

## RELIANCE IS NOT ENOUGH: CALIFORNIA CONSUMERS MUST LOSE MONEY OR PROPERTY TO SUE

In a recent opinion applying voter-approved amendments to California's Unfair Competition Law (Bus. & Prof. Code § 17200, "UCL") and False Advertising Law (Bus. & Prof. Code § 17500, "FAL"), the California Court of Appeal has held that private plaintiffs do not have standing to sue unless they allege a cognizable loss of money or property. The case, *Kwikset Corp. v. Superior Ct. (Benson)*, --- Cal. App. 4th ---, 2009 WL 457921, is a favorable decision for businesses operating in California.

*Kwikset* is set against the backdrop of California's Proposition 64, a 2004 ballot initiative passed in an effort to curtail frivolous lawsuits by private plaintiffs and their lawyers. Proposition 64 amended the UCL and the FAL to require such plaintiffs to show that they "suffered injury in fact *and*...lost money or property" as a result of the challenged conduct of a business (emphasis added). Absent that showing of lost money or property, private plaintiffs do not have standing to bring their claims.<sup>1</sup>

Until recently, it has not been clear the extent to which Proposition 64 imposes a standing requirement of economic injury on consumers bringing UCL or FAL actions. In *Kwikset*, for example, the plaintiffs thought it would be enough to allege they had purchased an item where the manufacturer had made a false representation. The plaintiffs purchased locksets that defendants had labeled "Made in U.S.A.," even though the locksets contained parts manufactured or assembled outside the United States. The Complaint stated that these "misrepresentations caused [each plaintiff] to spend and lose the money he [or she] paid for the locksets. [Each plaintiff] has suffered injury and loss of money as a result..." *Id.* at \*3.

The Court of Appeal took a strict reading of Proposition 64, finding plaintiffs' pleading did not satisfy the law's standing requirements. "Real parties do not allege the locksets were defective, or not worth the purchase price they paid, or cost more than similar products without false country of origin labels. Nor have real parties alleged the locksets purchased either were of inferior quality or failed to perform as expected." *Id.* at \*5. The Court went on to hold that "[a]bsent a showing of some complaint about the cost, quality, or operation of the mislabeled locksets, [plaintiffs] received the benefit of their bargain" and have no standing to sue. *Id.* at \*6. In short,

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<sup>1</sup> In contrast, actions brought by the California Attorney General and other elected prosecutors need not allege a loss of money or property, even after Proposition 64.

the Court of Appeal found that to have standing, plaintiffs needed to allege a cognizable economic injury—not just a hypothetical, amorphous loss. To have standing to bring a UCL or FAL action, a plaintiff must make some demonstrable complaint about the “cost, quality, or operation” of a defendant’s product. *Id.*

*Kwikset* follows several other recent cases that have applied strict standing requirements for private plaintiffs suing under the UCL and FAL. In 2007, the California Court of Appeal held that Proposition 64’s requirement that private plaintiffs have suffered “injury in fact and [have] lost money or property” meant that plaintiffs must have some demonstrable injury. *Buckland v. Threshold Enterprises, Ltd.*, 155 Cal. App. 4th 798, 812 (2007). And in 2008, the Court of Appeal held that the “injury must be economic, at least in part, for a plaintiff to have standing...” *Animal Legal Defense Fund v. Mendes*, 160 Cal. App. 4th 136, 147 (2008). On a related front, the California Supreme Court also recently held in *Meyer v. Sprint Spectrum L.P.*, 45 Cal. 4th 634 (2009), that consumers must have suffered actual injury to sue under the State’s Consumers Legal Remedies Act.<sup>2</sup>

While none of these cases completely insulates businesses from frivolous claims, they remain a positive development for businesses operating in California and continue the trend toward restricting private consumer litigation to those plaintiffs who, as actual purchasers of products or services, were truly harmed by allegedly unfair conduct or false or misleading statements.

*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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<sup>2</sup> See also Arnold & Porter Advisory, [“California’s Supreme Court Rules That Consumers Must Have Suffered Actual Injury to Sue Under the State’s Consumers Legal Remedies Act,”](#) Feb. 2009.