Case No. S269212

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA MEDICAL ASSOCIATION,

Petitioner,

v.

AETNA HEALTHCARE OF CALIFORNIA, INC. D/B/A AETNA U.S. HEALTHCARE INC.; AND AETNA HEALTH OF CALIFORNIA, INC.,

Respondents.

After a Published Decision by the California Court of Appeal, Second Appellate District, Division Eight, Case No. B304217

(Los Angeles County Superior Court, Case No. BC487412)

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE AMERICAN MEDICAL ASSOCIATION IN SUPPORT OF PETITIONER CALIFORNIA MEDICAL ASSOCIATION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

State Statutes

Other Authorities

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

The American Medical Association (AMA) respectfully requests permission to file the following amicus curiae brief in support of Petitioner California Medical Association (CMA).

The AMA is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state, including California. The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

The Second Appellate District's decision below denying CMA standing to bring this lawsuit would severely restrict the ability of membership organizations like the AMA to protect themselves and their interests from unfair competition. The outcome of this case will therefore have significant and far-reaching consequences on the AMA and other membership organizations in the state.

A key issue before this Court is whether the Unfair Competition Law (UCL), as amended by Proposition 64, confers standing on an organization that expends its own resources to counteract a defendant's unlawful and unfair practices. The AMA's proposed amicus curiae brief will assist the Court in deciding this issue by providing additional background on the

UCL and Proposition 64, analyzing state and federal case law addressing this very same standing issue, and demonstrating how allowing CMA to pursue this UCL action against Aetna furthers the consumer-protection purposes of the law.

Applicant AMA therefore respectfully requests that the Court accept and file the attached amicus curiae brief.

No party or counsel for a party authored, in whole or in part, the proposed brief. Nor has a party, counsel for a party, or any other person or entity, other than amicus curiae and its counsel, made monetary contributions intended to fund the preparation or submission of the proposed brief.

Dated: June 7, 2022

Respectfully submitted,

STRUMWASSER & WOOCHER LLP

BY: _____

BRYCE A. GEE

Attorneys for Amicus Curiae
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AMICUS CURIAE BRIEF

INTRODUCTION

California's Unfair Competition Law (UCL) is one of the state's most important consumer-protection laws. (See Bus. & Prof. Code, §§ 17200 et seq.)[1] It broadly prohibits "any unlawful, unfair or fraudulent" business practices. (§ 17200.) It authorizes courts to enjoin those harmful practices. (§ 17203.) And it allows parties that have "lost money or property" to sue to protect themselves against such harm. (§ 17204.)

The Second Appellate District's decision, however, prevents the California Medical Association (CMA) from utilizing these vital UCL protections. The decision below narrowly interprets the UCL to categorically preclude standing to an organization that has lost money or property by expending its own resources to combat a defendant's wrongful conduct. This result is not supported by the text of the UCL, is inconsistent with this Court's UCL jurisprudence, conflicts with state and federal case law, and undermines the purposes of the UCL to protect consumers from unlawful and unfair business practices.

If CMA is not allowed to pursue this action, the illegality of Aetna's wrongful conduct may never be adjudicated, and the insurer will be free to continue to commit these violations and to harm CMA and California consumers. The decision below should be reversed.

ARGUMENT

I. The Purpose of the Unfair Competition Law, As Amended by Proposition 64, Is to Protect Consumers from Unfair Business Practices

The UCL prohibits "any unlawful, unfair or fraudulent business act or practice." (§ 17200.) "Its purpose is to protect consumers and

[1] Subsequent statutory references are to the Business & Professions Code.

competitors by promoting fair competition in commercial markets for goods and services." (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320, quotation marks omitted.) "In service of that purpose, the Legislature framed the UCL's substantive provision in broad, sweeping language" and "provided courts with broad equitable powers to remedy violations." (*Ibid.*, quotation marks omitted.) That is, the Legislature "intended by this sweeping language to permit tribunals to enjoin on-going wrongful business conduct in whatever context such activity might occur." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 181, quotation marks omitted.) For decades, the UCL has been used to combat a wide variety of unlawful and unfair business practices that harmed consumers.

But it was also misused. Before 2004, the UCL's expansive standing provision authorized "any person" (former § 17204, as amended by Stats.1993, ch. 926, § 2, p. 5198)—literally anyone and everyone—to bring an unfair competition lawsuit. As this Court recognized back then, under section 17200, "a private plaintiff who has himself suffered no injury at all may sue to obtain relief for others" and "the courts have repeatedly permitted persons not personally aggrieved to bring suit for injunctive relief under the unfair competition statute on behalf of the general public, in order to enforce *other* statutes under which parties would otherwise lack standing." (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 561, 567, quotation marks omitted.)

Unscrupulous attorneys took advantage. They filed meritless lawsuits against large groups of businesses *en masse* and then sought to extract individual settlements from those desperate to avoid what was threatened to be lengthy and costly litigation. A law firm named the Trevor Law Group made these abusive "shakedown" lawsuits infamous:

> The abuse is a kind of legal shakedown scheme: Attorneys form a front "watchdog" or "consumer" organization. They scour public records on the Internet for what are often ridiculously minor violations of some regulation or law by a small business, and sue that business in the name of the front organization. Since even frivolous lawsuits can have economic nuisance value, the attorneys then contact the business (often owned by immigrants for whom English is a second language), and point out that a quick settlement (usually around a few thousand dollars) would be in the business's long-term interest. For the Trevor Law Group, the usual targets were auto repair shops.

(*People ex rel. Lockyer v. Brar* (2004) 115 Cal.App.4th 1315, 1317.)

"Small businesses were the particular province of Trevor Law Group-style shakedowns, because such businesses would often be willing to spend around $2,000 to buy their peace rather than the same amount on an attorney to defend the case." (*Consumer Defense Group v. Rental Housing Industry Members* (2006) 137 Cal.App.4th 1185, 1216, fn. 22.) The courts lamented that the UCL was thus allowing "the use of the very process of litigation to precipitate payoffs by private businesses for alleged violations of law having no real relationship to a true public interest." (*Ibid*.)

Another stark example of this scheme was recounted in *Stop Youth Addiction*, which involved a "for-profit" shell corporation whose "sole shareholder [wa]s the mother of the corporation's attorney" that "filed this lawsuit against 431 retailers," seeking "$10 *billion* in restitution as an incident to an injunction against defendants, and attorney fees." (17 Cal.4th at p. 585 (dis. opn. of Brown, J.).) After the lawsuit was filed, each defendant was warned that the plaintiff corporation's attorney "will get the most in attorney fees from whoever stays in [the suit] the longest." (*Ibid*.) It was further alleged that "plaintiff's counsel offered to forego even *filing* suit against individual defendants in exchange for fees," that "counsel [wa]s

compensated exclusively from such fees," and that "he systematically offer[ed] to settle on terms that include attorney fees but no legally binding relief." (*Id*. at p. 596 (dis. opn. of Brown, J.).) Such circumstances, former Justice Brown observed, "suggest the use of the UCL as a means of generating attorney fees without any corresponding public benefit." (*Ibid*.) The problem, she stated, was that the UCL's grant of "unbridled standing to so many" meant that "the Law fails to provide 'any mechanism to distinguish between' plaintiffs with genuine business disputes, 'true' private attorneys general, and those who use the Law as a means of leveraging settlements at the expense of the public interest." (*Id*. at p. 584, quoting Tent. Recommendation, Unfair Competition Litigation (May 1996) Cal. Law Revision Com. Rep., Summary of Tent. Recommendation (dis. opn. of Brown, J.).)

In other words, the UCL was being exploited by those with no connection to, and no personal stake in, the business practices being challenged. Self-serving individuals were bringing UCL claims not to prevent unlawful and unfair business practices but to create paydays for themselves. They did not care whether a lawsuit had any merit to it, and even if they did stumble upon an unfair practice needing to be enjoined, they "might agree to settle the claim for less than its worth" or "may not competently prosecute the lawsuit." (*Stop Youth Addiction*, *supra*, 17 Cal.4th at p. 583 (conc. Opn. of Baxter, J.).) The UCL's consumer-protection purposes were thus being undermined by the filing of such frivolous lawsuits.

Proposition 64 sought to rein in these abusive practices. Echoing the concerns expressed by former Justice Brown in *Stop Youth Addiction*, the voters declared that the UCL was "being misused by some private attorneys" who "[f]ile frivolous lawsuits as a means of generating attorney's fees without creating a corresponding public benefit." (Prop. 64,

§ 1, subd. (b)(1) [Findings and Declarations of Purpose].) To curb such abuses, Proposition 64 restricted standing under the statute to a litigant "who has suffered injury in fact and has lost money or property as a result of the unfair competition." (§ 17204.)

As this Court recognized in *Kwikset*, Proposition 64 thus requires that "a plaintiff must now demonstrate some form of economic injury," which is a type of injury in fact that is not intended to be "a substantial or insurmountable burden." (*Kwikset*, *supra*, 51 Cal.4th at pp. 323-324.) Rather, it suffices "to allege some specific, identifiable trifle of injury"—the basic idea being that "an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." (*Id*. at pp. 324-325 & fn. 7, quotation marks omitted.)

By requiring an individualized, albeit a trifle of, injury, Proposition 64 sought to ensure that UCL plaintiffs had a personal stake in the matter and were sufficiently motivated to bring meritorious cases against unlawful and unfair business practices and to pursue them diligently. Essentially, the voters determined that restricting the scope of the UCL in this manner was necessary to strengthen the protections that were being provided to consumers under the law.

II. The Unfair Competition Law, As Amended by Proposition 64, Confers Standing on an Organization That Diverts Resources As a Result of a Defendant's Unfair Business Practices

This Court has recognized that there are "innumerable ways in which economic injury from unfair competition may be shown" to satisfy standing requirements under the UCL. (*Kwikset*, *supra*, 51 Cal.4th at p. 323.) Proposition 64 did not "purport to define or limit the concept of 'lost money or property'" (*ibid*.) and that "open-ended phrase" should be interpreted broadly, not narrowly (*id*. at p. 331). What matters for UCL

standing is not the type of economic harm caused by a defendant's unfair practice but the fact that a plaintiff "has personally suffered such harm." (*Id*. at p. 323.)

When, as here, an organization has diverted its own resources in response to a defendant's unfair practices—such as devoting paid staff time to investigate and take other actions to combat the wrongful conduct—it has personally suffered economic harm and should have standing to sue under the UCL to prevent that injury from continuing.

The First Appellate District directly addressed this very issue in *Animal Legal Defense Fund v. LT Napa Partners LLC* (2015) 234 Cal.App.4th 1270, review den. June 10, 2015, S225790[2] (*ALDF*), holding that the diversion of resources by an organization constituted sufficient economic injury to confer standing under the UCL. In that case, an animal legal defense organization named Animal Legal Defense Fund (ALDF) brought a UCL action against a restaurant owner, alleging that the restaurant had continued to serve foie gras after a statewide ban went into effect. ALDF demonstrated that these illegal sales of foie gras harmed the organization's mission of preventing animal cruelty and that, in response, it had diverted significant resources to counteract the defendant's misconduct. (*Id*. at pp. 1279-1282.) Specifically, the organization hired a private investigator to visit the restaurant and attempt to order foie gras (*id*. at p. 1275); paid staff at ALDF spent time analyzing the facts uncovered in the investigation (*id*. at p. 1280); and, over the course of several months, ALDF staff also devoted time and resources to sharing the investigation

[2] This Court also denied a request from the Chamber of Commerce of the United States to depublish the *ALDF* decision. (June 10, 2015, S225790.)

findings with law enforcement authorities and attempting to persuade them to take action on the violations (*ibid*.).

In reaching its conclusion that this diversion of resources constituted economic injury under the UCL, the court in *ALDF* began by thoroughly discussing and analyzing this Court's precedents interpreting Proposition 64's standing requirements. (*ALDF*, *supra*, 234 Cal.App.4th at pp. 1278-1281.) Significantly, in view of this Court's recognition that economic injury may be shown when a plaintiff is "required to enter into a transaction, costing money or property, that would otherwise have been unnecessary" (*Kwikset*, *supra*, 51 Cal.4th at p. 323), the court in *ALDF* determined that the organization's diversion of time and resources that would have been spent on other ALDF projects were such transactions that established UCL standing (*ALDF*, at pp. 1280, 1282-1283).[3]

ALDF also acknowledged the case law holding that an organization's expenditure of time and resources in order to pursue litigation does not constitute economic injury for UCL standing. (234 Cal.App.4th at pp. 1281-1283.) As the court in *Buckland v. Threshold Enterprises, Ltd.* (2007) 155 Cal.App.4th 798, disapproved on other grounds in *Kwikset*, *supra*, 51 Cal.4th 310, determined, an "organization cannot, of course, manufacture the injury necessary to maintain a suit from its expenditure of resources on that very suit." (155 Cal.App.4th at p. 815, quotation marks omitted.) The plaintiff there failed to establish the requisite injury in fact, as she admitted that her "costs were incurred solely to

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[3] Contrary to Aetna's contentions (e.g., Aetna Br. 14, 30), the Court's prior decision in *Amalgamated Transit Union, Local 1756, ALF-CIO v. Superior Court* (2009) 46 Cal.4th 993 does not foreclose standing under these circumstances. That case did not consider, much less resolve, whether an organization's diversion of resources could constitute sufficient economic injury to confer UCL standing.

facilitate her litigation" against the defendant. (*Id*. at p. 816.) The court in *Two Jinn, Inc. v. Government Payment Service, Inc.* (2015) 233 Cal.App.4th 1321, applied the same rule in rejecting UCL standing to a party that similarly conceded that its "investigation constituted 'pre-litigation activities'" and that had failed to offer any evidence that the "investigation was conducted independently of this lawsuit." (*Id*. at p. 1336, brackets omitted.)

Nevertheless, both *Buckland* and *Two Jinn* made clear that "funds expended independently of the litigation to investigate or combat the defendant's misconduct may establish an injury in fact." (*Buckland*, *supra*, 155 Cal.App.4th at p. 815; *Two Jinn*, *supra*, 233 Cal.App.4th at p. 1336.) Both cases further recognized that an organization's diversion of resources, as long as done so independently of litigation, could likewise constitute sufficient economic injury for UCL standing. (*Buckland*, at p. 816; *Two Jinn*, at pp. 1334-1335.) The plaintiffs in those cases, however, had failed to allege or demonstrate any such diversion or expenditure of resources for nonlitigation purposes. (*Buckland*, at p. 816 ["Buckland does not allege any comparable diversion of resources, and her investigation costs, if any, are inextricably tied to her litigation expenses."]; *Two Jinn*, at p. 1336 ["Aladdin has failed to identify any evidence supporting its remarkable claim that it investigated GPS's activities for nonlitigation reasons."].)

After extensively analyzing these two cases, the *ALDF* court determined that, unlike in *Buckland* and *Two Jinn*, plaintiff ALDF had "presented evidence its investigatory expenditures, as well as the resources spent in attempting to persuade the authorities, had a purpose independent of the current litigation and might have rendered such litigation unnecessary." (234 Cal.App.4th at p. 1282.) Therefore, consistent with *Buckland* and *Two Jinn*, ALDF's diversion of resources constituted

sufficient economic injury to establish UCL standing. (*Id*. at pp. 1282-1283.)

The *ALDF* court further observed that cases addressing the federal standing requirement "also support the proposition that the plaintiff's claimed diversion of resources can constitute injury in fact." (234 Cal.App.4th at p. 1281.) As this Court has recognized, federal case law is relevant to UCL standing because Proposition 64 "intended to incorporate the established federal meaning" of injury in fact. (*Kwikset*, *supra*, 51 Cal.4th at p. 322.) The initiative declares:

> It is the intent of the California voters in enacting this act to prohibit private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact under the standing requirements of the United States Constitution.

(Prop. 64, § 1, subd. (e) [Findings and Declarations of Purpose].) Proposition 64's requirement that a plaintiff "lost money or property" means that the "injury in fact" must be economic in nature. In this way, UCL standing is "substantially narrower than federal standing," which "may be predicated on a broader range of injuries," such as "recreational and aesthetic harms," impairment of activities for "purely esthetic purposes," and "damage to aesthetic and environmental interests." (*Kwikset*, at p. 324 & fn. 6, quotation marks and citations omitted.) But other than requiring an *economic* "injury in fact," "nothing in the text of Proposition 64 or its supporting arguments suggests that the requirement was intended to be quantitatively more difficult to satisfy" than federal standing requirements. (*Id*. at p. 324.) As this Court has determined, so long as "a party has alleged or proven a personal, individualized loss of money or property in any nontrivial amount, he or she has also alleged or proven injury in fact." (*Id.* at p. 325).

The decision in *ALDF* therefore properly relied on federal cases holding that an organization that diverts resources in response to a defendant's misconduct has suffered injury in fact and has standing to sue under federal law. (234 Cal.App.4th at pp. 1280-1281 [discussing *Havens Realty Corp. v. Coleman* (1982) 455 U.S. 363, *Fair Housing of Marin v. Combs* (9th Cir. 2002) 285 F.3d 899, and *So. Cal. Housing Rights Center v. Los Feliz Towers Homeowners Assn.* (C.D. Cal. 2005) 426 F.Supp.2d 1061].) The numerous other federal cases discussed by CMA (CMA Opening Br. 27-37) further confirm that an organization's diversion of resources is sufficient to demonstrate injury in fact.

In addition to CMA's cited cases, amicus notes the Ninth Circuit's recently published decision in *Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. Vilsack* (9th Cir. 2021) 6 F.4th 983, which likewise held that an organization has standing when a defendant's behavior "has frustrated its mission and caused it to divert resources in response to that frustration of purpose," so long as that diversion of resources was unrelated to litigation costs and not incurred by choosing to spend money on a problem that "otherwise would not affect the organization at all." (*Id.* at pp. 987-988.) In that case, a ranchers-cattleman organization, whose members include individual cattle producers, sued to challenge a mandatory assessment on cattle sales imposed by federal law. (*Id*. at p. 986.) The court found that the organization had direct standing to sue because the challenged mandatory assessments affected the organization's mission of "protecting domestic independent cattle producers" and the organization had "devoted (and continues to devote) resources, independent of expenses for this litigation, to deal with the program that might otherwise be used in support of that mission." (*Id*. at p. 988.) Thus, a membership organization that diverts its own resources in

furtherance of its mission of protecting its members has suffered injury in its own right and has standing to sue as an organization.

The relevant facts at issue here are indistinguishable from those presented in *ALDF*, as well as in *Ranchers Cattlemen* and the many other federal cases cited by CMA. As more fully discussed in CMA's briefs, Aetna's unlawful and unfair practices frustrated CMA's long-standing mission of promoting the science and art of medicine, protecting the public health of California residents, and advocating for physicians and patients in the state. (E.g., CMA Opening Br. 10-11, 32-33.) In response, CMA diverted significant staff resources from other CMA projects in order to investigate and counter Aetna's misconduct, including advising physicians and the public on how to address Aetna's actions, preparing educational resources on Aetna's policies, communicating directly with Aetna in an attempt to persuade the insurer to cease its illegal practices, and meeting with state agencies to urge them to investigate and take appropriate action against Aetna. (CMA Opening Br. 15-16, 31-35.)

Thus, just like the organization in *ALDF*, CMA "presented evidence of a genuine and long-standing interest in the effective enforcement" of the law; CMA demonstrated that the defendant's "alleged violations of the statute tended to frustrate plaintiff's advocacy" efforts; and CMA established that Aetna's actions "tended to impede plaintiff's ability to shift its focus" on other advocacy efforts. (*ALDF*, *supra*, 234 Cal.App.4th at p. 1282.) Accordingly, CMA's expenditure of its own resources to combat Aetna's practices, which "had a purpose independent of the current litigation and might have rendered such litigation unnecessary" (*ibid.*), constitutes economic injury and confers UCL standing on the organization to sue to enjoin Aetna from continuing to harm CMA.

This conclusion is consistent with this Court's precedents, consistent with other Court of Appeal decisions recognizing the diversion of resources

as a type of injury in fact, and consistent with federal case law on standing requirements. The Second Appellate District's decision below stands alone in denying UCL standing to an organization that has been injured in this manner by a defendant's unlawful and unfair business practices.

III. Conferring Standing on an Organization That Diverts Resources As a Result of a Defendant's Unfair Business Practices Furthers the Consumer-Protection Purposes of the Unfair Competition Law and Proposition 64

This Court's "role in construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law." (*People v. Canty* (2004) 32 Cal.4th 1266, 1276.) In doing so, the statutory language "is construed in the context of the statute as a whole and the overall statutory scheme, and we give significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose." (*Ibid*., quotation marks omitted.) The rules of statutory interpretation apply equally in construing statutes enacted through the initiative process. (*Ibid*.)

The Second Appellate District below and Aetna fixate on the narrow intent of Proposition 64 to limit standing in UCL actions, but they overlook—and do not once acknowledge—the overarching purpose of the UCL's statutory scheme as a whole: "to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." (*Kwikset*, *supra*, 51 Cal.4th at p. 320.) Proposition 64's standing requirements did not change the consumer-protection purposes of the law. To the contrary, the initiative reaffirmed that the UCL is "intended to protect California business and consumers from unlawful, unfair, and fraudulent business practices," declaring that amendments to the UCL were necessary to eliminate frivolous lawsuits that were being filed "as a means of generating attorney's fees without creating a corresponding public benefit." (Prop. 64, § 1, subds. (a) & (b)) [Findings

and Declarations of Purpose].) The UCL is, and always has been, about protecting the public.

The instant action before the Court is a UCL lawsuit brought to enjoin an unlawful and unfair business practice that Aetna has committed and threatens to continue to commit against physicians and California consumers. As more fully explained by CMA, insurance consumers have the option to purchase preferred provider organization (PPO) health plans, which are typically more expensive than other plans but provide patients more flexibility in where they can seek medical care. Those who purchase PPO plans are encouraged to go to "in-network" physicians, who have agreed to accept discounted rates of payment from Aetna, but are also permitted to receive care from "out-of-network" providers, who have not agreed to such discounted rates.

But out-of-network providers cost Aetna more money, so the insurer sought to limit the use of their services. Many years ago, Aetna thus devised a company policy to threaten to terminate or to actually terminate the insurer's contracts with physicians who Aetna believed were referring too many patients to out-of-network providers. Aetna also sent threatening letters to patients who had used out-of-network providers, warning them that they could lose coverage for their upcoming surgeries. CMA has argued that Aetna's actions were contrary to the best interests of patients and their health, improperly interfered with the patient-physician relationship, were in breach of the insurer's contractual obligations to cover such services, and were illegal and unfair.

Aetna denies that it has done anything wrong and even contends that the insurance company sought to restrict access to care in order to protect its members and Aetna's in-network providers. (Aetna Br. 5-6.)

Regardless of the sincerity of the insurer's contentions, these are serious allegations and significant issues that deserve to be fully

adjudicated by the courts. This is exactly the type of lawsuit the UCL was intended to authorize—one that seeks to protect California physicians and patients from an insurance company's unlawful and unfair business practices.

No one can seriously claim this to be a "frivolous" or "shakedown" lawsuit. No one can contend the UCL is being misused here as a means of generating attorney's fees without creating a corresponding public benefit. And no one can reasonably argue that CMA lacks sufficient particularized injury to competently prosecute this lawsuit, which comes to this Court after approximately a decade of hard-fought litigation.

As this action has demonstrated, an organization that has diverted its own resources to combat a defendant's illegal and unfair business practices has lost money or property, has suffered economic injury, and should have standing to sue under the UCL to stop the violations from continuing to harm the organization. Allowing such a suit to proceed to the merits and giving the organization the opportunity to prove the violations being alleged furthers the purposes of the UCL, as amended by Proposition 64, to protect consumers and competitors from unlawful and unfair business practices.

CONCLUSION

CMA has expended substantial resources to combat Aetna's wrongful conduct. This is personal and concrete economic harm suffered by the organization. CMA should be allowed to sue under the UCL to prevent Aetna from continuing to harm the organization and the public.

Dated: June 7, 2022

Respectfully submitted,

STRUMWASSER & WOOCHER LLP

BY: _____

BRYCE A. GEE

Attorneys for Amicus Curiae
American Medical Association

CERTIFICATE OF COMPLIANCE

I certify that, pursuant to rule 8.204(c)(1) of the California Rules of Court, the attached Amicus Curiae Brief is proportionally spaced, uses a typeface of 13 points, and contains 4,102 words, as determined by a computer word count.

Dated: June 7, 2022

Respectfully submitted,

STRUMWASSER & WOOCHER LLP

BY: _____
BRYCE A. GEE

Attorneys for Amicus Curiae
American Medical Association

PROOF OF SERVICE

STATE OF CALIFORNIA

Re: *California Medical Association v. Aetna Healthcare of California, et al.,* 2DCA No. B304217, LASC No. BC487412

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024. My electronic mail address is loliver@strumwooch.com.

On **June 7, 2022**, I served the foregoing document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE AMERICAN MEDICAL ASSOCIATION IN SUPPORT OF PETITIONER CALIFORNIA MEDICAL ASSOCIATION** on all appropriate parties in this action, as listed on the attached Service List, by the method stated:

☒ If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with the Clerk of the Court by using the EFS/TrueFiling system as required by California Rules of Court, rule 8.70. Participants in the case who are registered EFS/TrueFiling users will be served by the EFS/TrueFiling system. Participants in the case who are not registered EFS/TrueFiling users will be served by mail or by other means permitted by the court rules.

☒ If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this is executed on **June 7, 2022**, at Los Angeles, California.

LaKeitha Oliver

SERVICE LIST

California Medical Association v. Aetna Healthcare of California, et al.,
2DCA No. B304217, LASC No. BC487412

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STATE OF CALIFORNIA
Supreme Court of California

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STATE OF CALIFORNIA
Supreme Court of California

Case Name: **CALIFORNIA MEDICAL ASSOCIATION v. AETNA HEALTH OF CALIFORNIA**
Case Number: **S269212**
Lower Court Case Number: **B304217**

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/7/2022

Date

/s/LaKeitha Oliver

Signature

Gee, Bryce (222700)

Last Name, First Name (PNum)

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