

June 19, 2009

The Honorable Ronald M. George, Chief Justice  
The Honorable Associate Justices  
California Supreme Court  
350 McAllister Street  
San Francisco, CA 94102-4783

Re: *Safeco Insurance Company v. The Superior Court of Los Angeles County*  
Supreme Court of California, No. S173602  
Letter in Support of Petition for Review

Dear Chief Justice George and Associate Justices:

The following amici<sup>1</sup> respectfully submit this *amicus* letter pursuant to Rule 8.500(g) of the California Rules of Court in support of the Petition for Review filed in the above-captioned matter. The issues presented are of great importance to the business community, as the decision directly conflicts with the express intent of California voters when they passed Proposition 64.

## I. STATEMENT OF INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (“U.S. Chamber”) is the world’s largest business federation. It represents an underlying membership of more than three million businesses, state and local chambers of commerce, and professional organizations of every size, in every industry sector, and from every region of the country. The U.S. Chamber has thousands of members in California and thousands more conduct substantial business in the State. For that reason, the U.S. Chamber and its members have a significant interest in the administration of civil justice in the California courts. The U.S. Chamber routinely advocates the interests of the national business community in courts across the nation by filing *amicus curiae* briefs in cases involving issues of national concern to American business. In fulfilling that role, the U.S. Chamber has appeared many times before this Court

The California Chamber of Commerce (“CalChamber”) is a non-profit business association with over 15,000 members, both individual and corporate, representing virtually every economic interest in the State of California. For over 100 years, CalChamber has been the voice of California business. While CalChamber represents several of the largest corporations in California, seventy-five percent of its members have

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<sup>1</sup> Chamber of Commerce of the United States of America, California Chamber of Commerce, California Restaurant Association, and California New Car Dealers Association

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100 or fewer employees. CalChamber acts on behalf of the business community to improve the state's economic and jobs climate by representing business on a broad range of legislative, regulatory and legal issues. CalChamber often advocates before the courts by filing *amicus curiae* briefs in cases involving issues of paramount concern to the business community.

California Restaurant Association ("CRA") is the definitive voice of the California restaurant and hospitality industry and is the largest and longest serving nonprofit trade association in the nation. Representing the restaurant and hospitality industries since 1906, the CRA is made up of over 22,000 foodservice establishments in California. The restaurant industry is the largest private employer in California, representing more than 1.4 million jobs.

The California New Car Dealers Association ("CNCDA") is a statewide trade association that represents the interests of over 1200 franchised new car and truck dealer members. CNCDA members are primarily engaged in the retail sale and lease of new and used motor vehicles, but also engage in automotive service, repair and part sales. CNCDA often advocates before the courts by filing *amicus curiae* briefs in cases involving issues of paramount concern to franchised new car dealers.

## **II. REVIEW IS NECESSARY IN ORDER TO UPHOLD THE WILL OF CALIFORNIA VOTERS, AND TO ENSURE THAT THE STANDING REQUIREMENTS ESTABLISHED BY PROPOSITION 64 ARE FOLLOWED**

When California voters went to the ballot on November 2, 2004 to vote on Proposition 64, their intent was clear. They were tired of bounty-hunting attorneys bringing frivolous lawsuits, clogging the court system, and using phantom plaintiffs to shakedown businesses and line their own pockets at the business's expense. Proposition 64, which passed with an overwhelming 59.1% of the vote, explicitly prevents uninjured private persons from bringing an individual or representative action on behalf of the general public under California's Unfair Competition ("UCL") law. In order to assert a UCL claim, on behalf of an individual or others, a plaintiff must have suffered an injury-in-fact and lost money or property as a result of the alleged unfair business practice. The protections that were sought by the voters, however, have been weakened by the Court of Appeal's holding. The appellate court's ruling directly conflicts with the objectives of Proposition 64, and allows a party, whom the court found had no injury in fact, to maintain a UCL lawsuit and use the discovery process to attempt to locate a new plaintiff.

The Court of Appeal's decision creates an "end-around" Proposition 64, eroding the standing requirement which voters demanded, by simply replacing phantom plaintiffs with strawman plaintiffs. Not only did the initial plaintiff, the Proposition 103 Enforcement Project lack standing, but their next plaintiff class representative who

was named after the passage of Proposition 64 lacked standing as well. Indeed, as the appellate court itself recognized, “Karnan had no interest in the continued prosecution of the case, because she was not harmed by the conduct alleged in the case.” *Safeco Insurance Co. v. Super. Ct.*, B213044 (2<sup>nd</sup> App. Dist, 2009) [Slip Opinion, p.13]. Nevertheless, the Court of Appeal found that the rights of the putative class members could justify the grant of precertification discovery to a plaintiff, who has no interest in the litigation, in hopes of attempting to locate a substantive plaintiff to maintain a UCL action despite the express terms and goals of Proposition 64.

### **III. ABSENT REVIEW, CALIFORNIA BUSINESSES WILL ONCE AGAIN BE SUBJECT TO THE KIND OF SHAKEDOWN LAWSUITS PROPOSITION 64 SOUGHT TO ELIMINATE**

This decision, if allowed to stand, will have a devastating impact on the business community. Prior to the passage of Proposition 64, frivolous UCL lawsuits against businesses ran rampant since they could be filed without an injured party. Proposition 64 was passed in order to prevent this sort of abuse of the justice system. The measure’s preamble states that, “the voters found and declared that the UCL’s broad grant of standing had encouraged frivolous unfair competition lawsuits that clog our courts, cost taxpayers, and threaten the survival of small businesses.” By easing the requirement of standing to bring suit, the Court of Appeal has opened up the flood gates for any party, whether or not they were injured by an alleged wrongdoing, to bring suit, and cause businesses to spend millions of dollars defending frivolous actions.

If allowed to stand, the repercussions of the Appellate Court’s decision are clear. The decision renders Proposition 64’s standing requirement virtually meaningless as it allows attorneys to use “placeholder” plaintiffs, with no standing, to initiate a UCL action, engage in substantial merits and class discovery, and continue to maintain an action and use the discovery process in the hopes of locating a substitute plaintiff even after it is determined that the plaintiff never had standing in the action in the first instance. Permitting these meritless lawsuits to proceed, in addition to being contrary to the voter’s intentions, will result in businesses being coerced into settlements from baseless discovery proceedings. The results will be disastrous for California business, leaving them vulnerable to shakedown litigation at a time when their economic stability is imperative to getting California back on track financially.

### **IX. CONCLUSION**

The appellate court’s decision warrants review as it overturns the will of the people when they enacted Proposition 64. The Court’s holding directly conflicts with the express language set forth in Proposition 64, requiring that a plaintiff have been injured in fact and lost money or property as a result of the alleged unfair business practice. By allowing the plaintiff, who had neither an injury in fact, nor lost money or property to initiate and maintain a UCL claim, the Court of Appeal permitted what the voters had

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expressly rejected – that is, a plaintiff-less UCL claim. The amici are concerned about the ramifications that this decision will have on California businesses. Accordingly, the amici urge the Court to grant the Petition for Review filed in this case.

Respectfully submitted,

Erika C. Frank  
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