

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 Decision by the Court of Appeal
Second Appellate District, Division Eight, Case No. B304217
(Los Angeles County Superior Court No. BC487412)

**APPLICATION OF ANIMAL LEGAL DEFENSE FUND
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF PETITIONER; AND BRIEF**

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**APPLICATION OF ANIMAL LEGAL DEFENSE FUND
FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

Pursuant to California Rules of Court, rule 8.520(f), Animal Legal Defense Fund (ALDF) respectfully applies for leave to file the accompanying amicus curiae brief in support of petitioner California Medical Association.

This application is timely. On May 3, 2022, the Court issued an order extending the time to serve and file amicus curiae briefs to and including June 15, 2022. No party or counsel for any party to this appeal made a monetary contribution intended to fund the preparation or submission of this brief.

Counsel is familiar with the briefing filed in this action. ALDF's brief will assist the Court in its consideration of the issues presented, as the Second District Court of Appeal's decision in *California Medical Association v. Aetna Health of California Inc.* (2021) 63 Cal.App.5th 660, lacked critical information about ALDF's organizational structure to justify its holding prohibiting organizations with members from ever having standing under the UCL. Additionally, ALDF is a nonprofit organization and its perspective can help the Court understand why an organization that reasonably diverts resources in response to an unlawful business practice suffers a bona fide economic injury satisfies the standing requirement under the UCL.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Animal Legal Defense Fund (ALDF) is a national nonprofit membership organization that works to protect the lives and advance the interests of animals through the legal system. ALDF pursues its mission on behalf of its over 300,000 members and supporters across the country by providing public education through outreach efforts, working to strengthen animal protection legislation at state and national levels, supporting prosecutors and law enforcement on animal cruelty cases, and filing lawsuits against government and private entities.

In *Animal Legal Defense Fund v. LT Napa Partners LLC* (2015) 234 Cal.App.4th 1270, a restaurant's violation of a law prohibiting the sale of foie gras diminished ALDF's organizational investments supporting that law and threatened to harm ALDF's credibility, reputation, and good will due to its vocal support of the law to supporters and the public. Consequently, ALDF filed a lawsuit under the Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.) to enjoin ongoing violations of that law. The First District in that case held that ALDF suffered an economic injury under the UCL by diverting organizational staff time and resources in response to a restaurant openly violating a law that ALDF publicly supported.

The holding of the *LT Napa* case is squarely at issue in this litigation. Specifically, this Court is considering whether an organization that expends resources and diverts them from other activities in response to a defendant's alleged violations of the

UCL suffers an economic injury sufficient for standing under the UCL.

Also at issue in this litigation is the question whether an organization that otherwise satisfies the requirements for UCL standing loses that standing because it has members who are coincidentally injured. (*See California Medical Association v. Aetna Health of California Inc.* (2021) 63 Cal.App.5th 660.) The Second District's analysis and characterization of facts lacks some important context that ALDF has an interest in explaining.

ALDF therefore requests that the Court accept and consider the accompanying amicus curiae brief.

Dated: June 15, 2022

Respectfully submitted,

s/ Christopher Berry

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

The Animal Legal Defense Fund has no interested entities or persons that must be listed in this certificate under California Rule of Court, Rule 8.208.

Dated: June 15, 2022

Respectfully submitted,

s/ Christopher Berry

Christopher Berry

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ARGUMENT

Standing in this case is straightforward: an organization suffers a bona fide loss of money or property under the UCL when an illegal business practice reasonably causes that organization to divert resources in response. Aetna's request to narrow UCL standing to exclude legitimately injured plaintiffs like CMA from Court is particularly inapt against Proposition 64's purpose to stop unscrupulous shakedown lawsuits while permitting anyone suffering an actual economic injury to enjoin damaging unlawful business practices.

In particular, Aetna's argument that a diversion or expenditure of valuable staff time does not constitute an economic injury conflicts with key case law and the practical reality of managing an organization. Additionally, Aetna's characterization of diversions in cases like this as a "choice" rather than an injury improperly shifts responsibility from the defendant engaging in an unlawful business practice to the organization whose mission and activities were frustrated by the illegal practice. Lastly, there is no basis for the argument that organizations that suffer a direct economic injury distinct from their members do not have standing simply because they have members.

I. PROPOSITION 64 SERVES AS A GATEKEEPER TO PREVENT SHAKEDOWN LAWSUITS WHILE PERMITTING PERSONS WITH BONA FIDE INJURIES TO ENJOIN UNLAWFUL BUSINESS PRACTICES.

As a background matter, the Court should remain mindful that the purpose of Proposition 64 is to serve a gatekeeper function only to eliminate frivolous lawsuits by shakedown lawyers while simultaneously authorizing persons with actual injuries to promote the broad remedial purpose of the UCL to prevent unfair competition.

Historically, “any person” could use the UCL to enjoin an unlawful business practice. However, unscrupulous lawyers “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). In response, voters approved Proposition 64 to limit standing only to those plaintiffs who “lost money or property as a result of such unfair competition.” (Bus. & Prof. Code § 17204; Prop. 64, § 1, subd. (e).)

Importantly, this Court recognized that Proposition 64 “targeted only the specific abuse” of shakedown lawsuits, and otherwise “did not propose to curb the broad remedial purpose of the UCL[.]” (*In re Tobacco II Cases*, 46 Cal.4th at 317.)

Viewed in this gatekeeper framework, cases like this where an organization diverts resources in response to an unlawful practice are not shakedowns, but rather good faith efforts to stop unlawful business practices that cause a bona fide economic injury. As explained below, an organization’s diversion of staff

time or other resources qualifies as “lost money or property” to the organization, and that economic injury is directly and fairly caused by unlawful business practices in cases like this. The Court should not artificially restrict UCL standing to prevent organizations like CMA or ALDF who are legitimately impaired by an unlawful business practice from enjoining such a practice.

II. ORGANIZATIONS HAVE STANDING UNDER PROPOSITION 64 WHEN AN UNLAWFUL BUSINESS PRACTICE CAUSES THEM TO REASONABLY DIVERT STAFF TIME OR OTHER RESOURCES.

The UCL provides standing to any person who has “suffered injury in fact and has lost money or property as a result of [] unfair competition.” (Bus. & Prof. Code § 17204.)

Emphasizing “the plain language” of the statute, this Court has distilled the statutory language to a “simple” two-part test requiring a plaintiff to show: (1) “loss or deprivation of money or property sufficient to qualify as injury in fact, i.e. economic injury,” and (2) “that the economic injury was the result of, i.e. caused by, the unfair business practice....” (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 321-22.)

A. Staff time is valuable, and an organization’s expenditure of staff time or other resources qualifies as “lost money or property”.

An organization’s use of its limited resources undoubtedly qualifies as an economic injury, i.e. lost money or property. (See *Animal Legal Defense Fund v. LT Napa Partners LLC* (2015) 234 Cal.App.4th 1270.) Aetna argues that CMA’s expenditure of hundreds of hours of paid staff time specifically does not qualify

as a “form of a loss of ‘money or property’[.]” (Resp. Br. 33.) Aetna’s argument fails because staff time is a valuable resource to an organization—the same time expended responding to an unlawful practice cannot also be spent advancing the organization’s other preexisting priorities.

Case law supports the position that diversion of staff time qualifies as an economic injury. In *LT Napa*, ALDF advocated for legislation to prohibit the sale of foie gras and performed public outreach touting the law as it took effect. (234 Cal.App.4th at 1279-80.) Faced with a restaurant openly flouting that law, ALDF “expended significant staff time and resources” to investigate and counteract the unlawful activity by trying to persuade law enforcement authorities to enforce the law over a three-month span. (*Id.* at 1280.) Ultimately, the *LT Napa* court correctly determined that ALDF’s detection, investigation, and attempts to counteract the unlawful activity caused a “diversion of limited resources” that satisfied the UCL’s economic injury requirement. (*Id.*)

Significantly, the *LT Napa* court recognized the opportunity cost that ALDF suffered in response to the illegal foie gras sales: “[t]he diversion of limited resources has caused [plaintiff] postpone projects that would reach new media markets, reach new people, better develop [the] organization, and advance its mission.” (*LT Napa*, 234 Cal.App.4th at 1280.) To illustrate the point, staff time that ADLF spent dealing with illegal foie gras sales at the restaurant was time that could have been spent advocating to end the cruel production methods in

other states or at the federal level. (*See id.*) Although ALDF incidentally paid a private investigator to go to the restaurant (*id.*), that fact is immaterial because the bulk of ALDF's injury was the diversion of limited staff time from other activities to deal with the illegal foie gras sales.

This Court reached a similar conclusion as the *LT Napa* court about the economic nature of staff time when it held that a county's use of staff time qualified as an "expenditure of [] funds or other property" that could be enjoined by California's taxpayer statute. (*See Blair v. Pitchess* (1971) 5 Cal.3d 258.) In *Blair*, plaintiffs invoked California's taxpayer statute to enjoin law enforcement officials from serving legal process and seizing property in violation of the federal Constitution. (*Id.*) A threshold issue was whether county staff time qualified as an "illegal expenditure of . . . funds or other property" of the county subject to an injunction under the taxpayer statute. (*Id.* at 267, *citing* Code of Civ. Proc. § 526a.) This Court held that use of staff time was an expenditure of funds or other property: "the mere expenditure of the time of county officers is a sufficient expenditure of public funds to be subject to injunction under section 526a [of the Code of Civil Procedure]." (*Blair v. Pitchess* (1971) 5 Cal.3d 258, 285–86, n.21; *see also Wirin v. Horrall* (1948) 85 Cal.App.2d 497, 504-05.) Because county staff time alone was sufficient to show an expenditure of funds or other property, the *Blair* court did not bother measuring other forms of expenditure. (5 Cal.3d at 285–86, n.21.)

Additionally, the Civil Code supports the view that expenditure of staff time is a loss of property because it specifically lists “products of labor or skill” as an example of property. (See Civ. Code §§ 654 & 655.) As such, an organization suffers a loss of property when it diverts staff time to put aside one form of work product to create another form of work product.

Aetna argues that “loss of time is not an economic harm” and cites three cases in support of that argument. (Resp. Br. 33.) However, all of those cases involved the personal time of individual consumers and are therefore distinguishable from cases like *LT Napa* and *Blair* that involve staff time paid for by an organization. (See *Knippling v. Saxon Mortg., Inc.* (E.D. Cal. Mar. 22, 2012) 2012 WL 1142355, at *2 (individual’s personal time dealing with defendant); *Ruiz v. Gap, Inc.* (N.D. Cal. Feb. 3, 2009) 2009 WL 250481 (individual’s personal time spent monitoring credit), at *3-4; *In re Sony Gaming Networks & Customer Data Sec. Breach Litig.* (S.D. Cal. 2012) 903 F.Supp.2d 942, 966 (individual’s personal time spent monitoring credit).)

Lastly, any lingering ambiguity whether diversion of staff time qualifies as an economic injury under the UCL should be resolved in favor of CMA in this case. This Court has already recognized that “[t]here are innumerable ways in which economic injury from unfair competition may be shown.” (*Kwikset*, 51 Cal.4th at 323.) Slamming the gate on organizations like CMA and ALDF who suffer legitimate injuries by reasonably expending staff time in response to unlawful business practices is not tailored to the purpose of Proposition 64 to prevent

shakedown lawsuits. (*See In re Tobacco II Cases*, 46 Cal.4th at 317.) Rather, a restrictive holding by this Court would seriously hinder the “broad remedial” purpose of the UCL to protect against illegal, unfair, and deceptive business practices. (*See id.*)

B. Unlawful business practices reasonably cause an organization’s subsequent diversion or organizational resources in cases like this.

Aetna overly complicates a simple issue when it insists that an unlawful business practice does not cause the diversion of resources that an organization expends because of an unlawful business practice. To spin this argument, Aetna characterizes a diversion of resources as a “choice” that is solely responsible for the resulting loss of money or property. (*See Resp. Br.* 16-18.)

Far from being some lackadaisical choice, organizations in the position of CMA and ALDF find themselves stuck between a rock and a hard place when their missions or activities are frustrated by someone else’s unlawful business practice.

For example, in *LT Napa*, ALDF invested organizational resources to encourage the legislature to ban the sale of foie gras. (234 Cal.App.4th at 1280.) ALDF then touted the success and educated members and the public about it as the law became effective. (*Id.*) If restaurants and other sellers openly violated the foie gras sale with impunity then ALDF’s organizational investment to help enact the law would diminish, as would its good will with members, supporters, donors, and the public.

Notably, the “good will” of an organization is itself a form of “property” under California law. (*See Civ. Code* §§ 654 & 655.) It

may technically be accurate to characterize ALDF's diversion of resources in *LT Napa* as a "choice", it is unfair to shift responsibility and blame to ALDF for its reasonable and good faith decision about how to handle the unlawful business practice in that case.

The dynamic in the present case is similar for CMA as it was for ALDF in *LT Napa*. In this case, Aetna's unlawful practices burdened CMA by, for example, creating a deluge of complaints and requests for help from physicians who were terminated from Aetna's network for making out-of-network referrals. (See 3 JA 958 ¶ 6.) Had CMA chosen to ignore and hang the phone up on affected physicians, it would have lost good will. (See Civ. Code §§ 654 & 655.) Instead, it diverted staff time from other work to deal with problems caused by Aetna's unlawful conduct. (See 3 JA 958 ¶¶ 6 & 8.)

Aetna's claim that "any organization with a broadly defined 'mission'" could manufacture standing by diverting resources does not fit with facts like this case where a diversion is organic, reasonable, and done in good faith. (Resp. Br. 23.) Contrary to Aetna's concern, it is precisely *because* both ALDF and CMA are nonprofit organizations with focused missions that the unlawful business practices in our respective cases reasonably—and in good faith—motivated a diversion of organizational resources.

Moreover, Aetna's request to prohibit standing in cases like this is a request to throw the baby out with the bathwater. Case law already prohibits "manufactured" standing. Costs incurred solely to facilitate litigation represent an exception to the broad

scope of economic injuries allowed under the UCL. (*Buckland v. Threshold Enters., Ltd.* (2007) 155 Cal.App.4th 798, disapproved on another ground in *Kwikset, supra*, 51 Cal.4th at 337; *see also Two Jinn, Inc. v. Gov't Payment Serv., Inc.* (2015) 233 Cal.App.4th 1321.) Essentially, Aetna's concern is that organizations will manufacture standing even though they are already prohibited from manufacturing standing. Under the normal rules of civil procedure, an organization that is a UCL plaintiff must truthfully allege facts relating to standing that would withstand a demurrer and would be subject to discovery to test the veracity of those allegations.

III. ORGANIZATIONS WITH MEMBERS CAN SUFFER A DISCRETE INJURY THAT IS DISTINCT FROM THE INJURIES OF THEIR MEMBERS

Nothing in the text of the UCL restricts associations or organizations with members from suffering economic injury. "Organizations of persons" and "associations" are strictly included in the definition of a "person" who may bring a UCL claim. (Bus. & Prof. Code § 17201.)

Nor are there any additional standing requirements for organizations regarding their corporate structure, including whether they have members, as the Second District Court of Appeal suggested here. (*Cal. Med. Ass'n v. Aetna Health of Cal.* (2021) 63 Cal.App.5th 660, 669.) In finding that a membership organization cannot establish injury in fact under the UCL when it diverts resources to investigate and combat unlawful conduct that harms its mission, the Second District in this case conflated a

Section 17204 action based on an organization's direct economic injury with a representative action under Section 17203 brought by an organization to address the economic injuries of many individual organization members. (*Ibid* at 667–69.)

The Second District's error in this case overlooks the fact that a membership organization may have standing in two ways. It may have standing directly under the UCL regardless of whether it has members. Although an organization's members *may* be injured as well in such an instance, they are not always. And whether an organization's members are injured is not determinative of whether the organization *itself* suffers a loss of money or property. (*See Havens Realty Corp. v. Coleman* (1982) 455 U.S. 363, 378–79.)

The *LT Napa* court's holding and analysis illustrates the flaw in the Second District Court of Appeal's reasoning in this case. (*LT Napa*, 234 Cal.App.4th 1270.) In *LT Napa*, ALDF alleged that the restaurant's ongoing illegal sale of foie gras frustrated its mission and caused it to divert its resources away from other efforts. ALDF provided a declaration from its executive director that the basis for its direct economic injury was the organization's diversion of resources to combat the defendants' illegal sales of foie gras, and that ALDF would have otherwise put those resources toward different campaigns against practices that were not already illegal. The *LT Napa* court quoted extensively from ALDF's declaration and recognized that ALDF had standing under the UCL. (*LT Napa*, 234 Cal.App.4th at 1282–83.)

The *LT Napa* court was well aware that, at the time, ALDF had “more than 110,000 members” because it stated so in the declaration the court relied on. (Exhibit 1, ¶ 3.) Contrary to the Second District’s assumption, ALDF does sometimes represent the interests of its human members. (See *Kuehl v. Sellner* (8th Cir. 2018) 887 F.3d 845, 851 (holding that ALDF has associational standing to bring suit on behalf of members suffering an aesthetic injury by seeing animals kept in inhumane conditions at a private roadside zoo).)

However, the fact that ALDF has members and sometimes represents their interests is immaterial. In finding that ALDF established standing under the UCL, the *LT Napa* court found no need to address ALDF’s membership because ALDF’s injury was based on its organizational diversion of resources. (*LT Napa*, 234 Cal.App.4th at 1279–80.)

The Second District’s concern that if it held for CMA then “any organization acting consistently with its mission to help its members...could claim standing” appears to be based on a misconception about how injuries occur in these cases. (*Cal. Med. Ass’n*, 63 Cal.App.5th at 668.) Organizations like CMA and ALDF did not go out of their way to manufacture an injury in pursuit of a bad faith shakedown lawsuit. Rather, as explained above (*supra* Part II.B.) the unlawful business practices imposed some degree of frustration on the organizations that reasonably motivated expenditures of staff time and organizational resources in response. An organization such as CMA that diverts hundreds of staff hours—or, hypothetically, hundreds of thousands of staff

hours—should not be arbitrarily denied access to the UCL without support in the statutory text simply because the organization happens to have members.

CONCLUSION

The text and purpose of Proposition 64 show that California voters intended to impose a standing hurdle to keep frivolous lawsuits at bay but surmountable enough to maintain the UCL’s “broad remedial purpose” for persons suffering a bona fide economic injury. An organization that reasonably diverts staff time or other resources because of a defendant’s unlawful business practices clears this hurdle.

Dated: June 15, 2022

Respectfully submitted,

/s Christopher Berry

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.250(c), I hereby certify that this brief is produced using 13-point Century Schoolbook type, including footnotes, and contains 4,201 words, as counted by Microsoft Word.

Dated: June 15, 2022

Respectfully submitted,

s/ Christopher Berry

Christopher Berry

PROOF OF SERVICE

I, Christopher Berry declare as follows:

I am a citizen of the United States. I reside in Oakland, California. I am over the age of eighteen years and not a party to this action. My business address is: Animal Legal Defense Fund, 525 East Cotati Ave, Cotati, CA 94931.

On June 15, 2022, I served a copy of this APPLICATION OF ANIMAL LEGAL DEFENSE FUND FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER; AND BRIEF on the required parties by:

First, by causing to be placed copies of the document, via U.S. Mail enclosed in sealed envelopes with adequate postage, in a U.S.P.S. mailbox addressed as follows:

George Gascón Los Angeles County DA 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	The Honorable Elihu Berle Los Angeles Superior Court Department 3 312 North Spring Street Los Angeles, CA 90012
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Second, serving a copy of the document on the Attorney General through the office's website at https://oag.ca.gov/services-info/17209_brief/add.

In addition, all counsel of record in this matter are concurrently served with the foregoing via the True Filing service as required by this Court.

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

Executed on June 15, 2022, in Oakland, CA:

s/ Christopher Berry

Christopher Berry

EXHIBIT 1

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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **COUNTY OF NAPA**

11
12 ANIMAL LEGAL DEFENSE FUND, a
13 nonprofit corporation located in
14 California,

15 Plaintiff,

16 v.

17 LT NAPA PARTNERS, LLC,
18 incorporated in California;

19 KENNETH FRANK, an individual and
20 as owner of LT Napa Partners, LLC; and

21 DOES 1 through 25, inclusive,

22 Defendants.

Case No. 26-61166

**DECLARATION OF STEPHEN
WELLS IN OPPOSITION TO
DEFENDANTS' SPECIAL MOTION
TO STRIKE (SLAPP)**

Date: May 31, 2013

Time: 8:30 a.m.

Courtroom B

Judge: Hon. Diane M. Price

Date Action Filed: March 14, 2013

Trial Date: None Set

1 I, Stephen Wells, declare as follows:

2 1. The matters set forth in this declaration are true of my own personal knowledge,
3 and if called as a witness, I could and would testify to their truth.

4 2. I am a resident of Guerneville, California, and am executive director for the
5 Animal Legal Defense Fund (ALDF), Plaintiff in the above-captioned action. I have
6 worked for ALDF from 1999 to the present. I am responsible for coordinating the
7 activities of ALDF's various departments, including those responsible for our litigation
8 and outreach efforts to end force-feeding in the foie gras industry.

9 3. ALDF is a California-based, national non-profit organization involved in every
10 aspect of animal law. ALDF has spent over three decades focusing on issues involving
11 animals and the law; its main focus is the use of the legal system to assist courts and
12 legislatures in preventing animal cruelty and advancing the protection of the interests of
13 animals through the legal system. ALDF's groundbreaking efforts to use the legal system
14 to end the suffering of abused animals are supported by hundreds of dedicated attorneys
15 and more than 110,000 members. ALDF has been involved in the protection of animals
16 used and sold in commercial enterprises, with a focus on cruelty and intensive
17 confinement of animals used for food.

18 4. In recent years, the organization has become especially active in educating the
19 public about the animal welfare consequences of foie gras production. For example,
20 ALDF Director of Litigation Dillard wrote a blog post entitled "Why Focus on Foie
21 Gras" in September 2011. Scott Heiser, ALDF's Director of Criminal Justice, similarly
22 wrote a question-and-answer blog post about foie gras in July 2012. ALDF has also used
23 other media to educate the public, such as producing and disseminating a video entitled
24 "Foie Gras: Animal Cruelty and Consumer Threat."

25 5. In 2004, ALDF wrote letters of support for the bill that became California Health
26 and Safety Code Sections 25980, *et seq.* ALDF's Executive Director at the time, Joyce
27 Tischler, wrote separately to the bill's author John Burton and Senate Committee Chair
28 on Business and Professions Liz Figueroa to advocate for the bill's passage.

1 6. During the months before the law became effective, ALDF performed public
2 outreach to remind the public of the July 1, 2012 effective date and reinforce the law's
3 importance. For example, ALDF Litigation Director Dillard discussed the importance of
4 the law in his News10 debate with Defendant Frank.

5 7. Following the passage of the foie gras law, ALDF has tried to shift resources
6 elsewhere, such as educating the public about foie gras and advocating an end to cruel
7 production methods in other states and at the federal level.

8 8. ALDF's outreach efforts have included significant time and resources raising
9 awareness about the poor living conditions of ducks raised to produce foie gras, including
10 press releases and letter-writing campaigns to oppose force-feeding birds. ALDF has also
11 worked to gather information about foie gras production through state and federal public
12 records requests. ALDF attorneys have written letters to the California Attorney General
13 and the Better Business Bureau asking for false advertising actions against foie gras
14 producers claiming their product is humane.

15 9. ALDF attorneys have also filed numerous petitions and lawsuits urging an end to
16 force-feeding in the foie gras industry. ALDF has brought suit in New York State
17 concerning the state's approval of foie gras, which is a diseased product. It has brought
18 multiple suits in federal court. One suit claims that the USDA arbitrarily denied a petition
19 asking the agency to declare foie gras unfit for human consumption. Another suit alleges
20 that foie gras producers make false advertisements about the animal welfare
21 characteristics of the product. At the administrative level, ALDF also has a pending
22 petition to the USDA asking for a consumer warning label on foie gras products.

23 10. ALDF's communications department has spent significant resources raising
24 awareness about the poor living conditions for ducks being raised for foie gras. ALDF
25 has drafted press releases and has initiated letter writing campaigns to oppose the
26 inducement of disease by way of force-feeding in ducks raised for foie gras.

27

28

1 11. ALDF paid a private investigator, Kevan D. Kurt, to visit La Toque to attempt to
2 buy foie gras from Defendants on September 2, 2012, October 12, 2012, and March 3,
3 2013. On each occasion, the investigator reported that he ordered and received foie gras
4 as part of the meal he purchased.

5 12. Upon learning the results of the investigations at La Toque, paid staff at ALDF
6 diverted their attention from other ALDF projects to analyze the facts obtained during the
7 investigation. ALDF concluded that La Toque's serving of foie gras in the manner
8 reported by our investigator violates California Health and Safety Code Sections 25980,
9 *et seq.*

10 13. ALDF then expended significant staff time and resources to share its investigation
11 findings with Napa law enforcement authorities. ALDF attorneys diverted time and
12 attention from other projects and attempted to persuade the Napa authorities to enforce
13 California Health and Safety Code Sections 25980, *et seq.* over the course of at least
14 three months. The Napa City Attorney eventually declined to take legal action against La
15 Toque. ALDF performed further research and believes that Defendants' conduct squarely
16 fits within the law's prohibitions.


17 14. As a result of Defendants' refusal to follow the California Health and Safety Code
18 Sections 25980, *et seq.*, ALDF cannot engage in other activities that would better further
19 its organizational mission. The diversion of limited resources has caused ALDF to
20 postpone projects that would reach new media markets, reach new people, better develop
21 ALDF's organization, and advance its mission. ALDF continues to respond to
22 Defendants' sales of foie gras because it is compelled to expose and stop illegal sales of
23 products harming animal welfare.

24 15. Defendants' continuing violations of California Health and Safety Code Sections
25 25980, *et seq.*, harm ALDF's organizational mission, and cause ALDF to lose money due
26 to diverted staff time and resources. Foie gras sales at La Toque are ongoing, and ALDF
27 will continue to divert resources until the sales end. Were Defendants to cease their
28 unlawful foie gras sales, ALDF would no longer have to expend these resources.

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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.

Dated: May 16, 2013

By: 
Stephen Wells

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: **cberry@aldf.org**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	S269212_ACB_AnimalLegalDefFund

Service Recipients:

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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/Christopher Berry

Signature

Berry, Christopher (283987)

Last Name, First Name (PNum)

Animal Legal Defense Fund

Law Firm