

CERTIFIED FOR PUBLICATION

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

TIM McADAMS,
 Plaintiff and Appellant,
 v.
 MONIER, INC.,
 Defendant and Respondent.

C051841
 (Super. Ct. No. SCV 16410)
**ORDER MODIFYING OPINION
 AND DENYING REHEARING
[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion filed herein on May 30, 2007, be modified as follows:

1. On page 2 of the opinion, in the first sentence of the second paragraph beginning with the words "We agree with case law," delete the phrase

--as opposed to requiring a showing of "actual reliance"--

so that the sentence reads:

We agree with case law that an "inference of common reliance" may be applied to a CLRA class that alleges a

material misrepresentation consisting of a failure to disclose a particular fact.

2. On page 2 of the opinion, in the first sentence of the third paragraph beginning with the words "We conclude here," delete the phrase

--as opposed to requiring a showing of "actual reliance"--

so that the sentence reads:

We conclude here that an "inference of common reliance" may likewise be applied to a UCL class that alleges a material misrepresentation consisting of a failure to disclose a particular fact.

3. On page 22 of the opinion, in the sixth sentence of the first full paragraph beginning with the words "As we shall explain," delete the phrase

(as opposed to "actual reliance")

so that the sentence reads:

As we shall explain, the concept of "inference of common reliance" can be applied here to satisfy these two quoted principles of standing, rendering plaintiff's UCL action suitable for class treatment.

4. On page 25 of the opinion, in the first full paragraph, delete the second sentence, which begins with the words "We do not construe" and ends with the words "was injured thereby."

5. On page 25 of the opinion, in the first sentence of the second full paragraph, delete the words

instead of requiring a showing of "actual reliance."
so that the sentence reads:

Several factors support our conclusion that this standard of "inferred reliance" from the CLRA class context may also be applied to the Proposition 64 UCL class context.

6. On pages 26 and 27 of the opinion, delete footnote 7 in its entirety and replace it with the following:

A federal district court decision--*Anunziato v. eMachines, Inc.* (C.D.Cal. 2005) 402 F.Supp.2d 1133--declined to import the CLRA's reliance requirement into the UCL because, first, the CLRA and the UCL have "significant structural differences" (the CLRA prohibits 23 specified practices; "the UCL broadly proscribes 'unfair competition'"), and, second, the remedies are different (the CLRA provides for actual and punitive damages, while the UCL does not). (*Id.* at p. 1137.)

There is no change in the judgment.

Respondent's petition for rehearing is denied.

FOR THE COURT:

SCOTLAND, P.J.

DAVIS, J.

RAYE, J.