

SUPREME COURT  
**FILED**

MAR 01 2019

Jorge Navarrete Clerk

**S249895**

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**CALIFORNIA SUPREME COURT**

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Deputy

**ABBOTT LABORATORIES et al.,**  
Defendants and Petitioners,  
**vs.**  
**SUPERIOR COURT OF CALIFORNIA,**  
Respondent.

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**THE PEOPLE OF THE STATE OF CALIFORNIA,**  
Plaintiff and Real Party in Interest.

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**APPLICATION TO SUBMIT AMICUS BRIEF AND  
AMICUS CURIAE BRIEF OF  
CONSUMER ATTORNEYS OF CALIFORNIA  
IN SUPPORT OF REAL PARTY IN INTEREST  
THE PEOPLE OF THE STATE OF CALIFORNIA**

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*Fourth Appellate District, Division One, D072577  
On Writ Review from an Order Denying a Motion to Strike  
Orange County Superior Court, Case No. 00879117, Hon. Kim Dunning*

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**CERTIFICATE OF INTERESTED PARTIES**

Pursuant to California Rule of Court 8.208, Consumer Attorneys of California certifies that it is a non-profit organization which has no shareholders. As such, *amicus* and its counsel certify that *amicus* and its counsel know of no other person or entity that has a financial or other interest in the outcome of the proceeding that the *amicus* and its counsel reasonably believe the Justices of this Court should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

Dated: March 1, 2019

\_\_\_\_\_  
VALERIE T. MCGINTY

**APPLICATION OF CONSUMER ATTORNEYS OF  
CALIFORNIA FOR LEAVE TO FILE AN AMICUS BRIEF  
IN SUPPORT OF REAL PARTY IN INTEREST**

Consumer Attorneys of California hereby requests that its attached amicus brief submitted in support of Real Party in Interest be accepted for filing in this action.

Counsel is familiar with the briefing filed in this action to date. The concurrently-filed amicus brief is concise and addresses two very precise, but critically-important and amicus believes the brief will assist this Court in its consideration of the issues presented.

No party to this action has provided support on the authorship, production or filing of this brief.

**STATEMENT OF INTEREST OF THE *AMICUS***

The Consumer Attorneys of California (“Consumer Attorneys”) is a voluntary membership organization representing approximately 6,000 associated attorneys practicing throughout California. The organization was founded in 1962. Its membership consists primarily of attorneys who represent individuals who are victims of personal injury, employment discrimination, unsafe products, and harmful

business practices. Consumer Attorneys has taken a leading role in advancing and protecting the rights of injured Californians in both the courts and the Legislature.

As an organization that is representative of the plaintiff's trial bar throughout California, including attorneys who represent consumers in fraudulent and deceptive business practice cases, Consumer Attorneys is interested in the significant issues presented in this case, especially with respect to preserving the effectiveness and application of California's Unfair Competition Law.

Dated: March 1, 2019

LAW OFFICE OF VALERIE T. MCGINTY

By: \_\_\_\_\_  
VALERIE T. MCGINTY  
Attorney for *Amicus Curiae*  
Consumer Attorneys of California

**S249895**

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**CALIFORNIA SUPREME COURT**

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**AMICUS CURIAE BRIEF OF  
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**STATEMENT OF INTEREST OF THE *AMICUS***

The Consumer Attorneys of California (“Consumer Attorneys”) is a voluntary membership organization representing approximately 6,000 associated attorneys practicing throughout California. The organization was founded in 1962. Its membership consists primarily of attorneys who represent individuals subjected in a variety of ways to personal injury, employment discrimination, and other harmful business and governmental practices. Consumer Attorneys has taken a leading role in advancing and protecting the rights of injured Californians in both the courts and the Legislature.

As an organization representative of the plaintiff’s trial bar throughout California, including many attorneys who represent consumers in cases involving fraudulent and deceptive business practices, Consumer Attorneys is interested in the significant issues presented in this case, especially with respect to preserving the effectiveness and application of the UCL.

## INTRODUCTION

For two reasons, this Court should reverse the Fourth District’s decision and reinstate the trial court’s denial of defendants’ motion to strike allegations of “claims for restitution and civil penalties based on conduct outside the territorial jurisdiction of Orange County.” (*Abbott Laboratories v. Superior Court* (2018) 24 Cal.App.5th 1, 8.)

First, as this Court has held, statutory interpretation principles require that the UCL be construed according to its plain language, which contains nothing to support the geographic limitation that Petitioners urge here.

Second, as the Court of Appeal acknowledged, the purpose of the statute is to “protect” “consumers” by “promoting fair competition in commercial markets for goods and services.” (*Id.* at 21.) Thus, thwarting the ability of the District Attorney to “protect” consumers would violate the Legislature’s intent.

Accordingly, this Court should allow district attorneys who prosecute UCL actions on behalf of all of the People of California to seek the statewide remedies provided by the statute.

## LEGAL DISCUSSION

### I.

**Statutory Interpretation: Because the UCL’s plain language does not prohibit it, the District Attorney may seek statewide remedies.**

Because nothing in the UCL prohibits it, district attorneys bringing UCL actions on behalf of the People of California (which class has been certified here) must be allowed to pursue the corresponding statewide remedies.

As this Court just held, where a case “involves the interpretation of a statute,” the “fundamental task . . . is to determine the Legislature’s intent so as to effectuate the law’s purpose” and the “first” thing this Court does is “examine the statutory language, giving it a plain and commonsense meaning.” (*Meza v. Portfolio Recovery Associates, LLC* (2019) 2019 WL 641517, p. 6.)

**A. The UCL specifically authorizes district attorneys to bring an action “in the name of the people of the State of California,” and leaves the remedy to the trial court’s sound discretion.**

The UCL specifically designated district attorneys as one of the authorized entities to bring suit under the statute: “Actions for

relief pursuant to this chapter shall be prosecuted by the Attorney General or a district attorney or by a county counsel . . . or by a person who has suffered injury in fact and has lost money or property as a result of unfair competition.” (Bus. & Prof. Code § 17204.)

The UCL also states the relief that is available without limiting that relief to a single county. Specifically, it provides that the trial court shall determine the remedy, imposing a “civil penalty for each violation of this chapter” and it prescribes the factors “the court shall consider” in “assessing the amount of the civil penalty.” (Bus. & Prof. Code § 17206.)

Because the statute does not state the restriction sought by Petitioners, this Court ought not insert one: “If the Legislature had intended” a different “interpretation, it would have said so directly, as it easily could have done.” (*Ramirez v. City of Gardena* (2018) 5 Cal.5th 995, 1002.)

Likewise, here the Legislature wrote a very detailed code section on “Civil Penalty for Violation of Chapter” and could easily have specified that district attorneys be allowed to receive remedies only for violations occurring in their own counties. But the Legislature did not do that.

Moreover, intervention by the Court of Appeal on writ review was unnecessary here because the Attorney General already has the constitutional power (and the obligation) to intervene in any UCL proceeding where it perceives the District Attorney is not adequately enforcing that statute. Accordingly, no writ relief to limit remedies to Orange County was warranted here.

**B. Neither *Safer* or *Hy-Lond* support a geographic limitation here.**

Petitioners and the Fourth District are wrong to claim that a geographic limitation is supported by *Safer v. Superior Court*, (1975) 15 Cal.3d 230 and *People v. Hy-Lond*, (1979) 93 Cal.App.3d 734.

Both *Safer* and *Hy-Lond* are inapposite.

First, *Safer* was not a UCL case and held only that a district attorney could not intervene in a private civil action because no statute authorized such involvement. (*Safer, supra*, 15 Cal.3d at 238.) But here, as shown above, the UCL does authorize the district attorney to bring this action and it places no limits on the remedies a district attorney can obtain when doing so. (Bus. & Prof. Code § 17206.)

Second, *Hy-Lond*, which is not a decision of this Court, does not support the writ relief granted here. As the dissent explained, all

*Hy-Lond* held that a district attorney's settlement that purported to limit "enforcement as to future violations" was improper. (*Abbott Laboratories, supra*, 24 Cal.App.5th at 37 (Dissenting Opn.)) The district attorney's ability to pursue statewide remedies for *past violations* was not at issue in *Hy-Lond*.

Moreover, the reliance on *Hy-Lond*, which dealt with a stipulated settlement is all the more inexplicable here, on writ review of a motion to strike allegations that do not even appear in the prayer for relief (which simply requests "restitution of any money acquired by Defendant's unlawful and unfair business practices"). (*Abbott Laboratories, supra*, 24 Cal.App.5th at 32.) Thus, *Hy-Lond* is not authority for the existence of any geographic limitation on the past violations at issue here.

Accordingly, neither *Safer* nor *Hy-Lond* apply here.

As this Court has held, where a statute's language is unambiguous, there is no occasion to examine its purpose and public policy. (*Ramirez, supra*, 5 Cal.5th at 1001 (citing *Coalition of Concerned Communities, Inc. v. City of Los Angeles* (2004) 34 Cal.4th 733, 737).) Moreover, the legislative intent supports the same outcome, as will be shown next.

## II.

**Legislative Intent: Limiting relief sought by a district attorney on behalf of a certified class of Californians would frustrate the legislative intent behind the statute.**

Imposing geographical limits on the relief a district attorney can seek under the UCL would frustrate the legislative intent.

As this Court has held, the ability of both government officials and private individuals to bring a UCL action addresses “the overarching legislative concern,” which is “to provide a streamlined procedure for the prevention of ongoing or threatened acts of unfair competition.” (*Solus Industrial Innovations, LLC v. Superior Court* (2018) 4 Cal.5th 316, 340-341.)

**A. If cities and counties are barred from representing statewide interests, judicial resources will be burdened with suits in each of the 58 counties and consumers will be deprived of the UCL’s intended “streamlined procedure.”**

The ability of cities and counties to invoke the UCL in one county’s superior court to protect statewide interests is critical to the redress of statewide injuries.

Otherwise, a single suit seeking statewide relief brought by a district attorney must become 58 suits brought in each of the 58 counties.

This would unnecessarily burden courts and would deprive consumers of the “streamlined procedure” the Legislature intended the UCL to be. (*Solus Industries, supra*, 4 Cal.5th at 340-341.)

**B. If cities and counties are barred from representing statewide interests, meritorious cases that are beyond the resources of the Attorney General may never be brought.**

Allowing cities and counties to seek statewide relief effectuates the statutory intent of maximizing the resources available to pursue meritorious cases.

This is important because Californians have benefitted from the statewide relief obtained by attorneys other than the Attorney General’s office. As the California Law Revision Commission noted, “most of the significant consumer abuses over the past two decades have been detected and litigated by private counsel, including the three leading cases under the Unfair Competition Act.”

(<http://www.clrc.ca.gov/pub/BKST/BKST-UnfairCompetition.pdf>, p.

27 (citing *Daar v. Yellow Cab Co.*, (1967) 67 Cal.2d 695; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800; *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94).)

Accordingly, maximizing the ability of public and private lawyers to bring actions for statewide relief in one county's superior court will help effectuate the statutory intent here.

## CONCLUSION

Because both the plain language of the statute and its legislative purpose support the availability of statewide remedies (should the trial court choose to award such remedies here), this Court should reverse and order the Fourth District to vacate its decision and issue a new order denying the writ petition.

Dated: March 1, 2019

LAW OFFICE OF VALERIE T. MCGINTY

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VALERIE T. MCGINTY  
Attorney for *Amicus Curiae*  
Consumer Attorneys of California

**CERTIFICATE OF LENGTH OF BRIEF**

I, Valerie T. McGinty, declare under penalty of perjury under the laws of the State of California that the word count for this Brief, excluding Tables of Contents, Tables of Authority, Proof of Service and this Certification is 1,339 words as calculated utilizing the word count feature of Microsoft Word, which was used to create this document.

Dated: March 1, 2019

VALERIE T. MCGINTY

**PROOF OF SERVICE**

I am over the age of 18 and not a party to the within action; my business address is 524 Fordham Road, San Mateo, CA 94402.

On **March 1, 2019**, I served the within document described as:

**APPLICATION TO SUBMIT AMICUS BRIEF AND AMICUS CURIAE BRIEF OF  
CONSUMER ATTORNEYS OF CALIFORNIA IN SUPPORT OF REAL PARTY IN  
INTEREST THE PEOPLE OF THE STATE OF CALIFORNIA;**

on the interested parties in this action by placing an addressed stamped envelope in a U.S. mailbox to each of the recipients listed in the attached service list.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

**Executed on March 1, 2019 at San Mateo, California.**

\_\_\_\_\_  
VALERIE T. MCGINTY

# ABBOTT LABS V. SUPERIOR COURT

Case Number S249895

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