

State Consumer Protection Laws Enforcement and Litigation Trends in California

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The UCL - Overview

- “As used in this chapter, unfair competition shall mean and include any **unlawful, unfair or fraudulent** business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.” Bus. & Prof. Code § 17200.

The UCL – Overview, cont.

- Section 17200 creates “three varieties of unfair competition: practices which are unlawful, unfair or fraudulent.” *In re Tobacco II Cases*, 46 Cal.4th 298, 311 (2009).
- “There are separate lines of authority construing each of these three terms.” *Gregory v. Albertson’s, Inc.*, 104 Cal.App.4th 845, 851 (2002).
- Conduct may be “unfair” or “fraudulent” even if not “unlawful” and vice versa. *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 180 (1999).

The UCL – “Unlawful” Prong

- The UCL’s “unlawful” prong **“borrows” violations of other laws** and makes them independently actionable. *Cel-Tech*, 20 Cal.4th at 180.
 - Covers “any practices forbidden by law, be it **civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made.**” *Saunders v. Superior Court*, 27 Cal.App.4th 832, 838-39 (1994).
 - Covers **other states’ laws** in addition to California law and federal law. *Process Specialties, Inc. v. Sematech, Inc.*, 2001 WL 36105562, *15 (E.D. Cal. Nov. 8, 2001).
 - Whether the statute or regulation carries an **express private right of action is irrelevant.**

The UCL – “Unfair” Prong

- Three-way split in authority:
 - Pre-*Cel-Tech* formulation (balancing test)
 - **The balancing test** requires “an examination of [the] impact [of the defendant’s conduct] on its alleged victim, balanced against the reasons, justifications and motives of the alleged wrongdoer. In brief, the court must **weigh the utility of the defendant’s conduct against the gravity of the harm** to the alleged victim....” *South Bay Chevrolet v. Gen. Motors Acceptance Corp.*, 72 Cal.App.4th 861, 886 (1999) (quoting *State Farm Fire & Casualty Co. v. Superior Court*, 45 Cal.App.4th 1093, 1103-04 (1996)).
 - Post-*Cel-Tech* formulation (tethering test)
 - **The tethering test** requires that “any finding of unfairness ... be **tethered to some legislatively declared policy**”; “unfair” conduct “**threatens an incipient violation of ... law, or violates the policy or spirit of [the] laws** because its effects are comparable to or the same as a violation of the law.” *Cel-Tech*, 20 Cal.4th at 186, 187.

The UCL – “Unfair” Prong, cont.

- Three-way split in authority (cont.):
 - FTC Section 5 formulation
 - The Section 5 test requires that: “(1) **the consumer injury must be substantial**; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be **an injury that consumers themselves could not reasonably have avoided.**” *Camacho v. Automobile Club of Southern California*, 142 Cal.App.4th 1394, 1403 (2006) (citing *Orkin Exterminating Co. v. F.T.C.*, 849 F.2d 1354, 1364 (11th Cir. 1988)).
 - **Practice Tip:** Two of these elements – “substantial injury” and “must be an injury that consumers themselves could not reasonably have avoided” – are key differences that may make the Section 5 test more difficult to satisfy than the pre-*Cel-Tech* balancing test.

The UCL – “Fraudulent” Prong

- Liability exists if “members of the public are **likely to be deceived**” by the defendant’s conduct. *Tobacco II*, 46 Cal.4th at 312.
 - “[T]his prong of the UCL is governed by the reasonable consumer test.” *Rubio v. Capital One Bank*, 613 F.3d 1195, 1204 (9th Cir. 2010); see also *Consumer Advocates v. Echostar Satellite Corp.*, 113 Cal.App.4th 1351, 1360 (2003) (“unless the advertisement targets a particular disadvantaged or vulnerable group, it is judged by the effect it would have on a reasonable consumer”).
 - **Practice Tip:** Therefore, the standard is: **conduct likely to deceive a reasonable consumer.**

The UCL – Defenses

- ***Cel-Tech* “Safe Harbor”**
 - *Cel-Tech*, 20 Cal.4th at 184 (UCL does not reach “business practices which the Legislature has expressly declared to be lawful in other legislation. That other provision must actually bar it, however, and not merely fail to allow it. In other words, courts may not use the unfair competition law to condemn actions the Legislature permits. Conversely, the Legislature's mere failure to prohibit an activity does not prevent a court from finding it unfair.”)
- **Economic Abstention Doctrine**
 - *Desert Healthcare Dist. v. PacificCare FHP, Inc.*, 94 Cal.App.4th 781 (2001) (complex economic policy)
- **No Connection to California**
 - *Norwest Mortgage, Inc. v. Sup. Ct.*, 72 Cal.App.4th 214 (1999)
- **Federal law explicitly prohibits private right of action**
 - See, e.g., *Perez v. Nidek Co.*, 657 F.Supp.2d 1156, 1164-66 (S.D. Cal. 2009) (“Plaintiffs’ CLRA and UCL claims are dismissed because they impermissibly seek private enforcement of the FDCA The Court will not permit Plaintiffs to privately enforce the FDCA and its regulations under the guise of state law claims”); *In re Epogen & Aranesp Off-Label Mktg. & Sales Practices Litig.*, 590 F.Supp.2d 1282, 1290-91 (C.D. Cal. 2008) (same); *Hartless v. Clorox Co.*, 2007 U.S. Dist. LEXIS 81686, at *11 (S.D. Cal. Nov. 2, 2007) (“Where private rights of action to enforce a statute have been expressly barred by Congress, that statute may not serve as a predicate for a UCL claim”)
- **Federal Preemption**
 - *Carrea v. Dreyer’s Grand Ice Cream, Inc.*, 2011 U.S. Dist. LEXIS 6371 (N.D. Cal. Jan. 10, 2011) (FDCA 8 preemption)

The FAL

- The FAL (Bus. & Prof. Code §§ 17500 et seq.) prohibits:
 - **advertising** about goods or services that the defendant knew or should have known was “likely to deceive” a reasonable consumer (see *Kasky v. Nike, Inc.*, 27 Cal.4th 939, 951 (2002)); and
 - advertising with the **intent not to sell as advertised**
- “A violation of the UCL’s fraud prong is also a violation of the false advertising law (§ 17500 et seq.).” *Tobacco II*, 46 Cal.4th at 312 n.8.

Remedy #1: Restitution

- “The court may make such orders ... as may be necessary to **restore to any person in interest any money or property ... which may have been acquired by means of** such unfair competition [or false advertising].” Bus. & Prof. Code § § 17203, 17535.
 - “Restitution” is the only form of monetary relief the UCL affords in a private action; “damages” are not recoverable. *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134 (1999); *see also Clark v. Superior Court*, 50 Cal.4th 605, 613 (2010) (“The only monetary remedy available in a private action under the unfair competition law is restitution.”); *Kasky*, 27 Cal.4th at 950 (“remedies are ‘generally limited to injunctive relief and restitution’”).
 - “In drafting the act, the Legislature deliberately traded the attributes of tort law for speed and administrative simplicity.” *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 1266-67 (1992).

Remedy #1: Restitution, cont.

- Three types of UCL restitution:
 - 1) “Money taken” restitution: “[A] UCL defendant [may be compelled] to return money obtained through an unfair business practice to **those persons in interest from whom the property was taken**, that is, to persons who had an ownership interest in the property or those claiming through that person.” *Kraus v. Trinity Mgt. Services, Inc.*, 23 Cal.4th 116, 126-127 (2000) (emph. added).
 - 2) “Vested interest” restitution: “The concept of ... restitution, as used in the UCL, is **not limited** only to the return of money or property that was once in the possession of [the plaintiff].” *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal.4th 163, 178 (2000) (emph. added). Rather, UCL “restitution is broad enough to allow a plaintiff to **recover money or property in which he or she has a vested interest**.” *Korea Supply*, 29 Cal.4th at 1149 (emphasis added).
 - 3) Restitutionary disgorgement of profits: “any profits [the defendant] may have gained through **interest or earnings on the plaintiffs’ money** that [the defendant] wrongfully withheld.” *Juarez v. Arcadia Financial, Ltd.*, 152 Cal.App.4th 889, 915 (2007).

Remedy #1: Restitution, cont.

- *Nonrestitutionary* disgorgement of profits?
 - If at all, only in a certified UCL class action. *Korea Supply*, 29 Cal.4th at 1148 n.6; see *Cruz v. PacifiCare Health Systems, Inc.*, 30 Cal.4th 303, 318 (2003) (“It may be the case that under the UCL, **a class action would allow for disgorgement into a fluid recovery fund.**”); *Kraus*, 23 Cal.4th at 137 (“the Legislature ... **has authorized disgorgement into a fluid recovery fund in class actions**”).
 - *Corbett v. Superior Court*, 101 Cal.App.4th 649, 655 (2002) (“Where a class has properly been certified, a plaintiff in a UCL action **may seek disgorgement of unlawful profits into a fluid recovery fund.**”).
 - *Alch v. Superior Court*, 122 Cal.App.4th 339, 407-08 (2004) (“It may well be that in a proper case a court **may order disgorgement of profits into a fluid recovery fund** in a UCL class action; at least one case has so held.” (citing *Corbett*)).
 - *Madrid v. Perot Systems Corp.*, 130 Cal.App.4th 440, 460 (2005) (“[N]on-restitutionary disgorgement is **not an available remedy** in a UCL class action.”).
 - *Feitelberg v. Credit Suisse First Boston, LLC*, 134 Cal.App.4th 997, 1016 (2005) (“[T]he nonrestitutionary remedy that plaintiff seeks is **not available under the UCL**, regardless of whether the claim is prosecuted as a class action.”).

Remedy #1: Restitution, cont.

- Enhanced remedies for senior citizens and disabled persons are not available in UCL cases:
 - Civil Code section 3345:
 - applies "in actions brought by, on behalf of, or for the benefit of senior citizens or disabled persons ... **to redress unfair or deceptive acts or practices or unfair methods of competition.**" Civ. Code § 3345(a).
 - allows for triple recovery when "a trier of fact is authorized by a statute to impose either a fine, or a civil penalty or other penalty, or **any other remedy the purpose or effect of which is to punish or deter,**" if certain other conditions are met. Civ. Code § 3345(b).
 - Section 3345 enhances only remedies that are "in the nature of a penalty." UCL "restitution" is meant to deter, but not punish. It is not "in the nature of a penalty," so the UCL does not fall within section 3345's parameters. *Clark*, 50 Cal.4th at 613-15.

Remedy #1: Restitution, cont.

- How restitution is measured is not entirely clear:
 - *Tobacco II*, 46 Cal.4th at 312 (“[T]he UCL’s focus [is] on **the defendant’s conduct, rather than the plaintiff’s damages**, in service of the statute’s larger purpose of protecting the general public against unscrupulous business practices.”)
 - *Colgan v. Leatherman Tool Group, Inc.*, 135 Cal.App.4th 663, 700 (2006) (restitution is measured based on evidence of “**the value of the consumer impact or the advantage realized by [the defendant]**”)
 - *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 336 (2011) (“A restitution order against a defendant ... requires both that money or property have been **lost by a plaintiff**, on the one hand, **and** that it have been **acquired by a defendant**, on the other.”)
 - *Clark*, 50 Cal.4th at 614-15 (“Restitution is not a punitive remedy. The word ‘restitution’ means the return of money or other property obtained through an improper means to the person from whom the property was taken. Because restitution in a private action brought under the unfair competition law is **measured by what was taken from the plaintiff**, that remedy is not a penalty”)

Remedy #2: Injunctive Relief

- “Any person who **engages, has engaged, or proposes to engage** in unfair competition **may be enjoined** in any court of competent jurisdiction. The court may make such orders ... as may be necessary to **prevent the use or employment by any person of any practice which constitutes unfair competition**” Bus. & Prof. Code § 17203; *see id.* § 17535.
- UCL and FAL injunctions are most commonly entered to halt ongoing or future wrongful conduct.

Remedy #2: Injunctive Relief, cont.

- Courts may also craft injunctions to remedy the effects of past wrongful acts:
 - *Colgan*, 135 Cal.App.4th at 677, 702 (approving injunction requiring defendant to notify its distributors and accept returns of misleadingly-labeled goods); *Hewlett v. Squaw Valley Ski Corp.*, 54 Cal.App.4th 499, 517, 539-43 (1997) (affirming UCL injunction requiring ski resort to reforest wilderness areas); *Podolsky v. First Healthcare Corp.*, 50 Cal.App.4th 632, 656 (1996) (UCL permits injunctions to “correct the consequences of past conduct”); *People v. Toomey*, 157 Cal.App.3d 1, 21 (1984) (affirming UCL injunction requiring defendant “to establish an impound fund to be used to provide refunds to [past] purchasers”)
- Injunctions may be ordered without restitution:
 - “Nothing in the statute’s language conditions a court’s authority to order injunctive relief on the need in a given case to also order restitution. Accordingly, the right to seek injunctive relief under section 17203 is not dependent on the right to seek restitution; the two are wholly independent remedies.” *Clayworth v. Pfizer, Inc.*, 49 Cal.4th 758, 790 (2010); see *Kwikset*, 51 Cal.4th at 337 (same).

Competitor vs. Competitor Actions

- The post-*Cel-Tech* formulation of “unfair” conduct applies. *Cel-Tech*, 20 Cal.4th at 187 n.12 (“Nothing we say relates to actions by consumers.”).
- Under the *Korea Supply* rule, injunctive relief will often be a competitor’s only remedy. Examples:
 - *Korea Supply*, 29 Cal.4th 1134 (contractor sued competitor for using unfair bidding practices to win project from government of South Korea)
 - *Cel-Tech*, 20 Cal.4th 163 (cell phone retailers sued cell phone service provider for selling phones below cost and recouping losses through higher prices for service)
 - *Eddins v. Redstone*, 134 Cal.App.4th 290 (2005) (small video store owners sued movie studios for agreeing to secret unearned discounts only for Blockbuster, undermining smaller outlets’ ability to compete)
 - *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal.App.4th 688 (2007) (retailer alleged that defendant’s defamatory analytic reports diminished its assets and reduced its market capitalization)

Consumers Legal Remedies Act

Consumers Legal Remedies Act – Cal. Civil Code § 1750 et seq.

- Purpose is to protect **consumers** against unfair and deceptive business practices. §1760; see also *Pollard v. Ericsson, Inc.*, 125 Cal. App.4th 214, 220 (2004) (and insulate responsible business from spurious or vexatious lawsuits).
- CLRA to be liberally construed and applied to promote its purposes

CLRA

- §1761(d) – “Consumer” is “an individual who seeks or acquires, by purchase or lease, any goods or services for personal, family or household purposes”
- §1783 – Three year statute of limitations “from the date of commission of such method, act or practice”

CLRA

- §1751 – Provisions not waivable by consumer
- §1780(a) & (e) – Non-exclusive remedies include: damages, injunction, restitution, punitive damages and attorneys' fees for prevailing plaintiff
 - §1780(b)(1) – Enhanced remedies available to seniors and disabled individuals
 - Defendant may recover fees if prosecution of the action was not in good faith (§1780(e))

CLRA

- §1770 – list of 24 separate acts/practices, including the following false ad related:
 - §1770(a)(5) “sponsorship, approval, characteristics, ingredients, uses, benefits or quantities” not as represented
 - §1770(a)(7) “particular standard, quality or grade” not as represented
 - §1770(a)(9) intent not to sell as advertised
 - §1770(a)(16) not supplied per previous representation
- “Reasonable Consumer” Standard
 - *McKinniss v. Sunny Delight*, 2007 U.S. Dist. LEXIS 96108 (C.D. Cal. Sept. 4, 2007)

CLRA

- §1780 – Individual action
- §1781 – Class action
 - §1781(b) & (c) – CLRA-specific class certification standards and procedures
 - §1781(c)(3) – No motion specifically under Cal. Code Civ. Proc. §437c (summary judgment) in class action, but may bring motion that “action is without merit or there is no defense.” *Consumer Advocates v. Echostar*, 113 Cal.App.4th 1351, 1359-60 (2003).

CLRA

- §1782(a) – ***Pre-filing notice requirement*** for claim for ***damages*** under CLRA
 - 30-day notice prior to bringing damages claim (registered mail, return receipt requested)
 - Must provide notice of violation, demand cure and provide opportunity to cure
 - May sue for injunctive relief in the interim (§1782(d)) and damages under other claims
 - If so, complaint may be amended to add CLRA damage claim following the proper notice

CLRA

- If cure under §1782(b) or (c) is accomplished, there is no right to bring a claim for damages
- §1782(b) – For individual action under §1780:
 - Defendant has the 30-day notice period to correct, repair, replace or give other remedy

CLRA

- §1782(c) – For **class action** under 1781
 - Cure provision has no time period and cure requires classwide remedy:
 - **Identification** of members of putative class
 - **Notification** to putative class members that upon request they will get remedy
 - Requested **remedy** provided
 - **Cease** engaging in the practice

CLRA

- §1782(e) – Attempts by the potential defendant to comply with pre-filing cure provisions are construed as an offer to compromise and are inadmissible as liability evidence pursuant to Evid. Code §1152, but can be used by defendant to show good faith

CLRA

- Makes little sense for defendant to avail itself of cure rights under §1782 (i.e., cure a threatened class action under CLRA)
 - Cure activities would not be part of a binding court order
 - Protects only against CLRA damages claim
 - §1784 provides protection against “any action,” though requires additional showing of “not intentional/bona fide error”
 - Unaware of any published case discussing a defendant using or benefitting from cure rights under §1782
 - If defendant wants to cure and obtain preclusion, a court supervised noticed class settlement provides much more protection
- Pro forma pre-filing notice letter is sent
- Response may be sent (though not required)

CLRA

Failure to comply with pre-filing notice

- Cannot sue for damages until compliance
- If a damages remedy is sought prior to compliance, the damages remedy **may** be lost. *Outboard Marine Corp. v. Superior Court*, 52 Cal. App. 3d 30, 40-41 (1975) (“literal application of the notice provisions” is required to accomplish statute’s purpose); *Cattie v. Wal-Mart*, 504 F. Supp. 2d 939, 950 (S.D. Cal. 2007)

Government Enforcement

The Tools

- The primary tools used by the Attorney General to protect consumers are:
- The **Unfair Competition Law** (UCL), Cal. Bus. & Prof. Code (B&P Code) sections 17200 et seq.; and
- The **False Advertising Law** (FAL), B&P Code sections 17500 et seq.

Goal – Protect Consumers

- The Office of the Attorney General is primarily concerned with **protecting consumers**, but
- Cleaning up Dodge City helps competitors too!
- When your competitor is running false ads or the like, it's taking your business.

If Your Competitor is Cheating Let Us Know

Supervising Attorney
Consumer Law Section
Office of the Attorney General
455 Golden Gate Ave, Suite 11000
San Francisco, CA 94102
Or contact me
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415-703-5389

These Are Law Enforcement Actions

- “An action filed by the People seeking injunctive relief and civil penalties is fundamentally a law enforcement action designed to protect the public and not to benefit private parties....The request for restitution on behalf of vendees in such an action is only ancillary to the primary remedies sought for the benefit of the public.”

People v. Pacific Land Research Co. (1977) 20 Cal. 3d 10, 17 [citations omitted].

Actions on behalf of The People

- Law Enforcement actions are brought in the name of The People of the State of California.
- They can be brought by the Attorney General or District Attorney or, in certain circumstances, by a City Attorney or County Counsel

B&P Code sections 17204 & 17535

Civil Enforcement

- UCL and FAL Claims may be brought as civil actions.
- Civil Penalties up to \$2,500 per violation of the UCL or FAL. B&P Code sections 17206 and 17536.
- UCL Penalties may be doubled if victims are elderly or disabled. B&P Code section 17206.1.
- Remedies are cumulative. B&P Code sections 17205 and 17534.5
- A violation of the FAL is automatically a violation of the UCL. B&P Code section 17200.

Criminal Enforcement

- Public Prosecutors may bring FAL claims as misdemeanors punishable by up to six months in jail, a fine up to \$2,500, or both. B&P Code section 17500.
- Consumer fraud may violate other statutes, including the Penal Code, and be prosecuted accordingly.

Before the Summons is Served

- Informal investigations
- Administrative Subpoenas pursuant to California Government Code sections 11180 et seq.
- Business may be asked to verify advertising claims. B&P Section 17508.
- Ex parte applications for Temporary Restraining Orders, Receiverships, and/or Asset Freezes

Litigation

- Preliminary Injunction may be sought.
- Civil Contempt may be prosecuted if Preliminary Injunction or other court orders are violated.
- Actions may be settled by stipulated judgment only – no side deals.
- Stipulated judgment may be submitted at time of initial filing.

What's Happening Some Examples

- **Note** - The Office of the Attorney General does not discuss, confirm, or deny on-going confidential investigations.
- The AG is aggressively pursuing mortgage fraud criminally and civilly, including:
 - Loan modification scams;
 - Loan “Audit” scams; and
 - Mortgages obtained by fraud.

More Examples

- Prosecuting an attorney who took advance fees to “negotiate” with IRS.
- Secured convictions on 65 counts of grand theft and securities fraud against perpetrators of pyramid scheme and phony stock sales.
- Seeking \$800,000 in restitution in Computer Kiosk Fraud against African American churches.
- Taking a leadership role in the coalition of 50 state attorneys general and dozens of state banking regulators seeking to address problems in the mortgage loan servicing industry.

And More

- Resolved a predatory lending lawsuit against Countrywide in settlement expected to provide \$8.68 billion worth of home loan and foreclosure relief
- Secured a \$6.5 million settlement from top officers of Countrywide; funds used to establish a foreclosure relief fund.
- Won \$1.2 million ruling against people who sent nearly a million deceptive mailers to business owners threatening them with loss of their corporate status.

And still more

- Sued three largest tax preparation companies over deceptive marketing and lending practices. Two settlements and one trial court victory.
- Sued Stanley Chais for misleading investors and concealing ties to Bernie Madoff.
- Settled with CVS pharmacy requiring company to make sure expired products are not sold and to provide \$2 coupons to consumers who identify expired products.

Also

- Register service providers such as Credit Service Organizations and Mortgage Foreclosure Consultants.
- File Amicus briefs on consumer issues. Copies of all appellate briefs involving UCL and FAL must be served on the AG. B&P Code sections 17209 and 17536.5

You Can Serve Those Briefs On

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street
Los Angeles, CA 90013-1230

Prop 64

- The Old Days – Anyone could bring an action on behalf of the public seeking to enforce the UCL or FAL even if the named plaintiff had no dealings with the defendants.
- In 2004 voters passed Proposition 64 which permits individuals to bring UCL and FAL actions only if they meet California’s class action requirements and have suffered injury and lost money or property as a result of the unfair competition or false advertising. B&P Code sections 17203, 17204, 17535.
- The purpose of Proposition 64 was to eliminate standing for those who have not engaged in business dealings with defendants, thereby eliminating “shake-down lawsuits” while preserving for actual victims the ability to sue and enjoin such practices. *Kwikset Corp. v. Super. Court* (2011) 51 Cal.4th 310, 317.

Prop 64 – Continued

- Proposition 64's standing requirements do not apply to law enforcement actions. B&P Code sections 17203 and 17535.
- Proposition 64's standing requirements do not apply to unnamed class members. *In re Tobacco II Cases* (2009) 46 Cal.4th 298, 324.
- Proposition 64 made no change whatsoever to the substance of unfair competition claims. *Tobacco II* at p. 313-314.

Class Certification Post-Prop. 64

- Does an *In re Tobacco II* type standing analysis apply in UCL class certification proceedings?
 - Does “reasonable consumer” standard resolve this issue?
 - *cf. Fitzpatrick v. General Mills Inc.*, 635 F.3d 1279 (11th Cir. 2011) (New Jersey consumer protection law)
 - Divergent views in Cal. courts
 - Divergent views between Fed. and Cal. courts
 - Divergent views in Fed decisions

Class Certification Post-Prop. 64, cont.

Post Tobacco II Cal. cases

Morgan v. AT&T,
177 Cal.App.4th 1235 (2009)

Kaldenbach v. Mutual of Omaha,
178 Cal.App.4th 830 (2009)

Cohen v. DirecTV, Inc.,
178 Cal.App.4th 966 (2009)

Princess Cruise Lines v. Sup. Ct.,
179 Cal.App.4th 36 (2009)

In re Vioxx Class Cases,
180 Cal.App.4th 116 (2009)

Weinstat v. Dentsply International, Inc., 180 Cal.App.4th 1213 (2010)

In re Steroid Hormone Product Cases,
181 Cal.App.4th 145 (2010)

McAdams v. Monier, Inc.,
182 Cal.App.4th 174 (2010)

Pfizer Inc. v. Sup. Ct. (Galfano),
182 Cal.App.4th 622 (2010)

Sevidal v. Target Corp.,
189 Cal.App.4th 905 (2010)

Class Certification Post-Prop. 64, cont.

- Divergent views in federal court
 - Classwide reliance must be shown:
 - *Avritt v. Reliastar Life Ins.*, 615 F.3d 1023 (8th Cir. 2010)
 - *Webb v. Carter's, Inc.*, ___ F.R.D. ___, 2011 WL 343961 (C.D. Cal. Feb. 3, 2011)
 - Proof of classwide reliance unnecessary:
 - *Yokoyama v. Midland Nat. Life Ins. Co.*, 594 F.3d 1087, 1093 (9th Cir. 2010) (construing Hawaii consumer protection law with comparable “capacity to deceive” a reasonable consumer standard)
 - *Chavez v. Blue Sky Nat. Bev. Co.*, 268 F.R.D. 365, 378-79 (N.D. Cal. 2010)
 - *Lymburner v. U.S. Fin. Funds, Inc.*, 263 F.R.D. 534, 542-43 (N.D. Cal. 2010)
 - *Plascencia v. Lending 1st Mortg.*, 259 F.R.D. 437, 448 (N.D. Cal. 2009)
 - *Bagdasarian v. Amazon.com, Inc.*, 258 F.R.D. 383, 387-88 (C.D. Cal. 2009)
 - *Greenwood v. Compucredit Corp.*, 2010 WL 291842, *7 (N.D. Cal., Jan. 19, 2010)

Remedies Recent Developments

- *Kwikset Corp. v. Sup. Ct.*,
51 Cal.4th 310 (2011)
- *Grodensky v. Artichoke Joe's Casino*,
171 Cal.App.4th 1399 (2009) (depublished)
- *Clark v. Sup. Ct. (Nat'l Western Life Ins.)*,
50 Cal.4th 605 (2010)

Panel Members

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