

California Supreme Court Further Clarifies Scope of UCL Claims Following Proposition 64

Posted on June 30, 2009 by [Larry Golub](#)

On June 29, 2009, the [California Supreme Court](#) issued two decisions that restrict the use of [California Business & Professions Code section 17200](#), otherwise known as the Unfair Competition Law (UCL). Both cases addressed aspects of the UCL as it now exists since the passage of [Proposition 64](#), which occurred in November 2004.

In one case, the Court, relying on the ballot materials that accompanied the proposition, confirmed that a private party may only pursue a representative claim under the UCL if that party complies with class action requirements. In the other case, the Court held that a labor union, which itself has not suffered actual injury, may not bring a UCL claim on behalf of its members, even if such members have assigned their rights to the union or if those rights are based on the doctrine of “associational standing.” These two nearly unanimous decisions come just weeks after the Court, in a divided 4-3 [decision](#), [In Re Tobacco II Cases](#) (decided May 18, 2009), found that following Proposition 64 only the class representatives (and not the absent class members) need to meet the “actual injury” standing requirement of the UCL.

The first decision, [Arias v. Superior Court \(Angelo Dairy\)](#) (pdf), involved a dairy employee who sued his former employer and others for a variety of California Labor Code violations and other labor regulatory violations. He also brought claims under the UCL on behalf of himself and other current and former employees of the defendants. The trial court struck the UCL claims on the grounds that plaintiff had failed to satisfy the pleading requirements for a class action. The Court of Appeal agreed, and the Supreme Court accepted review. In affirming the judgment below, the Court reviewed the Proposition 64 portion of the Voter Information Guide prepared by the Secretary of State issued in connection with the November 2, 2004 election, observing that there is “no doubt” that “one purpose of Proposition 64 was to impose class action requirements on private plaintiffs’ representative actions brought under the” UCL. In California, those class action requirements arise out of California Code of Civil Procedure section 382.

The second decision, [Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court \(First Transit, Inc.\)](#) (pdf), also addressed another aspect of the UCL modified by the passage of Proposition 64, specifically the standing requirement under Business & Professions Code section 17203 that a private party claim may only be brought by a “person who has suffered injury in fact and has lost money or property as a result of the unfair competition.”

In this case, 17 individuals and two labor unions brought an action against the defendants, with the unions alleging “representative” claims under the UCL on behalf of themselves and “all aggrieved transportation industry employees and former employees employed by” the defendants. The unions also alleged that they had received from 150 employees an assignment of their rights under the UCL. The trial court found that the unions did not have standing to sue in a representative capacity under the UCL since the unions did not suffer actual injury, and that the

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assignment did not rectify the lack of actual injury. The Supreme Court affirmed this trial court decision as well, concluding (1) that an assignment of rights by an injured employee cannot confer UCL standing on an uninjured assignee, and (2) that the doctrine of "associational standing," wherein an association that does not have standing in its own right may nevertheless have standing to bring a claim on behalf of its members, was not incorporated into the amendments to the UCL made by Proposition 64, which, again, requires "actual injury" by the person bringing the UCL action.

These two actions decided June 29, 2009, along with the *In Re Tobacco II Cases* action decided May 18, 2009, are but the latest Supreme Court decisions that have addressed the changes brought to the UCL by Proposition 64 over the past several years since the November 2, 2004 election. *See also Branick v. Downey Savings & Loan Ass'n.*, 39 Cal. 4th 234 (2006); *Californians for Disability Rights v. Mervyn's, LLC*, 39 Cal. 4th 223 (2006). And there are still further cases in the pipeline. Just weeks ago, the Court accepted review in *Kwikset Corp. v. Superior Court*, No. S171845 (review granted 6/11/09), a case that will address further standing requirements under the UCL, and late last year the Court accepted review in *Clayworth v. Pfizer, Inc.*, No. S166435 (review granted 11/19/08), which among other things is set to address the scope of restitution under the UCL as well as the whether UCL standing exists when a plaintiff recovers claimed overcharges from third persons.