

Loyola Consumer Law Review

2005

*571 CONSUMER NEWS

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A New Chapter in Consumer Bankruptcy Law

Bankruptcy is essentially a process by which a consumer may eliminate debt or establish a favorable repayment plan as a way to get out from under overwhelming debt. [\[FN1\]](#) But, of course, millions of consumers already knew that. In 2004, consumer debt in the United States reached \$1.7 trillion--a new high. [\[FN2\]](#) During the same period, more than 1.5 million U.S. consumers filed for bankruptcy protection. [\[FN3\]](#) That is approximately one in every seventy-three U.S. households. [\[FN4\]](#)

Not surprisingly, Congress responded with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which will soon make it more difficult for consumers to walk away from their debts. [\[FN5\]](#) Under the former consumer bankruptcy laws, seventy percent of consumers who filed for bankruptcy were able to eliminate credit card debt, medical expenses, and utility bills. [\[FN6\]](#) Chapter 7 of the bankruptcy code [\[FN7\]](#) is the provision that essentially allows consumer-*572 debtors to "wipe the slate clean" as to most types of debt. [\[FN8\]](#)

While Chapter 7 will still work its magic for some consumer-debtors, under the new law, many filers will no longer qualify for Chapter 7 protection, and will be channeled to a new and less forgiving chapter of the bankruptcy code-- Chapter 13. [\[FN9\]](#) Under this chapter, filers who have a sufficient income will be required to repay creditors in small monthly amounts over a five-year period according to a court-ordered repayment schedule. [\[FN10\]](#)

But just what constitutes a sufficient income is a question that is expected to keep bankruptcy lawyers busy, potentially increasing the attorney's fees that bankrupt consumers will pay. [\[FN11\]](#) Essentially, the "means test" formula goes like this: if a consumer's income is over the annual household median for their state and the court determines that he or she can make payments of at least \$100 per month after paying for living expenses, then the consumer may only file under Chapter 13. [\[FN12\]](#) While the formula sounds straightforward enough, the devil is likely to be found in the details as lawyers and courts attempt to determine and apply living expenses for essentials such as food, housing, clothing, personal care, and transportation. [\[FN13\]](#)

In addition to the extra legal work this Act is likely to generate, the law has also drawn criticism from consumer-advocacy groups who are quick to point out the real winners here are the credit card companies. [\[FN14\]](#) Indeed, the credit card industry has reportedly donated \$24.8 million to federal politicians since 1999. [\[FN15\]](#) As one lawmaker put it, "This [law] puts credit card companies and banks at the head of the list." [\[FN16\]](#)

*573 While "bankruptcy" may conjure up images of irresponsible consumers living beyond their means, studies have shown that consumers often find themselves seeking bankruptcy relief after unforeseen medical expenses, losing their job, or divorce. [\[FN17\]](#) This provision will make it that much harder for cash-strapped consumers--the unfortunate and irresponsible alike--to move on with their lives and put their debts behind them. [\[FN18\]](#)

Furthermore, although declaring bankruptcy allows consumers to get out from under overwhelming debt, bankruptcy--even

(Cite as: 17 Loy. Consumer L. Rev. 571)

prior to this bill--is not a free pass for consumers. [\[FN19\]](#) A bankruptcy filing remains on a consumer's credit report for seven to ten years, and may prevent an individual from getting a job, being promoted, or being able to do something as basic as renting an apartment. [\[FN20\]](#) Also, it must be remembered that consumers may not use bankruptcy to discharge certain debts, including: back taxes accrued less than three years earlier, student loans, alimony payments, and child support payments. [\[FN21\]](#)

In addition to the "means test," the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, provides that consumers who have equity in their homes will only be able keep up to \$125,000 of that equity away from creditors. [\[FN22\]](#) However, where state laws provide for greater exemptions, state law will apply provided the bankrupt consumer has lived in that state for at least forty months prior to filing. [\[FN23\]](#)

Other features of the Act include mandatory credit counseling and a fraud prevention provision. Consumers who wish to file bankruptcy will need to attend at least six months of credit counseling before filing for bankruptcy protection, [\[FN24\]](#) and will not be able to have their debts discharged until completing a court approved *574 personal financial management course. [\[FN25\]](#) The Act's "fraud test" provision will prevent consumers from escaping payments on goods or services the court determines to be "luxury items" purchased for over \$500 with a credit card within ninety days of filing for bankruptcy. [\[FN26\]](#)

Notably absent from the Act are measures to prevent predatory lending practices, such as excessively high interest rates on credit cards, that take advantage of consumers struggling with their finances and helps drive consumers into bankruptcy in the first place. [\[FN27\]](#) The Federal Trade Commission has recently had its hands full with bogus debt management companies that promise to reduce a consumer's debt while delivering only higher interest rates and penalties. [\[FN28\]](#) While some lawmakers attempted to include predatory lending provisions in the Act, these provisions were left out and have now been proposed in a separate bill. [\[FN29\]](#)

There must be limits to the forgiveness lawmakers are willing to extend to consumers who have failed to adequately manage their finances. But bankruptcy relief must also be made available to give down-and-out consumers a chance to rebuild their lives and provide for their families. While, arguably, the Act, strikes as balance between the interests of consumers and consumer lenders, this new chapter in bankruptcy law is undeniably a win for lenders. [\[FN30\]](#)

***575 Tort Reformers Score Class Action Victory**

Big business lobbyists celebrated at the White House when President Bush signed the Class Action Fairness Act [\[FN31\]](#) ("CAFA" or "Act") earlier this year. While the Act addresses many of the criticisms of the class action device, its passage is viewed by some as a major blow to consumers and the tort bar that represents them. [\[FN32\]](#) Plaintiff's lawyers and consumer advocates, point to Vioxx, Enron, Firestone, WorldCom as evidence that Corporate America should not be granted what they argue is essentially immunity through tort reform. [\[FN33\]](#)

At their best, class action lawsuits protect the rights of large groups of consumers by allowing them to combine their individually small claims into a single suit against large corporations. [\[FN34\]](#) Without the class-action device very few consumers would be willing and able to sue the phone company, for example, for the extra few dollars they improperly billed last year. [\[FN35\]](#)

But there have been major criticisms of class action suits. [\[FN36\]](#) First, there is the problem of "forum shopping." [\[FN37\]](#) When a class action suit involves thousands of plaintiffs and is nationwide in scope, plaintiffs' attorneys have the option of filing in virtually any county in the United States. [\[FN38\]](#) Not surprisingly, plaintiff's attorneys have been drawn to the

counties that are most plaintiff-friendly, such as Madison County, Illinois. [\[FN39\]](#) Supporters of the CAFA, however, have persuasively argued that cases with nation-wide implications should be heard in federal court, and not in the most extremely pro-*576 plaintiff state courts in the nation. [\[FN40\]](#) The CAFA does not limit a plaintiff's ability to file in a particular county, but it does allow defendants to remove cases involving more than 100 plaintiffs and an amount in controversy of more than \$5 million to federal court. [\[FN41\]](#)

"We're getting some of these enormous class actions out of problem jurisdictions, where a local judge makes rulings that apply to 50 states that a federal judge is not willing to make," stated a representative for the U.S. Chamber of Commerce, [\[FN42\]](#) an organization notorious for pushing an anti-trial lawyer agenda. [\[FN43\]](#) This issue has, at times, touched on the much larger issue of the influence of local politics on the state judicial process. [\[FN44\]](#) Republican Senator Orin Hatch, a supporter of the Act opined:

[U]nlike our Federal courts which have judges who are insulated from political influence through lifetime appointments, many State court judges are elected officials who answer through the political process itself There are jurisdictions in this country, State jurisdictions and local jurisdictions, that border on corruption, that literally don't care what the facts are, don't care what the law is. They are just going to give the plaintiffs' attorneys whatever they want. [\[FN45\]](#)

While the issue of forum shopping pits plaintiffs against defendants, the problem of "coupon settlements" pits class action plaintiff's lawyers against the consumers they represent. [\[FN46\]](#) It has become an all too common occurrence for plaintiff's class action lawyers to walk away with millions, while the consumer class-members, on whose behalf the lawsuit was filed in the first place, walk away with free boxes of cereal, coupons for movie rentals, or thirty-dollar discounts on vacation packages. [\[FN47\]](#) As one tort reformer *577 put it, "When [plaintiff's lawyers] walk in with their \$5,000 suits and gold cufflinks, they don't look like the downtrodden." [\[FN48\]](#)

CAFA will help to keep the interests of the plaintiffs' attorneys and their class members aligned by requiring that the fees attorneys receive are calculated based upon the value of the coupons actually redeemed by the consumer class members. [\[FN49\]](#) Consequently, attorneys can no longer "win" unless their clients also "win." [\[FN50\]](#)

While it may be hard for trial lawyers to object to CAFA's coupon provisions, they point to the painfully slow pace of federal court as a major obstacle to injured plaintiffs who will now be channeled into federal court. [\[FN51\]](#) "People don't understand what they're giving up in this debate," says one plaintiff's lawyer representing plaintiffs who were injured by Vioxx. [\[FN52\]](#) The fact that the Exxon Mobil oil spill is still caught up in federal litigation illustrates the extent of the problem consumers may face. [\[FN53\]](#)

Although trial lawyers and consumer groups fear that federalizing the class action lawsuit may effectively eliminate the class action mechanism, these concerns are largely based on anecdotal evidence. [\[FN54\]](#) There is no reason to think federal judges are not able to preside over a class action suit just as fairly as they preside over any other type of case. [\[FN55\]](#) Surely, some measure of deterrence will be lost, but consumers will stand to recover more than coupons when they prevail. [\[FN56\]](#) Furthermore, the level of deterrence provided by the most extreme pro-plaintiff counties may well have been excessive. [\[FN57\]](#)

*578 What consumers may find more troubling than the passage of CAFA is that the tort reformers are continuing to push for more. [\[FN58\]](#) President Bush has specifically targeted medical malpractice and asbestos litigation as well. [\[FN59\]](#) Meanwhile, other tort reformers are portraying CAFA as only "a modest procedural step," and portraying the U.S. legal system as a serious threat to the U.S. economy. [\[FN60\]](#) They rant against the tort system as a tax on the American standard of living, and blame it for a host of problems including the high price of cars, to obstetricians being driven out of work. [\[FN61\]](#)

Ironically, it was big business that gave rise to our modern tort system in the first place. [FN62] One-hundred years ago a consumer poisoned by canned food or a laborer who lost his arm was unlikely to find relief at the court house. [FN63] Before the MacPherson v. Buick Motor Company case in 1916, [FN64] New York consumers were not permitted to sue manufacturers of defective products. [FN65] But the "tort reformers" of this era "wanted to create social insurance for the many misfortunes of life, including accidental injury, disability, and unemployment." [FN66] Then, after World War II, legal commentators including Richard Posner, began arguing that increasing big business' exposure to liability was the "socially efficient" way to ensure that manufactures would implement and maintain safety improvements. [FN67] The tort system that has resulted is unique in the world and "causes the rest of the industrialized world to rub its eyes in wonder." [FN68]

*579 While one might hope that the tort reform debate would be focused on defining our collective concept of justice, the debate has often emphasized economics instead. [FN69] At present, however, there is no authoritative evidence that tort litigation is weighing down the economy or spiraling out of control. [FN70] The economic data that does exist indicates that legal services in 2003 accounted for less than 1.5% of the gross domestic product, slightly less than in 1990. [FN71] While there may be good arguments for tort reform, the available economic data does not signal alarm. [FN72] Still, President Bush uses financial "data" when he rails against the tort system: "Junk lawsuits have driven the total cost of America's tort system to more than \$240 billion a year--greater than any other major industrialized nation." [FN73] But while such figures make for a more persuasive speech, the accuracy of this figure is in serious doubt. [FN74] In fact, the report that the President cites as his source does not even mention "junk lawsuits." [FN75] The report's author says that the data from the study did not distinguish between junk lawsuits and legitimate lawsuits, and merely identified the tort system as a whole as a \$246 billion enterprise. [FN76] "We've seen examples of both sides of the [tort reform] debate misstating numbers." [FN77]

One of the problems in trying to analyze the U.S. tort system is that there are no good numbers to go on because no one collects data from the over 15,500 courtrooms. [FN78] The Justice Department's Bureau of Justice Statistics says jury awards in tort actions have actually fallen from \$65,000 in 1992, to \$37,000 in 2001. [FN79] But this *580 data was collected from only forty-five of the nation's 3,100 counties. [FN80] Furthermore, these numbers do not represent cases that settle or are reduced on appeal. [FN81] Without reliable and far more complete data it is difficult to imagine how lawmakers are going to improve our tort system. [FN82] At least one commentator has called for a government study to allow for a legitimate and factual debate on further tort reforms. [FN83] If, on the other hand, the real goal is simply to push laws through that support special interests, a thorough government study may be an unnecessary and perhaps counterproductive step.

The Class Action Fairness Act of 2005 may be generally "fair." Arguably, the "forum shopping" and "coupon settlement" abuses needed to be addressed. But the concern is that tort reformers are not done marching against consumers' ability to be compensated for tortious injuries. [FN84] Trial lawyers and the consumers they represent must hope that the "class-action defeat is an aberration instead of just the first blow in a victorious Bush crusade against what Republicans portray as an out-of-control system of legal redress." [FN85] One plaintiff's lawyer commented, "Right now we can hold the votes we need in the Senate for really important stuff, but that's getting whittled away." [FN86]

Napa Wineries Win Labeling Battle

Napa Valley vintners recently moved another step closer to securing the exclusive use of the prestigious "Napa" name for wines actually consisting of grapes grown in the Napa Valley. In March, the United States Supreme court announced that it would not review a California Supreme Court decision holding that a California statute did not violate the federal Constitution's Supremacy Clause by requiring that all wines using the word "Napa" on their label consist of no less than seventy-five percent Napa-grown grapes. [FN87] Napa *581 Valley's victory may eventually help unsophisticated consumers of wine make more informed purchasing decisions. [FN88]

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Although the Supreme Court's announcement is a significant step for the Napa growers and consumers, the California statute still faces additional pending challenges brought by Bronco Wine Co. ("Bronco"), based on free speech, the commerce clause, and the takings clause of the federal Constitution. [\[FN89\]](#) If the California statute [\[FN90\]](#) is ultimately enforced, Bronco, the makers of Charles Shaw wine, popularly known as "Two Buck Chuck," will have to change the names of three of their wines: Napa Ridge, Napa Creek Winery, and Rutherford Vintners. [\[FN91\]](#) The Napa vintners argue that less expensive grapes, such as those Bronco uses, sold under the Napa name threaten the value of grapes actually grown in the Napa Valley. [\[FN92\]](#) Napa Valley's cabernet sauvignon grapes sell for nearly \$4,000 a ton, compared to approximately \$600 a ton for California's non-Napa grapes. [\[FN93\]](#) Bronco's co-owner Fred Franzia scoffs at the prices Napa Valley wines sell for (between \$50 and \$100 a bottle), calling this price structure a "house of cards." [\[FN94\]](#)

Federal law requires that wines bearing the word "Napa" on their label be made from no less than seventy-five percent Napa-grown grapes, but also provides an exception, or "grandfather clause," for wine labels that existed prior to 1986 when the federal law was enacted. [\[FN95\]](#) The California statute, however, closes this federal "loophole" that had allowed Bronco to use the Napa name on ***582** its label so long as the origin of the grapes was also identified on the label. [\[FN96\]](#) By refusing to review the California Supreme Courts ruling in Bronco Wine Co. v. Jolly, the U.S. Supreme court, in effect, ended Bronco's challenge to the California statute as a violation of the Supremacy Clause of the federal Constitution. [\[FN97\]](#)

The California Supreme Court's holding that federal law does not preempt California's labeling statute will stand. If the statute survives Bronco's remaining constitutional challenges, consumers will no longer be subjected to misleading "Napa" advertising.

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[\[FN1\]](#). Shirley Dean, *CONTRA COSTA TIMES*, May 21, 2005, at F4.

[\[FN2\]](#). *Id.*

[\[FN3\]](#). *Id.*

[\[FN4\]](#). Terry Savage, *Many New Changes in Bankruptcy Laws*, *CHI. SUN-TIMES*, Apr. 25, 2005, at 65.

[\[FN5\]](#). Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, [Pub. L. No. 109-8, 119 Stat. 23 \(2005\)](#); Marianne Lavelle, *When You're Down and Out*, *U.S. NEWS & WORLD REPORT*, Mar. 14, 2005, at 18.

[\[FN6\]](#). Lavelle, *supra* note 5, at 18.

[\[FN7\]](#). 11 U.S.C.A. ch. 7 (West 2005).

[\[FN8\]](#). Lavelle, *supra* note 5, at 18. Chapter 7 does not permit filers to escape back taxes, alimony, child support, or student loans. *Id.*

[\[FN9\]](#). 11 U.S.C.A. ch. 7 (West 2005); Lorene Yue, *Bankruptcy Reform Toughens Consumers' Exit From Debt*, *CHI. TRIB.*, Mar. 27, 2005, at B1.

[\[FN10\]](#). Lavelle, *supra* note 5, at 18.

[\[FN11\]](#). Yue, *supra* note 9, at B1.

[\[FN12\]](#). Id.

[\[FN13\]](#). Id.

[\[FN14\]](#). Bankruptcy Bill on Fast Track, 18 Credit Card Mgmt. 8, Apr. 1, 2005, available at 2005 WLNR 5104698.

[\[FN15\]](#). Id. MBNA Corp., is the leading political contributor, donating \$6.7 million to candidates--including President Bush--since 1999. Id. The American Bankers Association has donated over \$5.8 million during this same timeframe. Id.

[\[FN16\]](#). Id. (quoting Representative Jan Schakowsky (D-Ill.)).

[\[FN17\]](#). Id.

[\[FN18\]](#). Id.

[\[FN19\]](#). Dean, *supra* note 1, at F4; see also Consumer Action, at www.consumeraction.org (suggesting alternatives to financial management to avoid the undesirable consequences of filing for bankruptcy protection).

[\[FN20\]](#). Dean, *supra* note 1, at F4.

[\[FN21\]](#). Id.

[\[FN22\]](#). Savage, *supra* note 4, at 65.

[\[FN23\]](#). Brian Collins, Bankruptcy Bill May Pass, ORIGINATION NEWS, Apr. 1, 2005, at 716.

[\[FN24\]](#). Yue, *supra* note 9, at B1.

[\[FN25\]](#). Yue, *supra* note 9, at B1. It is somewhat ironic to note that the required personal financial management course will cause indebted consumers approximately \$25-\$50 a month. Id.

[\[FN26\]](#). Id.

[\[FN27\]](#). Editorial, PHI. DAILY NEWS, Mar. 31, 2005, at 16.

[\[FN28\]](#). FTC Cracks Down on Bogus Debt-Settlement Companies, CARDLINE, Apr. 1, 2005, at 1 (reporting that three credit counseling companies have recently settled with the Federal Trade Commission: National Consumer Counsel, Better Budget Financial Services, and Debt Management Foundation Services agreed to pay \$6 million in restitution, with \$124 in penalties ordered, but suspended).

[\[FN29\]](#). Collins, *supra* note 23, at 716. Senators Bob Ney (R-Ohio) and Paul Kanjorski (D-Pa.) introduced a bill intended to reduce predatory lending shortly after the Senate approved the consumer bankruptcy bill. Id. This bill contains provisions similar to the amendments that were rejected in the bankruptcy bill, in part, because Senators wanted to limit the scope of the bankruptcy bill and considered the predatory lending provisions to be misplaced. Id.

[\[FN30\]](#). Bankruptcy Bill on Fast Track, *supra* note 14 (quoting Senator Charles Grassley (R-Iowa), "This [the passage of the Act] proves if you are right on something, you can win. We are right on this.").

[FN31]. Class Action Fairness Act of 2005, [Pub. L. No. 109-2, 119 Stat. 4 \(2005\)](#).

[FN32]. Lorraine Woellert, In This Battle, It's War By Anecdote, BUSINESSWEEK, Mar. 14, 2005, at 77.

[FN33]. Mike France, Lorraine Wollert, & Micheal J. Mandel, How to Fix the Tort System, BUSINESSWEEK, Mar. 14, 2005, at 70.

[FN34]. 150 Cong. Rec. S7, 564 (2004).

[FN35]. Id.

[FN36]. Id.

[FN37]. Id.

[FN38]. 150 Cong. Rec. S7, 563, 64 (2004).

[FN39]. Marianne Lavelle, Class Action Crackdown, U.S. NEWS & WORLD REPORT, Feb. 21, 2005, at 46.

[FN40]. Lavelle, supra note 39, at 46.

[FN41]. Id.

[FN42]. Id.

[FN43]. Gretchen Morgenson & Glen Justice, Taking Care of Business, His Way, N.Y. TIMES, Feb. 20, 2005, at 31.

[FN44]. 150 Cong. Rec. S7, 564 (2004).

[FN45]. Id.

[FN46]. Lavelle, supra note 39, at 46.

[FN47]. Id.

[FN48]. Lorraine Woellert & Richard Dunham, Trial Lawyers Will Take Their Case to the People, BUSINESSWEEK, Mar. 7, 2005, at 53.

[FN49]. Class Action Fairness Act of 2005, [Pub. L. No. 109-2, 119 Stat. 4 \(2005\)](#).

[FN50]. Id.

[FN51]. Lavelle, supra note 39, at 46.

[FN52]. Id.

[FN53]. Id.; but see The Chamber Wants Class Actions In Federal Court, BUSINESSWEEK, Feb. 21, 2005, at 19 (arguing against any suggestion that state courts judges have more time to handle large cases than their federal counterparts).

[\[FN54\]](#). Lavelle, supra note 39, at 46.

[\[FN55\]](#). But see id. (suggesting that federal judges are skeptical of class action suits and citing anecdotal evidence of this skepticism).

[\[FN56\]](#). Id.

[\[FN57\]](#). Id. (citing a 2003 Madison County, Illinois, case in which a judge awarded a \$10.1 billion verdict in a lawsuit with alleged Philip Morris' advertising of a "light" cigarette was deceptive).

[\[FN58\]](#). France et al., supra note 33, at 70.

[\[FN59\]](#). Id.

[\[FN60\]](#). Id.

[\[FN61\]](#). Id.

[\[FN62\]](#). Id.

[\[FN63\]](#). France et al., supra note 33, at 70. In 1911, the families of the women killed in New York's Triangle Shirtwaist Factory Building fire recovered only \$75 each "despite rotten fire hoses, locked escape doors, and other signs of clear negligence." Id.

[\[FN64\]](#). [111 N.E. 1050 \(N.Y. 1916\)](#).

[\[FN65\]](#). France et al., supra note 33, at 70.

[\[FN66\]](#). Id.

[\[FN67\]](#). Id.

[\[FN68\]](#). Id. "Europeans would be extremely nervous with this kind of arrangement [U.S. tort system]." Id. But countries such as Germany, Britain, Belgium, and France offer their victims nationalized health care and lost wages are generally paid by the government or the victim's employer. Id. "[I]t's not like the cost disappears; it just becomes part of the tax base." Id.

[\[FN69\]](#). Id.

[\[FN70\]](#). France et al., supra note 33, at 70.

[\[FN71\]](#). Id.

[\[FN72\]](#). Id.

[\[FN73\]](#). Woellert, supra note 32, at 77.

[\[FN74\]](#). Id.

[\[FN75\]](#). Id.

[\[FN76\]](#). Id.

[\[FN77\]](#). Id.

[\[FN78\]](#). Woellert, supra note 32, at 77.

[\[FN79\]](#). Id.

[\[FN80\]](#). Woellert, supra note 32, at 77.

[\[FN81\]](#). Id.

[\[FN82\]](#). Id.

[\[FN83\]](#). Wollert, supra note 32, at 77.

[\[FN84\]](#). Woellert & Dunham, supra note 48, at 53.

[\[FN85\]](#). Id.

[\[FN86\]](#). Id.

[\[FN87\]](#). [Bronco Wine Co. v. Jolly, 95 P.3d 422 \(Cal. 2004\)](#), cert. denied [125 S. Ct. 1646 \(2005\)](#).

[\[FN88\]](#). Michelle Locke, Supreme Court Turns Down Napa Wine-Label Case, CONTRA COSTA TIMES, Mar. 22, 2005, at F4; see [Bronco Wine Co., 95 P.3d at 426](#) (citing legislative findings that "consumers are confused and deceived by these practices").

[\[FN89\]](#). [Bronco Wine Co., 95 P.3d at 428](#).

[\[FN90\]](#). [Cal. Bus. & Prof. Code § 25241](#) (West 2005).

[\[FN91\]](#). Locke, supra note 88, at F4. Rutherford is a viticultural region within [Napa Valley, Bronco Wine Co., 95 P.3d at 425 n.1](#).

[\[FN92\]](#). Locke, supra note 88, at F4.

[\[FN93\]](#). Id.

[\[FN94\]](#). Id. Franzia says that Bronco's consumers are not confused, saying, "people buy London Fog raincoats without assuming they're made in London." Id. However, representatives for Napa counter, "[f]or centuries, people have understood that there is a direct connection between wine style and the place where it comes from." Id.

[\[FN95\]](#). Annette Haddad, Supreme Court Puts 'Two Buck Chuck' In Its Place, LOS ANGELES TIMES, Mar. 22, 2005, available at 2005 WLNR 4380445.

[\[FN96\]](#). [Bronco Wine Co., 95 P.3d at 427](#).

[\[FN97\]](#). [Id. at 422](#).

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