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## California Supreme Court Holds That Only Individual Representatives in UCL Class Actions Are Required to Satisfy The Standing Requirements of Proposition 64

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A sharply divided California Supreme Court ruled on May 18, 2009, that in putative class actions filed under California's Unfair Competition Law (the "UCL") (Business and Professions Code Section 17200), only the named class representative(s) – not absent class members – must satisfy the standing requirements of Proposition 64, the 2004 ballot initiative that amended the UCL. That is, only the named plaintiff(s) in a class action must show they "suffered injury in fact and ha[ve] lost money or property as a result of" the alleged unfair competition. The Court's narrow 4-3 majority decision reversed a series of lower court rulings which had held that every class member in a UCL class action must demonstrate Proposition 64 standing.

Just as important, the decision re-affirmed the requirement in "fraud"-based class actions, that class representatives must still plead and prove actual reliance on misrepresentations made by defendants and that only in certain limited circumstances can actual reliance be presumed on a class-wide basis. Thus, putative class action plaintiffs will still face significant hurdles in having classes certified on claims arising out of allegedly fraudulent or deceptive sales practices. The Court was unanimous on this ruling, and parted ways only on the Proposition 64-standing issue.

The decision in *In re Tobacco II Cases*, No. S147345, \_\_\_ Cal.4th \_\_\_ (May 18, 2009), reversed a trial court order

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decertifying a class action brought under the “fraudulent” prong of the UCL. The plaintiffs alleged that various tobacco manufacturer defendants had purposefully misled consumers about the alleged health effects and addictive nature of cigarette smoking. The trial court certified a class including all persons who had smoked cigarettes during the relevant class period and who had been exposed to the defendants’ marketing campaign. After the passage of Proposition 64, the trial court decertified the class, holding that each member of the class was required to demonstrate injury-in-fact in order for the lawsuit to proceed. That order was affirmed by the Fourth District Court of Appeal.

In reversing, the Supreme Court determined that the plain language of Proposition 64 did not require that all class members must satisfy the new standing requirements imposed by the initiative. The Court explained that the Proposition 64 ballot materials were devoid of any indication that the measure was intended to alter the manner in which class actions would proceed under the UCL. Citing federal law, the Court stated that standing in class actions is generally evaluated with respect to class representatives, and not members of the class. The Court observed that Proposition 64 was not intended to result in any substantive changes in the UCL law, but was principally directed at curbing the prevalence of “shakedown” lawsuits filed by private plaintiffs’ attorneys who did not represent clients who had suffered actual injury from the challenged practice(s), and that the remedial purpose of the UCL would be preserved by the Court’s construction. In a concurring and dissenting opinion, three Justices disagreed that Proposition 64 was so limited. They emphasized the text of the initiative and its accompanying voter pamphlet specified that all UCL representative claims must meet class certification requirements imposed by Code of Civil Procedure Section 382, and that only select public prosecutors should be allowed to sue on behalf of others, unless each class member meets the standing and injury-in-fact requirements of Proposition 64.

The Court also clarified what class representatives must allege to demonstrate that their injuries-in-fact were sustained “as a result of” fraudulent activity under the UCL’s fraud prong. The Court held that class representatives must plead and prove “actual reliance” on the purported fraudulent statements. A plaintiff can establish actual reliance by showing that he or she would not have, in all probability, purchased the defendant’s product in the absence of misrepresentations. However, a plaintiff need not show that the misrepresentation was the sole or decisive factor in his or her purchasing decision. Moreover, although the general rule

remains that fraud must be alleged with specificity, the Court explained that where, as in the tobacco lawsuit at issue, a plaintiff alleges exposure to a long-term advertising campaign, the plaintiff is not required to plead with an “unrealistic degree of specificity” that the plaintiff relied on particular advertisements or statements.

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