



The Consumer Legal Remedies Act

Restoring the traditional pleading and proof requirements for claims of deception under Civil Code section 1750

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The Consumer Legal Remedies Act (CLRA), as set forth in Civil Code, section 1750, *et seq.*, was enacted in 1970 to provide manifest protections for millions of consumers throughout California. At the time of its enactment and in the ensuing 37 years, as written, the CLRA is the most far-reaching consumer protection statute in the United States. It was passed by both houses of the California Legislature with only two dissenting votes and signed by then-Governor Reagan. For more than 35 years, there has been very little decisional law interpreting it. In the past several years, many lawsuits in California have invoked the CLRA to protect consumers from deceptive advertising and unlawful business practices in the sale or lease of goods or services intended for personal, family or household use. Because of the far-reaching liability, remedial and procedural provisions of the statutory

scheme, corporate defendants have begun a concerted effort to engraft pleading and proof requirements onto the statute never intended by the Legislature when the statute was passed.

Simultaneously with the passage of Proposition 64 in November, 2004, which imposed standing and class action requirements on causes of action brought under California's Unfair Competition Law, (UCL) (Bus. & Prof.Code, §17200, *et seq.*) defendants began to argue that, in the wake of that initiative, there were rigorous hurdles that consumers must surpass to establish claims of deception under the CLRA. Two cases serve to illustrate this point. In both the *In re Tobacco Cases II* (2005) 123 Cal.App.4th 617 [20 Cal.Rptr.3d 693], review granted Feb. 16, 2005, No. S129522, 24 Cal.Rptr.3d 865, and *Pfizer v. Superior Court* (2006) 141 Cal.App.4th 290 [45 Cal.Rptr.3d 840], review granted Nov. 1, 2006, No. S145775, 51 Cal.Rptr.3d 707, two California Courts of Appeal held that claims for misleading advertising under the CLRA required

proof of both causation and reliance by each plaintiff and every member of the class. The California Supreme Court granted review in both cases to resolve those issues.

Despite the grant of review, litigation on those topics has continued unabated with mixed results. In *McAdams v. Monier* (2007) ___ Cal.App.4th ___ [2007 WL 1545072], the Court of Appeal, in agreement with prior California case law, held that "an 'inference of common reliance' – as opposed to requiring a showing of 'actual reliance' – may be applied to a CLRA class that alleges a material misrepresentation consisting of a failure to disclose a particular fact." (*Id.* at p. 1.) Such an "inference of common reliance" may satisfy the CLRA's requirement that "plaintiffs in a CLRA action must show that a defendant's conduct was deceptive and that the deception caused them harm." (*Id.*) (Citing Civil Code § 1780(a); *Massachusetts Mutual Life Ins. Co. v. Superior Court* (2002) 97 Cal.App.4th 1282, 1293 [119 Cal.Rptr.2d 190].)

In *McAdams*, plaintiffs alleged that the defendant failed to disclose that its 50-year/lifetime, permanent color, and maintenance-free roof tiles are inherently defective because their material composition causes the exterior surface of the product (including the glaze and slurry-coated color exterior) to deteriorate, degrade and to lose coating and color well before the warranted 50-year useful life of the tiles. Because the nature of the class action is based on an "inference of common reliance" on this single, specific, al-



leged material misrepresentation, the Court held, under *Massachusetts Mutual*, that class treatment was appropriate. (*Id.* at p. 5.)

In summary, the reasoning of the conservative court in *McAdams* is faithful to many precedents of the California Supreme Court, including *Vasquez v. Superior Ct.* (1971) 4 Cal.3d 800 [94 Cal.Rptr. 796]; *Occidental Land, Inc. v. Superior Court*, (1976) 18 Cal.3d 355 [134 Cal.Rptr. 388], which has historically interpreted the CLRA according to both its terms and the intent of its drafters. The CLRA was fully intended to prohibit deception about, misrepresentation and concealment of material information that is included in contracts involving the sale or lease of goods and services to consumers or even which is attempted to be included in those agreements.

Unfortunately, *McAdams* is not the last word. Recently, another Court of Appeal in California interpreted the same statutory scheme to impose rigid standing requirements on plaintiffs, despite the broad language of the statute and a prior decision of the California Supreme Court interpreting the statute's requirements that a consumer "suffer damage" in order to bring a lawsuit under its provisions.

In *Meyer v. Sprint Spectrum* (2007) 150 Cal.App.4th 1136 [59 Cal.Rptr.3d 309], a different Court of Appeal affirmed a trial court's dismissal of a complaint seeking only injunctive relief for Sprint's agreement to provide cellular telephone service, which included unconscionable and illegal terms that would or could be used against consumers in the future, and that were alleged to violate Civil Code section

1770(a)(14), (19), which prohibits representations that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law and unconscionable contract provisions.

Discarding the California Supreme Court's prior interpretation of the CLRA with respect to its standing requirements

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in *Kagan v. Gibraltar Savings & Loan Assn.* (1984) 35 Cal.3d 582 [200 Cal.Rptr. 38], the Court of Appeal in *Meyer* construed the terms "suffer" and "damage" in the CLRA to require unambiguously that consumers suffered some kind of "monetary harm" or "personal invasion of their rights" before they could legitimately file a lawsuit under the CLRA. (*Id.* at p. 25.) The sole basis for this *gloss* was the reference to and adoption of definitions in Webster's Dictionary, a source not relied upon by the court in *Kagan*, to interpret the CLRA's terms.

Instead of being faithful, not only to the language but the drafter's intent, in enacting the CLRA in the first place, the *Meyer* court sought to restrict both the language and intent of the CLRA to foreclose legitimate lawsuits aimed at preventing entities like Sprint from attempting to impose provisions in contractual agreements which are directly

prescribed in the statute. In doing so, the *Meyer* court seeks to accomplish part of the broad remedial scheme of the CLRA which authorizes trial courts to issue injunctions to enjoin practices proscribed by the Act.

A petition for review has been filed in *Meyer* and one is likely to be filed in *McAdams*. These issues may be added to the list of issues the California Supreme Court will be asked to resolve in interpreting this very significant consumer protection statute. Its interpretation by the George court holds the fate of the CLRA and the purpose of that statutory scheme in the balance.

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