTitle=Top%20Headlines

v. Bd. of Supervisors of L.A. County, 49 Cal. 3d 432, 439 (1989).

Third, the UCL's lack of a standing requirement was fundamentally unfair to defendants. For example, judgments in representative actions on behalf of the "general public," which lacked the "procedural formalisms and due process safeguards of class actions," were not binding as to absent parties, so defendants failed to achieve the peace of mind that comes with finality. Michael S. Greve, *Consumer Law, Class Actions, and the Common Law*, 7 Chap. L. Rev. 155, 166 (2004); *Bronco Wine Co. v. Frank A. Logoluso Farms*, 214 Cal. App. 3d 699, 715-21 (1989). This problem was highlighted in November 1996 by the non-partisan California Law Revision Commission (Commission),[3] which the Legislature had commissioned to review the UCL and provide recommendations on fixing the problems associated with, *inter alia*, the lack of standing requirements. California Law Revision Comm'n,

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[3] The California Law Revision Commission

> was created in 1953 as the permanent successor to the Code Commission and given responsibility for the continuing substantive review of California statutory and decisional law. The Commission studies the law in order to discover defects and anachronisms and recommends legislation to make needed reforms . . . . The Commission may study only topics that the Legislature has authorized.

California Law Revision Comm'n, History and Purpose, *at* http://www.clrc.ca.gov/background.html (last modified Apr. 23, 2003). The Commission consists of a member of the Senate appointed by the Rules Committee; a member of the Assembly appointed by the Speaker; seven members appointed by the Governor with the advice and consent of the Senate; and the Legislative Counsel, who is an ex officio member. *Id.*

State of California, *California Law Revision Commission: Recommendation, Unfair Competition Litigation* (Nov. 1996).

Moreover, the Commission described as "troublesome" the "potential for a multiplicity of actions under the [UCL] and overlapping or parallel proceedings" by public and private prosecutors, reportedly characterized by some commentators as the "two-front war" on defendants. *Id.* at 209. The Commission explained that "[t]his situation can result because there is no limitation on multiple plaintiffs seeking relief for the same injury to the general public." *Id.* Indeed, unsophisticated defendants routinely were subjected to the most frivolous complaints for technical violations harming nobody—complaints that no plaintiff required to show standing could bring. *See* McCarthy, *supra* (reporting on the Trevor Law Group scandal in which lawyers formed a for-profit corporation and filed thousands of UCL complaints with extortionate offers of settlement regarding trivial violations). Professor Robert Fellmeth, the expert who consulted the Commission on its report and recommendation to the California Governor and Legislature regarding needed reforms to the UCL, summed up the problem-ridden UCL this way:

> No statute of which we are aware in this state or nation confers the kind of unbridled standing to so many without definition, standards, notice requirements, or independent review . . . . At present, it is unclear who can sue for whom, what they have to do, whether it is final, and as to whom . . . . The current system is, notwithstanding its beneficial use by many historically,

> headed toward the worst of all possible legal worlds: abuse of process as unqualified person[s] disingenuously invoke the interests of the general public, extortionate nuisance lawsuits with high exposure, confusion and duplication of litigation resources, and uncertain finality.

Robert C. Fellmeth, *Unfair Competition Act Enforcement by Agencies, Prosecutors, and Private Litigants: Who's on First?*, 15-WTR Cal. Reg. L. Rep. 1, 11 (1995).

Proposition 64 brought much-needed reform to the former UCL's no-standing provision. Public policy favors subjecting all pending cases to the beneficial reforms of Proposition 64. By requiring all pending UCL plaintiffs to establish standing before continuing the prosecution of their claims—as the voters mandated in passing Proposition 64—the courts would be serving the interests of judicial economy, optimal judicial decisionmaking, and fairness.

B. The UCL's No-Standing Provision Was an Aberration Among States' Consumer Protection Laws

Prior to Proposition 64, California's unfair competition law was unique among state consumer protection statutes in its lack of a standing requirement for private and representative suits. Fellmeth, *California's Unfair Competition Act: Conundrums and Confusions*, *supra*, at 229 (describing the "liberal and perhaps unique standing provisions" for individual private actions and the law's "unusual license for plaintiff representation of the general public"). Nearly every other state with a substantially similar statute requires meaningful standing before private litigants can sue. This suggests that such

an omission in the UCL was flawed. *See* Alaska Stat. § 45.50.531 (requiring "ascertainable loss of money or property"); Conn. Gen. Stat. Ann. § 42-110g (same); Fla. Stat. Ann. § 501.211 (requiring private party to have been "aggrieved" or to have "suffered a loss"); Hawaii Rev. Stat. Ann. § 480-13 (requiring "injur[y]" to "business or property"); 815 Ill. Comp. Stat. Ann. 505/2 (requiring "actual damage"); La. Rev. Stat. Ann. § 51:1409 (requiring "ascertainable loss of money or movable property" and expressly prohibiting consumer class actions); Me. Rev. Stat. Ann. tit. 5, § 213 (requiring "loss of money or property"); Mass. Gen. Laws ch. 93A, § 11 (same); Mont. Code Ann. § 30-14-133 (requiring "ascertainable loss of money or property" and expressly prohibiting consumer class actions); Neb. Rev. Stat. § 59-1609 (requiring "injur[y]" to "business or property"); N.C. Gen. Stat. § 75-16 (requiring consumer plaintiffs to show "injur[y]" and competitor plaintiffs to show that business was "broken up, destroyed or injured"); S.C. Code Ann. § 39-5-140 (requiring "ascertainable loss of money or property" and expressly prohibiting consumer class actions); Vt. Stat. Ann. tit. 9, § 2461(b) (requiring "damages or injury"); Wa. Rev. Code Ann. § 19.86.090 (requiring "injur[y]" to "business or property"); Wis. Stat. Ann. § 100.20 (requiring "pecuniary loss").

Thus, applying Proposition 64's standing reforms to pending cases would not only bring those cases in line with all other cases in California in

which plaintiffs must show standing, but it would also bring pending UCL cases in line with the overwhelming majority of unfair competition statutes across the country.

C. Given the Fundamental Importance of the Initiative Power in California, Proposition 64 Should Be Liberally Construed to Apply to Pending Cases

In California, the people "reserve to themselves the powers of initiative and referendum"—a reservation of power enshrined in their constitution. Cal. Const. art. IV, § 1. This constitutional provision for initiative and referendum is based on "the theory that all power of government ultimately resides in the people." *Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore*, 18 Cal. 3d 582, 591 (1976). Because "[v]oter action by initiative is so fundamental," the initiative or referendum power is liberally construed in favor of its use. *Native American Sacred Site & Envtl. Prot. Ass'n v. City of San Juan Capistrano*, 120 Cal. App. 4th 961, 965 (2004). As this Court observed, "it is our solemn duty to jealously guard the initiative power, it being one of the most precious rights of our democratic process." *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 22 Cal. 3d 208, 248 (1978) (internal citations and quotation marks omitted). Given the fundamental nature of the initiative power, this Court has articulated a policy of "giving the initiative's terms a liberal construction." *Brosnahan v. Brown*, 32 Cal. 3d 236, 262 (1982).

Here, Californians for Disability Rights does not challenge the constitutionality of Proposition 64. Nor does it challenge the fact that the voters' intent in passing Proposition 64 was to repeal the no-standing provision of California's unfair competition law. Instead, it demands that this Court *strictly* construe that intent by imposing an arbitrary cut-off on the cases to which the standing reforms of Proposition 64 should apply.

Nothing in the initiative or ballot materials suggests that the voters intended to enact *only future reform* of the unfair competition law's standing requirements. To the contrary, Proposition 64 states that "[i]t is the intent of California voters in enacting this act to eliminate frivolous unfair competition lawsuits." Proposition 64, § 1(d). The initiative also declares that "[i]t is the intent of California voters in enacting this act that only the California Attorney General and local public officials be authorized to file and prosecute actions on behalf of the general public." *Id.* § 1(f). Nevertheless, Californians for Disability Rights argues that this Court should conservatively construe Proposition 64 to prohibit retroactive effect of the standing provisions. In light of the sanctity of the initiative power and this Court's policy of "giving the initiative's terms a liberal construction," this Court should reject the call for a narrow construction of Proposition 64's terms and broadly apply Proposition 64's reforms to pending cases.

II

THE BALANCE OF THE EQUITIES FAVORS APPLICATION OF PROPOSITION 64'S REFORMS TO PENDING CASES

If conventional methods of statutory interpretation of Proposition 64 do not yield for this Court a definitive answer as to whether the initiative's reforms should be applied to pending lawsuits, then this Court should consider balancing the equities of the parties affected. *MW Erectors*, *Inc. v. Niederhauser Ornamental & Metal Works Co.*, *Inc.*, 36 Cal. 4th 412, 426 (2005) ("The court may also *consider* the impact of an *interpretation* on *public policy*, for where uncertainty exists *consideration* should be given to the consequences that will flow from a particular interpretation." (internal citations and quotation marks omitted, emphasis added)). *Cf.* Richard A. Posner, *Economic Analysis of Law* 577-78 (5th ed. 1998) ("[I]n areas where conventional methods of interpretation leave the judge in doubt, perhaps he should feel free to use his interpretive freedom to nudge the statute in the direction of efficiency."). A decision of this Court to apply Proposition 64's reforms to pending cases will produce *many* "winners" and *few* "losers." Weighing the interests of the various interest groups that might be impacted by this Court's ruling, it would be far more equitable to apply Proposition 64's reforms to pending lawsuits than not.

A. Those Who Stand to Win: The Judicial and Law Enforcement System, Businesses, Employees, and Consumers

Those who will likely benefit from application of Proposition 64 to pending cases include the judicial and law enforcement system, businesses involved in pending actions, and those businesses' employees and patrons.

Applying Proposition 64's reforms to pending cases will weed out those UCL cases without a real dispute between the parties, permitting courts to dedicate their limited resources to hearing the claims of actually injured litigants, and allowing the Attorney General and local government prosecutors to do their job of enforcing the competition laws on behalf of the public without having to deal with duplicative or shakedown lawsuits. *See*, *e.g.*, Cal. Const. art. V, § 13 ("[T]he Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced."). Injured parties, their attorneys, and consumers at large represented by government prosecutors will benefit from the greater access to judicial resources.

Applying Proposition 64's reforms to pending cases will also benefit the businesses being sued by uninjured plaintiffs in those cases, particularly small businesses that lack the funds to litigate. Conversely, denying Proposition 64's reforms to such businesses will force them to divert resources away from productive activity and into defending themselves from often

meritless lawsuits by uninjured plaintiffs. While the number of pending UCL suits or the prospect of large monetary recoveries in those cases may be limited, any costs associated with a business's continued litigation of an uninjured plaintiff action likely will be borne by that business's customers, through higher prices, and employees, through lower wages and benefits. Council of Economic Advisers, *Who Pays for Tort Liability Claims? An Economic Analysis of the U.S. Tort Liability System* (Apr. 2002); *see also* Deborah J. La Fetra, *Freedom, Responsibility, and Risk: Fundamental Principles Supporting Tort Reform*, 36 Ind. L. Rev. 645, 645 (2003) ("Unfortunately, many facets of America's civil justice system operate to shift all of those risks to the entrepreneurs who produce the consumer goods and services that make people's lives easier or more pleasant. Moreover, just as taxes imposed on businesses are necessarily passed on to consumers, consumers must also realize that businesses have passed the costs of outlandish tort verdicts onto them in the form of higher prices.").

Finally, the consumers at large—those whom California's unfair competition law was intended to protect—will receive the benefits of actions by prosecutors and injured parties, while avoiding the costs that businesses were forced to pass along to consumers as a result of duplicative or shakedown lawsuits.

B. Those Who Stand to Lose: Plaintiffs Who Have Suffered No Injury, and the Attorneys Who Represent Them

Plaintiffs who lack even the minimal injury needed to confer standing will lose if this court applies Proposition 64 retroactively. Their lawyers, who are either bringing the suit on a contingent basis or may seek attorney fees under a fee-shifting statute, also stand to lose. Lawyers have the possibility of recovering attorney's fees under the common-fund doctrine or under section 1021.5 of the California Code of Civil Procedure. Fellmeth, *California's Unfair Competition Act: Conundrums and Confusions*, *supra*, at 254. Those who will lose from Proposition 64's application to pending cases are the lawyers representing *non-injured* plaintiffs in those cases, whose hope of collecting attorney's fees in what would otherwise have been successful cases on the merits may vanish. Sham consumer organizations will also lose. Jeff Chorney, *Lockyer Wins Ruling in 17200 Lawsuit*, The Recorder, Mar. 18, 2004 (reporting State Bar investigation into the formation of "Consumer Enforcement Watch" as a "sham corporation" set up by lawyers to serve as plaintiff in UCL suits).

By definition, no injured party will be affected. Injured parties in pending cases can still pursue claims under the UCL. Government prosecutors in pending cases can still pursue claims under the UCL to protect California consumers. Special interest groups, like Californians for Disability Rights, can support those members who are actually injured who seek to bring claims.

CONCLUSION

This Court should decide that Proposition 64's procedural reforms apply to pending cases. There is little question that the overwhelming majority of voters, and political and business leaders of all stripes, viewed the UCL's no-standing provision as seriously flawed and requiring reform in order to bring the law in line with California's traditional standing requirements and the requirements of nearly all states with substantially similar statutes. The voters' intent to finally require meaningful standing for private litigants to pursue a lawsuit against a business—an intent expressed through the fundamental right of the initiative power—should be broadly carried out. These considerations, along with a balancing of the equities, counsel the Court to give businesses in pending UCL lawsuits their procedural due.

This Court should reverse the judgment of the court of appeal, with instructions to grant Mervyn's motion to dismiss.

DATED: September 21, 2005.

Respectfully submitted,

PAUL J. BEARD II

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PAUL J. BEARD II

Attorney for Amici Curiae
Pacific Legal Foundation and
Central California Citizens
Against Lawsuit Abuse

CERTIFICATE OF COMPLIANCE

Pursuant to California Rule of Court 14(c)(1), I hereby certify that the foregoing BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CENTRAL CALIFORNIA CITIZENS AGAINST LAWSUIT ABUSE IN SUPPORT OF RESPONDENT MERVYNS, LLC, is proportionately spaced, has a typeface of 13 points or more, and contains 4,055 words.

DATED: September 21, 2005.

_____

PAUL J. BEARD II

DECLARATION OF SERVICE

I, Barbara A. Siebert, declare as follows:

I am a resident of the State of California, residing or employed in Sacramento, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 3900 Lennane Drive, Suite 200, Sacramento, California.

On September 21, 2005, true copies of BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND CENTRAL CALIFORNIA CITIZENS AGAINST LAWSUIT ABUSE IN SUPPORT OF RESPONDENT MERVYNS, LLC, were placed in envelopes addressed to:

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 21st day of September, 2005, at Sacramento, California.

_____
BARBARA A. SIEBERT