

# Litigation Alert: Supreme Court Clarifies Standing and Reliance Rules for 17200 Consumer Class Action Claims

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## INTRODUCTION

On May 18, 2009, a split California Supreme Court handed down its long awaited decision of *In Re Tobacco II Cases* (S147345), clarifying the effect of Proposition 64 on the unfair competition law (“UCL”) (Bus. & Prof. Code, § 17200 *et seq.*) in consumer class actions.

The California Supreme Court’s decision has two critical holdings for any company facing a UCL class action:

- Only the named plaintiff—not all absent unnamed class members—must show that she “has suffered injury in fact and has lost money or property as a result of [the alleged] unfair competition” under the UCL.
- In pleading and proving a misrepresentation claim, the plaintiff is not required to plead and prove reliance on specific misrepresentations or false statements where the misrepresentations were part of an extensive and long-term advertising campaign.

These holdings will make it more difficult for defendants to limit claims at the pleading stage and defeat class certification motions, thereby increasing the exposure and expense associated with defending consumer class actions.

## SUMMARY

Prior to Proposition 64’s passage in 2004, UCL actions could be prosecuted either by government officials, “or upon the complaint of any board, officer, person, corporation or association or by any person acting for the interests of itself, its members or the general public.” Following passage, a person “pursu[ing] representative claims or relief on behalf of others” must meet the standing requirements of Section 17204, showing, in particular, that he or she “has suffered injury in fact and has lost money or property as a result of [the] unfair competition.”

In *In Re Tobacco II Cases*, a four justice majority reversed the lower courts and held the new standing rules are applicable only to class representatives, and not absent class members. In so holding, the majority read Proposition 64 narrowly to only preclude suits brought under the UCL in which the named plaintiff has not been injured.

In addition, the majority held that class representatives claiming misrepresentation as the basis of a UCL claim must demonstrate actual reliance on the allegedly deceptive or misleading statements. However, when the unfair practice is a fraudulent advertising campaign, the Court held that a plaintiff need not plead or prove “an unrealistic degree of specificity,” such as showing that he or she relied on *particular* advertisements or statements.

## THE SPECIFICS OF THE SUPREME COURT’S DECISION

*In Re Tobacco II Cases* originated when Willard Brown, acting “individually, on behalf of the General Public of the State of California, as well as on Behalf of All Others Similarly Situated,” filed sued against a number of tobacco companies. Other named plaintiffs subsequently joined the action. The plaintiffs alleged, *inter alia*, unfair competition on the part of the tobacco companies due to the fact that they advertised and sold tobacco products to the plaintiffs and other California citizens while knowing, but denying, concealing and engaging in a public campaign to misrepresent the addictive nature of tobacco. In his seventh amended complaint plaintiff Brown moved for class certification of his UCL cause of action. The trial court granted the motion. Following the passage of Proposition 64, defendants moved for class decertification, arguing that the new standing requirement under the UCL that a party must have suffered injury in fact and lost money or property due to the UCL violation applied to every class member. As such, defendants argued, the class should be decertified because the changes in the law now caused individualized issues to predominate. The trial court agreed, holding that the “simple language” of

Proposition 64 required that “for standing purposes, a showing of causation is required as to each class member’s injury in fact.” The trial court reasoned that since individual issues now predominated in the case, class treatment had become “unmanageable and inefficient.” Consequently, the trial court granted the motion for decertification and the appeals court affirmed, but the Supreme Court reversed and remanded.

To start with, the Supreme Court held that lower courts were mistaken in finding that unnamed members of a class must demonstrate section 17204 standing. The Court reasoned that “nothing in the text of Proposition 64, nor in the accompanying ballot materials, makes any reference to altering class action procedures to impose upon all absent class members the standing requirement imposed upon the class representative.” In addition, the Court explained that were the lower courts’ decisions allowed to stand, Proposition 64 would have a broader effect on UCL than intended by its drafters and supporters. The Court noted that Proposition 64 was designed to eliminate a practice under the UCL wherein lawyers who had suffered no injury but intended to exploit “the generous standing requirement of the UCL” would form watchdog or consumer organizations, search the public records for violations of a particular regulation by a business, and file suit against that business in search of a quick settlement. The majority reasoned that the Proposition was not intended to curb the rights of ordinary citizens who had been injured and sought to file class-action suits under the UCL, but that the lower courts’ reading of the amendment would have exactly that result. In further support of its holding, the majority also pointed to the fact that Proposition 64 did not alter the remedies provision of the UCL, and that after the passage of Proposition 64 the primary form of relief under the UCL to protect consumers from unfair business practices remained an injunction. The Court explained that the “purpose of such relief, in the context of a UCL action, is to protect California’s consumers against unfair business practices by stopping such practices in their tracks. An injunction would not serve the purpose of prevention of future harm if only those who had already been injured by the practice were entitled to that relief.” Thus, the Supreme Court held that the new standing rules are applicable only to the class representatives, and not all absent class members.

The Court also held that a class representative proceeding on a claim of misrepresentation as the basis of his or her UCL action must demonstrate actual reliance on the allegedly deceptive or misleading statements. However, the Court noted that while “a plaintiff must show that the misrepresentation was an immediate cause of the injury-producing conduct, the plaintiff need not demonstrate it was the only cause.” Relying on precedent, the Court also held that in UCL actions alleging deceptive or fraudulent advertising, a plaintiff need not demonstrate individualized reliance on specific misrepresentations, such as a specific commercial or magazine ad for a tobacco product, to satisfy the reliance requirement. Finally, the Court explained that an allegation of reliance is not defeated merely because there was alternative information available to the consumer-plaintiff, even regarding an issue as prominent as whether cigarette smoking causes cancer.

Three justices concurred with the majority’s holdings as to the injury-in-fact and causation requirements, but dissented from the Court’s finding that unnamed class members in a private UCL class action need not meet the injury-in-fact and causation requirements of Proposition 64. The minority explained that the language of Proposition 64 and the arguments of its proponents clearly showed that the Proposition “eliminated any private right, even of injured persons, to represent those who have not been injured.”

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