

1
2
3 SUPERIOR COURT OF THE STATE OF CALIFORNIA
4 IN AND FOR THE COUNTY OF ALAMEDA
5
6

7	Hoffman v. American Express	2001-022881
8	Turner v. Allstate	2002-046665
9	Ryan Hanan v. Ford	HG03-086629
10	Cellphone Termination Fee Cases	JCCP 004332
11	Cross Country Bank Cases	JCCP 004380
12	Turner v. State Farm	RG03-078358
13	Turner v. Farmers Ins. Co.	RG03-078362
14	Goldman v. Furniture Traditions	RG03-083217
15	FATE v. Covenant Care	RG03-087211
16	FATE v. Ember Care	RG03-087224
17	FATE v. GranCare	RG03-103363
18	The Utility Consumers Action Network v. Pacific Bell	RG04-174050
19	Center For Biological Diversity, Inc. v. FPL	RG04-183113

[SECOND TENTATIVE] ORDER (1)
DENYING MOTIONS TO STRIKE
UCL CLAIMS ASSERTED BY
PRIVATE PARTIES IN THE
INTEREST OF THE GENERAL
PUBLIC; and (2) DENYING MOTIONS
TO STRIKE UCL CLAIMS
ASSERTED BY PRIVATE PARTIES
IN THEIR OWN INTERESTS.

Date: February 10, 2004
Time: 9:00 am

1 PROCEDURE

2 All of the motions in the above cases concern how to apply the statutory amendments
3 made in Proposition 64 to pending cases that were filed on or before November 2, 2004. The
4 Court was inclined to frame the issues in ways that were not addressed directly by the parties in
5 their initial briefs so it issued a tentative decision on January 28, 2005, and permitted Plaintiffs,
6 Defendants, the Attorney General, and the Alameda County District Attorney to file briefs to
7 address the tentative basis for the Court’s decision. See *Bacon v. Southern Cal. Edison Co.*
8 (1997) 53 Cal.App.4th 854, 860.

9
10 After the Court’s tentative decision of January 28, 2005, and before the hearing on
11 February 10, 2005, the Court of Appeal, First Appellate District, issued an opinion in
12 *Californians for Disability Rights v. Mervyn's (“Mervyn’s”)* (February 1, 2005) 2005 Cal. App.
13 LEXIS 160, that addresses the Proposition 64 issues.

14
15 The Court of Appeal certified *Mervyn’s* for publication. C.R.C. 977(d) states “A
16 published California opinion may be cited or relied on as soon as it is certified for publication or
17 ordered published.” The Court notes that under C.R.C. 24(b)(1), *Mervyn’s* is not a final decision
18 until 30 days after filing. As the Court understands the law, the ability to cite a case concerns
19 whether it can be relied upon by lower courts as authority and is distinct from the finality of a
20 decision for purposes of entering judgment and calendaring appeal dates.

21 ///
22 ///
23 ///
24 ///
25 ///

1 DECISION.

2 All of the motions to strike, demurrers, and other motions by Defendants based on
3 Proposition 64 are DENIED. The *Mervyn*'s decision is directly on point concerning how to
4 apply the statutory amendments in Proposition 64 to claims under California's Unfair
5 Competition Law, Business and Professions Code 17200 et seq ("UCL") that were filed on or
6 before November 2, 2004. *Mervyn*'s compels the Court to deny the various defense motions to
7 strike the UCL claims. *Auto Equity Sales, Inc. v. Superior Cour* (1962) 57 Cal. 2d 450, 455.
8

9 The result is that the Plaintiffs in the above cases may continue to pursue UCL claims in
10 their own interests and in the interest of the general public. UCL claims filed on or before
11 November 2, 2004, will be governed by the text of sections 17203 and 17204 as they existed
12 before the adoption of Proposition 64.
13

14 The Court takes judicial notice of the Official Voter Guide for the November 2, 2004,
15 election. The Court also takes judicial notice of the decisions of other trial courts, although
16 other trial court decisions are not binding on this court.

17 The Court will issue separate orders in the individual cases that are set for hearing on
18 February 10, 2005. If Counsel have issues that are not addressed by this order, they should be
19 prepared to discuss them at the hearing.

20 The Court understands that the Third and Fourth Districts of the Court of Appeal may
21 consider issues related to Proposition 64 in the near future. These issues may eventually reach
22 the California Supreme Court. If there is a change in the law, then the parties to the above
23 actions may renew their motions. C.C.P. 1008; *Int'l Ins. Co. v. Superior Court* (1998) 62 Cal.
24 App. 4th 784, 788.
25

26 What follows is dicta.

1 WHY THE DICTA?

2 The Court will state, by way of dicta, how it would have applied Proposition 64 to cases
3 that were filed on or before November 2, 2004, in the absence of the *Mervyn*'s decision. The
4 Court takes this exceptional step for two reasons.

5 First, a lower court may define issues and explore alternatives to the current state of the
6 law in an effort to assist the Court of Appeal in determining whether to change the law. *People*
7 *v. Willis* (2002) 27 Cal. 4th 811, 817-821 (considering the concerns of the lower courts and then
8 changing the law to address those concerns). If the trial court does not recognize and discuss an
9 issue, the issue might be deemed waived and the Court of Appeal might not to consider it.
10 Therefore, the Court will state its thoughts publicly.
11

12 Second, Plaintiffs and Defendants are presenting arguments that appear to be result
13 oriented and that do not address all the legal issues and potential judicial options. Sometimes it
14 is the Court's responsibility to consider and explore independently what should be the proper
15 result in a case. *Abbott Laboratories v. Mead Johnson & Co.* (7th Cir. 1992) 971 F.2d 6, 22-23
16 ("Each party, it appears, tried to hit a home run ... Neither offered alternative conclusions that
17 steered a reasonable middle ground.")
18

19 The Court is acutely aware that the parties in these cases have no incentive to raise the
20 full range of options. The Defendants want the claims against them dismissed – they have no
21 interest in suggesting that public entities continue prosecution of the UCL claims in the interest
22 of the public. The Plaintiffs want to continue to control the litigation of UCL claims in the
23 interest of the public – they have no interest in letting the UCL claims proceed under the
24 direction and control of public entities.
25
26

1 The Court’s reading of Proposition 64 and the ballot materials leads it to the conclusion
2 that the electorate wanted UCL claims in the interest of the general public to be prosecuted by
3 public entities. Under this Court’s suggested approach, the Plaintiffs would lose control of UCL
4 claims asserted on behalf of the public, public entities would immediately assume prosecution of
5 claims on behalf of the general public, and the Defendants would be required to defend pending
6 UCL claims brought on behalf of the public. This appears to be the result intended by the
7 electorate, but it is a result that will not please any of the named parties to these cases. The Court
8 states its thoughts in an effort to broaden the discussion and to provide the appellate courts the
9 opportunity to consider a fuller range of alternatives.
10

11
12 PROSECUTION OF UCL CLAIMS BEFORE PROPOSITION 64.

13 Before Proposition 64, three different types of plaintiffs could prosecute UCL claims: (1)
14 the Attorney General or any other public entity in the interest of the People of the State of
15 California; (2) private parties in the interest of the general public; and (3) private parties in their
16 own interest. These three categories of cases were expressly identified in Business and
17 Professions Code 17204, which stated, “Actions for any relief pursuant to this chapter shall be
18 prosecuted exclusively in a court of competent jurisdiction by [1] the Attorney General or any
19 district attorney ... in the name of the people of the State of California upon their own complaint
20 or upon the complaint of any board, officer, person, corporation or association or by any person
21 acting for the interests of [2] itself, its members or [3] the general public.”
22
23

24 Before Proposition 64, the UCL permitted all types of plaintiffs to obtain injunctive and
25 monetary relief from a defendant that had engaged in any unlawful, unfair, or fraudulent business
26 act. Where the UCL claim was asserted in the interest of the general public, the Court could

1 order injunctive and monetary relief for the benefit of the general public even though the affected
2 members of the general public were not parties to the case either as named plaintiffs or absent
3 class members.

4
5 PROPOSITION 64.

6
7 Proposition 64 was approved by the general public in an election on November 2, 2004,
8 and became effective the next day. Cal. Const. Art. II, § 10 (a) (“An initiative statute or
9 referendum approved by a majority of votes thereon takes effect the day after the election unless
10 the measure provides otherwise.”)

11 Proposition 64 contains nine separate sections: section 1 is the “Findings and Declaration
12 of Purpose,” sections 2-6 are statutory amendments; and sections 7-9 concern the application of
13 the statutory amendments. The statutory amendments concern Business and Professions Code
14 sections 17203, 17204, 17206, 17535, and 17536. The amendments to a single statutory section
15 can concern more than one issue. Specifically, the amendment to section 17204 both eliminates
16 the right of a private person to represent the general public and requires a person bringing a UCL
17 claim in his or her own interest to meet heightened standing requirements. This Court would
18 have considered each issue separately.

19
20 It is also worth noting that the UCL is a complex statute with both procedural and
21 substantive provisions. Procedurally, the UCL previously authorized claims by government
22 entities, private persons in the interest of the general public, and private persons in their own
23 interests. Substantively, the UCL permits claims for unlawful, unfair, and fraudulent business
24 practices. Paraphrasing *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 757-758,
25 although the UCL has been treated as an omnibus consumer protection statute, the Court should
26

1 be careful not to assume that all UCL claims are procedurally and substantively similar. Such an
2 assumption would “fail[] to attend to the complexity of the [UCL] and the variety of claims that
3 may be adjudicated under its rubric.” *Id.*, 98 Cal.App.4th at 757.

4 *Mervyn’s* does not consider separately the different sections of Proposition 64.

6 INTERPRETIVE TOOLS AND OVERALL PURPOSE OF PROPOSITION 64.

7
8 As directed by *People v. Canty* (2004), 32 Cal. 4th 1266, 1276-1277, the Court would
9 interpret Proposition 64 using the same principles that govern the construction of a statute. The
10 Court’s role is to ascertain the electorate’s intent so as to effectuate the purpose of the law. The
11 Court first examines the language of the proposition and gives the words their usual, ordinary
12 meaning. If the language is clear and unambiguous, the Court follows the plain meaning of the
13 measure. This “plain meaning” rule does not, however, prohibit a court from examining whether
14 the literal meaning of a measure comports with its purpose. The language is construed in the
15 context of the measure as a whole. The intent of the law prevails over the letter of the law and
16 the letter will, if possible, be read to conform to the spirit of the act.

17
18 Given the importance of the intent and spirit of the law, the Court would consider the
19 “Findings and Declaration of Purpose” in Proposition 64, Section 1, and the voter information
20 guide. *People v. Canty* (2004) 32 Cal. 4th 1266, 1280 (“statements of the intent of the enacting
21 body contained in a preamble, while not conclusive, are entitled to consideration”); *Hayward*
22 *Area Planning Assn. v. Alameda County Transportation* (1999) 72 Cal. App. 4th 95, 104-105
23 (“[I]f the meaning of the words is not clear courts can use interpretative aids; with respect to
24 voter-approved enactments, these aids include the ballot analysis, the official summary, and the
25 arguments presented to the voters.”).

1 The Court would have found that the central purpose of Proposition 64 was to ensure that
2 only public entities prosecuted UCL claims in the interest of the general public. Proposition 64
3 permits private parties to continue pursuing private UCL claims to recover compensation for
4 actual injuries and permits those parties to pursue class actions on behalf of similarly situated
5 injured persons. This is similar to the law in other states. What Proposition 64 was intended to
6 do was to close the “loophole” that “no other state allows” that permitted private persons to
7 “‘appoint’ themselves to the act like the Attorney General.” Ballot Argument in Favor of
8 Proposition 64. The Court would have found that Proposition 64 and the voter information guide
9 suggest that the electorate intended to immediately transfer the prosecution of claims in the
10 interest of the general public from private parties to public entities.
11

12
13 PROPOSITION 64’S EFFECT ON SUBSTANTIVE LAW.
14

15 Proposition 64 did not affect change the UCL’s standards for permissible conduct. Under
16 Business and Professions Code 17203, “Any person who engages, has engaged, or proposes to
17 engage in unfair competition may be enjoined in any court of competent jurisdiction.” Business
18 and Professions Code 17200 defines unfair competition as “any unlawful, unfair, or fraudulent
19 business act.” Proposition 64 did not change these provisions. Any act that was unlawful,
20 unfair, or fraudulent under the UCL before November 3, 2004, remains unlawful, unfair, or
21 fraudulent.
22

23
24 PROPOSITION 64’S EFFECT ON WHO CAN PROSCUTE A UCL CLAIM.
25

26 The primary effect of Proposition 64 was to change who can prosecute a UCL claim. As
it reads after the adoption of Proposition 64, section 17204 states, “Actions for any relief

1 pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction [1] by
2 the Attorney General or any district attorney ... in the name of the people of the State of
3 California upon their own complaint or upon the complaint of any board, officer, person,
4 corporation or association or [2] by any person who has suffered injury in fact and has lost
5 money or property as a result of such unfair competition.” The amendment deletes the words
6 that permitted private persons to prosecute UCL claims in the interest of the general public and
7 adds words that require private persons who prosecute UCL claims in their own interest to have
8 suffered actual injury.
9

10 *Mervyn’s* does not consider separately the effect of Proposition 64 UCL on claims
11 brought by public entities, by private persons in the public interest, and by private persons for
12 private interests. *Mervyn’s* appears to conflate the interests of the plaintiff organization
13 (Californians for Disability Rights) with the interests of the general public. Applying *Mervyn’s*
14 can be difficult because the Court of Appeal based its decision in substantial part on the facts of
15 that case, but never states in the caption or in the text of the opinion whether the plaintiff
16 organization brought the action on its own behalf, as an association on behalf of its members, or
17 in the interest of the general public. This trial court thinks those distinctions are important.
18

19 Starting with the letter of the UCL as amended, the Court would focus on the word
20 “prosecuted” in section 17204. California courts have held consistently that “prosecution”
21 includes every aspect of a case through final judgment. See *Ramos v. Superior Court* (1982) 32
22 Cal. 3d 26, 36 (“The term “prosecution” is sufficiently comprehensive to include every step in an
23 action from its commencement to its final determination.”). See also *Melancon v. Superior*
24 *Court of Los Angeles County* (1954) 42 Cal. 2d 698, 707-708. This definition of “prosecution” is
25 also implicit in Code of Civil Procedure 583.110 et seq (especially 583.420) and California Rule
26

1 of Court 373 (especially subsection (e)), regarding the dismissal of cases for delay in prosecution.
2 The Code of Civil Procedure and Rules of Court are not concerned with delay in filing a case
3 (which is covered by the statute of limitations), but the delay in bringing the case to trial after it
4 has been filed.

5 *Mervyn's* does not discuss the meaning of the word “prosecution” and how it affects the
6 application of section 17204 (as amended) to pending cases.
7

8
9 CLAIMS BY PUBLIC PROSECUTORS IN THE INTEREST OF THE PEOPLE OF THE
10 STATE OF CALIFORNIA.

11 When government entities pursue UCL claims in the name of the people of the State of
12 California, the UCL claims are in the nature of law enforcement actions. *People v. Pacific Land*
13 *Research Co.* (1977) 20 Cal.3d 10, 17 (UCL claim by the Attorney General “is fundamentally a
14 law enforcement action designed to protect the public and not to benefit private parties.”). The
15 government entities act as representatives of the people as an indivisible whole. *People v.*
16 *Eubanks* (1996) 14 Cal.4th 580, 589-590, states, “The prosecutor speaks not solely for the victim,
17 or the police, or those who support them, but for all the People. That body of 'The People'
18 includes the defendant and his family and those who care about him. It also includes the vast
19 majority of citizens who know nothing about a particular case, but who give over to the
20 prosecutor the authority to seek a just result in their name.”
21

22 Proposition 64 has not changed the ability of the Attorney General, any district attorney,
23 or any authorized government entity to “prosecute” a UCL claim in the name of the people of the
24 State of California. This is clear from Section 1(g) of Proposition 64, which states “It is the
25 intent of California voters in enacting this act that Attorney General, district attorneys, county
26

1 counsels, and city attorneys maintain their protection authority and capability under the unfair
2 competition laws.”

3
4 CLAIMS BY PRIVATE PERSONS IN THE INTEREST OF THE GENERAL PUBLIC.

5 This Court would have held that Proposition 64 transfers the prosecution of UCL claims
6 in the interest of the general public from private parties to public entities. In reaching that
7 conclusion, the Court would examine (1) who was the real party in interest when a claim was
8 asserted “in the interest of” the general public, (2) what is “the general public,” (3) who
9 represents “the general public,” and (4) can “the general public” choose how it is represented in
10 legal proceedings before getting to (5) whether the general public intended to permit private
11 parties to represent it after Proposition 64.
12

13
14 WHO WAS THE REAL PARTY IN INTEREST WHEN A PRIVATE PARTY ASSERTED A
15 UCL CLAIM IN THE INTEREST OF THE GENERAL PUBLIC?
16

17 The Court would have held that when private parties asserted UCL claims in the interest
18 of the general public the real party in interest was the general public.

19 Before Proposition 64, Section 17203 read, “Actions for any relief pursuant to this
20 chapter shall be prosecuted exclusively in a court of competent jurisdiction ... by any person
21 acting for the interests of ... the general public.” The plain language of the statute suggested that
22 when a private party pursued a UCL claim in the interest of the general public, the real party in
23 interest was not the named plaintiff but “the general public.”
24

25 In the first case to apply this language, *Hernandez v. Atlantic Finance Co.* (1980) 105
26 Cal. App. 3d 65, stated, “[W]e read the statute as expressly authorizing the institution of action

1 by any person on behalf of the general public. The Legislature has provided that suit may be
2 brought by any person acting in his own behalf *or* on behalf of the general public.” The Court
3 then distinguished actions on behalf of the general public prosecuted by a private attorney general
4 with a class action where the named plaintiff has suffered damages, is pursuing his or her own
5 claim, and seeks to represent similarly situated persons. This suggests that the court considered
6 claims in the interest of the public as distinct from claims in the interest of the named plaintiff.
7 See also *Prata v. Superior Court* (2001) 91 Cal. App. 4th 1128, 1138-1139 (claim in interest of
8 general public is distinct from claim in interest of named plaintiff).
9

10 A claim by a private person in the interest of the general public is similar to a claim by a
11 government official in the interest of a state department or agency – the former may be the named
12 party but the latter is the real party in interest. Federal Rule of Civil Procedure 25(d)(1),
13 regarding substitution of parties, acknowledges this and states, “when a public officer is a party
14 to an action in an official capacity and during its pendency ... ceases to hold office, then the
15 action does not abate and the officer's successor is automatically substituted as a party.”
16

17 The Court observes that the role of the general public in claims “in the interest of the
18 general public” could have been clarified by earlier attention to C.C.P. 367. This section states,
19 “Every action must be prosecuted in the name of the real party in interest, except as otherwise
20 provided by statute.” UCL jurisprudence might have developed differently if actions “in the
21 interest of the general public” had been captioned “*THE GENERAL PUBLIC ex rel. Jane*
22 *Plaintiff v. ACME CO.*” instead of “*JANE PLAINTIFF in the interest of the general public v.*
23 *ACME CO.*”
24
25
26

1 The Court would have concluded that although private parties that assert UCL claims in
2 the interest of the general public may devote time and energy to the claims, the real party in
3 interest is the general public.

4 *Mervyn's* suggests that the named plaintiff (a private organization) had an interest in
5 pursuing a UCL claim in the interest of the public. *Mervyn's* did not, however, discuss whether
6 the named plaintiff was bringing the UCL claim for its own benefit, for the benefit of its
7 members, or in the interest of the public. Therefore, it is unclear whether *Mervyn's* holds that the
8 named plaintiff is the real party in interest when a UCL claim is brought on behalf of the public.
9 *People v. Ault* (2004) 33 Cal. 4th 1250, 1268 (“It is axiomatic that cases are not authority for
10 propositions not considered.”)
11

12 13 WHAT IS THE “GENERAL PUBLIC”?

14 The Court would hold that when a private plaintiff brought a UCL claim in the interest of
15 the general public under former Business and Professions Code 17204, the plaintiff represented
16 the public as a whole. The Court could not locate any law directly on this subject, but the
17 “general public” presumably has the same meaning as the “People of the State of California”
18 under Government Code 100(a).¹
19

20 The judicial treatment of claims in the interest of the general public suggests that they are
21 in the interest of the public as a whole and not in the interest of the named plaintiff, persons
22 similarly situated to the named plaintiff, or persons injured by the result of the unfair
23

24
25 ¹ *Rosenbluth International, Inc. v. Superior Court* (2002) 101 Cal. App. 4th 1073, could be read as holding that only
26 consumers are member of the general public. The Court understands *Rosenbluth's* rationale to be that the named
plaintiff was not competent to represent the injured persons (large corporations), not that the injured persons were
not members of the general public. As a general matter, corporations are members of the general public and are

1 competition. For example, a judgment on a UCL claim in favor of the general public is not
2 binding on the individual members of the public. *Corbett v. Superior Court* (2002) 101 Cal.
3 App. 4th 649, 662 (majority) and 684 (dissent); *Payne v. National Collection Systems, Inc.*
4 (2001) 91 Cal. App. 4th 1037. In addition, if a private person obtains relief for the general
5 public, the plaintiff usually seeks to recover fees under C.C.P. 1021.5 for benefits conferred on
6 the general public.

7
8 The definition of the “general public” is open to dispute. In *Kraus v. Trinity Management*
9 *Services, Inc.* (2000) 23 Cal. 4th 116, the Court indicates that UCL claims not certified as class
10 actions could nevertheless be “brought on behalf of absent persons.” *Id* at 121. See also *Kraus*
11 at 126 fn 10, and 138 fn 18. There is no statutory basis for these statements and the Court
12 seemed to be taking the allegations of the complaint as true. See *Kraus* at 125 fn 9.

13 Alternatively, the Court could have simply been acknowledging the reality that claims prosecuted
14 by the general public for public purposes can result in incidental benefits (restitution) to the
15 injured members of the public. See, e.g. Penal Code 1204.4(f) and (j) (restitution can be awarded
16 to victims in criminal cases).

17
18 The Court also notes that there is some case law suggesting that UCL claims by private
19 persons in the interest of the public are not as “public” as claims by public prosecutors on behalf
20 of the People of the State of California. *People ex rel. Orloff v. Pacific Bell* (2003) 31 Cal. 4th
21 1132, 1154 n12, *Net2phone, Inc. v. Superior Court* (2003) 109 Cal. App. 4th 583, 587, and
22 *Payne v. National Collection Systems, Inc.* (2001) 91 Cal. App. 4th 1037, 1044-1047. Although
23 these cases implicitly suggest that the “People of the State of California” has a different meaning
24

25
26 entitled to the protection of California law. *People v. Eubanks* (1996) 14 Cal. 4th 580 (criminal prosecution for theft
of trade secrets from large corporation).

1 than the “general public,” they do not explain why there is a difference or what that difference
2 might be. In the absence of clear direction, the Court would conclude that the “general public”
3 has the same meaning as the “People of the State of California.”
4

5 WHO REPRESENTS “THE GENERAL PUBLIC”?
6

7 Before Proposition 64, section 17204 permitted private persons to prosecute actions on
8 behalf of the general public.²

9 Former section 17204 was a departure from the ordinary course of things, where the
10 Executive branch enforces laws in the interest of the public. Cal. Const., art. V, § 13 (“It shall be
11 the duty of the Attorney General to see that the laws of the State are uniformly and adequately
12 enforced.”); Government Code § 26500 (“The district attorney is the public prosecutor, except as
13 otherwise provided by law. The public prosecutor shall attend the courts, and within his or her
14 discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.”)
15 See also *People v. Oakland Water Front Co.* (1879) 118 Cal. 234, 239 (the attorney general has
16 the authority and power to institute or prosecute proceedings in the name or on behalf of “the
17 people of the state”); *People v. Cortes* (1990) 71 Cal. App. 4th 62, 79 (“our state Constitution
18 delegates the prosecutorial function to the executive branch, which is represented by the district
19 attorney.”)
20

21 ///

22 ///

23 ///

1 CAN THE GENERAL PUBLIC CHOOSE WHO CAN REPRESENT IT IN THE COURTS?

2 The people of the State of California can presumably (through the Legislature or in a
3 ballot initiative) determine who can represent the people in litigation. This Court would hold
4 that the amendment to section 17204 in Proposition 64 demonstrates that the people intended to
5 eliminate the ability of private persons to prosecute actions on behalf of the general public and
6 intended to transfer that authority to public officials. This is the effect of the amendment to
7 section 17204. The “Findings and Declaration of Purpose” in Proposition 64, Section 1, and the
8 ballot statement also suggest this intent.
9

10 In the “Findings and Declaration of Purpose” in Proposition 64, Section 1, the people of
11 the State of California found and declared that some private attorneys were filing “lawsuits on
12 behalf of the general public without any accountability to the public and without adequate court
13 supervision.” Section 1(b)(4). The section then states, “It is the intent of California voters in
14 enacting this act that only the California Attorney General and local public officials be authorized
15 to file and prosecute actions on behalf of the general public.” Section 1(f). This is a strong
16 suggestion that the people wanted to transfer the authority for prosecuting claims in the interest
17 of the public from unaccountable and unsupervised private attorneys to government officials.
18

19 The arguments in the voter information guide echo this purpose. The Argument in Favor
20 of Proposition 64 states:

21 Shakedown lawyers ‘appoint’ themselves to act like the Attorney General
22 and file lawsuits on behalf of the people of the State of California,
23 demanding thousands of dollars from small businesses that can’t afford to
fight in court.

24 * * *

25 ² There are other examples where the general public has, through the Legislature or by initiative, enacted laws that
26 permit private persons to prosecute actions on behalf of the general public. See Health and Safety 1430(a)
(regulation of long term care facilities); Health & Safety 25249.7 (Proposition 65).

1 Here's why 'YES' on Proposition 64 makes sense: ...

2 * Allows only the Attorney General, district attorneys, and other public
3 officials to file lawsuits on behalf of the People of the State of California
4 to enforce California's unfair competition law.

5 The Rebuttal to Argument Against Proposition 64 states:

6 Here's what 64 really does:

7 * Stops fee-seeking lawyers from exploiting a loophole in California law -
8 A LOOPHOLE NO OTHER STATE HAS – that lets them 'appoint'
9 themselves to act like the Attorney General and file lawsuits on behalf of
10 the people of the State of California.”

11 * Permits only real public officials like the Attorney General or District
12 Attorneys to file lawsuits on behalf of the People of the State of California.

13 As directed by *Canty*, 32 Cal. 4th at 1276-1277, the Court's role is to ascertain the
14 electorate's intent so as to effectuate the purpose of the law. It appears to this Court that the
15 electorate wanted claims in the interest of the general public to be prosecuted only by “real public
16 officials.”

17 DID THE GENERAL PUBLIC INTEND TO PERMIT PRIVATE PARTIES TO REPRESENT
18 IT AFTER THE PASSAGE OF PROPOSITION 64?

19 The focus of these motions is on how the general public expected to be represented in
20 cases that were filed by private parties in the interest of the public before November 3, 2004.

21 The Court would consider the text of the statutory amendments, the “Findings and Declaration of
22 Purpose,” and the information in the voter information guide.

23 The statute itself suggests that the general public wanted to be represented only by public
24 entities immediately after the passage of Proposition 64. Section 17204 says that actions under
25 the UCL “shall be prosecuted exclusively” by public entities in the interest of the people of the
26 State of California. The term “prosecution” includes every step in an action from its

1 commencement to its final determination, so after November 2, 2004, only public entities could
2 “prosecute” public claims.

3 The “Findings and Declaration of Purpose” states at Section 1(f), “It is the intent of
4 California voters in enacting this act that only the California Attorney General and local public
5 officials be authorized to file and prosecute actions on behalf of the general public.” This could
6 be read as either (1) only public entities are authorized to file and to prosecute actions on behalf
7 of the general public or (2) only public entities are authorized to file [new actions] and prosecute
8 actions [previously filed by public entities] on behalf of the general public, but private entities
9 that have already filed actions on behalf of the general public may continue to prosecute those
10 actions. The former interpretation is consistent with the statute and the latter interpretation is
11 strained.
12

13 The ballot arguments also suggest that the general public wanted to be represented only
14 by public entities immediately. The Argument in Favor states:

15 Here’s why a ‘YES’ on Proposition 64 makes sense: ...

- 16 · Stops these shakedown lawsuits ...
- 17 · Settlement money goes to the public, not the pockets of unscrupulous
18 trial lawyers.

19 The Rebuttal to Argument Against Proposition 64 states:

20 Here’s what 64 really does: ...

- 21 · Stops Abusive Shakedown Lawsuits ...
- 22 · Stops trial lawyers from pocketing FEE AND SETTLEMENT
23 MONEY that belongs to the public.

24 The statements that Proposition 64 will “stop” the “shakedown lawsuits” suggest that the
25 effect will be immediate. The statements that Proposition 64 will stop private counsel from
26 being paid from the settlement of UCL claims so that all settlement funds can be distributed to

