

## Petition for Review Filed With the California Supreme Court Challenging the Ability of a Plaintiff, With No Standing, to Use the Discovery Process to Attempt to Locate A Plaintiff with Standing under the UCL

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On April 30, 2009, the Court of Appeal issued a decision in which it held that attorneys and their plaintiff, who never suffered an injury in fact from an alleged unfair act, never had standing to assert a class claim under California's Unfair Competition Law (the "UCL"), and was essentially a *complete stranger* to the action, could nevertheless use the discovery process to attempt to locate an actual plaintiff with standing under the UCL. [A copy of the opinion, Safeco v. Superior Ct., 173 Cal. App. 4th 814 (2004), can be found [here](#).]

In other words, Safeco stands for the proposition that attorneys and their clients may maintain an action and use the litigation process to attempt to locate actual appropriate plaintiff clients to continue an action that was not properly maintained in the first instance.

The Petition for Review seeking review of this issue was filed on June 8th. [A copy of the PFR is [here](#).]

As argued in the Petition, the Safeco decision is at odds with California law and class action principles. This holding conflicts with basic jurisdictional issues that require standing at all times during a case. This holding also conflicts with federal class action principles that require the flat dismissal of class actions where the plaintiff lacks original standing. Finally, and most importantly, this holding conflicts with Proposition 64 that the California electorate strongly approved, which expressly imposed "injury-in-fact" standing requirements under the UCL that were intended to put an end to UCL lawsuits brought by uninjured plaintiffs.

Critically, as the California Supreme Court recognized:

**“[T]he intent of California voters in enacting Proposition 64 was to limit [] abuses by ‘prohibit[ing] private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact.’”**

Californians for Disability Rights v. Mervyn's, LLC, 39 Cal. 4th 223, 228 (2006).

As also argued in the Petition for Review, "[t]o permit a plaintiff with no standing to use the discovery process to continue an action that should not have proceeded in the first instance under Proposition 64 is to give no effect to the

voters' intent at all. Under the Opinion, attorneys and consumer organizations have little reason not to use "placeholder" plaintiffs to initiate a UCL action to "shakedown" businesses. Attorneys can proceed with the knowledge that the discovery process will be available to them to find an actual injured client or, at a minimum, that the threat of such discovery can be used as leverage for settlement and that the costs of such discovery can be levied on a defendant for months before a summary judgment motion disposing of standing can even be heard. This is precisely the type of abuse that the California electorate expressly intended to stop in adopting Proposition 64."

[For updates on this Petition, please refer back to this post as I will be updating it with amicus letters and briefs that are filed.]