

SUPREME COURT OF THE STATE OF CALIFORNIA

CALIFORNIA MEDICAL
ASSOCIATION,

Plaintiff-Petitioner,

vs.

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

Defendants-Respondents.

Case No. S269212

Second Appellate District,
Division Eight
No. B304217

Los Angeles County
Superior Court
No. BC487412

**APPLICATION TO FILE AMICI CURIAE BRIEF;
AMICI CURIAE BRIEF OF LOCAL PROSECUTORS
IN SUPPORT OF PLAINTIFF-PETITIONER**

The Honorable Judge Elihu Berle, Presiding

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**APPLICATION FOR LEAVE TO FILE
AMICI CURIAE BRIEF**

**To the Honorable Chief Justice Tani Cantil-Sakauye and
the Associate Justices of the California Supreme Court:**

Pursuant to California Rules of Court, rule 8.520(f), the City Attorneys of San Francisco, Oakland, San Diego, and San Jose, respectfully request permission to file the attached amici curiae brief. This application is timely made, as this Court granted an extension of time to file amicus curiae briefs to June 15, 2022. (See Order Granting Extension of Time [filed May 3, 2022].)

Amici are concerned that the Court of Appeal's conclusions are in error and if not reversed, will harm consumers, and could seriously undermine the robust prosecution of California Business and Professions Code section 17200 et seq. violations.

Therefore, Amici respectfully request leave to file their brief below.

IDENTITY OF AMICI AND STATEMENT OF INTEREST

In California, the Unfair Competition Law, Business and Professions Code section 17200 et seq.¹ (“UCL”), is designed to protect consumers from business acts or practices that are unlawful, unfair, fraudulent, and/or deceptive. For the last several decades, hundreds of consumer protection actions have been brought by the Attorney General and local prosecutors from across California seeking statewide remedies such as restitution, civil penalties, and injunctive relief against a multitude of different companies.

Amici Curiae City Attorneys of San Francisco, Oakland, San Diego, and San Jose represent four of the largest jurisdictions in California. Though our offices devote substantial resources litigating and supporting actions under the UCL, public prosecutors are only able to prioritize a limited number of enforcement matters. As a result, private-plaintiff consumer protection suits are an important avenue for vindicating the rights of consumers. Organizational plaintiffs, in particular, are in a position to identify and enjoin a range of unlawful, unfair, and deceptive practices that public prosecutors may not have the resources to confront.

Amici brings specialized knowledge and experience in reviewing and assessing matters for public enforcement under the UCL, and are well-positioned to provide a perspective on the critical role organizations play to protect California consumers

¹ All statutory references are to the California Business and Professions Code unless otherwise indicated.

through UCL actions. The Court of Appeal's decision was wrongly decided, and threatens the standing of organizational plaintiffs to bring suit under the UCL. For these reasons, Amici Curiae have a substantial interest in this matter.

Dated: June 15, 2022

Respectfully submitted,

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AMICI CURIAE BRIEF INTRODUCTION

The Unfair Competition Law (“UCL”) (Bus. & Prof. Code, § 17200 *et seq.*) is a powerful expression of the priority our State places on the protection of consumers from unscrupulous business practices. As cities, counties and organizations who have a history of bringing and supporting statewide UCL actions to protect California residents, Amici encounter the unrelenting reality that unlawful and fraudulent practices, often targeting the most vulnerable among us, pervade our communities. Consistent with the scope and purpose of the UCL, private plaintiffs, including organizational plaintiffs, should not be precluded from their legitimate efforts to hold wrongdoers accountable.

ARGUMENT

I. **THE CALIFORNIA LEGISLATURE WANTED THE UCL TO BE ENFORCED BY PRIVATE AND PUBLIC LAW OFFICES**

A. **The UCL Serves a Broad Remedial Purpose.**

The California Legislature enacted the UCL as a sweeping consumer protection statute to prohibit “any unlawful, unfair, or fraudulent business act or practice.” (Bus. & Prof. Code, § 17200.) Consistent with the text and history of the UCL, this Court has explained on multiple occasions that the UCL serves a broad remedial purpose. In *Abbott Laboratories v. Superior Court of Orange County* (2020) 9 Cal.5th 642, 661 (hereinafter, *Abbott Labs*), the Court pointed to the “broad remedial purpose” of the UCL in holding that all public prosecutors authorized to enforce

the UCL may seek a statewide relief under the UCL. The Court also noted that “the Legislature reasonably could have believed that an overlapping scheme of decentralized enforcement has several potential advantages” and that “more enforcement in this context is better than less.” (*Id.* at 661.)

Similarly, in *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320), the Court concluded that the purpose of the UCL was effectuated by the Legislature’s “broad, sweeping language.” In service of this broad remedial purpose, the UCL commensurately confers “broad equitable authority to courts to remedy violations.” (*Abbott Labs, supra*, 9 Cal.5th at p. 652.) The Legislature intended that the broad language of the UCL would “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.)

B. The UCL Vests Private Parties with the Ability to File Actions to Enforce the UCL.

The UCL expressly permits claims to be brought by any “person,” including “associations and other organizations of persons.” (Bus. & Prof. Code, §§ 17201, 17204.) Prior to the passage of Proposition 64, the UCL granted all “persons” the ability to bring an action without needing to show injury or damage. In approving Proposition 64, voters determined that the UCL had been misused by some private attorneys who exploited the generous standing requirement of the UCL to file “shakedown” suits to extort money from small businesses. (*In re*

Tobacco II Cases (2009) 46 Cal.4th 298, 316.) Now, private litigants must sue on their own behalf, and show a loss of money or property to have standing to bring UCL cases. (Bus. & Prof. Code, § 17204, as amended by Prop. 64, § 3.)

In analyzing this amendment, this Court concluded that Proposition 64 “did not propose to curb the broad remedial purpose of the UCL” (*In re Tobacco II Cases, supra*, 46 Cal.4th at p. 317.) Rather, the clear thrust of Proposition 64 was to limit frivolous and abusive private litigation. (*Id.* at 316-317.) Proposition 64 continued to vest both private litigants and government agencies with authority to remedy consumer harm. Importantly, injunctive and restitutionary relief continued to be available to all UCL plaintiffs: private litigants and public prosecutors alike can seek these equitable remedies when the challenged business practices justify this relief. (Bus. & Prof. Code, § 17203.)

II. PUBLIC PROSECUTORS ARE CONSTRAINED BY LIMITED RESOURCES

The UCL vests certain public prosecutors with the authority to prosecute UCL actions on behalf of the general public. (Bus. & Prof. Code, § 17204.) The Attorney General and these local prosecutors have together brought hundreds of consumer protection actions on behalf of the People of the State of California. From actions against national banks, arbitration organizations, insurance companies, multinational corporations, chain retailers, and pharmaceutical companies, consumers and

small businesses have benefitted from the robust enforcement scheme the California Legislature put in place.

Despite robust enforcement efforts by the Attorney General and local public officials across California, however, public prosecutors do not—and cannot—hope to bring enforcement actions to remedy all unlawful, unfair, or fraudulent business acts or practices occurring in California. (See *Abbott Labs, supra*, 9 Cal.5th at p. 661 [describing how the “limited enforcement resources of the Attorney General have been a significant factor in the Legislature’s repeated expansion of public enforcement authority under the UCL.”].) Rather, public prosecutors must prioritize only a subset of meritorious enforcement actions to those that involve the most egregious practices and the broadest potential impact on the public. Even among these matters, in an effort to best deploy tax dollars that fund their work, public prosecutors generally pursue those that the private bar is less likely or able to address.

III. PRIVATE PLAINTIFFS PLAY A VITAL ROLE IN THE ENFORCEMENT OF CONSUMER RIGHTS

Private litigants, including organizational plaintiffs, are an important part of the UCL’s enforcement regime. Organizations with special expertise, such as Appellant, the California Medical Association, are well-positioned to initiate UCL actions that results in public injunctive relief—relief that “by and large” benefits the general public. (*Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th 1066, 1080.) For example, organizations that provide consumer law services, many of which

bring matters of concern to Amici’s attention, divert their resources to secure injunctive relief to prevent the threat of harm to the client populations they serve and, by extension, to the general public. These organizations justifiably initiate UCL actions on their own behalf to enforce consumer rights.

As this Court held in *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 959, Proposition 64 did not impose any additional requirements on private plaintiffs to secure public injunctive relief, even if “the primary purpose and effect of” that relief is “to prohibit and enjoin conduct that is injurious to the general public.” Under the UCL, courts have the power to enjoin “[a]ny person who engages, has engaged, or proposes to engage in unfair competition,” and fashion injunctive relief “as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition.” (Bus. & Prof. Code, § 17203; see *In re Tobacco II Cases, supra*, 46 Cal.4th at p. 319 [“an injunction” is “the primary form of relief available under the UCL to protect consumers from unfair business practices.”].)

Proposition 64 provides no basis to preclude an organizational plaintiff, suing on its own behalf, from securing injunctive relief. The fact that such injunctive relief might also benefit the organization’s members, or the public at large, is fully aligned with the UCL’s broad remedial purpose. It certainly is not a reason to deny standing to an organization that can demonstrate injury to itself.

CONCLUSION

UCL actions by private plaintiffs, including organizational plaintiffs, give effect to the UCL's broad remedial purpose. For the above reasons, this Court should reverse the Court of Appeal's decision below.

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CERTIFICATE OF COMPLIANCE

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I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on June 15, 2022.

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IN SUPPORT OF PLAINTIFF-PETITIONER**

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Executed June 15, 2022, at San Francisco, California.



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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**

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