

## California Supreme Court Rules on Unfair Competition Law

***The decision provides organizational plaintiffs, including nonprofits and trade associations, with a basis to establish standing to bring UCL claims.***

In July 2023 the California Supreme Court expanded the ability of organizations to sue under California's unfair competition law (UCL). In *California Medical Association v. Aetna Health of California Inc.*, the Court held that if an organization such as a trade association incurs costs while responding to a perceived fraudulent, unlawful, or unfair trade practice that threatens its bona fide, pre-existing mission, it has standing to sue so long as those costs were not incurred in connection with litigation of the organization's UCL claims.

### Background

The UCL is designed to deter anticompetitive business practices and generally promote competition in California. It achieves this aim (in part) by granting private parties the ability to seek injunctions and restitution for harms flowing from unfair competition. Prior to 2004, nearly any person, including organizations, could assert UCL claims. However, in 2004, the California electorate passed Proposition 64, which limited UCL standing to private plaintiffs who could demonstrate that they had suffered an "injury in fact" and economic harm "as a result of" the challenged conduct. These dual requirements effectively precluded "associational standing," which involves membership organizations (e.g., trade organizations and environmental clubs) asserting UCL claims on behalf of their members. However, whether Proposition 64 completely barred membership organizations from asserting UCL claims remained an open question.

The Court addressed this question in *California Medical Association v. Aetna Health of California Inc.* The case centers around a "Network Intervention Policy" of the defendant insurer, Aetna Health of California (Aetna). Aetna designed the policy to deter its in-network doctors from referring preferred provider organization (PPO) patients to out-of-network doctors. The plaintiff, California Medical Association (CMA), is a membership organization representing the interests of California doctors. The CMA opposed Aetna's Network Intervention Policy on the basis that the policy allegedly interferes with the ability of doctors to exercise their sound medical judgment. At first, the CMA spent its own resources, including employee time, in investigating and opposing Aetna's policy through non-litigation channels (e.g., advising physicians and the public regarding how to address Aetna's policy in an effort to avoid litigation). Eventually, the CMA elected to sue Aetna under the UCL. In its suit, the CMA claimed that its initial diversion of internal resources, including employee time, satisfied the UCL's standing requirements. The trial and appellate

courts both disagreed with the CMA, finding that the diversion of resources theory was insufficient to confer UCL standing upon the CMA. The CMA appealed to the California Supreme Court.

## The Decision

The California Supreme Court overturned the court of appeal's order affirming summary judgment to Aetna. In so doing, the Court concluded that the CMA may satisfy UCL organizational standing based on a diversion of resources theory.<sup>1</sup> According to the Court, the CMA suffered the type of economic injury required to establish UCL standing to the extent the CMA dedicated its resources in responding to the alleged unfair practice, Aetna's Network Intervention Policy.<sup>2</sup> The Court distinguished the CMA's organizational standing from the associational standing barred by California's passage of Proposition 64.<sup>3</sup> The latter type of standing involves an organization asserting standing based on injury to its members, whereas the former type of standing requires economic injury to the organization itself.<sup>4</sup>

The Court did impose limitations on organizational plaintiffs seeking to establish UCL standing under a diversion of resources theory. First, the Court found that an organizational plaintiff "must show that the defendant's actions have posed a threat to the plaintiff organization's mission, causing it to devote resources to allay the threat."<sup>5</sup> That organizational mission must be genuine and pre-existing, not a manufactured "pretext to create UCL standing."<sup>6</sup> Second, the Court held that an organization does not suffer UCL injury in fact to the extent its expenditures were incurred "in the course of UCL litigation, or to prepare for such litigation."<sup>7</sup> Because the CMA had a "bona fide mission of promoting the medical profession and public health" and responded to Aetna's Network Intervention Policy by expending "staff time and other resources," the Court concluded that there existed a triable issue of fact as to CMA's standing to sue under the UCL.<sup>8</sup>

## Implications

- The Court's decision provides organizational plaintiffs, including nonprofits and trade associations, with a basis to establish standing to bring UCL claims. Prior to the opinion, these organizations struggled to establish standing because Proposition 64 precludes organizational UCL standing under a representative theory of harm to the organization's members. The opinion may result in an influx of UCL lawsuits from organizations under a diversion of resources theory of UCL standing.
- Organizational plaintiffs asserting a diversion of resources theory remain limited in a few important respects. First, the Court made clear that organizations may not establish UCL standing based on expenditures incurred in preparing for or conducting UCL litigation. Second, the organization's diversion of resources must take place in pursuit of its bona fide mission, separate and apart from its planned UCL litigation.
- The Court limited its holding to *organizational* UCL standing and expressly declined to address *individual* UCL standing. In a footnote, the Court distinguished the case from a line of case law finding no UCL standing where individual plaintiffs claim to have suffered injury premised on the diversion of their uncompensated time in addressing the alleged unfair competition. Thus, the Court's opinion should not extend UCL standing to individual plaintiffs whose only asserted injury is the reallocation of their uncompensated time.

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**Endnotes**

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<sup>1</sup> *Id.* at \*5-10.

<sup>2</sup> *Id.* at \*5.

<sup>3</sup> *Id.* at \*7.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at \*12.

<sup>6</sup> *Id.* at \*15.

<sup>7</sup> *Id.* at \*13.

<sup>8</sup> *Id.* at \*15.