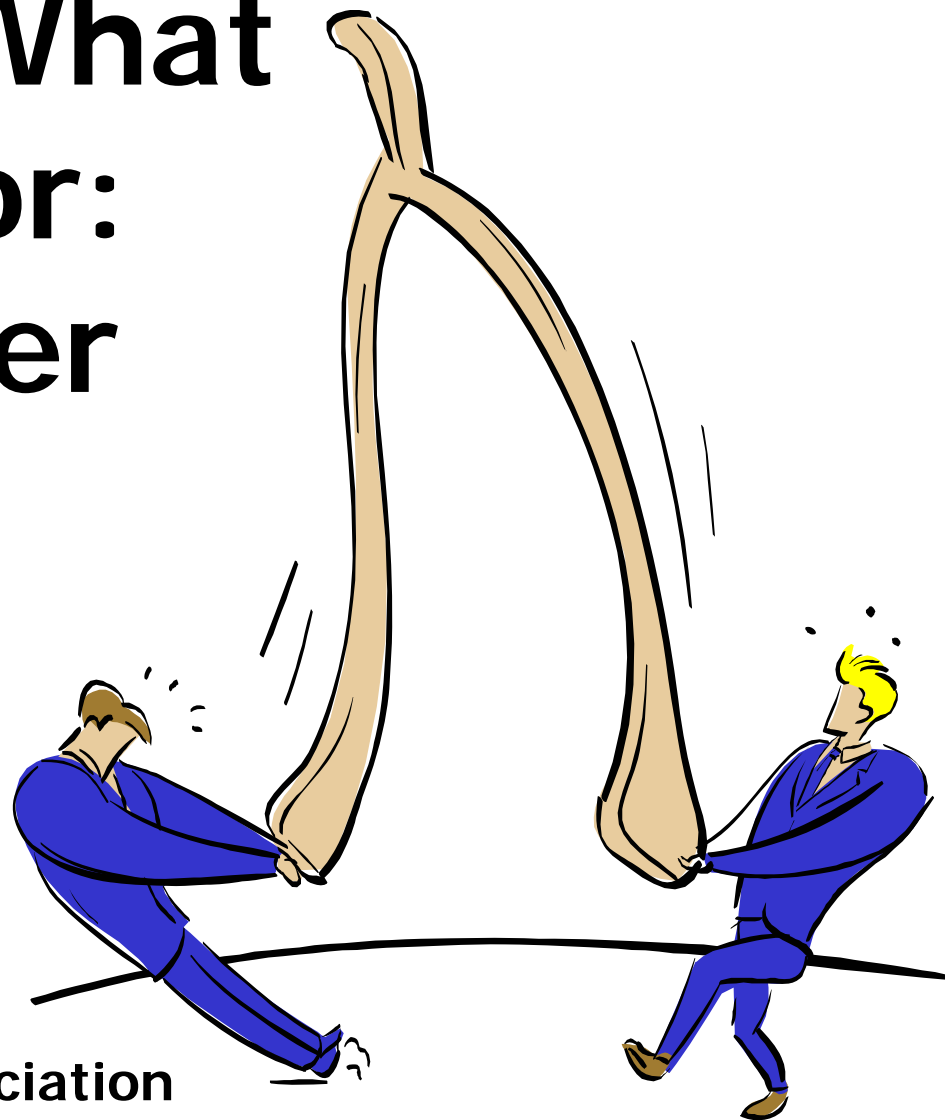


Be Careful What You Wish For: The UCL After Prop. 64

Michael Sweet
Kimberly A. Kralowec

December 1, 2005

Santa Clara County Bar Association



How did we get here?

- Trevor Law Group
 - Actions against nail salons and auto shops. Single plaintiffs with huge number of defendants. Lots of immigrant/mom & pop businesses. Extracted settlement money.
 - Resignation from bar with charges pending September 17, 2003.





Attempts at legislative fix



- Several attempts to change 17200 in legislature rebuffed.



Proposition 64

- Who was behind it and why?
- Who opposed it and why?

Follow the Money



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Campaign Finance Activity

PROP 64 - LIMITATIONS ON ENFORCEMENT OF UNFAIR BUSINESS COMPETITION LAWS. INITIATIVE STATUTE

View Information:

- General Information
- Late Independent Expenditures Affecting This Measure

 **How much money is being raised and spent to pass or defeat California propositions and ballot measures, and what are the sources of the money? Check here to follow the money trail.**

Committees formed to support or oppose the ballot measure.

COMMITTEE ID	COMMITTEE NAME	COMMITTEE POSITION
1257254	YES ON 64 -- CALIFORNIANS TO STOP SHAKEDOWN LAWSUITS, A COALITION OF TAXPAYERS, AUTOMOBILE DEALERS, BUSINESS GROUPS AND CIVIL JUSTICE REFORM SUPPORTERS	SUPPORT
1256259	CALIFORNIA MOTOR CAR DEALERS ASSOCIATION FUND TO STOP SHAKEDOWN LAWSUITS - YES ON 64	SUPPORT
1270479	PUBLIC HEALTH WARNING: NO ON 64, A COALITION OF ENVIRONMENTAL, PUBLIC HEALTH AND CONSUMER GROUPS, REGISTERED NURSES, AND ENVIRONMENTAL AND CONSUMER ATTORNEYS	OPPOSE

Stop Shakedown Lawsuits

CALIFORNIA SECRETARY OF STATE

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YES ON 64 -- CALIFORNIANS TO STOP SHAKEDOWN LAWSUITS, A COALITION OF TAXPAYERS, AUTOMOBILE DEALERS, BUSINESS GROUPS AND CIVIL JUSTICE REFORM SUPPORTERS

Election Cycle:
 2005 through 2006
 2003 through 2004
 Historical

Election Dates:
1. GENERAL ELECTION
Tuesday, November 02nd, 2004
2. PRIMARY ELECTION
Tuesday, March 02nd, 2004
3. SPECIAL ELECTION
Tuesday, October 07th, 2003

Change the Election Cycle to view different Election Dates:

View Information:
(Due to the amount of data, these pages may take some time to load.)
 General Information
 Contributions Received
 Contributions Made
 Expenditures Made
 Late Contributions/Independent Expenditures and Interim Filings (Prop. 34)
 Electronic Filings

This is the official name of the committee, political party, or major donor as registered with the Secretary of State.

HISTORICAL NAMES FOR THIS COMMITTEE

CALIFORNIANS TO STOP SHAKEDOWN LAWSUITS, A COALITION OF TAXPAYERS, AUTOMOBILE DEALERS, BUSINESS GROUPS AND CIVIL JUSTICE REFORM SUPPORTERS

CALIFORNIANS TO STOP SHAKEDOWN LAWSUITS, A COALITION OF TAXPAYERS, AUTOMOBILE DEALERS, CIVIL JUSTICE AND BUSINESS GROUPS

CALIFORNIANS AGAINST SHAKEDOWN LAWSUITS SPONSORED BY CIVIL JUSTICE ASSOCIATION OF CALIFORNIA

FILER ID:
1257254

FILER PHONE:
(415) 399-6800

SUMMARY INFORMATION - YES ON 64 -- CALIFORNIANS TO STOP SHAKEDOWN LAWSUITS, A COALITION OF TAXPAYERS, AUTOMOBILE DEALERS, BUSINESS GROUPS AND CIVIL JUSTICE REFORM SUPPORTERS (ID# 1257254)

CURRENT STATUS	ACTIVE
LAST REPORT DATE THIS SESSION	01/31/2005
REPORTING PERIOD	10/17/2004 - 12/31/2004
CONTRIBUTIONS FROM THIS PERIOD	\$2,654,072.87
TOTAL CONTRIBUTIONS 1/1/2004 - 12/31/2004	\$13,148,895.21
EXPENDITURES FROM THIS PERIOD	\$2,535,962.38
TOTAL EXPENDITURES 1/1/2004 - 12/31/2004	\$14,588,045.29
ENDING CASH	\$3,424.27

\$14,588,045.29



Stop Shakedown Contributions



NAME OF CONTRIBUTOR

AMOUNT

CA Motor Car Dealers Assn. Fund To Stop Shakedown Lawsuits-yes On 64

\$5,000,000

Alliance Of Automobile Manufacturers, Inc.

\$1,250,000

U.S. Chamber Of Commerce And Related Entities

\$ 495,000

Intel

\$ 300,000

Kaiser Foundation Health Plans

\$ 300,000

Pfizer

\$ 217,000

Blue Cross

\$ 150,000

Johnson & Johnson

\$ 125,000

Microsoft

\$ 100,000

Cisco

\$ 100,000

Oracle

\$ 100,000

Car Dealers - \$4.8 Million

CALIFORNIA SECRETARY OF STATE

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Campaign Finance Activity

CALIFORNIA MOTOR CAR DEALERS ASSOCIATION FUND TO STOP SHAKEDOWN LAWSUITS - YES ON 64

Election Cycle:

- 2005 through 2006
- 2003 through 2004
- Historical

Election Dates:

- GENERAL ELECTION**
Tuesday, November 02nd, 2004
- PRIMARY ELECTION**
Tuesday, March 02nd, 2004
- SPECIAL ELECTION**
Tuesday, October 07th, 2003

Change the Election Cycle to view different Election Dates.

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(Due to the amount of data, these pages may take some time to load.)

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- Electronic Filings

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Propositions and Ballot Measures

Committees, Parties and Major Donors

dailyLateSpecial Filings

Lobbying Activity

Advanced Reports

This is the official name of the committee, political party, or major donor as registered with the Secretary of State.

HISTORICAL NAMES FOR THIS COMMITTEE

CALIFORNIA MOTOR CAR DEALERS ASSOCIATION FUND TO STOP SHAKEDOWN LAWSUITS

FILER ID:
1256259

FILER PHONE:
(916) 442-7757

SUMMARY INFORMATION - CALIFORNIA MOTOR CAR DEALERS ASSOCIATION FUND TO STOP SHAKEDOWN LAWSUITS - YES ON 64 (ID# 1256259)

CURRENT STATUS	ACTIVE
LAST REPORT DATE THIS SESSION	01/29/2005
REPORTING PERIOD	10/17/2004 - 12/31/2004
CONTRIBUTIONS FROM THIS PERIOD	\$100,583.33
TOTAL CONTRIBUTIONS 1/1/2004 - 12/31/2004	\$1,999,158.33
EXPENDITURES FROM THIS PERIOD	\$1,038,782.24
TOTAL EXPENDITURES 1/1/2004 - 12/31/2004	\$4,891,049.00
ENDING CASH	\$480,148.01

\$4,891,049

Car Dealer Contributions

NAME OF CONTRIBUTOR

CITY

STATE

AMOUNT

Greater Los Angeles New Car Dealers Association	Los Angeles	CA	\$500,000
New Car Dealers Association	San Diego	CA	\$250,000
Southern California Chevrolet Dealers Association	Cerritos	CA	\$151,325
Toyota Of Orange, Inc.	Orange	CA	\$104,900
Conant Automotive Resources	Cerritos	CA	\$100,000
Orange County Automobile Dealers Assoc.	Costa Mesa	CA	\$100,000
Longo Toyota	El Monte	CA	\$100,000
Silicon Valley Auto Dealers Association	San Jose	CA	\$100,000
Auto Nation	Ft. Lauderdale	FL	\$100,000



Public Health Warning



"Coalition of Environmental, Public Health and Consumer Groups, Registered Nurses, and Environmental and Consumer Attorneys"

CALIFORNIA SECRETARY OF STATE

secretary of state elections & voter info political reform california business portal archives & golden state museum special programs

Cal-Access

California Automated Lobbying and Campaign Contributions & Expenditure Search System

Campaign Finance Activity

PUBLIC HEALTH WARNING: NO ON 64, A COALITION OF ENVIRONMENTAL, PUBLIC HEALTH AND CONSUMER GROUPS, REGISTERED NURSES, AND ENVIRONMENTAL AND CONSUMER ATTORNEYS

Election Cycle:

2005 through 2006
 2003 through 2004
 Historical

Election Dates:

1. GENERAL ELECTION
Tuesday, November 02nd, 2004
2. PRIMARY ELECTION
Tuesday, March 02nd, 2004
3. SPECIAL ELECTION
Tuesday, October 07th, 2003

Change the Election Cycle to view different Election Dates.

View Information:
(Due to the amount of data, these pages may take some time to load.)

General Information
 Contributions Received
 Contributions Made
 Expenditures Made
 Late Contributions/Independent Expenditures and Interim Filings (Prop. 34)
 Electronic Filings

This is the official name of the committee, political party, or major donor as registered with the Secretary of State.

FILER ID:
1270479

FILER PHONE:
(916) 442-6902

SUMMARY INFORMATION - PUBLIC HEALTH WARNING: NO ON 64, A COALITION OF ENVIRONMENTAL, PUBLIC HEALTH AND CONSUMER GROUPS, REGISTERED NURSES, AND ENVIRONMENTAL AND CONSUMER ATTORNEYS (ID# 1270479)

CURRENT STATUS	ACTIVE
LAST REPORT DATE THIS SESSION	02/09/2005
REPORTING PERIOD	10/17/2004 - 12/31/2004
CONTRIBUTIONS FROM THIS PERIOD	\$1,545,795.67
TOTAL CONTRIBUTIONS 1/1/2004 - 12/31/2004	\$3,206,291.00
EXPENDITURES FROM THIS PERIOD	\$1,826,439.02
TOTAL EXPENDITURES 1/1/2004 - 12/31/2004	\$3,129,468.02
ENDING CASH	\$112,600.10

\$3,129,468.02



Consumer Attorneys of California

Consumer Attorneys Open Wallets

Last week, Consumer Attorneys of California and its allies officially formed a No on 64 committee to oppose the business-backed initiative. Over the summer, President James Sturdevant had maintained CAOC had no plans to formally coordinate fund raising.

Consumer Attorneys Open Wallets to Fund No on Prop 64 Campaign

Jill Doran
The Recorder
05-30-2004

SACRAMENTO -- The fund-raising drives are officially off in the battle over Proposition 64, the measure that aims to change provisions of the state's Business & Professions Code §17200.

Last week, Consumer Attorneys of California and its allies officially formed a No on 64 committee to oppose the business-backed initiative. Over the summer, President James Sturdevant had maintained CAOC had no plans to formally coordinate fund raising.

On Wednesday, Attorney General Bill Lockyer said he would formally oppose Prop 64, joining a coalition of plaintiff lawyers, consumer groups and advocacy for the environment and public health who say they rely on the state's unfair competition law for redress.

Sturdevant said the decision to form an opposition committee came after Gov. Arnold Schwarzenegger walked away from efforts to craft a legislative compromise and instead endorsed the initiative.

"There was no need before that time to create a committee to fight that proposition because we took [Schwarzenegger] at his word," Sturdevant said.

So far, No on 64 contributions total just about \$84,000 -- a far cry from the more than \$11 million collected by the two Yes on 64 committees, including more than \$1.3 million from auto dealers and other businesses in just the month of September. On Tuesday, Shell Oil Co. donated \$100,000.

Sturdevant said Prop 64 opponents had no specific fund-raising goals, but would "raise as efficient amount of money to get the message out to millions of Californians that they need to go out and vote against this proposition."

Prop 64 seeks to limit the right to sue under § 17200 to those individuals actually injured because of an unfair business practice. It would also restrict the right to sue on the "public's behalf" to state attorneys general or local public officials, and would require any parties they recover to be used only for enforcement of consumer protection laws.

Field polls taken in the first month of August showed that the measure was familiar to only about 8 percent of likely voters, but that 41 percent of the 200 likely voters surveyed would vote for it once they had the text read to them. Since then, Prop 64 supporters have launched a television ad campaign.

Johr Sullivan, the president of the fast-food group Civil Justice Association of California, said he wasn't surprised that Prop 64 opponents had decided to form a committee of their own.

"They have been running a campaign for some time without ever forming a legal committee," Sullivan said.

So far, most of the organized opposition has come from a group called Election Watchdog, which was funded with \$150,000 from the Foundation for Taxpayer and Consumer Rights. State Sen. Bill Monroy, R-Deerfield, has asked the state Fair Political Practices Commission to see whether Election Watchdog violated any campaign finance laws in using the money to oppose Prop 64.

The largest contributors to the new No on 64 campaign have come from law firms, including Fustino, Jaspis & Simons of Hayward; the DeWitt Law Firm of Stockton; and Murray, Frank & Seltzer of New York City, each of which contributed \$10,000.

So far, No on 64 contributions total just about \$84,000 -- a far cry from the more than \$11 million collected by the two Yes on 64 committees, including more than \$1.3 million from auto dealers and other businesses in just the month of September. On Tuesday, Shell Oil Co. donated \$100,000.



No on 64 Contributions

NAME OF CONTRIBUTOR	CITY	STATE	OCCUPATION	AMOUNT
Consumer Attorney's Issues Political Action Committee	Sacramento	CA		\$500,000
James Sturdevant	San Francisco	CA	Attorney	\$400,000
Consumer Attorney's Issues Political Action Committee	Sacramento	CA		\$225,000
CAALA	Los Angeles	CA	CAALA PAC	\$150,000
California State Council Of Service Employees	Sacramento	CA	Attorney	\$100,000
Greene, Broillet, Panish & Wheeler LLP	Santa Monica	CA	Attorney	\$ 50,000
Milberg Weiss Bershad & Schulman LLP	New York	CA	Attorney	\$ 50,000
Lerach, Coughlin, Stoia & Robbins, LLP	San Diego	CA	Attorney	\$ 50,000

Proposition 64

TEXT OF PROPOSED LAWS

Proposition 64

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends sections of the Business and Professions Code; therefore, existing provisions proposed to be deleted are printed in ~~strike-through~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Findings and Declaration of Purpose

The people of the State of California find and declare that:

(a) This state's unfair competition laws set forth in Sections 17200 and 17500 of the Business and Professions Code are intended to protect California businesses and consumers from unlawful, unfair, and fraudulent business practices.

(b) These unfair competition laws are being misused by some private attorneys who:

(1) File frivolous lawsuits as a means of generating attorney's fees without creating a corresponding public benefit.

(2) File lawsuits where no client has been injured in fact.

(3) File lawsuits for clients who have not used the defendant's product or service, viewed the defendant's advertising, or had any other business dealing with the defendant.

(4) File lawsuits on behalf of the general public without any accountability to the public and without adequate court supervision.

(c) Frivolous unfair competition lawsuits clog our courts and cost taxpayers. Such lawsuits cost California jobs and economic prosperity, threatening the survival of small businesses and forcing businesses to raise their prices or to lay off employees to pay lawsuit settlement costs or to relocate to states that do not permit such lawsuits.

(d) It is the intent of California voters in enacting this act to eliminate frivolous unfair competition lawsuits while protecting the right of individuals to retain an attorney and file an action for relief pursuant to Chapter 5 (commencing with Section 17200) of Division 7 of the Business and Professions Code.

(e) It is the intent of the California voters in enacting this act to prohibit private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact under the standing requirements of the United States Constitution.

(f) It is the intent of California voters in enacting this act that only the California Attorney General and local public officials be authorized to file and prosecute actions on behalf of the general public.

(g) It is the intent of California voters in enacting this act that the Attorney General, district attorneys, county counsels, and city attorneys maintain their public protection authority and capability under the unfair competition laws.

(h) It is the intent of California voters in enacting this act to require that civil penalty payments be used by the Attorney General, district attorneys, county counsels, and city attorneys to strengthen the enforcement of California's unfair competition and consumer protection laws.

SEC. 2. Section 17203 of the Business and Professions Code is amended to read:

17203. Injunctive Relief—Court Orders

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to return to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 352 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.

SEC. 3. Section 17204 of the Business and Professions Code is amended to read:

17204. Actions for Injunctions by Attorney General, District Attorney, County Counsel, and City Attorneys

Actions for a relief pursuant to this chapter shall be prosecuted exclu-

sively in a court of competent jurisdiction by the Attorney General or any district attorney or by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or any city attorney of a city, or city and county, having a population in excess of 750,000, and, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county in the name of the people of the State of California upon their own complaint or upon the complaint of any board, officer, person, corporation or association or by any person ~~acting in the interests of and on behalf of the members of the general public who has suffered injury in fact and has lost money or property as a result of such unfair competition.~~

SEC. 4. Section 17206 of the Business and Professions Code is amended to read:

17206. Civil Penalty for Violation of Chapter

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city, or city and county, having a population in excess of 750,000, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the State General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (d), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. *The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.*

(d) If the action is brought at the request of a board within the Department of Consumer Affairs or a local consumer affairs agency, the court shall determine the reasonable expenses incurred by the board or local agency in the investigation and prosecution of the action.

Before any penalty collected is paid out pursuant to subdivision (c), the amount of any reasonable expenses incurred by the board shall be paid to the state Treasurer for deposit in the special fund of the board described in Section 205. If the board has such special fund, the money shall be paid to the state Treasurer. The amount of any reasonable expenses incurred by a local consumer affairs agency shall be paid to the general fund of the municipality or county that funds the local agency.

(e) If the action is brought by a city attorney of a city and county, the entire amount of the penalty collected shall be paid to the treasurer of the city and county in which the judgment was entered *for the exclusive use by the city attorney for the enforcement of consumer protection laws.* However, if the action is brought by a city attorney of a city and county for the purposes of civil enforcement pursuant to Section 17800 of the Health and Safety Code or Article 3 (commencing with Section 11570) of Chapter 19 of Division 10 of the Health and Safety Code, either the penalty collected shall be paid entirely to the treasurer of the city and county in which the judgment was entered or, upon the request of the city attorney, the court may order that up to one-half of the penalty, under court supervision and approval, be paid for the purpose of restoring, maintaining, or enhancing the premises that were the subject of the action and that the balance of the penalty be paid to the treasurer of the city and county.

SEC. 5. Section 17535 of the Business and Professions Code is amended to read:

17535. Obtaining Injunctive Relief

Text of Proposed Laws | 109

Attorney General, one-half of the amount of the penalty collected shall be paid to the treasurer of the county in which the State Treasurer.

Attorney counsel, the entire amount of the penalty collected shall be paid to the treasurer of the county in which the city attorney or city prosecutor, the treasurer of the county and funds shall be for the exclusive use of the Attorney General, county counsel, and city prosecutor laws.

request of a board within the Department of Consumer Affairs agency, the expenses incurred by the board or institution of the action.

not pursuant to subdivision (c), incurred by the board shall be deposited in the special fund of the board. If no such special fund exists, the amount of such reasonable expenses shall be paid to the treasurer of the local agency.

It is in violation of Section 17530, and Section 17534 are mutually

July 1, 2003, and the effective date that is inconsistent with this shall irrespective of the code in

re and another measure or measure appear on the same statewide measure shall be deemed to be that this measure shall receive provisions of this measure shall be of the other measure relating of void.

or part thereof, is for any reason remaining provisions shall not and effect, and to this end the

Information Guide.

enable limits to determine what for third order, and Proposition 64 has been used to enhance the who did not commit a serious in, at a cost to taxpayers of more \$0,000 per year.

to: to criminals who commit serious longer prison sentences for those who and/or violent felonies, and if felony; to be prosecuted for each criminal offense; and to offenders and reduce the cost who commit crimes that do not to this act.



Proposition 64



- Principal target: The unaffected private plaintiff
- Standing: Actual Injury
- Liability
- Class Certification
- Restitution
- Injunctive Relief
- Parallel changes in §17535 and §17536.



The Changes Wrought By Prop. 64

Standing



The UCL Before Prop. 64:

- “any person” could act as a private attorney general and seek relief on behalf of the “general public” (Bus. & Prof. Code §17204)
- Associations had standing to sue on behalf of their members

And After:

- “any person who has suffered injury in fact and lost money or property as a result of” unfair competition (Bus. & Prof. Code §17204, as amended)
- Written in the conjunctive; defendants argue this means you have to show both injury in fact *and* loss of money or property
- But: Prop. 64 expressly indicated that it was intended to import the standing rules of Article III, which do not require loss of “money or property” Prop. 64, § 1(e).
- Associational standing may have been eliminated or limited
- Standing limitations do not apply to claims brought by Attorney General, DA, county counsel, city attorney or city prosecutor.



The Changes Wrought By Prop. 64

Liability



The UCL Before Prop. 64:

- UCL prohibited any “unfair, unlawful or fraudulent” conduct (Bus. & Prof. Code §17200)
 - “unlawful” prong “borrows” violations of other laws (state, federal, statutory, court-made) and makes them independently actionable
 - “unfair” prong; *Cel-Tech* issue. *Cel-Tech Communications, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th 163 (1999)
 - “fraudulent” prong: plaintiffs need only prove that members of the public “likely to be deceived” (*Bank of the West v. Sup. Ct.*, 4 Cal. 4th 1254 (1992))
- Bottom line: plaintiffs did not have to prove that they, or anyone else, suffered monetary harm or any other kind of harm (*Stop Youth Addiction v. Lucky Stores, Inc.*, 17 Cal.4th 553 (1998); *Committee on Children's Television, Inc. v. General Foods Corp.*, 35 Cal.3d 197, 211 (1983))

And After:

- UCL did not change these substantive bases for liability;
 - UCL still “borrows” violations of other laws;
 - Definition of “unfair” is still dictated by *Cel-Tech*;
 - “fraudulent prong”: the “likely to deceive” standard is arguably altered by the “and lost money or property” language.



The Changes Wrought By Prop. 64

Class Certification



The UCL Before Prop. 64:

- Class certification was not required;
- The plaintiff could seek representative relief on behalf of other people without formal class certification
- Accordingly, an unaffected plaintiff could, and often did, champion the rights of the general public
- Some cases suggested that UCL claims could not be certified for class treatment because that was not the “superior” way to litigate the dispute, given the availability of representative, non-class relief (*Kavruck v. Blue Cross of California*, 108 Cal.App.4th 773, 787 (2004); *Frieman v. San Rafael Rock Quarry, Inc.*, 116 Cal.App.4th 29, 38 (2004))

And After:

- “Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 *and complies with Section 382 of the Code of Civil Procedure ...*” (Bus. & Prof. Code §17203, as amended) (emphasis added).
- Prop. 64 resolves any dispute about whether UCL cases *can* be certified.
- Now, they not only can be certified, but arguably, they *must* be.



The Changes Wrought By Prop. 64

Restitution



The UCL Before Prop. 64:

- Monetary relief was limited to “restitution.” *Kraus v. Trinity Mgmt. Serv., Inc.*, 23 Cal.4th 116 (2004); *Cortez Purolator Air Filtration Prods. Co.*, 23 Cal.4th 163 (2000).
- Split of authority on whether non-restitutionary disgorgement of profits is recoverable in a *certified* UCL class action:
 - Supreme Court has specifically left that issue undecided. *See, e.g., Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1148 n.6 (2004); *Kraus*, 23 Cal.4th at 137.
 - *Corbett v. Superior Court*, 101 Cal.App.4th 649, 655 (2002) (“Where a class has properly been certified, a plaintiff in a UCL action may seek disgorgement of unlawful profits into a fluid recovery fund.”).
 - *Madrid v. Perot Systems Corp.*, 130 Cal.App.4th 400 (2005) (“[N]onrestitutionary disgorgement is not an available remedy in a UCL class action.”).

And After:

- Prop. 64 does not change the UCL’s “restitution” remedy.
- Does Prop. 64 open the door to damages?
 - Early decisions permitted UCL plaintiffs to recover compensatory damages as well as restitution. *See Committee on Children’s Television v. General Foods Corp.*, 35 Cal. 3d 197, 226 (1983) (conc. & dissenting opn. of Bird, C.J.) (cataloging early cases).
 - A central reason for the Supreme Court’s later holding that restitution is the only form of monetary relief recoverable under the UCL is that “the Legislature deliberately traded the attributes of tort law for speed and administrative simplicity.” *Bank of the West v. Superior Court*, 2 Cal.4th 1254, 1266-67 (1992); *see also Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134, 1144 (2003).
 - Prop. 64 eliminated the “speed and administrative simplicity” by requiring class certification and imported “attributes of tort law” by requiring “injury in fact.”



The Changes Wrought By Prop. 64

Injunctive Relief



The UCL Before Prop. 64:

- Plaintiff could obtain injunctive relief on behalf of others without formal class certification

And After:

- Prop. 64 arguably limits the injunctive relief remedy unless formal class certification is obtained.
- But – the class certification requirement only applies to plaintiffs seeking to “pursue representative claims for relief on behalf of others.”
 - Individual plaintiff could seek broad injunctive relief - stop publishing misleading advertising; stop engaging in unlawful employment practice
 - Prop. 64 does not say that anyone other than the representative plaintiff has to have lost money or property for an injunction to issue.

How Will Plaintiffs Adapt in the Post-Prop. 64 World?

Initial Question: Does Prop. 64 Apply Retroactively To Pending Cases?

- No express retroactivity language
- Ballot materials use *prospective* language
 - “A YES vote on this measure means: Except for the Attorney General and local public prosecutors, *no person could bring a lawsuit for unfair competition* unless”
 - “Proposition 64 closes a loophole *allowing lawyers to file frivolous shakedown lawsuits* against small businesses.”
 - “This measure *prohibits any person, other than the Attorney General and local public prosecutors, from bringing a lawsuit* for unfair competition ...”

BALLOT MEASURE SUMMARY

PROP 59 Public Records, Open Meetings, Legislative Constitutional Amendment.

MAKE YOUR VOICE

Summary
Amends Constitution to include public's right of access to meetings of government bodies and writings of government officials. Preserves specified constitutional rights; retains existing exclusions for certain meetings and records. Fiscal Impact: Potential minor annual state and local government costs to make additional information available to the public.

BALLOT MEASURE SUMMARY

PROP 63 Mental Health Services Expansion, Funding, Tax on Personal Incomes Above \$1 Million. Initiative Statute.

Summary
Establishes 1% tax on taxable personal income above \$1 million to fund expanded health services for mentally ill children, adults, seniors. Fiscal Impact: Additional state revenues of about \$800 million annually by 2006-07, with comparable annual increases in total state and county expenditures for expansion of mental health programs. Unknown potential off-setting savings to state and local agencies.

What Your Vote Means

Yes	No
A YES vote on this measure means: A surcharge on state personal income taxes would be enacted for taxpayers with annual taxable incomes of more than \$1 million to finance an expansion of county mental health programs.	A NO vote on this measure means: Funding for county mental health programs would largely be dependent upon actions by the Legislature and Governor.

Arguments

Pro	Con
Proposition 63 expands mental health care for children and adults, using programs proven to be effective. Paid for by 1% tax on taxable personal income over \$1 million. Requires strict financial accountability. Supported by nurses, mental health professionals, law enforcement, educators. Let's stop neglecting mental illness. Vote YES on Proposition 63.	Prop. 63 is a false promise. It doesn't treat the mentally ill, but is a disguised substitute for long-term solutions. Built on a shaky funding scheme, it ends, destroying its own funding source. Don't jeopardize the health of thousands with a feel-good plan.

For Additional Information

For	Against
Rusty Selix, Campaign for Mental Health 1127 11th Street, #225 Sacramento, CA 95814 916.227.1166 info@YESon63.org www.YESon63.org	Citizens for a Healthy California 400 Capitol Mall, Suite 1500 Sacramento, CA 95814 916.49.14726 www.HealthyCalifornia.org

PROP 64 Limits on Private Enforcement of Unfair Business Competition Laws. Initiative Statute.

Summary
Allows individual or class action "unfair business" lawsuits only if actual loss suffered; only government officials may enforce these laws on public's behalf. Fiscal Impact: Unknown state fiscal impact depending on whether the measure increases or decreases court workload and the extent to which diverted funds are replaced. Unknown potential costs to local governments, depending on the extent to which diverted funds are replaced.

What Your Vote Means

Yes	No
A YES vote on this measure means: Except for the Attorney General and local public prosecutors, no person could bring a lawsuit for unfair competition unless the person has suffered injury or lost money or property. Also, except for the Attorney General and local public prosecutors, a person pursuing such claims on behalf of others would have to meet the additional requirements of class action lawsuits.	A NO vote on this measure means: A person could bring a lawsuit under the unfair competition law without having suffered injury or lost money or property. Also, a person could bring such a lawsuit without meeting the additional requirements of class action lawsuits.

Arguments

Pro	Con
Proposition 64 closes a loophole allowing lawyers to file frivolous shakedown lawsuits against small businesses. Proposition 64 stops lawyers from pocketing most of the settlements from these bogus lawsuits. Don't be misled by the trial lawyers' misstatements: 64 doesn't change any of California's consumer or environmental laws! Yes on 64.	Newspaper headlines warn: "Consumers lose if initiative passes." "The LA Times reports Proposition 64 'would weaken a state law that allows private groups and government prosecutors to sue businesses for polluting the environment and for engaging in misleading advertising and other unfair business practices... the current law would be drastically curtailed.'"

For Additional Information

For	Against
Yes on 64—Californians to Stop Shakedown Lawsuits 3001 Douglas Blvd., Suite 225 Roseville, CA 95661 916.766.5596 info@yeson64.org www.yeson64.org	Consumer Watchdog 1750 Ocean Park Blvd., Suite 200 Santa Monica, CA 90405 310.392.0708 NoCalProp64@consumerwatchdog.org www.NoCalProp64.org

6 | Ballot Measure Summary

How Will Plaintiffs Adapt in the Post-Prop. 64 World?

Does Prop. 64 Apply Retroactively To Pending Cases?

- The omission was intentional
 - “At one point we did decide we wanted to keep the initiative as clean as possible and that we didn't want to put in excess language on that or any other issue.” John Sullivan, Chairman of Yes on 64 Committee, quoted in “Firms’ drive on lawsuits attacked: Critics say Prop. 64 is being used to purge pending cases,” *Sacramento Bee*, December 29, 2004.



2004-12-29 10:15 AM PST The Sacramento Bee

This story is taken from [Business](#) at [sacbee.com](#).

Firms' drive on lawsuits attacked

Critics say Prop. 64 is being used to purge pending cases.

By Kevin Yamamura -- Bee Capitol Bureau

Published 2:15 am PST Wednesday, December 29, 2004

Companies are trying to use a voter-approved November initiative limiting lawsuits against businesses to purge pre-existing cases from California courts, despite assertions by consumer groups that Proposition 64 should not apply.

The Unfair Competition Law cases range from a suit against State Farm charging that the company illegally sets higher rates for previously uninsured drivers to a claim against Anheuser-Busch and Miller Brewing that argues the companies target children in their advertising.

The companies have argued that because the parties that brought those suits are barred from doing so under Proposition 64, the suits should now be dismissed.

Under California law, initiatives approved by the voters take effect the day after the election unless otherwise specified. But legal experts disagree as to whether an initiative such as Proposition 64 that does not specifically discuss retroactivity can be used in pending cases.

Some Superior Court judges have decided that Proposition 64 does apply to cases filed before the Nov. 2 election, while others have ruled that the initiative cannot be used to stop such cases. Lawyers expect the state Supreme Court will have to clarify the matter.

The initiative represented a significant win for businesses, automakers and car dealers that had long fought trial lawyers and public-interest groups in the Capitol to change a state law regarding who can sue companies for unfair practices.

Proposition 64 limited that right to those who suffer actual damages from a company's actions and to public prosecutors. Previously, outside public-interest groups and trial lawyers were able to file claims even though they had not suffered actual harm.

Consumer advocates have criticized companies for invoking the initiative in pending cases because they believe backers of the initiative never specified the law would be used that way.

"Proposition 64 was marketed as an initiative to stop the filing of shakedown lawsuits against small businesses, and the fact that large corporations are using it to halt existing cases and even meritorious cases is completely the opposite of how they billed it," said Steve Blackledge, legislative director for the California Public Interest Research Group.

But the corporate-based coalition that supported the initiative and helped it pass by an 18 percent margin insists that it never misled voters.

John Sullivan, a chairman of the Yes on 64 effort and president of the business-backed Civil Justice Association of California, said the campaign's message was focused on protecting businesses from dubious lawsuits. He added that talking about whether the new law would apply to existing lawsuits was unnecessary.

How Will Plaintiffs Adapt in the Post-Prop. 64 World?

Does Prop. 64 Apply Retroactively To Pending Cases?

- The omission was intentional
 - “The businesses backing Proposition 64 always intended to apply the new law to pending cases and purposely chose not to tell voters, said Fred Hiestand, general counsel for the Civil Justice Assn. of California, a tort-reform lobbying group that helped sponsor Proposition 64.”
 - “Citing Prop. 64, Firms Seek to Kill Lawsuits,” *Los Angeles Times*, December 27, 2004.

Los Angeles Times

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Author: Marc Lifshier and Myron Levin
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Corporations are trying to kill a raft of lawsuits filed under California's Unfair Competition Law, claiming that the suits were invalidated when voters approved Proposition 64 last month.

The ballot measure made it harder for businesses to be sued over deceptive advertising and other fraudulent practices under law, which corporate interests have long attacked as an invitation for unscrupulous attorneys to file so-called shakedown suits against businesses.

Since election day, DaimlerChrysler, Mercury General Corp., Kwikset Corp. and other companies have asked state judges to dismiss at least a dozen pending unfair-competition cases. More challenges are expected.

"It's a great opportunity to wipe out cases that shouldn't be in the courts," said John Sullivan, director of the Civil Justice Association of California and co-chairman of the Proposition 64 campaign. "These are the kind of cases the voters wanted to get rid of and benefited lawyers primarily."

Opponents of Proposition 64 — mainly environmental and consumer rights activists — accuse businesses of pulling a bait-and-switch with voters by trying to apply the amended law retroactively.

New laws, whether approved by the Legislature or voters, usually aren't retroactive unless they contain specific wording otherwise. Neither the pro-Proposition 64 TV ads bankrolled by corporations nor the text of the initiative itself said the law would apply to cases pending in the courts.

Businesses "should be playing by the rules that were in place when the cases were actually filed," said Bill McGovern, a Sierra Club lobbyist. "They certainly didn't tell the voters they were planning to cut off remedies that were in place in cases that already in the system."

Foes of the ballot measure were clearly under the impression that losing the initiative fight wouldn't derail important Unfair Competition Law cases already on the docket.

The Environmental Protection Information Center, based in Garberville, Calif., sued Pacific Lumber Co., a unit of Maxx on election day to ensure that its case would get a hearing under the old law.

The suit, which alleges that Pacific Lumber violated state logging laws by harming fish and animal habitat, couldn't be filed under the revised law. Under Proposition 64, plaintiffs in unfair-competition cases must prove that they have personally lost or injured because of a company's behavior — and the plaintiffs in the Pacific Lumber case are essentially fish and wildlife.

Pacific Lumber, which has yet to file an answer to the complaint, said Thursday that it intended to challenge the lawsuit on grounds that it was invalidated by Proposition 64.

The businesses backing Proposition 64 always intended to apply the new law to pending cases and purposely chose not to tell voters, said Fred Hiestand, general counsel for the Civil Justice Assn. of California, a tort-reform lobbying group that has



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



Prop. 64 Retroactivity – The Courts Weigh In:

- **Trial courts split on the issue:**
 - Judges of the same court came to differing conclusions
- **Orange County:**
 - *Americare v. Medical Capital Corp.*, Orange Cty. Super Ct. – Prop. 64 does not apply to pending claims
 - *California Alliance v. Ensign Group*, Orange Cty. Super Ct. – Prop. 64 does apply to pending claims
- **Los Angeles County:**
 - *Teachers for Truth in Advertising v. Spirit Sciences USA, Inc.*, Los Angeles Cty. Super. Ct. – Prop. 64 does not apply to pending claims
 - *Dohrmann v. Tosco Refinery Co.*, Los Angeles County Super. Ct. – Prop. 64 does apply to pending claims



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



Prop. 64 Retroactivity – The Courts Weigh In:

■ **Appellate courts also split:**

- 1st District – NO: *Californians for Disability Rights v. Mervyn's LLC*, 126 Cal.App.4th 386 (2005)
- 1st District – YES: *Schwartz v. Visa Int'l Service Assn.*, 132 Cal.App.4th 1452 (Sept. 28, 2005)
- 2nd District – NO: *Consumer Advocacy Group v. Kintetsu Enterprises*, 129 Cal.App.4th 540 (2005)
- 2nd District – YES: *Branick v. Downey Sav. & Loan Assn.*, 126 Cal.App.4th 828 (2005)



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



Prop. 64 Retroactivity – The Courts Weigh In:

■ **4th District – YES:**

- *Benson v. Kwikset Corp.*, 126 Cal.App.4th 887 (2005)
- *Bivens v. Corel Corp.*, 126 Cal.App.4th 887 (2005)
- *Lytwyn v. Fry's Electronics*, 126 Cal.App.4th 1455 (2005)
- *Frey v. TransUnion*, 127 Cal.App.4th 986 (2005)
- *Thornton v. Career Training Center*, 128 Cal.App.4th 116 (2005)
- *Schulz v. Neovi Data Corp.*, 129 Cal.App.4th 1 (2005)
- *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.*, 129 Cal.App.4th 1228 (2005)



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



Prop. 64 Retroactivity – The Supreme Court Acts:

- **April 27, 2005: Supreme Court grants review in multiple cases**
- **Review granted outright:**
 - *Californians for Disability Rights v. Mervyn's LLC*, 126 Cal.App.4th 386 (2005)
 - *Branick v. Downey Sav. & Loan Assn.*, 126 Cal.App.4th 828 (2005)



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



Prop. 64 Retroactivity – The Supreme Court Acts:

- **“Grant and hold”:**

- *Benson v. Kwikset Corp.*, 126 Cal.App.4th 887 (2005)
- *Bivens v. Corel Corp.*, 126 Cal.App.4th 887 (2005)
- *Lytwyn v. Fry’s Electronics*, 126 Cal.App.4th 1455 (2005)
- *Thornton v. Career Training Center*, 128 Cal.App.4th 116 (2005)
- *Schulz v. Neovi Data Corp.*, 129 Cal.App.4th 1 (2005)
- *Consumer Advocates Group, Inc. v. Kintetsu Enterprises*, 129 Cal.App.4th 540 (2005)



How Will Plaintiffs Adapt in the Post-Prop. 64 World?

Prop. 64 Retroactivity – The Supreme Court Acts:

- **Depublished:**

- *Frey v. TransUnion*, 127 Cal.App.4th 986 (2005)



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



Prop. 64 Retroactivity – In The Meantime

- Plaintiffs seek leave to amend to satisfy the new requirements
- Defendants continue to move for judgment on the pleadings
- Supreme Court probably won't rule until next year



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



What Plaintiffs Will Do:

- *Injured People Will File Suit:*
 - The easiest way to deal with the amendments is to join a plaintiff who did, in fact, “lose money or property”
 - Far easier than litigating whether Prop. 64 should be interpreted to import Article III standing requirements, or whether associational standing still exists

Implications for Defendants:

- The UCL cases that are brought will be stronger.
- Judicial and public hostility will be less frequent and less virulent
 - No more cases like *Benson v. Kwikset* (opinion before rehearing)



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



What Plaintiffs Will Do:

- Large associational plaintiffs will become involved.
- If courts rule that associational standing is unchanged by Prop. 64, we may see a lot more large associations filing UCL actions on behalf of their members.

Implications for Defendants:

- Result could be similar to what we saw after the PSLRA
- There was a temporary lull in new filings, but now, securities defendants are facing large, well-capitalized plaintiffs such as pension funds
- Are the defendants really better off?



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



What Plaintiffs Will Do:

- They will all seek formal class certification
 - Easiest way to deal with the new class action requirement is simply to add class allegations to the complaint.
 - Drawback – cost of formal class notice
 - Drawback – problem of the Class Action Fairness Act

Implications for Defendants:

- Broader monetary relief may be recoverable.
- Defeating class certification can be difficult and expensive.
- Class actions require class notice, which often serves only to publicize the defendant's wrongdoing and generate public support for the case.
- Class actions cannot be settled or dismissed without court approval (Rule of Court 1859). A certified class has greater settlement leverage.
- Res judicata problem
- Possible CAFA implications



How Will Plaintiffs Adapt in the Post-Prop. 64 World?



What Plaintiffs Will Do:

- Add causes of action
 - Now that an injured plaintiff will be filing suit and seeking formal anyway, you may as well add other claims.
 - CLRA
 - A lot of UCL cases involve fact patterns that would fall within the ambit of the CLRA
 - Punitive damages
 - Mandatory attorneys' fees (other than CCP section 1021.5)
- What other causes of action might we see added?

Implications for Defendants:

- Damages are recoverable under the CLRA, not just restitution. Civ. Code §1780(a)(1); *Broughton v. Cigna Healthplans*, 21 Cal.4th 1066, 1077 (1999).
- CLRA includes penalty provisions for wrongful conduct aimed at senior citizens or disabled persons. Civ. Code §1780(b).
- Punitive damages are recoverable. Civ. Code §1780(a)(4).
- CLRA's attorney's fees provision is much stronger than Code of Civil Procedure §1021.5 (the private attorney general doctrine). Civ. Code §1780(d).
- CLRA's class certification requirement is less stringent because "superiority" is not an element. Civ. Code §1781(b); *Massachusetts Mutual Life Ins. Co. v. Superior Court*, 97 Cal.App.4th 1282, 1287 (2002); *Hogya v. Superior Court*, 75 Cal.App.3d 122, 134-35 (1977).
- Will more cases go to trial?
 - If plaintiff's attorneys work harder to identify plaintiffs and build cases, will they demand more to settle? Will defendants be willing to pay?
- But - Settlements may bring preclusive effect that is not available under straight § 17200 case. So defendants may be willing to pay more.



UCL v. CLRA



	UCL	CLRA
Compensatory Damages	No	Yes, minimum \$1,000 per class action
Attorney Fees	Code Civ. Proc §1021.5 (if it applies)	Civ. Code §1780(d) (mandatory to a prevailing plaintiff)
Punitive Damages	No	Yes

The Changes Wrought By Prop. 64 *Bring in the Public Prosecutors*

“Plaintiff Lawyers Hunt for Partners: Needing Public Faces for Private AG Suits, Lawyers Turn to DAs, City Attorneys,” *The Recorder*, February 25, 2005

Plaintiff Lawyers Hunt for Partners

Justin Scheck
The Recorder
02-25-2005

Plaintiff lawyers seeking public partners won't get much help from the state's DAs. But city attorneys remain open to offers.

The plaintiff bar has been looking to team up with public prosecutors since the November passage of Proposition 64 limited private attorney general suits.

With Attorney General Bill Lockyer tepid to the idea of collaborating, the private lawyers have narrowed their focus to city attorneys and DAs.

Reed Kathrein, a partner with Lerach Coughlin Stoia Geller Rudman & Robbins, said that he's spoken with some district and city attorneys about teaming up, but would not go into details, including their responses.

Owen Clements, a deputy city attorney in San Francisco, said "three or four firms" have approached him since November. "I don't want to talk about specific people who have floated ideas to us, but people have floated ideas to us, and we'll consider them on a case-by-case basis," he said.

Kathrein and other plaintiff attorneys say such arrangements would be mutually beneficial. They say the public offices could take on more suits -- and presumably collect more penalties -- if private lawyers did much of the work.

They point out that a lesser-known portion of Prop 64 gives local offices prosecuting unfair business competition claims a share of any resulting civil penalties.

"I don't know if that's a blessing or a disease," said Gale Filter, a deputy director of the California District Attorneys Association who deals with consumer issues.

He said DAs don't want the same PR problems that plague plaintiff attorneys. "You can certainly see what would happen if you brought in private partners to do 17200 litigation. It could look like a way to generate revenue," Filter said.

More problematic, said several DAs, is the prospect of ceding public power -- "handing over the badge," as several put it.

"If someone were to ask me, I'd be against partnering," said Patricia Pummil, a San Diego deputy district attorney. Pummil is one of several consumer protection specialists who have been swapping e-mails in recent weeks warning of the dangers of working with private attorneys. Other DAs echoed her concerns.

"I would think it's a bad idea personally. Prosecutors themselves have an ethical standard to take into consideration. We don't take our cases on contingency," said Michael Yraceburn, a Kern County deputy DA.

"We're there to level the playing field, to make sure businesses that are bad actors are not taking advantage of good businesses. I don't know that the private attorneys have the same priorities," Yraceburn added.

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The Changes Wrought By Prop. 64

Bring in the Public Prosecutors



The UCL Before Prop. 64:

- Prop. 64 does not impact the standing of public prosecutors.
- Provides that funds recovered shall be earmarked for consumer protection (nobody asked the public prosecutors whether they wanted this).
- Public prosecutors can intervene in pending litigation or retain private class action attorneys to prosecute actions on their behalf (*e.g.*, Judge Sabraw's decision in the *FATE* cases contemplated this).

And After:

- Public prosecutors can recover mandatory civil penalties under the UCL – up to \$2,500 per violation. (Bus. & Prof. Code §17206(a).
- A public prosecutor is a more threatening opponent.
- A public prosecution is more likely to generate press attention and bad publicity.
- But – public prosecutors have expressed concerns that their funding will be reduced because of the perception that they can earn the money needed to run their offices from UCL litigation.



Prop. 64 Does Much of What it Was Intended to Do



Fewer UCL Cases will be Filed

- Don't know yet if this will actually pan out

No More "Frivolous" Cases

- Most plaintiffs will have not only had dealings with the defendant, but will also have suffered actual harm.
- But – how many truly “frivolous” cases were there to begin with??

No More Trevor Law Group Tactics

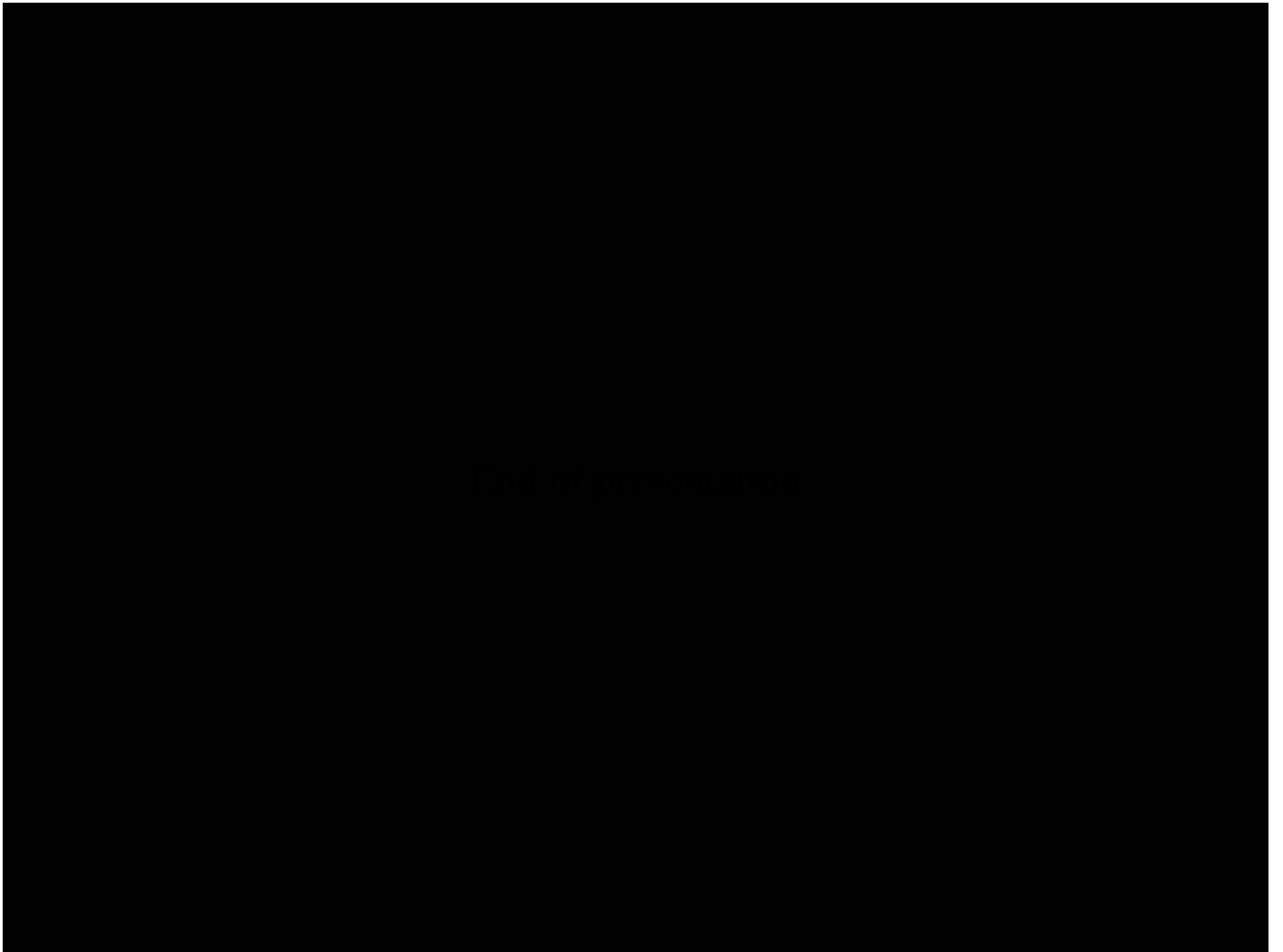
- They were the ones who really abused the law and who should have been more careful about what they wished for.
- But – a simple amendment requiring court approval of all settlements in UCL cases would have accomplished the same result as Prop. 64.



Questions



Thanks for coming.



Hon. James P. Kleinberg

- Judge, Superior Court of California, County of Santa Clara
Judge Kleinberg was appointed to the bench in 2002 and re-elected (unopposed) in 2004. He has been on the executive committee of the Litigation Section of the State Bar of California since 2002. Judge Kleinberg received his B.A. from the University of Pittsburgh in 1964 and his J.D. from the University of Michigan Law School in 1967. For over 19 years he was a partner at McCutchen, Doyle, Brown & Enersen LLP (now Bingham McCutchen, LLP) in their San Jose, Palo Alto and San Francisco Offices.

Michael Sweet

- Michael Sweet is a senior litigation associate in Winston & Strawn's San Francisco office who concentrates his practice in complex business litigation and political law. He represents clients in state and federal courts, including in actions brought under the UCL. Prior to practicing law, Mr. Sweet worked as a consultant on national and statewide political campaigns, including the 1992 presidential campaign of former California Governor Jerry Brown. He is a community activist and currently serves as the vice chair of the Rincon-Point/South Beach Citizens' Advisory Committee to the S.F. Redevelopment Agency.

Kimberly Kralowec

- Kimberly A. Kralowec is Of Counsel to The Furth Firm LLP, a plaintiffs' class action firm in San Francisco. Ms. Kralowec has extensive experience litigating UCL actions on behalf of both plaintiffs and defendants, and recently argued the Prop. 64 retroactivity question before the California Court of Appeal (First Appellate District, Division One). Before joining The Furth Firm, she was a partner with Severson & Werson, a class action defense firm in San Francisco. She is the author of *The UCL Practitioner*, the first and only weblog devoted to UCL law and practice (<http://www.uclpractitioner.com>).