Consumer Watchdog

July 13, 2009

Via Overnight Delivery
The Honorable Chief Justice Ronald M. George
and Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102

Re: *Loeffler v. Target Corp.* (2009) 173 Cal.App.4th 1229;
Second District Court of Appeal Case No. B199287,
Opinion Filed May 12, 2009;
California Supreme Court Case No. S173972

Dear Chief Justice Ronald M. George and Associate Justices:

Consumer Watchdog and Public Good respectfully urge this Court, pursuant to Rule 8.500(g), to grant the Petition for Review filed by Petitioners Kimberly Loeffler and Azucema Lemus ("Plaintiffs") in *Loeffler v. Target Corporation* ("*Loeffler*").

In *Loeffler*, the Second District Court of Appeal held that if retail corporations unlawfully charge amounts they claim to be "sales tax" on product sales, customers who unwittingly pay these fees cannot seek redress through California's consumer protection laws. The court's decision leaves millions of customers who have suffered real monetary damage with no meaningful remedy against retailers' unlawful practices. Instead, the court instructs aggrieved customers to sit by and trust that the retailers who charged them an illegal tax and the California Board of Equalization ("BOE") will independently decide if a refund is appropriate. This is not a viable remedy. As this Court held in *Javor v. State Board of Equalization* (1974) 12 Cal.3d 790, 799, retailers have no incentive to seek a refund from the state because they are obligated to repay it to their customers, and the BOE has no incentive to return unlawfully collected taxes without a court's intervention. This will certainly lead to abuse by retail corporations who realize they can impose whatever fees they desire, label them "sales taxes," and rest assured that their customers will have no right to take legal action against them.

Review is urgently needed to secure this Court's opinions affirming the broad power and scope of the Unfair Competition Law ("UCL") and Consumer Legal Remedies Act ("CLRA"). This Court has previously held that California's consumer protection laws' penalties and remedies are cumulative to the penalties and remedies under all other laws of the state. This includes the penalties and remedies of the tax laws. Furthermore,

this Court has held that a UCL claim can be predicated on a violation of almost any state or federal law, even one with no private right of action. Consumer protection laws logically should reach situations where corporations hide behind the tax code to avoid liability to their customers. If the Second District Court of Appeal's decision is allowed to stand, it would craft a brand new bar to consumers' UCL and CLRA actions simply because the unlawful fees at issue are labeled "sales taxes."

The Interest of Amici Curiae in This Litigation

Consumer Watchdog, formerly The Foundation for Taxpayer and Consumer Rights, is a nonprofit, nonpartisan consumer advocacy organization specializing in the application of California consumer protection laws, enforcement of California insurance regulations, and health care reform. Founded in 1985, Consumer Watchdog advocates for the rights of consumers and holds corporations accountable in the Legislature and the courts. One of Consumer Watchdog's chief missions is to protect consumers from corporate assault on their rights and pocketbooks, including the right to legal recourse. Consumer Watchdog frequently intervenes or acts as amicus curiae and its counsel represent consumers in cases considering the application of consumer protection laws like the Unfair Competition Law ("UCL"), Consumers Legal Remedies Act ("CLRA") and False Advertising Law ("FAL"). Consumer Watchdog, and the public on whose behalf Consumer Watchdog advocates, are vitally interested in the question of whether California's consumer protection law remedies are available to customers who are forced to pay unlawful fees disguised as sales taxes.

Public Good is a public interest organization dedicated to the proposition that all are equal before the law. Through amicus participation in cases of particular significance for consumer protection and civil rights, Public Good seeks to ensure that the protections of the law remain available to all. The right of access to the courts that lies at the heart of this case exemplifies the rights that Public Good seeks to defend.

I. Whether California's Consumer Protection Laws Provide Remedies for Consumers Who Challenge the Legality of Retailers' "Sales Tax" Fees is a Question of Enormous Importance to Consumers and Businesses.

It is vitally important to consumers and businesses that this Court confirm that California's consumer protection laws apply to retailers who unlawfully collect fees from customers and then hide behind the tax code. Although retail businesses are ultimately responsible for paying sales tax to the state, they are entitled to and typically demand reimbursement from their customers. If the retailer does not actually owe sales tax to the state for particular product sales, but continues to collect sales tax reimbursement anyway, consumers traditionally have been able to seek remedies though the courts. (See, e.g., *Dell Inc. v. Superior Court* (2008) 159 Cal.App.4th 911 [allowing consumers

to file a putative class action under the UCL and CLRA alleging that Dell had improperly charged them sales tax on service contracts]; *Laster v. T-Mobile USA, Inc.* (2008) 2008 WL 5216255 [allowing consumers to bring claims under the UCL and CLRA against cell phone retailers who had deceptively imposed sales tax reimbursement charges on its customers].) If *Loeffler* is allowed to stand, customers will have to rely on the very same retail businesses who are illegally charging them to seek, of their own volition, a BOE determination about whether particular products are taxable. This is a major reversal of fortune for consumers. Consumers, who are the damaged party, are shut out from any remedy except for waiting and hoping that the retailer collects a refund from the BOE. This could affect every person who purchases goods in California.

At the same time, businesses that lawfully and honestly collect sales tax will be harmed by the *Loeffler* decision if it is allowed to stand. First, consumer confidence is essential to the functioning of California's economy. Stripping consumers of their right to challenge unlawful and misleading business practices will undermine consumer confidence and harm all businesses. Second, if a retailer is unlawfully collecting fees labeled "sales tax" and not turning that money over to the state, that retailer gains an economic advantage over honest, lawful businesses. By insulating a retailer from liability simply because it calls its fee a "sales tax," this Court could encourage some retailers to pad their profit margins unlawfully. This harms honest businesses in the short term and the entire economy in the long term.

II. Contrary to the Second District Court of Appeal's Decision, Plaintiffs Have a Right of Redress Against Target Under California's Consumer Protection Laws.

A. The Court of Appeal's Decision Strips Consumers of All Viable Remedies Against Retailers Who Collect Unlawful Fees Disguised as "Sale Taxes" and Ignores the Power of Courts to Craft Remedies to Avoid Conflict With Other Laws.

The Second District Court of Appeal denied consumers the right to bring UCL and CLRA claims, out of fear that allowing courts to interpret the tax code in actions against retailers will indirectly prevent the collection of taxes by the state. This reasoning ignores the fact that under the UCL and CLRA, courts have the power to craft creative remedies that work around prohibitions and limitations in order to provide relief for consumer victims. (See, e.g., *People v. Superior Ct. (Jayhill)* (1973) 9 Cal.3d 283, 286 [holding that when ordering restitution for consumers "a court of equity may exercise the full range of its inherent powers to accomplish complete justice between the parties, restoring if necessary the status quo ante as nearly as may be achieved"].) Instead, the *Loeffler* decision leaves consumers without recourse in the courts and to rely upon: 1) a retail corporation to independently seek a BOE determination as to whether a refund is appropriate for particular product sales; or 2) the BOE to independently determine that a

retailer has been unlawfully collecting "sales tax" fees and order the retailer to return those unlawful fees to customers.

Even assuming the retailer/taxpayer has paid the sales tax to the state (an assumption for which there is no evidentiary basis here), these are impractical solutions. Neither retailers nor the BOE have an incentive to independently investigate whether particular products are being taxed appropriately. Retailers do not have an economic interest in obtaining a sales tax refund from the BOE because they will have to return the money to their customers, and the administrative process is costly and time-consuming. (See Rev. & Tax. Code § 6901.5.) The retailer must file an administrative claim with the BOE under the provisions in Chapter 7, Article 1 of the tax code. (See *id.*, § 6901 et seq.) From an administrative standpoint, filing with the state is a hassle. If the BOE denies the administrative claim, the retailer ***may*** bring suit against the BOE for a sales tax refund. (See *id.*, § 6932 et seq.) Since the retailer will have to pay to sue the state and does not get to keep the refund, this is an unlikely outcome. In addition, if the BOE actually issues a refund, returning the money to customers creates an even bigger administrative headache.

At the same time, without a court's intervention, the BOE has no incentive to independently investigate a particular retailer or the taxation of a particular product. Non-taxpayer consumers like Target customers can complain to the BOE, but unless the violation is truly egregious or many citizens complain, the BOE is unlikely to launch a serious investigation. With over a million retail outlets in California, the BOE cannot be expected to chase down every tax code violator, even the large ones like Target. This Court has recognized that state agencies are not capable of bringing every enforcement action.

In *Javor v. State Board of Equalization* ("*Javor*") (1974) 12 Cal.3d 790, this Court held that car dealership customers could bring an action against car dealers and the BOE to receive a sales tax reimbursement refund connected to a federal excise tax that had been repealed. (12 Cal.3d at 802.) This Court recognized that customers were not going to receive a refund without judicial intervention. (*Id.* at 801-02.) First, the vast majority of customers would never find out that they were owed a refund because there was no proper notification system. (*Id.* at 801.) Second, car dealers were not required to refund customers, but were merely allowed to collect a refund from the BOE after refunding customers. (*Ibid.*) In essence, under the procedure created by the BOE, this Court reasoned, "the Board is very likely to become enriched at the expense of the customer to whom the amount of the excessive tax actually belongs." (*Id.* at 802.) To preserve the integrity of the sales tax system and protect the public, this Court allowed the plaintiff consumers to join the BOE as party to the lawsuit against the car dealers. (*Id.* at 802-03.)

The Plaintiffs in *Loeffler* face a similar situation. Without judicial intervention, Target customers who paid sales tax on their coffee "to go" are not going to receive a refund. As in *Javor*, most Target customers do not know that they were erroneously charged for sales tax. In addition, Target's customers have no statutory right to collect the reimbursement directly from the BOE and Target has no incentive to petition the BOE for a refund. While this Court in *Javor* required both the retailer and BOE to resolve the sales tax reimbursement refund at issue, the Second District Court of Appeal's decision cuts off this type of court-ordered remedy and leaves consumers with nothing. The appellate court's decision makes even less sense in light of *Javor* because Plaintiffs in *Loeffler* are seeking remedy from Target and not the BOE. Plaintiffs are not attempting to impede the State's collection of taxes. They are challenging Target's misleading and unlawful practice of imposing a particular charge.

Moreover, the Second District Court of Appeal failed to consider the full power of California's consumer protection remedies through which courts can craft injunctive relief and restitutionary relief for victims. Both the UCL and CLRA are to be liberally construed and applied to protect consumers. (See, e.g., *Barquis v. Merchant Collection Assoc.* (1972) 7 Cal.3d 94, 111 [holding that the Legislature intended that the UCL provide injunctive relief in a wide variety of contexts]; *People v. Superior Ct. (Jayhill)* (1973) 9 Cal.3d 283, 286 [holding that a court ordering restitution in consumer protection cases may exercise its full powers to accomplish justice between the parties]; *Wang v. Massey Chevrolet* (2002) 97 Cal. App. 4th 856, 869 [holding that the CLRA is to be liberally construed and applied to "protect consumers against unfair and deceptive business practices and provide efficient and economical procedures to secure such protection"].)

B. Government Regulators Rely on Private Attorneys General to Enforce Consumer Protection Laws.

This Court has recognized that government agencies like the BOE do not have the resources to pursue every violation of the statutes and regulations under their jurisdiction. The consumer protection laws thus allow "private attorneys general" to work in conjunction with state agencies to redress illegal and unfair business practices.

In *Donabedian v. Mercury Insurance Co.* (2004) 116 Cal.App.4th 968, for example, the California Insurance Commissioner submitted an amicus brief explaining the need for private litigation to enforce the UCL. (116 Cal.App.4th at 982-83.) In a part of that amicus brief quoted by the court, the Commissioner stated that "in adopting Insurance Code sections 1861.03 and 1861.10, the voters envisioned that the Commissioner's ability to enforce the [specified] provisions of the Insurance Code would be supplemented by the use of private attorneys general." (*Id.* at 983, quoting amicus curiae brief of The California Department of Insurance.) Elsewhere in the amicus brief,

the Commissioner made clear the reason for this need for supplemental private enforcement:

> Moreover, private attorneys general often have access to resources that the Department does not. Like all administrative agencies, the Department ***must balance its statutory responsibilities with the available resources when exercising its discretion to deploy its prosecutorial authority.***
>
> The Department does conduct some enforcement actions against carriers. . . . In all candor, however, the Department simply ***lacks sufficient resources to pursue every allegation*** where . . . through the independent investigation and resources expended by a private attorney general, a violation of the Insurance Code is revealed.

(Department of Insurance amicus curiae brief in *Donabedian*, 2003 WL 23280980, p. 19, emphasis added.) Thus, the Insurance Commissioner explicitly stated that the Department does not have sufficient resources to pursue every claim, and he relies upon the powers vested in private attorneys general by Insurance Code section 1861.03 to enforce certain violations of the Insurance Code.

Similarly, in *Manufacturers Life Insurance Co. v. Superior Court* (1995) 10 Cal.4th 257, the Insurance Commissioner advocated for the power of private parties to bring consumer protection actions simultaneous to his agency's enforcement efforts. (10 Cal.4th at 276, fn. 8.) In his amicus curiae brief, the commissioner "expressed his belief that regulatory enforcement by his office is complementary to the Cartwright Act and the UCA . . . . [and] that the public interest is served by vigorous enforcement of all three statutes." (*Ibid.*)

The BOE has broad powers to collect taxes including lawsuits and seizure of property (See Rev. & Tax. Code §§ 6711-15, 6796-99.) When a retailer is overcharging customers by adding erroneous sales tax fees, however, the BOE has limited authority to provide remedies for customers. First, the BOE is very unlikely to investigate a particular retailer's unlawful and misleading collection of sales tax unless many customers complain about it. The BOE can choose to audit a retailer, but this is a voluntary decision by the agency. (See *id.*, § 7052.) Furthermore, the BOE does not have a proscribed method of ensuring a retailer has made these refunds. The BOE would have to rely upon customers to keep it informed, and most customers would not know that the BOE had even authorized a refund.

If the Second District Court of Appeal's decision is allowed to stand, it leaves consumers without redress for unlawful sales tax collection and fails to protect businesses from competitors who abuse the tax laws to their competitive advantage. The consumer protection laws are meant to complement agency enforcement. By granting review, or

ordering depublication of the lower court's decision, this Court can ensure that private citizens, those who are the most directly impacted by the erroneous collection of sales tax, have available to them a workable process for getting their money back from retailers. Aggrieved consumers who have suffered real financial damages will not have to rely on the BOE to initiate an investigation of a retailer. At the same time, the BOE will not have to spend its limited resources auditing retailers to determine if they are correctly assessing sales.

III. The Legislature Enacted the UCL and CLRA to Combat Business Practices Exactly Like Target's Practice of Unlawfully Collecting Fees Disguised as "Sales Tax."

A. The UCL is Intentionally Broad in Scope, Covering "Any" Possible Unlawful, Unfair or Fraudulent Business Acts or Practices, Including a Violation of Revenue and Taxation Code Section 6359.

The UCL defines "unfair competition" broadly and unequivocally: "[U]nfair competition shall mean and include ***any*** unlawful, unfair or fraudulent business act or practice." (Bus. & Prof. Code § 17200, emphasis added.) In interpreting and applying the UCL, this Court has often repeated a phrase from its decision in *Barquis*: "the Legislature intended this 'sweeping language' to include 'anything that can properly be called a business practice and that at the same time is forbidden by law.'" (7 Cal.3d at 113; see also, *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* ("*Stop Youth Addiction*") (1998) 17 Cal.4th 553 [holding that Penal Code violations can be used as predicate acts for a UCL claim].)[1]

It was the Legislature's use of the word "any" that the this Court relied upon to find that any law can be a predicate for an "independently actionable" UCL "unlawful" claim, stating:

> By proscribing "any unlawful" business practice, "section 17200 'borrows' violations of other laws and treats them as unlawful practices" that the Unfair Competition Law makes independently actionable.

(*Cel-Tech Comm., Inc. v. Los Angeles Cellular Tel.* ("*Cel-Tech*") (1999) 20 Cal.4th 163, 180.) In sum, it is well settled that the "unlawful" prong of the UCL confers an independent private right of action on any person to file a UCL action predicated upon

---

[1] An unrelated portion of *Stop Youth Addiction* regarding standing was superseded by statute. (See, e.g., *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 227.)

the violation of ***any*** law. This includes violations of the tax code, such as Plaintiffs' allegations that Target violated Revenue and Taxation Code section 6359.

B. Whether the Predicate Law Confers a Direct Private Right Of Action is Immaterial to a Plaintiff's Right to Bring a UCL "Unlawful" Action.

The Second District Court of Appeal's decision to bar Plaintiffs' UCL claim was based on an interpretation of Revenue and Taxation Code section 6901.5 that did not support a private right of action. Under the UCL scheme, this is a non-issue. This Court expressly held in *Stop Youth Addiction* that whether the predicate statute confers a private right of action is "*immaterial*" to determining whether the plaintiff can state a claim under the UCL, even if the predicate law is expressly limited to enforcement by "public lawyers," i.e., prosecutors. (17 Cal.4th at 562; see also *Cortez v. Purolator Air Filtration Prod's.* (2000) 23 Cal.4th 163, 173 [stating that a UCL claim is not a substitute for the predicate laws it borrows, but rather is "an equitable action by means of which a plaintiff may recover money or property obtained from the plaintiff or persons represented by the plaintiff through unfair or unlawful business practices"].)

In *Stop Youth Addiction*, the plaintiff brought a UCL "unlawful" claim predicated upon a violation of Penal Code section 308. (17 Cal.4th at 558.) In opposition, the defendant Lucky Stores ("Lucky") argued, and the superior court agreed, that plaintiff, Stop Youth Addiction, "lack[ed] standing to bring a UCL action predicated on violation of a statute for the direct enforcement of which there is no private right of action." (*Id.* at 560.) However, this Court *rejected* Lucky's argument, stating: "Undeniably, section 308 provides for its own *direct* enforcement only by public lawyers," but

> whether a private right of action should be *implied* under [the predicate] statute . . . is immaterial since any unlawful business practice . . . may be redressed by a private action charging unfair competition in violation of Business and Professions Code sections 17200 and 17203. Thus, as we have long recognized, it is in enacting the UCL itself, and not by virtue of particular predicate statutes, that the Legislature has conferred upon private plaintiffs "specific power" to prosecute unfair competition claims.

(*Id.* at 562, alterations and emphasis in original, citations omitted.)

In *Loeffler*, the Plaintiffs based their UCL action on a violation of Revenue and Taxation Code section 6359, which exempts certain food products, including coffee and other beverages, from sales tax. Like the defendant in *Stop Youth Addiction*, Target seeks to avoid liability by arguing the tax code does not grant a private right of action allowing customers to sue retailers who erroneously collect sales tax reimbursements. The Second District Court of Appeal examined Revenue and Taxation Code section 6901.5, the

section laying out the procedure for sales tax reimbursement refunds, and held that this section did not allow customers to bring claims against retailers. (*Loeffler*, 173 Cal.App.4th at 1243.) Based on this interpretation, the court rejected Plaintiffs' UCL claims. The Court of Appeal's decision is incompatible with *Stop Youth Addiction*. It is settled law that plaintiffs can base UCL claims on virtually any law regardless of whether it has a private right of action. Thus, the fact that section 6901.5 does not provide for a private right of action, implied or otherwise, is immaterial. The UCL itself gives Plaintiffs the power to bring a UCL "unlawful" claim based upon a violation of Revenue and Taxation Code section 6359.

C. The UCL and CLRA Provide Cumulative Remedies Allowing Regulators and Private Parties to Work Together to Combat Unlawful Business Practices.

The Legislature enacted California's consumer protection laws to complement other laws' remedies and State agency enforcement actions. (See Bus. & Prof. Code § 17205; Civ. Code § 1752.) Only upon the ***express*** provision of the Legislature are the UCL and CLRA remedies not cumulative to other laws. (*Ibid.*) In *Loeffler*, the Second District Court of Appeal fabricated such an express provision from the tax code and refused Plaintiffs' UCL and CLRA claims based on arguments rejected by this Court in *Stop Youth Addiction*. The *Loeffler* decision fails to consider the fact that the Legislature designed the consumer protection laws to complement enforcement efforts of regulators like the BOE.

In *Stop Youth Addiction*, this Court overturned the First District Court of Appeal and held that the plaintiffs could bring a UCL action based on a violation of Penal Code section 308. (17 Cal.4th at 558.) The defendant, Lucky, argued that the Legislature had preemptive intent when enacting the Penal Code because it failed to create a private right of action, and thus the UCL's broad express standing provision should not apply to Penal Code violations. (*Id.* at 569.) In rejecting this argument, the *SYA* Court looked to the UCL, which states that "[u]nless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state." (Bus. & Prof. Code § 17205.) Thus, in order to operate as a repeal to a UCL "unlawful" claim, ***a statute must "expressly provide" that such claims are not allowed.*** (*Id.* at 573, emphasis added.) This Court defined "expressly" to mean "in an express manner; in direct or unmistakable terms; explicitly; definitely; directly" and held that because the Penal Code did not ***expressly*** provide otherwise, the UCL remedies and penalties were cumulative to the remedies or penalties available under the Penal Code. (*Id.* at 573 [citing *City and County of San Francisco v. Western Air Lines, Inc.* (1962) 204 Cal.App.2d 105, 120].) Moreover, this Court found that when the Legislature has desired to limit the UCL, it has expressly created these limitations. (*Id.* at 573-74; see, e.g., Civ. Code § 7104 [Rosenthal-Roberti Item Pricing

Act expressly provides exclusive remedies]; see also *Hogya v. Sup. Ct.* (1977) 75 Cal.3d 1322 [holding that the CLRA is supplemental to remedies available under other laws].)

The Second District Court of Appeal here, like the defendant in *Stop Youth Addiction*, elevated ambiguous language to the level of an express provision by the Legislature. The *Loeffler* opinion equates a general prohibition of injunctions against the state to prevent the collection of taxes to express legislative intent to limit UCL and CLRA actions based on tax code violations. (*Id.* at 1246-48 [citing Cal. Const. Art. XIII § 32 and Rev. and Tax. § 6931].) The appellate court's finding was in error. Section 32 and Revenue and Tax Code section 6931 are not express provisions by the Legislature that limit consumer protection law remedies because they do not contain "***direct*** or ***unmistakable*** terms" that state this purpose. Section 32 and Revenue and Tax Code section 6931 only pertain to actions against the state and then, only if such actions prevent the collection of taxes. (See Petition for Review in *Loeffler*, pp. 17-20.) The UCL and CLRA actions in *Loeffler* are not against the state. No state agency or state agent is involved or named in the suit.

Moreover, the consumer protection laws and tax code have distinct remedies and penalties. Section 32 seeks to prevent courts from inhibiting the flow of tax dollars to the state. The UCL and CLRA actions seek to prevent unlawful businesses practices and consumer abuse as well as the return of monies unlawfully obtained. While the BOE can enforce tax laws and make its own determinations about who and what to tax, it is the purview of the courts to enforce the state's consumer protection laws.

D. The Second District Court of Appeal Incorrectly Barred Plaintiffs' UCL Claim.

As discussed, *supra*, virtually any law or regulation – federal, state, statutory or common law – can serve as predicate for a UCL "unlawful" violation. (See, e.g., *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 950.) The one exception to this general rule is "[w]hen *specific legislation* provides a 'safe harbor'." (*Cel-Tech*, 20 Cal.4th at 182, emphasis added; see also *Rubin v. Green* (1993) 4 Cal.4th 1187 [holding that the litigation privilege contained in Civil Code section 47(b) prohibited a UCL "unlawful" action based on communication that fell within the privilege].) The Second District Court of Appeal in *Loeffler* fabricated a new bar to UCL claims predicated on tax code violations. The court based its opinion on a broad reading of Article XIII, section 32 of the Constitution.

Plaintiffs' Petition for Review describes three reasons why section 32 does not apply in *Loeffler* to bar a UCL claim. (Petition for Review in *Loeffler*, pp. 17-20.) Consumer Watchdog fully agrees with Plaintiffs' analysis. Moreover, the BOE has promulgated regulations that contemplate that customers retain a right of action against retailers who have erroneously collected sales tax reimbursement. Section 1700(b)(6) of

title 18 of the California Code of Regulations states:

> Right of Customers. The provision of this regulation with respect to offsets do not necessarily limit the rights of customers to pursue refunds from persons who collected tax reimbursement from them in excess of the amounts due.

(Cal. Code Regs., tit. 18, § 1700(b)(6).) The regulations do not specify exactly what rights customers have to pursue refunds, but the BOE's own language belies the presumption that the tax code completely bars customers' legal rights to pursue retailers who have collected excess sales tax reimbursement. The UCL was enacted specifically to protect consumers from business practices that are unlawful and misleading. It is clear that the Second District Court of Appeal's position is out of line with the Legislature's intent for the UCL and the BOE's own regulations about sales tax reimbursements.

IV. Conclusion

The California Legislature crafted the UCL and CLRA to provide broad and expansive remedies to aggrieved consumers. These powerful consumer protection laws have been supported and expanded by seventy years of California court decisions. If the *Loeffler* decision is allowed to stand, consumers will be left with no protection when a business chooses to label a deceptive or unlawful fee as a "sales tax."

For these reasons, we strongly urge the Court to accept review of this case or to order it removed from publication in the official reports.

Sincerely,

Pamela Pressley

Pamela Pressley
Todd Foreman

Counsel for amicus curiae
CONSUMER WATCHDOG

cc: see attached Proof of Service