ARNOLD & PORTER LLP

CLIENT ADVISORY

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CALIFORNIA'S SUPREME COURT RULES THAT CONSUMERS MUST HAVE SUFFERED ACTUAL INJURY TO SUE UNDER THE STATE'S CONSUMERS LEGAL REMEDIES ACT

In its most recent opinion under California's Consumers Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*, CLRA), the Supreme Court of California held that plaintiffs may not sue for declaratory relief when they have not suffered any injury. In *Meyer* v. *Sprint Spectrum L.P.*, No. S153846, (Cal. Jan. 29, 2009), the Court held that to bring an action under the CLRA, one must have at least some "palpable threshold of damages." *Meyer*, slip op. at 14. The Court's unanimous ruling, a victory for companies doing business in California, is the latest limitation on what once seemed an unstoppable tide of frivolous consumer lawsuits in California.

Set against the backdrop of the 2004 passage of California's Proposition 64—a ballot initiative designed to limit lawsuits under California's Unfair Competition and False Advertising Laws to circumstances where the plaintiffs were actually injured by, and suffered a loss of money or property because of an unfair business practice—*Meyer* v. *Sprint Spectrum L.P.* applies similar limitations to claims brought under the CLRA. Unfair Competition and False Advertising Law claims are often paired with CLRA claims in consumer class actions and the statutory language for standing under the three acts is similar. While it may seem obvious that plaintiffs should have some injury before they can bring suit, California's consumer statutes have not always included such common sense requirements, and that made California a popular state for consumer class actions.

In 2007, California's Court of Appeal held that Proposition 64's requirement that plaintiffs suing under California's Unfair Competition and False Advertising Laws suffer "injury in fact and [have] lost money or property as a result of such unfair competition" meant that plaintiffs must have some demonstrable injury. *Buckland* v. *Threshold Enterprises, Ltd.*, 155 Cal. App. 4th 798, 812 (2007). Even though Buckland claimed to be damaged in the amount of the purchase price of allegedly mislabeled products, she purchased the products not "due to 'mistake, coercion, or request,' but [rather] to establish standing for an action in the public interest." *Id.* at 818 (quoting Rest. Restitution § 112). The Court explained that "[b]ecause the costs were incurred solely to facilitate her litigation, her purchase [did] not constitute the requisite injury in fact; to hold otherwise would gut the

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'injury in fact' requirement." *Id.* at 816. Fortunately, for businesses operating in California, Proposition 64 and cases such as *Buckland* and *Meyer* have raised the bar plaintiffs must meet.

Initially filed as *Ball* v. *Sprint Spectrum L.P.*, the *Meyer* lawsuit challenged allegedly unconscionable and illegal provisions in Sprint Spectrum L.P.'s mobile phone contracts. *Meyer*, slip op. at 2. However, following the passage of Proposition 64, Ball, who was not a Sprint customer, withdrew from the lawsuit, and Meyer and another plaintiff, Phillips, substituted in. *Id.* Affirmed by both California's Supreme Court and Courts of Appeal, the trial court dismissed the complaint because "[p]laintiffs ha[d] not shown they were personally damaged or that the allegedly unconscionable or illegal provisions ha[d] been enforced against them." *Id.* at 3.

The CLRA deems unlawful various "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person" with respect to the actual or intended sales or lease of goods or services to a consumer. Cal. Civ. Code § 1770(a). Under the CLRA, standing to sue is granted to "[a]ny consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770." Cal. Civ. Code § 1780(a). Sprint argued that plaintiffs had not "suffer[ed] any damage as a result of" the allegedly unconscionable and unlawful contract provisions (including an arbitration requirement and a waiver of the right to a jury trial) because Sprint never had a dispute with plaintiffs attempting to enforce those provisions. *Meyer*, slip op. at 4. In response, plaintiffs argued that although they did not suffer any pecuniary damages, they suffered opportunity and transactional damages. *Id.* at 5.

California's Supreme Court agreed with Sprint. Based on its reading of the statute, the Court held "that in order to bring a CLRA action, not only must a consumer be exposed to an unlawful practice, but some kind of damage must result." *Id.* at 6. The Court acknowledged that transactional costs could include "costs associated with the formation and maintenance of economic relationships, [such as the costs of lawsuits] enforcing contracts." *Id* at 5, n. 1. However, the Court explained that plaintiffs still had not suffered any damage, because even though the allegedly unconscionable provisions "may at some future time" result in greater costs and legal fees if Sprint attempted to enforce the arbitration clause, "it would contort the statutory language to conclude that the preemptive expenditure of fees for this litigation means that Sprint…had caused 'damage' at the time [such a] lawsuit was filed." *Id.* at 9. Similarly, the Court agreed that opportunity costs, such as the lost chance to select another mobile phone provider, theoretically could meet the damage requirement, but held that such damages did not exist "[i]n the present case, however, because Sprint had not sought to enforce any unconscionable term against plaintiffs." *Id.* at 9. Additionally, answering plaintiffs' concern that the Court's ruling would result in the loading of contracts with unconscionable terms "that would chill the efforts of consumers seeking to enforce their legal rights," the Court held that such concerns were "overstated," and that the legislature set a "low but nonetheless palpable threshold of damage and did not want the costs of a law suit to be incurred when no damage could yet be demonstrated." *Id.* at 14.

Finally, in a last ditch effort to save their case, plaintiffs also claimed that California Code of Civil Procedure section 1060 permits courts to issue declaratory relief "before there has been any breach of the obligation" for which declaratory relief is sought. *Id.* at 15 (quoting Cal. Code. Civ. P. § 1060). Again, the Court disagreed with plaintiffs. The Court distinguished between contractual rights and contractual remedies. In short, because the allegedly unconscionable provisions were remedies provisions, not substantive rights provisions affecting the parties' everyday behavior under the contract, the Court held that that plaintiffs' theory required too much of a stretch, and did not present a controversy with practical consequences. *Id.* at 17. Accordingly, the Court held that declaratory relief was not "necessary or proper," as required under the statute. *Id.*

Although *Meyer* does not immunize businesses from frivolous lawsuits, along with other recent cases such as *Buckland*, it reflects a favorable trend in the law for businesses operating in California.

We hope that you have found this client advisory useful. If you have additional questions, please contact your Arnold & Porter attorney or:

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