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NEWSLETTER OF THE UNFAIR COMPETITION LAW PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

## California's Fourth District Court of Appeal Applies the "Injury in Fact" and "Causation/Reliance" Elements of the UCL Standing Requirement to Uphold Dismissal of UCL Claim at Pleadings Stage

On January 7, 2008, the California Court of Appeal, Fourth District, issued an opinion upholding the dismissal (on demurrer) of a purported class action brought under the California Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.* ("UCL"), based on the application of the UCL's standing requirement of "injury in fact" and causation. *Hall v. Time Inc.*, --- Cal.App.4th ---, 2008 WL 68631 (Jan. 7, 2008). The decision further underscores the usefulness of the UCL standing requirement in obtaining dismissal – in some cases with prejudice – of inadequate UCL claims at the pleadings stage, and is thus good news to UCL defendants seeking viable defenses to be used in moving for early-stage dismissal.

In *Hall*, the plaintiff alleged that Time Inc. and certain affiliates ("Time") had engaged in an unlawful, unfair and/or fraudulent scheme to induce consumers to purchase books by offering a 21-day "free review period" with no obligation – but then sending "deceptive" invoices and bills that suggested an immediate, noncontingent payment obligation. The plaintiff alleged that he ordered a book subject to the 21-day free trial period, and then received the challenged invoices and bills requesting payment well before the "free trial" had expired. Plaintiff further alleged, however, that he kept the book and did not pay for it until 10 months later. The various defendants demurred and moved for judgment on the pleadings, which the trial court sustained and granted, respectively, without leave to amend. The Court of Appeal affirmed the resulting judgment.

The Court of Appeal noted that Section 17204 of the UCL, as modified by Proposition 64 in November 2004, provides a two-prong standing test, under which a private plaintiff has

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standing to assert a UCL claim only if he or she (1) "has suffered injury in fact" and (2) "has lost money or property as a result of such unfair competition." The Court rejected plaintiff's argument that he had alleged an injury in fact merely because he "expended money by paying Time" for the book. What mattered was that plaintiff "received a book in exchange," and he "did not allege he did not want the book, the book was unsatisfactory, or the book was worth less than what he paid for it." The Court also held that the UCL's use of the phrase "as a result of" imposes a clear causation (or "justifiable reliance") requirement – "that is, the alleged unfair competition must have caused the plaintiff to lose money or property." The Court concluded that this standing requirement was not met, either, as plaintiff had not alleged that Time's acts of alleged unfair competition had caused him to lose money or property. The challenged invoice "did not cause Hall to remit payment immediately on receiving the book: Rather, he remitted payment 10 months after receiving the book, long after the free trial period had expired," and plaintiff "did not allege he did not want the book or Time's alleged acts of unfair competition induced him to keep a book he otherwise would have returned during the free trial period."

The Court distinguished *Anunziato v. eMachines, Inc.*, 402 F.Supp.2d 1133 (C.D. Cal. 2005), in which a federal court held that a plaintiff need not show actual reliance on an alleged misrepresentation for standing to pursue a UCL fraud claim, on the grounds that the plaintiff in *Anunziato* did suffer actual damage caused by the defendant. Not so in *Hall*. Also, addressing plaintiff's reference to *McAdams v. Monier, Inc.*, 151 Cal.App.4th 667 (2007), *review granted*, 168 P.3d 869 (Sept. 19, 2007, No. S154088), the Court held that plaintiff's allegations did not satisfy the injury in fact and causation requirements either expressly or "by reasonable inference." (*McAdams* is currently subject to review before the California Supreme Court.) In closing, the Court held that the trial court correctly dismissed the complaint without leave to amend.

The ruling in *Hall* is a notable refinement of the UCL standing requirement. The Court rejected the simple notion that mere payment of money confers UCL standing, and it held squarely that the UCL demands allegation and proof that the challenged practice caused the plaintiff's injury. As standing to sue is an issue that can be raised at any stage of a case, including in connection with challenges to class certification (see, e.g., *Pfizer, Inc. v. Superior Court*, 141 Cal.App.4th 290 (2006), *review granted*, 146 P.3d 1250 (Nov. 1, 2006, No. S145775), also currently subject to review before the California Supreme Court), the *Hall* decision could prove to

have powerful impact in other pending UCL cases. UCL plaintiffs can expect to see the *Hall* decision mentioned early and often in pending actions, and the case might well discourage the filing of new UCL actions in which either the injury or causation requirements cannot be met.

**FOR ADDITIONAL INFORMATION ON THIS ISSUE, CONTACT:**



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