No. S171845

IN THE
SUPREME COURT OF CALIFORNIA

KWIKSET CORPORATION et al.,
Petitioners,

vs.

THE SUPERIOR COURT OF ORANGE COUNTY,
Respondent,

JAMES BENSON et al.,
Real Parties in Interest.

Fourth Appellate District, Division Three, No. G040075
Orange County Superior Court No. 00CC01275
The Honorable David C. Velasquez

REPLY IN SUPPORT OF PETITION FOR REVIEW

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
TIMOTHY G. BLOOD (149343)
PAMELA M. PARKER (159479)
KEVIN K. GREEN (180919)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

SOLTAN & ASSOCIATES
VENUS SOLTAN (99144)
450 Newport Center Drive, Suite 350
Newport Beach, CA 92660
Telephone: 949/729-3100
949/729-1527 (fax)

CUNEO GILBERT & LaDUCA, LLP
MICHAEL G. LENETT
(*Pro Hac Vice Admission Pending*)
507 C Street, N.E.
Washington, DC 20002
Telephone: 202/789-3960
202/789-1813 (fax)

Attorneys for Real Parties in Interest

Service on Attorney General and District Attorney Required by Bus. & Prof. Code, § 17209

No. S171845

IN THE
SUPREME COURT OF CALIFORNIA

KWIKSET CORPORATION et al.,
Petitioners,

vs.

THE SUPERIOR COURT OF ORANGE COUNTY,
Respondent,

JAMES BENSON et al.,
Real Parties in Interest.

Fourth Appellate District, Division Three, No. G040675
Orange County Superior Court No. 00CC01275
The Honorable David C. Velasquez

REPLY IN SUPPORT OF PETITION FOR REVIEW

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
TIMOTHY G. BLOOD (149343)
PAMELA M. PARKER (159479)
KEVIN K. GREEN (180919)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

SOLTAN & ASSOCIATES
VENUS SOLTAN (99144)
450 Newport Center Drive, Suite 350
Newport Beach, CA 92660
Telephone: 949/729-3100
949/729-1527 (fax)

CUNEO GILBERT & LaDUCA, LLP
MICHAEL G. LENETT
(*Pro Hac Vice Admission Pending*)
507 C Street, N.E.
Washington, DC 20002
Telephone: 202/789-3960
202/789-1813 (fax)

Attorneys for Real Parties in Interest

Service on Attorney General and District Attorney Required by Bus. & Prof. Code, § 17209

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

STATUTES, RULES AND REGULATIONS

SECONDARY AUTHORITIES

I. INTRODUCTION

Kwikset's response to the petition, simply put, is an exercise in denial.

Rather than address the substantive points plaintiffs raise, Kwikset ignores them, and then categorically insists that plaintiffs have failed to explain or support their contentions. Kwikset maintains that this is just a "straightforward case" involving no important questions of law. (Answer to Petition (Ans.) 1.) But Kwikset responds to none of plaintiffs' arguments detailing the court's errors and inconsistencies in its interpretations of Proposition 64's standing requirements – a subject that has generated widespread interest and spawned significant litigation since the initiative's passage. Kwikset dismisses the dangerous precedent set here with the bold declaration that the Court of Appeal's holding "will have no impact on California's consumer protection laws." (Ans. 7.) Yet, it blithely ignores that the court's ruling, if allowed to stand, will undo a judgment finding Kwikset liable for multiple violations of law, and will effectively render the "Made in U.S.A." statute mere surplusage. Kwikset robotically recites the holdings of various cases, and declares that these decisions are entirely consistent with the opinion here. But it completely misses the fact that the routes taken by these courts in reaching their ultimate decisions vary greatly and fail to provide clear, consistent guidance to litigants and trial judges.

Kwikset's "answer" is, in truth, no answer at all. In the end, Kwikset's determined avoidance of the serious questions raised in the petition, and its indifference to the significant shift in the interpretation of California's consumer protection laws that the Court of Appeal's decision represents, only underscore the compelling need for review here.

II. ARGUMENT

A. This Case Presents an Important Question of Law Critical to the Continued Vitality of Private Enforcement of California's Consumer Protection Statutes

Highlighting the bankruptcy of Kwikset's response is its utter failure to acknowledge that determining the meaning and scope of Proposition 64's standing requirements is central to fulfilling the initiative's true purpose, including its stated objective to preserve non-frivolous claims brought under the unfair competition and false advertising laws (UCL and FAL, respectively). Indeed, the significance of these issues is demonstrated by the fact that this Court has not hesitated to accept review in other cases focusing on different aspects of these requirements. (See, e.g., *In re Tobacco II Cases*, No. S147345 [concerning, inter alia, whether this language incorporates a reliance element]; *O'Brien v. Camisasca Automotive Manufacturing, Inc.*, No. S163207 [grant-and-hold review of case involving false "Made in U.S.A." advertising, and raising question whether initiative imposed actual deception, reliance and damage requirements].) The importance of the specific questions presented here is further evidenced by the amici letters urging a grant of review.

A case that presents a question of "public significance," or that can influence the development of the law, is worthy of this Court's attention quite apart from whether review might also be necessary to resolve a debate among the lower courts on that issue. (See, e.g., CEB, California Civil Appellate Practice (May 2008) Vol. 2, § 22.6, p. 1084.) This is just such a case, even assuming that the lower courts have been uniform in their interpretations of Proposition 64's requirements (which, as plaintiffs demonstrated in the petition and further explain here, they have not been).

As explained in the petition, by imposing a requirement that a plaintiff allege and prove product defect-type injuries and damages in a FAL case, the

Court of Appeal's decision threatens to undo decades of established jurisprudence and substantially weaken, if not eliminate, private enforcement actions that have long been played a critical role in California's consumer protection laws. (Petition for Review (Pet.) 20-21.) Indeed, the impact of this ruling is already being felt. Just recently, the decision here was cited as precedent to justify a grant of judgment on the pleadings in a case challenging the Applebee's restaurant chain's false nutritional information. (See Real Parties in Interest's Motion for Judicial Notice in Support of Petition for Review (MJN), Ex. 1 [Order Granting Judgment on the Pleadings in *Jones v. Dineequity, Inc.*, No. RG08391858 (*Jones*), dated April 9, 2009].) In that case, it mattered not that the plaintiff had alleged she specifically reviewed and relied on the defendant's representations regarding nutritional content in making her menu choices. (MJN, Ex. 2, pp. 3-4 [motion in *Jones* for judgment on the pleadings].) Based on the decision here, the trial court held plaintiff must allege that foods with the false nutritional labels cost more, or were not worth the price paid. (MJN, Ex. 1, p. 1.)

By ordering this case to be dismissed (and in particular, doing so without leave to amend), the Court of Appeal here – and many other state and federal courts facing similar issues – have seemingly endorsed the view that the voters, in approving Proposition 64, intended to permit defendants to engage in illegal conduct with impunity, unless a plaintiff comes forward who can establish onerous injury and damages standing requirements that, as here, ***have no relationship to the wrong alleged***. (Pet. 17-20.) That is not, however, what the voters believed they were doing, and both the language of the initiative and its legislative history bear this out.

In fact, the initiative reaffirmed that the purpose of the UCL and FAL is "to protect California businesses and consumers from unlawful, unfair, and fraudulent business practices." (See MJN, Ex. 3, § 1(a).) Even more importantly, voters were assured that meritorious consumer fraud and false

advertising cases would be protected under the new measure. (See, e.g., MJN, Ex. 4, p. 2 [rebuttal to argument against Proposition 64, insisting that initiative opponents' concerns about not being able to file "justified" false advertising and other consumer fraud lawsuits are a "smokescreen," and that Proposition 64 "would permit ALL the suits cited by its opponents," emphasis in original].)

Allowing the Court of Appeal's decision to stand in this case would actually be a double insult to the legislative process. Not only would it approve an interpretation of the initiative that is contrary to the one the voters were led to believe would control, but it would also effectively nullify the "Made in U.S.A." statute – a measure enacted in direct response to consumers' concerns about preserving American jobs and businesses, and one the Legislature intended to be enforced through the UCL and FAL. (See, e.g., Bus. & Prof. Code, § 17533.7 [making it unlawful to advertise any product as "Made in U.S.A." when it "has been entirely or substantially made, manufactured, or produced outside of the United States"]; § 17535 [permitting the court to enjoin "any practice ***in this chapter*** declared to be unlawful," emphasis added].)

Kwikset offers no meaningful rebuttal to these concerns about the future of private UCL and FAL enforcement, but only reflexively parrots the Court of Appeal's efforts to side-step them. (See Ans. 7 [repeating that public prosecutors are unhindered by the new standing requirements, and that "there [is] no shortage" of cases where the requirements have been met].) This leaves unchallenged plaintiffs' contention that public prosecutors have neither the time nor the funds to fill the void that would be left by the undoing of the statutes' private enforcement provisions. (Pet. 21.) Furthermore, it is no answer to the Court of Appeal's profound errors in this case to say that some plaintiffs have managed to overcome pleading hurdles in other cases involving very different facts. Such an argument ignores the fundamental question

whether the imposition of such hurdles in any of these cases was justified in the first place. Moreover, to plaintiffs' knowledge, no other plaintiff in a false advertising case, faced with pleading burdens even remotely similar to those imposed here, has successfully met those burdens, and neither Kwikset nor the Court of Appeal cited any such case.

Because the proper interpretation of Proposition 64's standing requirements has broad implications for the continued vitality of private enforcement actions under the UCL and the FAL, this Court should accept review here to determine whether the approaches taken by the intermediate appellate courts are consistent with the language and intent of the initiative.

B. Contrary to Kwikset's Conclusory Assertions, the Lower State and Federal Courts Have Been Far from Uniform in Their Interpretation of Proposition 64's Standing Requirements

Try as it might, Kwikset simply cannot erase the marked inconsistencies, blurred lines of analysis and vague pronouncements that have characterized much of the jurisprudence to date on the meaning of Proposition 64's standing requirements. Merely reciting the holdings in some cases and then pronouncing that the lower courts are in agreement on these issues of interpretation does not make it so. Kwikset misses the essential problem: The approaches taken by the state and federal courts in arriving at their ultimate outcomes vary greatly, and provide a confusing roadmap for litigants trying to satisfy the initiative's mandate.

For example, Kwikset touts the purported consistency of the Court of Appeal's approach here with the one used by the court in *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305 (*Troyk*). (Ans. 8.) But *Troyk* explicitly rejected the "benefit of the bargain" analysis on which the decision here rests. (Compare *Troyk*, *supra*, 171 Cal.App.4th at p. 1348, fn. 30 with Op. 11.) Moreover, *Troyk* held that facts alleging monetary harm could satisfy both the "injury in fact" and "lost money or property" requirements. (*Troyk*,

supra, 171 Cal.App.4th at p. 1347-1348.) The court here, however, concluded that plaintiffs could not use the same allegations of monetary harm – their purchase of products they did not want based on false "Made in U.S.A." labeling – to establish both elements, because "lost money or property" requires a particular type of economic injury, namely, product defects or cost differentials. (See Op. 9.)

Contrary to Kwikset's view, the decisions in *Hall v. Time, Inc.* (2008) 158 Cal.App.4th 847 (*Hall*), *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583 (*Peterson*), and *Medina v. Safe-Guard Products Internat., Inc.* (2008) 164 Cal.App.4th 105 (*Medina*), all reveal approaches to the standing requirements different from the one utilized here, even though these decisions all emanate from the same division of one appellate district. Specifically, these three decisions blur the distinction between "injury in fact" and "lost money or property," while the decision in this case appears to draw a sharp contrast between those elements. Thus, in *Hall*, *Peterson* and *Medina*, the "benefit of the bargain" rationale was at the root of both elements, not merely the "lost money or property" requirement. (See *Hall*, *supra*, 158 Cal.App.4th at pp. 855, 857; *Peterson*, *supra*, 164 Cal.App.4th at p. 1591; *Medina*, *supra*, 164 Cal.App.4th at p.114.) By contrast, the panel here was more faithful to the basic article III concept of "injury in fact," holding that plaintiffs satisfied that element simply by alleging that they paid out of pocket for the misrepresented locksets. (Op. 8-9.)

Kwikset simply glosses over these inconsistencies, and thus fails to appreciate the significance of the mixed signals such conflicting legal analysis sends to litigants and trial courts. (Ans. 8-9.) Kwikset has no answer, for example, to plaintiffs' observation that their allegations here would have satisfied *Hall*'s version of the initiative's mandate (and probably *Medina*'s as well), because they have alleged they "did not want" the falsely represented locksets. (See *Hall*, *supra*, 158 Cal.App.4th at pp. 855-857; *Medina*, *supra*,

164 Cal.App.4th at p. 114; see also 1 Exs. 19-21; 3 Exs. 447-449.) It should be noted, too, that while the *Medina* plaintiff made no allegation that he "relied on Safe-Guard's having a license as required by the vehicle service contract statutes" (*Medina, supra*, 164 Cal.App.4th at p. 115), plaintiffs here have expressly alleged that they bought Kwikset's locksets based on the representation that they were "Made in the U.S.A." (3 Exs. 447-449.)

Similarly, Kwikset offers no response to plaintiffs' observation that their allegations would likely have been deemed adequate under the analysis used in *Animal Legal Defense Fund v. Mendes* (2008) 160 Cal.App.4th 136. Although the court in that case apparently adopted the "benefit of the bargain" approach used by the Court of Appeal here, it nevertheless indicated that plaintiffs' complaint might have passed muster if they could have alleged an express representation by defendants about the origins of the product at issue – thus establishing that the representations were part of the "bargain" made. (*Id.* at pp. 146-147.) Precisely those types of representations were made here, but the Court of Appeal deemed them insufficient to plead "lost money or property."

Kwikset's discussion of the federal cases that have opined on Proposition 64's standing requirements is equally unpersuasive. As explained in the petition (Pet. 24-25), the federal district court in *Walker v. USAA Casualty Insurance Co.* (E.D.Cal. 2007) 474 F.Supp.2d 1168, explicitly tied its construction of the "lost money or property" requirement to the way this Court has interpreted a UCL plaintiff's eligibility for restitution, asking whether the plaintiff had a prior possessory or vested legal interest in the money or property at issue. (*Id.* at p. 1172.) On the other hand, the court in *G&C Auto Body, Inc. v. GEICO General Insurance Co.* (N.D.Cal. December 12, 2007, No. C06-04898 MJJ) 2007 U.S. Dist. Lexis 91327, expressly rejected that analysis. (*Id.* at pp. *12-*13.) Yet, it offered no clear alternate approach, and only vaguely remarked that the language of the UCL's

remedial provisions is "worded differently, and more narrowly," than Proposition 64's standing requirements. (*Id.* at p. *13.)

The federal district court in *Chavez v. Blue Sky Natural Beverage Co.* (N.D.Cal. 2007) 503 F.Supp.2d 1370 (*Chavez*), cited by Kwikset here, took an entirely different tack altogether. It simply assumed – without analysis, without citation to any authority, and in disregard of the UCL's limitation of remedies to restitution and injunctive relief – that Proposition 64 imposed a "damages" requirement in a false advertising case. (*Id.* at p. 1373 ["In 2004, Proposition 64 amended the express language of the UCL and FAL with respect to damages."].) The court concluded that plaintiff could not allege "damages" because defendants' alleged misrepresentations "had no value," measured as the difference in value between what plaintiff was promised and what he received. (*Id.* at pp. 1373-1374.)[1]

That federal courts are increasingly adding to the body of law on these issues, and that state courts are citing those federal decisions with greater frequency, render the need for review here all the more compelling. As these cases illustrate, in the absence of controlling authority from this Court, the federal courts, like their state counterparts, will have to continue to make their way in the dark – sometimes, as in *Chavez*, seemingly making up California law as they go along, with predictably varied and confusing results. It is vital, therefore, that this Court clarify the meaning of "injury in fact" and "lost money or property," and the distinctions, if any, between these two elements. Without this guidance, litigants will not know how to prepare their complaints with these essential legal requirements in mind, and federal and state courts will have inconsistent standards by which to measure those pleadings.

---

[1] Although *Chavez* was brought under the FAL, it did not involve claimed violations of California's "Made in U.S.A." statute.

C. The Court of Appeal's Refusal to Allow Plaintiffs the Opportunity to Meet Its Newly Announced Standing Test Cannot Be Squared with *Branick*

In asserting that the Court of Appeal made no error in denying plaintiffs an opportunity to satisfy the court's new articulation of Proposition 64's "lost money or property" requirement, Kwikset once again ignores every one of plaintiffs' contentions, as well as the controlling law set forth in *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235 (*Branick*), and the other Supreme Court decisions discussed in the petition that reinforce California's liberal amendment policies.

Branick's mandate could not have been more clear and direct. This Court unequivocally found that Proposition 64 "does not affect the ordinary rules governing the amendments of complaints." (*Branick, supra*, 39 Cal.4th at p. 239.) Those rules, particularly as they apply to amendments after demurrer (the situation here), recently were reinforced by the Court in *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730 (*City of Stockton*): Leave to amend after demurrer "is properly granted where resolution of the legal issues does not foreclose the possibility that the plaintiff may supply necessary factual allegations." (*Id.* at p. 747.) "If the plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment." (*Ibid.*; see also *Sheehan v. San Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 996.)

Kwikset suggests that plaintiffs had ample opportunity to satisfy the initiative's requirements when they were allowed to file first and second amended complaints after this Court's *Branick* decision. (Ans. 14.) But the decision at issue here was the first time the Court of Appeal (or any court) had identified specific deficiencies in plaintiffs' efforts to address the new standing rules, so this would have been plaintiffs' first opportunity to amend in response to those findings. Kwikset further contends that plaintiffs were

aware that other cases had already opined on what was needed to satisfy the initiative's standing requirements. (Ans. 15, fn. 2.) This argument assumes, however, that the body of case law on this subject provided clear guidance for false advertising litigants, and consistently imposed the same pleading burdens as those ultimately required by the Court of Appeal here. As plaintiffs have shown, that argument is unavailing. (See discussion *ante*, at § II.B, and Pet. 22-25.)

Kwikset also finds no fault with the Court of Appeal's refusal to consider plaintiffs' proffer of new facts in their briefing, at argument and in their petition for rehearing. (Ans. 15.) Here, however, Kwikset merely recycles the appellate court's own flawed rationalizations for that decision. Kwikset makes no effort to counter plaintiffs' detailed response to every one of the court's reasons for rejecting the proffers. (See Pet. 26-27.) For example, Kwikset asserts plaintiffs failed in their original proffers to provide detailed citations to the record supporting their suggested amendments. (Ans. 15.) But as plaintiffs pointed out, and Kwikset ignores, there was no need for plaintiffs to prepare such detail because they had prevailed on the demurrer. (Pet. 27.) In any event, plaintiffs are unaware of any authority requiring a detailed recitation of record facts under similar circumstances, and neither the Court of Appeal nor Kwikset cited any.

Kwikset also perpetuates the Court of Appeal's factual misstatement in suggesting that plaintiff Benson had been reimbursed for all his lockset purchases, and thus could not "truthfully" allege he lost money or property. (Ans. 15.) Plaintiffs demonstrated the error underlying this assertion, showing that Benson's testimony, in context, reveals that the only reimbursed purchases were those made just before trial to show that defendants' illegal conduct was ongoing. (See Pet. 27; 2 Exs. 305-309.) Kwikset simply has chosen to ignore the uncontested record.

Proposition 64 was designed to deter frivolous litigation. But as this Court observed in *Branick*, "to bar a meritorious action prosecuted by a . . . plaintiff 'who has suffered injury in fact and has lost money or property as a result of' unfair competition or false advertising, serves none of the voters' articulated objectives." (*Branick, supra*, 39 Cal.4th at pp. 241-242, citations omitted.) This is one such meritorious action, for it has been proved that defendants misrepresented the origins of their locksets, and plaintiffs lost money in reliance on those representations. As demonstrated in the petition, the Court of Appeal's justifications for denying amendment simply cannot withstand scrutiny. Kwikset's mere reiteration of those reasons, without more, does not make them any more persuasive. Notably, Kwikset has not argued that it will suffer any undue prejudice if plaintiffs are permitted to amend after review. For all these reasons, plaintiffs should be given leave to amend their complaint to add allegations satisfying what this Court deems to be the correct interpretation of the "lost money or property" requirement of Proposition 64.

D. Kwikset's Baseless Speculation About the Motives of Plaintiffs' Counsel Cannot Alter the Fact that This Litigation Conferred a Significant Benefit on California Consumers that Should Be Preserved

Having nothing of substance to support its contentions, Kwikset falls back on a familiar refrain of many a UCL defendant – i.e., that the case is driven by plaintiffs' counsel's desire for fees. This cheap shot is, as usual, a diversion from what the record actually demonstrates. Kwikset's meritless and entirely inappropriate speculation about counsel's motivations cannot change the overarching facts that, after a full trial, Kwikset was found to have violated laws designed to protect the consuming public, and was ordered to provide substantive relief for its wrongs. As the trial court concluded, that outcome conferred a significant benefit on consumers – one that should be preserved by this Court after review.

California law allows for an award of attorney's fees in a UCL or FAL action only if it "has resulted in the enforcement of an important right affecting the public interest," and only if, among other things, the court finds that "a significant benefit, whether pecuniary ***or nonpecuniary***, has been conferred on the general public or a large class of persons." (Cal. Code Civ. Proc., § 1021.5, emphasis added.) Here, the trial court found that Kwikset had violated the FAL, the UCL and the "Made in U.S.A." statute with respect to its advertising of more than two dozen of its products. (2 Exs. 266-273.) The court prohibited Kwikset from mislabeling its products going forward, and directed it to notify the commercial sellers of its products that they could return any falsely labeled products for a full refund or exchange them for properly labeled ones. (2 Exs. 273-275.)

Kwikset blithely dismisses the value of this remedy, arguing that it provides "no relief" to plaintiffs or class members because the court decided not to award restitution. (Ans. 16.) This is nonsense. Putting aside for the moment that the trial court gave various reasons for declining to award restitution, including the fact that it would too expensive to administer (2 Exs. 275), the injunction itself is of real value to class members and all other California consumers because it will protect them from illegal, anticompetitive and deceptive business practices. If the Court of Appeal is reversed (as it should be), and plaintiffs are permitted to establish their standing in the trial court, the trial court's judgment will ensure that the marketplace will remain free of any locksets falsely labeled by Kwikset. It will also send a strong message to Kwikset and others doing business in California that false advertising, and in particular, the type designed to unfairly exploit patriotic sentiments of consumers for profit, will not be tolerated – just as the Legislature intended. Consumers who seek to buy products made by American workers will have greater confidence that "Made in U.S.A." has real meaning.

The trial court rejected the same argument defendants make here, explaining as follows:

> The public is entitled, under the law, to be given correct information about the products they buy. Plaintiff achieved this result by filing and litigating this action. . . . By any measure, this action conferred a significant benefit on the public. To hold otherwise would be tantamount to holding that the false advertising statutes of this State are insignificant to the public.

(MJN, Ex. 5, superior court's Minute Order awarding attorneys' fees, dated September 30, 2002, p. 4 (Fee Order).)

In overlooking these important considerations, Kwikset forgets that the UCL and FAL not only serve as vehicles for the restoration of lost money, but also play a critical deterrence role. "The court may make such orders or judgments . . . as may be necessary to prevent the use or employment by any person . . . of any practices which violate this chapter." (Cal. Bus. & Prof. Code, § 17535; see also § 17203 [using substantially the same language].) "By this language, the Legislature obviously intended to vest the trial court with broad authority to fashion a remedy that would effectively . . . deter the defendant, and similar entities from engaging in such practices in the future." (*Fletcher v. Security Pacific Nat. Bank* (1979) 23 Cal.3d 442, 450.) Consequently, litigation efforts that enforce laws designed to protect the public, and result in orders that will deter or prevent harmful or illegal conduct going forward, provide a significant benefit to the public.

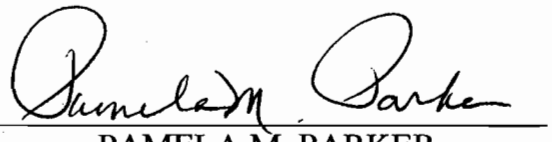
Plaintiffs' counsel were awarded a fee because they earned it. The trial court found that "the legal difficulty was high and the skill was great." (Fee Order 6.) Kwikset's argument is nothing more than a gratuitous swipe at plaintiffs' counsel by a defendant desperately clinging to the hope that it will get off scot-free notwithstanding its proven illegal conduct. This Court should not dignify their baseless contentions. Rather, it should accept review to determine the important questions presented, and preserve the significant benefits obtained for California consumers as a result of this litigation.

III. CONCLUSION

For the reasons given, the Petition for Review should be granted.

DATED: May 1, 2009

COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
TIMOTHY G. BLOOD
PAMELA M. PARKER
KEVIN K. GREEN



PAMELA M. PARKER

655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

SOLTAN & ASSOCIATES
VENUS SOLTAN
450 Newport Center Drive, Suite 350
Newport Beach, CA 92660
Telephone: 949/729-3100
949/729-1527 (fax)

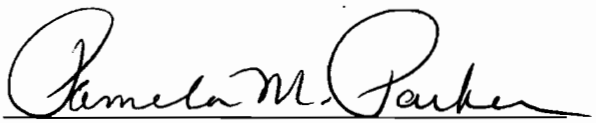
CUNEO GILBERT & LaDUCA, LLP
MICHAEL G. LENETT
507 C Street, N.E.
Washington, DC 20002
Telephone: 202/789-3960
202/789-1813 (fax)

Attorneys for Real Parties in Interest

CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies that pursuant to rule 8.204(c)(1) of the California Rules of Court, the enclosed **REPLY IN SUPPORT OF PETITION FOR REVIEW** is produced using 13-point Roman type, including footnotes, and contains approximately 4,161 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count provided by Microsoft Word word-processing software.

DATED: May 1, 2009



PAMELA M. PARKER
Counsel for Real Parties in Interest

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of San Diego, over the age of 18 years, and not a party to or interested party in the within action; that declarant's business address is 655 West Broadway, Suite 1900, San Diego, California 92101.

2. That on May 1, 2009, declarant served the **REPLY IN SUPPORT OF PETITION FOR REVIEW** by depositing a true copy thereof in a United States mailbox at San Diego, California in a sealed envelope with postage thereon fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is a regular communication by mail between the place of mailing and the places so addressed.

I declare under penalty of perjury that the foregoing is true and correct. Executed this first day of May, 2009, at San Diego, California.

Terree DeVries

Counsel for Petitioners

Michael J. Abbott
Fredrick A. Rafeedie
William M. Turner
Jones Bell Abbott Fleming & Fitzgerald LLP
601 S. Figueroa St., 27th Floor
Los Angeles, CA 90017
213/485-1555
213/689-1004(Fax)

Counsel for Real Parties in Interest

Timothy G. Blood
Pamela M. Parker
Kevin K. Green
Coughlin Stoia Geller Rudman & Robbins LLP
655 West Broadway, Suite 1900
San Diego, CA 92101
619/231-1058
619/231-7423(Fax)

Michael G. Lenett
Cuneo Gilbert & LaDuca, L.L.P.
507 C Street, N.E.
Washington, DC 20002
202/789-3960
202/789-1813(Fax)

Venus Soltan
Soltan & Associates
450 Newport Center Drive, Suite 350
Newport Beach, CA 92660
949/729-3100
949/729-1527(Fax)

Respondent

The Honorable David C. Velasquez
Department CX101
Orange County Superior Court
751 West Santa Ana Blvd.
Santa Ana, CA 92701
714/834-4802

Other Copies

Clerk of the Court
California Court of Appeal
Fourth District, Division Three
925 North Spurgeon Street
Santa Ana, CA 92701
714/558-6777
714/543-1318(Fax)

Appellate Coordinator
Consumer Law Section
Office Of The Attorney General
300 South Spring Street
Los Angeles, CA 90013
213/897-2000

District Attorney
Orange County District Attorney's Office
401 Civic Center Drive West, Room 200
Santa Ana, CA 92701
714/834-3600

Clerk of the Court
Orange County Superior Court
Civil Complex Center
751 West Santa Ana Blvd.
Santa Ana, CA 92701
714/568-4700