

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CONSUMER CAUSE, INC.,

Plaintiff and Appellant,

v.

NATIONAL VISION, INC.,

Defendant and Respondent.

B165646

(Los Angeles County
Super. Ct. No. BC 274257)

ORDER MODIFYING OPINION

THE COURT:*

IT IS ORDERED that the opinion filed herein on September 3, 2003, be modified in the following particulars:

On page 9, before the Disposition, delete the last paragraph in its entirety beginning with "In any event," and the following is inserted in its place:

Even if Consumer did not have to establish harm as an element of its claim, it did not allege that anyone was or would be harmed by National's conduct. Consumer did not allege that the challenged conduct resulted or would result in inadequate or inappropriate medical care, greater cost, lessened competition, reduced professional or business opportunities, or any other harm to any person or entity.

“In a suit under the UCL a public prosecutor may collect civil penalties, but a private plaintiff’s remedies are generally limited to injunctive relief and restitution. [Citations.] An order for restitution is one compelling a UCL defendant to return money obtained through an unfair business practice to those persons in interest from whom the property was taken. [Citation.]” (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 950, internal quotations omitted.) Thus, Consumer failed to allege facts entitling it to any remedy.

This modification does not have an effect on the judgment.

*

ORTEGA, Acting P. J. VOGEL (Miriam A.) MALLANO, J.