

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.

**APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF AND *AMICUS CURIAE* BRIEF OF
AIDS HEALTHCARE FOUNDATION,
IN SUPPORT OF PETITIONER
CALIFORNIA MEDICAL ASSOCIATION**

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

Superior Court, County of Los Angeles, Case No. BC487412

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APPLICATION AND STATEMENT OF INTEREST

AIDS Healthcare Foundation (AHF) requests leave to file the amicus brief accompanying this Application, based on the following grounds.

I. INTERESTS OF PROPOSED *AMICUS CURIAE*

AHF is a nonprofit public-benefit corporation incorporated in 1987 and headquartered in Los Angeles. In California, AHF operates 17 healthcare centers that provide advanced medical care designed specifically for HIV-positive clients; five wellness centers that perform walk-in HIV and STD testing and treatment; and 13 specialty pharmacies that dispense lifesaving medications to patients living with HIV and AIDS, serving approximately 100,000 patients statewide. As AHF's mission statement explains, AHF strives to provide "cutting-edge medicine and advocacy regardless of ability to pay."

AHF also advocates for people living with HIV/AIDS, to remove barriers to proper care and treatment and to end discrimination and stigmatization. Because having HIV/AIDS often still marks a person with a stigma in our society, many people living with HIV/AIDS are reluctant to identify themselves as may be required of plaintiffs in litigation. Also, HIV/AIDS patients may hesitate to confront their health-insurance companies or other healthcare-industry participants in court over legitimate disputes, for fear of losing access to healthcare in retaliation. In those situations, as appropriate, AHF fulfills its mission by stepping in and advocating in court for AHF's patients, thereby also benefiting other people with similar

circumstances. (See, e.g. *AIDS Healthcare Foundation, Inc. v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693 [in which AHF sought court order for Los Angeles County Department of Public Health's health officer to issue regulation protecting health and well-being of adult-film performers]; *AIDS Healthcare Foundation, Inc. v. Gilead Sciences, Inc.*, (Fed. Cir. 2018) 890 F.3d 986 [in which AHF sought court order invalidating five patents purportedly covering AIDS drugs].) AHF also occasionally files amicus curiae briefs in lawsuits, like this one, that raise issues of concern to people living with HIV/AIDS. (See, e.g. Brief of AIDS Healthcare Foundation as Amicus Curiae Supporting Petitioner, *Rutledge v. Pharmaceutical Care Management Association* (2020) 141 S.Ct. 474; Brief of AIDS Healthcare Foundation as Amicus Curiae Supporting Respondents and Affirmance, *CVS Pharmacy, Inc. v. Doe, One* (2021) 142 S.Ct. 480.)

AIDS Healthcare Foundation is vitally interested in the issues presented in this appeal. As both a healthcare organization and an advocacy organization, AHF devotes considerable organizational resources to advocacy for people living with HIV/AIDS, diverting those resources from AHF's vital healthcare work, all in furtherance of AHF's nonprofit mission. Until the *California Medical Association* decision, AHF had been confident to rely on the decision about Unfair Competition Law (the "UCL"; Bus. & Prof. Code, § 17200) organizational standing in *Animal Defense League Fund v. LT Napa Partners LLC* (2015) 234 Cal.App.4th 1270, whenever AHF would need access to a

California court to pursue a UCL claim about a business practice affecting AHF's patients.

The *Animal Defense League* decision on organizational standing has been well-established, having been favorably cited in other officially citable opinions, *Gallano v. Burlington Coat Factory of California, LLC* (2021) 67 Cal.App.5th 953, 964; *Greenpeace, Inc. v. Walmart, Inc.*, 2021 WL 4267536 at *2, (N.D. Cal. Sep. 20, 2021); *Dual Diagnosis Treatment Center, Inc. v. Blue Cross of California* (C.D. Cal. May 1, 2018) SA CV 15-0376-DOC (DFMx), 2018 WL 10072961 at *8. And, earlier, the U.S. District Court, Central District of California decision in *Southern California Housing Rights Center v. Los Feliz Towers Homeowners Assn.* (2005) 426 F.Supp.2d 1061, had made a very similar holding.

It is difficult to reconcile the new *California Medical Association* decision, constricting UCL organizational standing for membership organizations, with the *Animal Defense League* decision and its progeny, upholding UCL organizational standing for advocacy organizations, with or without members. The activities of the California Medical Association (CMA), in diverting organizational resources for a particular policy-and-legal battle, over a health-insurance company's restrictions on physician referrals to out-of-network healthcare providers, seem very similar to the activities of the Animal Defense League, in diverting organizational resources for another policy-and-legal battle, about the ban on the sale of foie gras. (Compare *Cal.*

Medical Assn., supra, 278 Cal.Rptr.3d at p. 307, with *Animal Defense League, supra*, 234 Cal.App.4th at pp. 1279-80.)

Although AHF is not a membership organization and thus is not governed by the *California Medical Association* decision, nonetheless AHF is quite concerned about the impact of this case on organizational standing challenges in the future. If an organization can be held not to have standing because it is a membership organization, it is plausible that a future UCL case could apply the *California Medical Association* decision instead of the contrary *Animal Defense League Fund* decision, equate AHF and CMA at the level of being organizations advocating for distinct groups of people (as well as for the common good), determine that AHF itself cannot suffer cognizable injury apart from the injuries suffered by AHF's patients, and dismiss AHF's case for lack of standing. Indeed, the *California Medical Association* decision should never be applied, because it improperly constricts UCL organizational standing for membership organizations and plausibly could be misapplied to non-membership organizations.

AHF respectfully believes that the accompanying amicus brief can assist this Court by providing a different perspective than that which is offered by the litigants alone, including a discussion of why it is important to preserve the clarity of organizational standing for the sake of all mission-led organizations, with or without members.

II. NO OTHER PARTY INVOLVED

No other party or its counsel has authored this brief in whole or in part, or has made a monetary contribution to fund the preparation of this brief. (Cal. Rules of Court, rule 8.520(f)(4).)

III. CONCLUSION

For the foregoing reasons, this Court is respectfully requested to grant this application to file the accompanying amicus brief.

Dated: June 15, 2022 Respectfully submitted,

AIDS HEALTHCARE FOUNDATION



JONATHAN M. EISENBERG
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BRIEF OF AMICUS CURIAE

I. SUMMARY OF RELEVANT EXISTING LAW

Proposition 64 amended the Unfair Competition Law, Business and Professions Code section 17200 et seq. (the “UCL”), to allow claims for relief thereunder to be brought by only those persons who have “suffered injury in fact and...lost money or property as a result of unfair competition” (Bus. & Prof. Code, § 17204). This amendment replaced the former, broader standing provision, which had allowed a UCL action to be brought "by any person acting for the interests of itself, its members or the general public." (*Id.*, former § 17204.) Thus Proposition 64 eliminated standing for individual plaintiffs to file lawsuits for alleged unfair business practices by which the plaintiffs were not personally harmed.

Proposition 64’s implications for associational and organizational standing have been refined through case decisions. Unfortunately, the most recent relevant decision of a Court of Appeal, in *California Medical Association v. Aetna Health of California*, departs from the line of cases that have defined UCL organizational standing as akin to federal standing standards. The new decision injects uncertainty and confusion into this issue and also mistakenly restricts UCL standing greatly.

Proposition 64 was designed to ensure that UCL case standing extended to only those persons who had suffered injury in fact. That intent is clearly reflected in the amended statutory

language stating that a UCL action can be brought by a person who has suffered "injury in fact." (Bus. & Prof. Code, § 17204.)

This Court in *Kwikset Corporation v. Superior Court of Orange County* noted that the intent of amending the UCL was to "prohibit private attorneys from filing lawsuits for unfair competition where they had no client who had been injured in fact under the standing requirements of the United States Constitution." (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322, emphasis added.) *Kwikset* further held that to prove injury in fact, the plaintiff must "(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., economic injury, and (2) show that that economic injury was the result of, i.e., caused by, the unfair business practice or false advertising that is the gravamen of the claim." *Id.*

The U.S. Constitution recognizes two types of organizational standing, (1) direct and (2) associational (also known as representational). (See *Havens Realty Corp. v. Coleman* (1982) 455 U.S. 363 (recognizing direct organizational standing); *Hunt v. Washington State Apple Advertising Comm'n* (1977) 432 U.S. 333, 344 (outlining requirements for associational standing).) Direct organizational standing requires a showing of an injury in fact through (A) a diversion of organizational resources to identify or to counteract the allegedly unlawful action, or (B) frustration of the organization's mission. (*Havens Realty, supra*, 455 U.S. at p. 379.) Associational standing applies to allow an organization to seek legal redress on behalf of the organization's members, even though the organization itself has

not sustained direct injury. *Hunt, supra*, 432 U.S. at p. 343.

Direct, and not associational, injury is at issue here.

Animal Defense League Fund articulated the requirements of Proposition 64 for organizational standing. In that case, Animal Defense League Fund (“ADLF”) diverted time and resources to inform legislators and the public about animal cruelty in the production of foie gras; these efforts were held to confer organizational standing under the UCL – in part because the efforts occurred independent of the litigation. (*Animal Defense League Fund, supra*, 234 Cal. App. 4th at p. 1282.) That decision was consistent with the explicit wording of Proposition 64, which provided that a private plaintiff has standing to sue if he or she “has suffered injury in fact and has lost money or property as a result of such unfair competition”; with the “original, injured claimant” standing requirement articulated by this Court in *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1002; with this Court’s requirement in *Kwikset* of economic harm; and with the showing required to obtain organizational standing under the U.S. Constitution as articulated in *Havens*.

Then came the *California Medical Association* decision, where the Court of Appeal held that CMA, in diverting organizational resources for policy-and-legal challenges over Aetna’s restrictions on physician referrals to out of network healthcare providers, did not have UCL organizational standing.

II. THE COURT OF APPEAL'S RESTRICTIVE VIEW OF ORGANIZATIONAL STANDING WOULD NEGATIVELY IMPACT MANY MISSION-DRIVEN ORGANIZATIONS

Proposition 64 and the line of cases that followed its passage expressly preserved standing for those individuals or entities who had had business dealings with a defendant and had lost money or property as a result of the defendant's unfair business practices. (See *Kwikset Corp.*, *supra*, 51 Cal.4th at p. 321.) While the *California Medical Association* decision does not eliminate standing for non-membership organizations like AHF, the decision does introduce a level of arbitrariness into the line of cases that clearly established standing for organizations that sustain direct economic injury from unfair competition, and that is cause for alarm. The Court of Appeal in *California Medical Association* has taken the drastic step of eliminating standing for an entire category of potential litigants (membership organizations), in a departure from the "lost money or property" wording of Proposition 64, the simple calculus of "an identifiable monetary or property injury" requirement set forth in *Kwikset* (51 Cal.4th at p. 325), and, most recently, the clear organizational-standing test articulated in *Animal Legal Defense Fund*. *California Medical Association* essentially paints a target on the back of membership organizations, marking them for elimination.

Now the largest non-public HIV/AIDS organization in the United States, AHF has worked for over three decades to end the HIV/AIDS epidemic by providing cutting-edge medicine and advocacy, regardless of ability to pay, to people living with

HIV/AIDS. In California, AHF cares for approximately 100,000 patients out of 17 outpatient HIV medical clinics, five wellness centers, and 13 specialty pharmacies. Additionally, AHF uses advocacy (including litigation), public-policy development, education, and community engagement on behalf of people with HIV/AIDS throughout the State and the country, to remove barriers to receiving proper care and treatment and to end discrimination and stigmatization. Because having HIV/AIDS often still marks a person with a stigma in our society, many people living with HIV/AIDS are reluctant to identify themselves as may be required of plaintiffs in litigation. AHF thus proudly and effectively takes up the mantle of representing the interests of its patients in court, and benefiting other people with similar circumstances. AHF must maintain funds and staff to support advocacy activities in the long term while also meeting the daily needs of patients. AHF's innovative and vigorous care model, which delivers comprehensive, lifesaving healthcare services and advocacy to people living with HIV/AIDS, makes AHF especially sensitive and vulnerable to unfair and unlawful business practices of third parties. AHF depends upon the protections of the UCL to shield not only the organization, but also patients, from any unfair business practices.

Without reversal of the *California Medical Association* decision, it will defeat swathes of injured membership-organization litigants before they reach the court. As for AHF, a non-membership organization, it is plausible that in a future UCL case a court might erroneously apply the *California Medical*

Association decision over the contrary *Animal Defense League* decision; equate AHF and CMA at the level of being organizations advocating for distinct groups of people (as well as the common good); determine that AHF itself cannot suffer identifiable injury in fact apart from the injuries suffered by patients; and dismiss AHF's case for lack of standing.

III. PROPOSITION 64 WAS NEVER INTENDED TO ELIMINATE STANDING FOR ORGANIZATION LITIGANTS WHO ACTUALLY SUSTAINED INJURY FROM UNLAWFUL BUSINESS PRACTICES

Proposition 64 was passed into law by California voters nearly 18 years ago. Proposition 64's enactment substantially revised the UCL's standing provisions for private individuals. (See Bus. & Prof. Code, § 17204.) Prior to the amendment of Proposition 64, "shakedown" lawsuits, where a few law firms filed thousands of UCL lawsuits accusing small businesses of technically unlawful acts in order to force monetary settlements and collect attorneys' fees, were all too common. (*See Angelucci v. Century Supper Club* (2007) 41 Cal.4th 160, 178 n.10.) One of the most notable abuses of the UCL was that of the Trevor Law Group, a law firm who in 2003 founded an alter ego called Consumer Enforcement Watch Corp. (Press Release, Office of the Attorney General, State of California, Attorney General Lockyer Files "17200" Consumer Protection Lawsuit against Beverly Hills Law Firm (Feb. 26, 2003), *available at* <https://oag.ca.gov/news/press-releases/attorney-general-lockyer-files-17200-consumer-protection-lawsuit-against-beverly>.) On behalf of Consumer Enforcement Watch Corp., the Trevor

Law Firm filed lawsuits against thousands of small businesses, mostly auto repair shops, based on minor regulatory violations. (See *id.*) Consumer Enforcement Watch Corp. and Trevor Law Group had no business relationship with or connection to these businesses. (See *id.*) Trevor Law Group then sent form letters to each of the businesses to demand monetary settlements. According to the Attorney General's complaint, Trevor Law Group demanded over \$2,000,000 total in settlement monies. (See *id.*)

Apparently driven by the Trevor Law Group scandal, Proposition 64 narrowed UCL standing requirements to allow only those lawsuits brought by a "person who has suffered injury in fact and has lost money or property as a result of the unfair competition" (Bus. & Prof. Code, § 17204.) This text replaced the former standing provision which had allowed an unfair competition law action to be brought "by any person acting for the interests of itself, its members or the general public." (*Id.*, former § 17204.)

The intent of amending the UCL was to reform abusive practices like that of Trevor Law Group, and to prohibit private attorneys from filing lawsuits for unfair competition despite not having a client who had suffered an injury, or even had direct contact with the defendant or with the unlawful acts alleged. As specified in the text of Proposition 64, the purpose of the voter initiative was, in pertinent part to:

- eliminate frivolous unfair competition lawsuits; and

- prohibit private attorneys from filing lawsuits for unfair competition where the attorneys lack clients who have been injured in fact under the standing requirements of the U.S. Constitution (Prop. 64, § 1(e)).

The amendments to the UCL made by Proposition 64 were meant to protect the rights of mission-driven organizations like CMA and AHF, not to take away their legal recourse. The intent of the California voters in enacting Proposition 64 was never to foreclose organizations working for the public benefit, like AHF, from filing lawsuits when the organizations sustain direct organizational injury (i.e., frustration of their missions and diversion of the money and resources that would otherwise have gone to fulfilling the missions) as a result of unlawful acts under the UCL. In fact, supporters of Proposition 64 as a ballot measure expressly stated that Proposition 64 would preserve standing – unquestionably of an organizational variety – for health groups seeking to prevent tobacco from being sold to children. (See Petitioner’s Motion of Judicial Notice, Ex. A at 41.) This Court should not allow the *California Medical Association* decision to eliminate the protections of the UCL for organizations that try to advance the common good. While the litigious climate of shakedown lawsuits prior to Proposition 64 may arguably have been oppressive to too many businesses, *California Medical Association* swings the pendulum to the other extreme and sets an insurmountable obstacle before litigants the UCL was designed to protect. This distortion of standing requirements under the UCL should not be allowed to stand.

A standing requirement arbitrarily tied to an organization's status as a membership organization foreseeably calls into question the right of all mission-driven organizations to challenge unlawful conduct under the UCL. It is not hard to imagine that a future UCL case could apply the *California Medical Association* decision over the contrary *Animal Defense League Fund* decision, equate membership and non-membership organizations at the level of being organizations advocating for distinct groups of people (as well as for the common good), determine that a non-membership organization itself cannot suffer cognizable injury apart from the injuries suffered by the individuals for whom they advocate, and dismiss the non-membership organization's case for lack of standing. This Court should not allow that possible expansion of bad law and injustice.

This case provides an opportunity for this Court to clarify that UCL standing is not contingent upon an organization's membership status, and further to define the showing necessary for organizations, with or without members, for direct organizational injury. Organizations, like AHF, and all litigants, will only benefit from this Court's restoration of certainty, predictability, and stability to the issue of organizational standing.

IV. CONCLUSION

The at-issue decision of the Court of Appeal misinterprets organizational standing in UCL cases in a way that threatens standing for mission-led advocacy organizations, specifically membership organizations, but unlikely exclusively them in the

long run. The longstanding, clear requirement of “injury in fact” to maintain a post-Proposition-64 UCL claim, as articulated in *Kwikset*, and as applied to organizations by the Court of Appeal in *Animal Defense League Fund*, informed by the U.S. Supreme Court’s interpretation of organizational standing in *Havens Realty*, should be preserved. Therefore, this Court should reverse the decision of the Court of Appeal below.

Dated: June 15, 2022 Respectfully submitted,

AIDS HEALTHCARE FOUNDATION



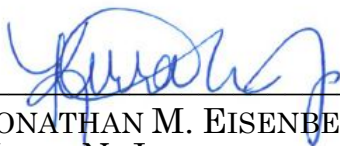
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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed Amicus Curiae Brief of AIDS Healthcare Foundation is produced using 13-point Century Schoolbook type and contains approximately 2,194 words, which is less than the total words permitted by the rules of the court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: June 15, 2022 Respectfully submitted,

AIDS HEALTHCARE FOUNDATION



JONATHAN M. EISENBERG
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CERTIFICATE OF SERVICE

I, Heather N. Marulli, declare that:

I am over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is c/o AIDS Healthcare Foundation, 6255 West Sunset Boulevard, 21st Floor, Los Angeles, California 90028.

On June 15, 2022, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF AIDS HEALTHCARE FOUNDATION, IN SUPPORT OF PETITIONER CALIFORNIA MEDICAL ASSOCIATION** on all of the appropriate parties in this action, as listed on the attached Service List, by the method stated:

U.S. MAIL: The following were served by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail in Los Angeles, California, addressed as indicated below:

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Ronald Reagan State Building	Dept. 3
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BY E-MAIL OR ELECTRONIC TRANSMISSION (EFS):
All counsel of record in this matter and others who have appeared and made EFS filings have been concurrently served with the document listed above via the TrueFiling service required by this Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on June 15, 2022, at Los Angeles, California.



Heather N. Marulli

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

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**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **kirra.jones@ahf.org**
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Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF AIDS HEALTHCARE FOUNDATION, IN SUPPORT OF PETITIONER CALIFORNIA MEDICAL ASSOCIATION

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

6/15/2022

Date

/s/Heather Marulli

Signature

Jones, Kirra (338070)

Last Name, First Name (PNum)

AIDS Healthcare Foundation

Law Firm