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September 11, 2006

VIA HAND DELIVERY

Honorable Ronald M. George, Chief Justice
and the Associate Justices
Supreme Court of California
Ronald Reagan Building
300 South Spring Street
Los Angeles, CA 90013

Re: ***Pfizer, Inc. v. Superior Court*, Supreme Court Case No. S145775**
Request for Depublication (Cal. Rule of Court, Rule 979(a))

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

I respectfully bring this request to depublish *Pfizer, Inc. v. Superior Court*, Court of Appeal No. B188106, filed July 11, 2006 [141 Cal. App. 4th 290], on behalf my clients who are involved in consumer protection class action suits alleging claims based on violations of Business and Professions Code sections 17200 and/or 17500.

My Law Offices actively participate in numerous class actions, many of which have substantially benefitted California consumers (see, e.g., *Discover Bank v. Superior Court* 36 Cal.4th 148). None of these actions would have been possible under the extreme anti-consumer bias which is the foundation of the *Pfizer* decision. I do not believe that this decision, which misinterprets the intent of Proposition 64 and would bring about anti-consumer results of overwhelming proportions, should be left standing as a published opinion.

The problem with the *Pfizer* decision is its inherent destruction of California's consumer protection statutes, an unintended result which was never contemplated as part of Proposition 64, nor what the Proposition literally or reasonably requires. In essence, by interpreting the "as a result of" language in Proposition 64 to require individual "reliance" on a false or misleading misrepresentation or advertisement for *all* putative class members, the practical effect of such an interpretation is to eliminate California's consumer protections for false advertising entirely. The language of the opinion makes it clear that this result is intended by the decision, not merely accidental.

As for logic of the decision itself, the decision creates a typicality requirement that has never been interpreted to mean that every class member must be perfectly identical with the class

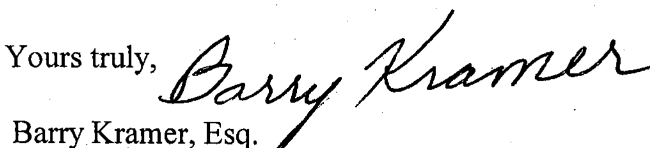
representative. To require such an identification between a class representative and an absent class member is to eliminate class actions in their entirety, since no two individuals are 100% alike. For example, one class member may have bought Listerine in a supermarket, while the class representative bought the product in a drug store. Or one purchaser might be an English instructor, whereas the class representative is a plumber. Indeed, the simple fact that a class representative has chosen to file a representative action whereas an absent class member has not filed such an action could arguably be interpreted as making the class representative atypical from other class members. The logic of the *Pfizer* court is untenable. To require 100% identity between any two consumers is incompatible with the principle of class actions.

In essence, the *Pfizer* decision is a knowing and intentional blow to eliminate class actions in the consumer context entirely. This decision is an inappropriate overexpansion of a Proposition intended to protect small businesses from a certain type of scandalous abuse. The decision states that "The issue is whether the 'likely to be deceived' standard can be reconciled with Proposition 64's new standing requirements," but reaches the wrong result and changes the traditional "likely to be deceived" standard altogether. This is not what the Proposition says, and clearly not what it intends. Indeed, the reconciliation that the court discusses is easily accomplished simply by refusing to impose a spurious 100% identity requirement between a class representative and the absent class members. This 100% identity requirement has never been found before, is not found in the Proposition at issue, and should not now be found to exist.

Looking at the matter with simple common sense, it is quite obvious that if the Proposition at issue intended to require individual reliance by absent class members, thereby gutting all consumer class actions, it would have said so. The Proposition placed special requirements on an individual seeking to enforce statutes concerning unfair competition and false advertising, but did not place such requirements on all individuals who would benefit by such enforcement. The *Pfizer* court has simply pulled such requirement out of thin air in an obvious intent to restrict class actions in the consumer context. This radical departure in the law should not be countenanced.

This decision acknowledges that it has the intended effect to "dramatically restrict" California's consumer protection measures, but inappropriately blames this harsh result on the initiative measure itself. The court below is wrong. The dramatic restriction it refers to does not come from the initiative itself, but from the court's gross misinterpretation of the initiative, by unreasonably expanding the standing requirements for a person bringing an action on behalf of others to all those that would benefit from the action. The initiative makes no such requirement, and an overly expansive interpretation of the initiative that would gut California's consumer protections and bring about unintended consequences should not be allowed to become California law.

Yours truly,



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