

## [California Supreme Court Holds that Only the Class Representative Needs to Meet the Standing Requirements of Proposition 64 to Pursue a Representative Action](#)

Posted on May 22, 2009 by [Misty Murray](#)

*In Re Tobacco II Cases*, \_\_\_ Cal. 4<sup>th</sup> \_\_\_ (May 18, 2009)

Following the passage of Proposition 64 on November 2, 2004, in order to bring a *representative* claim under the unfair competition law (“UCL”), a plaintiff must meet the following standing requirements: (1) establish that he or she “has suffered injury in fact and has lost money or property as a result of such unfair competition” and (2) comply with the class action requirements as set forth in California Code of Civil Procedure Section 382. *Bus. & Prof. Code* §§ 17203, 17204 and 17535. After the passage of Prop 64, litigants continued to debate whether only the named plaintiff or all class members had to meet the more stringent standing requirements of injury in fact and loss of money or property as a result of the alleged conduct.

In *In Re Tobacco II Cases*, \_\_\_ Cal. 4<sup>th</sup> \_\_\_ (May 18, 2009), the California Supreme Court resolved that debate. Specifically, the Court addressed two questions: “First, who in a UCL class action must comply with Proposition 64’s standing requirements, the class representative or all unnamed class members, in order for the class action to proceed?” and “Second, what is the causation requirement for purposes of establishing standing under the UCL and in particular what is the meaning of the phrase ‘as a result of’ in section 17204?” In response to the first question, the Court concluded that the new standing requirements of Prop 64 applied only to the named plaintiff/class representative and not to absent class members. In reaching this conclusion, the Court reasoned that “the references in section 17203 to one who wishes to pursue UCL claims on behalf of others are in the singular; that is, the ‘person’ and the ‘claimant’ who pursues such claims must meet the standing requirements of section 17204 and comply with Code of Civil Procedure section 382.” The Court concluded that these singular references must be interpreted to relate only to the individual representative plaintiff. The Court further reasoned that there was nothing in Prop 64 that indicated it was to have any affect on absent class members and the way in which class actions operate in the context of the UCL, or on the remedies available under the UCL, which did not always require actual injury to absent class members.

In response to the second question, the Court concluded that the named plaintiff/class representative must demonstrate actual reliance on the alleged deceptive or misleading representations, consistent with the element of reliance required in common law fraud actions. The Court, however, indicated that while the representative plaintiff must show that the alleged misrepresentation was “an immediate cause of the injury-producing conduct, the plaintiff need not demonstrate it was the only cause.” In other words, it is enough that the plaintiff’s reliance “played a substantial part” and was “a substantial factor, in influencing his decision.”

Finally, while the Court made clear that the new standing requirements of Prop 64 applied only to the named plaintiff/representative, the Court also noted that Prop 64 “explicitly mandates that

a representative UCL action comply with Code of Civil Procedure section 382,” which requires that class representative’s claims be typical of the unnamed class members and that common questions of law and fact predominate. *See Basurco v. 21<sup>st</sup> Century Ins. Co.*, 108 Cal. App. 4<sup>th</sup> 110, 117 (2003).

Justice Moreno authored the opinion for a divided Court, and Justice Baxter wrote a concurring and dissenting opinion.