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May 23, 2016

Presiding Justice Barbara J.R. Jones
Associate Justice Henry E. Needham, Jr.
Associate Justice Terence L. Bruiniers
California Court of Appeal
First Appellate District, Division Five
350 McAllister Street
San Francisco, California 94102-7421

Re: ***Rel v. Pacific Bell Mobile Services, No. A144349***
Request for Publication

Dear Presiding Justice Jones and Justices Needham and Bruniers:

Pursuant to Rule of Court 8.1120(a), the National Association of Consumer Advocates ("NACA") respectfully requests that this Court certify for publication its May 9, 2016 opinion (the "Opinion") in *Rel v. Pacific Bell Mobile Services*, No. A144349.

NACA is a national, non-profit organization with over 1,500 members who are private and public sector attorneys, legal services attorneys, law professors, law students and non-attorney consumer advocates, whose practices or interests primarily involve the protection and representation of consumers. (*See* www.consumeradvocates.org for additional information.) NACA's mission is to promote justice for all consumers, and is dedicated to the furtherance of ethical and professional representation of consumers. For instance, the current version of NACA's Standards And Guidelines For Litigating And Settling Consumer Class Actions can be found at 299 F.R.D. 160 (2014). More than 150 of NACA's members are California attorneys or non-attorney advocates who regularly advocate for consumers residing in California.

The Court's Opinion addresses an issue of significance to consumers, which arises frequently in the trial courts of this State, but which has been infrequently addressed by our appellate courts: May class representatives who meet the statutory standing requirements of the Unfair Competition Law ("UCL") but are not personally entitled to injunctive relief seek such relief on behalf of class members? The Opinion answers this question (correctly, in NACA's view) in the affirmative. Yet arguments are frequently presented to trial courts in UCL class cases urging the opposite result. In part, these arguments rely on federal court decisions striking requests for injunctive relief in similar factual contexts. As explained below, these federal decisions rest exclusively on the federal doctrine of "Article III Standing", which is inapplicable in state court proceedings. Nevertheless, overburdened trial court judges, presented with dozens of federal decisions in superficially similar procedural posture which strike classwide prayers for injunctive relief, sometimes fail to grasp the inapplicable underlying basis for those federal decisions, particularly since the word "standing" has several related but distinct meanings which

are not always clearly explained in the case law. The presence of a clear statement from a California Court of Appeal that the statutory elements for standing required to bring a UCL claim are as stated in that statute, regardless of which particular form(s) of relief may be sought, including class relief, would provide needed clarity.

The central holding of the Opinion is that a plaintiff who meets the standing requirements set out in Bus. & Prof. Code §17204 is entitled to proceed under the UCL, seeking any authorized relief. Of course, the ultimate *entitlement* to any particular form of relief depends upon the facts proven at trial and the trial court's exercise of discretion under all of the circumstances. The Opinion stresses the difference between standing to pursue a particular cause of action and the right to seek particular remedies under that cause of action. (Slip Op. at 9-12.) In other words, there is no separate "standing" requirement to pursue particular forms of relief under the UCL.

While clearly correct under California law and procedure, many federal cases have come to the opposite conclusion applying federal jurisprudence. The federal courts are courts of limited jurisdiction and can only hear "cases and controversies" as meant by Article III of the United States Constitution. One of the prerequisites for a case or controversy is that the plaintiff demonstrate "standing". The United States Supreme Court has concluded that Art. III standing must be established separately for each form of relief sought. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.* (2000) 528 U.S. 167, 185 ("Laidlaw is right to insist that a plaintiff must demonstrate standing separately for each form of relief sought."). Thus, in assessing the existence of Art. III standing in UCL cases, federal courts separately analyze standing for restitution and for injunctive relief and rule accordingly. This analysis has led to many federal decisions dismissing or striking prayers for injunctive relief in putative class cases asserting UCL claims. Recent examples are *Phillips v. Apple Inc.* (N.D. Cal. Apr. 19, 2016) 2016 WL 1579693, at *5 (to establish Art. III standing to seek an injunction "a named plaintiff must show that she herself is subject to a likelihood of future injury. Allegations that a defendant's conduct will subject unnamed class members to the alleged harm is insufficient to establish standing to seek injunctive relief on behalf of the class."); *Duran v. Creek* (N.D. Cal. Mar. 28, 2016) 2016 WL 1191685, at *6 (same); *Hall v. Sea World Entm't, Inc.* (S.D. Cal. Dec. 23, 2015) 2015 WL 9659911, at *17 (same). *See also, In re 5-hour ENERGY Mktg. & Sales Practices Litig.* (C.D. Cal. Sept. 4, 2014) 2014 WL 5311272, at *11 ("The federal courts are not empowered to set aside the standing requirements of Article III in the name of public policy, even when that policy is laudable.").

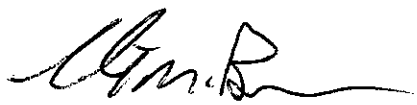
These federal cases analyzing Article III standing do not, of course, apply within our State system since California courts have general, not limited, jurisdiction. "Article III of the federal Constitution imposes a case-or-controversy limitation on federal court jurisdiction, requiring the party requesting standing [to allege] such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues. There is no similar requirement in our state Constitution." *Grosset v. Wenaas* (2008) 42 Cal.4th

1100, 1117, fn. 13 (internal citations and quotations omitted); see also, Cal. Const., art. VI, § 10 (empowering superior court to adjudicate any "cause" brought before it); *National Paint & Coatings Assn. v. State of California* (1997) 58 Cal.App.4th 753, 761 (rejecting claimed standing requirement based on federal citations; California Constitution "contains no 'case or controversy' requirement"); *Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 29 (same).

However, the inapplicability of Art. III standing requirements does not restrain able defense counsel in state court proceedings from citing by analogy to federal courts holding that UCL class prayers for injunctive relief must be stricken if the case is being prosecuted by representative plaintiffs without personal entitlements to an injunction. That such holdings are in the context of Art. III standing rather than UCL statutory standing may sometimes escape the notice of the trial court. This Court's clear statement that injunctive relief remains available once the plaintiff has passed the bar of having economic injury, which is the only standing requirement under the UCL, would provide important and much needed clarity to the issue. The Opinion thus meets the standards for publication set forth in Rule of Court 8.1105(c), subsections (2) (3), (4) and (6).

For the above reasons, it is respectfully requested that the Court designate its Opinion for publication.

Respectfully submitted,



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No. A144349

CERTIFICATE OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Bramson, Plutzik, Mahler & Birkhaeuser, LLP, 2125 Oak Grove Road, Suite 120, Walnut Creek, California 94598. OnMay 23, 2016, I served the within documents:

LETTER TO PRESIDING JUSTICE JONES AND JUSTICES NEEDHAM AND BRUNIERS REGARDING REQUEST FOR PUBLICATION

☐ By placing the documents(s) listed above in a sealed overnight service envelope and affixing a pre-paid air bill, and causing the envelope addressed as below to be delivered to an overnight service agent for delivery.

☒ by placing a copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at Walnut Creek, California addressed as set forth below

John David Franklin Franklin & Franklin 402 West Broadway, Suite 1140 San Diego, CA 92101 *Angela Rel : Plaintiff and Appellant*	Anthony Albert Ferrigno Law Offices of Anthony A. Ferrigno 1116 Ingleside Avenue Athens, TN 37303
Michael James Stortz Drinker Biddle & Reath 50 Fremont Street - 20th Floor San Francisco, CA 94105-2235 Anna Yeung Drinker Biddle & Reath LLP 50 Fremont St 20th Fl San Francisco, CA 94105-2235 *Pacific Bell Mobile Services : Defendant and Respondent*	Matthew J Adler Drinker Biddle & Reath LLP 50 Fremont St 20th Fl San Francisco, CA 94105

I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, executed on May 23, 2016, at Walnut Creek, California.

Tracy Tappero