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February 20, 2015

Court of Appeal, Third Appellate District
Deena C. Fawcett, Clerk
By _____ Deputy

VIA U.S. MAIL

Hon. Cole Blease, Acting Presiding Justice
Hon. Elena J. Duarte, Associate Justice
Hon. Louis Mauro, Associate Justice
California Court of Appeal
Third Appellate District
914 Capitol Mall, 4th Floor
Sacramento, CA 95814

Re: Request for Publication of Opinion:
Boren v. Correct Craft, Inc., No. C071080

Dear Honorable Justices:

Pursuant to Rule of Court 8.1120, Consumer Attorneys of California (“CAOC”) respectfully requests publication of the Court’s opinion in *Boren v. Correct Craft, Inc.*, No. C071080. This publication request is timely submitted within 20 days after the opinion was filed on February 4, 2015. See Rule of Court 8.1120, subd. (a)(3).

Statement of Interest

Founded in 1962, CAOC is a voluntary non-profit membership organization of over 3,000 consumer attorneys practicing in California. Its members predominantly represent individuals subjected to consumer fraud, unlawful employment practices, personal injuries and insurance bad faith. CAOC’s members have taken a leading role in advancing and protecting the rights of consumers, employees and injured victims in both the courts and in the legislature. This has often occurred through class action litigation brought under California’s Unfair Competition Law (“UCL”) (Bus. & Prof. Code §§ 17200 et seq.).

Reasons Why the *Boren* Opinion Should Be Published

The *Boren* opinion meets the standards for publication set forth in Rule of Court 8.1105(c) because it “[a]ppplies an existing rule of law to a set of facts significantly different from those stated in published opinions,” and because it “[a]dvances a new interpretation [or] clarification” of several important aspects of the UCL.

First, *Boren* provides significant and unique guidance on the UCL’s standing rules in the specific context of a product defect claim. Slip op. at 3-6. No published California appellate opinion has considered this standing question to date. The Supreme Court’s *Kwikset* opinion involved a product (locksets), but the case was for false advertising, and involved no assertion

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that the product was defective. See *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 317 (2011). *Boren* applies the rule of *Kwikset* in a new factual context not addressed in any other opinions.

In addition, *Boren* is also the first California appellate opinion—published or unpublished—to mention, let alone consider and construe, the standing analysis in *Birdsong v. Apple Inc.*, 590 F.3d 955 (9th Cir. 2009). Publishing *Boren* will provide guidance in UCL cases pending in federal district courts, in which *Birdsong* is frequently cited as an authority of equal dignity alongside *Kwikset*.

Second, the opinion's discussion of the UCL's "unlawful" prong in the specific context of a product defect claim is likewise unique among appellate decisions. Slip op. at 6-9. As the opinion notes, "the published decisions are not uniform about how tort claims fit under the UCL ..." *Id.* at 6. The main published decision involving product defect claims brought under the UCL was decided 18 years ago. *Klein v. Earth Elements, Inc.*, 59 Cal.App.4th 965 (1997). Most of the other published opinions simply acknowledge that a UCL "unlawful" prong claim may be predicated on a common-law tort, without any further analysis or discussion of the interplay between the UCL and specific tort claims. See, e.g., *Klein v. Chevron USA, Inc.*, 202 Cal.App.4th 1342, 1393 (2012). The *Boren* opinion provides this analysis and discussion, as well as a considered evaluation of 18-year-old *Klein v. Earth Elements*, which is wholly absent from any other opinions construing *Klein*.

Conclusion

For the reasons stated above, the *Boren* opinion meets the standards for publication of Rule of Court 8.1105(e). CAOC respectfully asks that the Court enter an order directing publication of the opinion.

Sincerely,


Kimberly A. Kralowec
State Bar No. 163158

cc: See attached proof of service

PROOF OF SERVICE

I, the undersigned, hereby declare under penalty of perjury that the following is true and correct:

I am a citizen of the United States; am over the age of 18 years; am employed by THE KRALOWEC LAW GROUP, located at 180 Montgomery Street, Suite 2000, San Francisco, California 94104, whose principal attorney is a member of the State Bar of California and of the Bar of each Federal District Court within California; am not a party to the within action; and that I caused to be served a true and correct copy of the following documents in the manner indicated below:

1. REQUEST FOR PUBLICATION OF OPINION FILED FEBRUARY 4, 2015; and
2. PROOF OF SERVICE.

By Mail: I placed a true copy of each document listed above in a sealed envelope addressed to each person listed below on this date. I then deposited that same envelope 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 upon motion of a party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit.


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Executed February 20, 2015 at San Francisco, California.



Gary M. Gray