No. S249895

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ABBOTT LABORATORIES; ABBVIE INC.; TEVA PHARMACEUTICAL INDUSTRIES, LTD.; TEVA PHARMACEUTICALS USA, INC.; BARR PHARMACEUTICALS, INC.; DURAMED PHARMACEUTICALS, INC.; DURAMED PHARMACEUTICALS SALES CORP

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE,

Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Real Parties in Interest.

Petition for Review of a Decision of the Court of Appeal, Fourth Appellate District, Division 1, No. D072577

Superior Court, County of Orange
Civil Case No. 30-2016-00879117-CU-BT-CXC
Honorable Kim G. Dunning

OPENING BRIEF ON THE MERITS

ORANGE COUNTY DISTRICT ATTORNEY
Tony Rackauckas, District Attorney, SBN 51374
Kelly A. Ernby, Deputy D.A., SBN 222969
401 Civic Center Drive
Santa Ana, CA 92701-4575
Tel: (714) 834-3600;
Fax: (714) 648-3636

– In Association with –
Mark P. Robinson, Jr., SBN 05442
Kevin F. Calcagnie, SBN 108994
ROBINSON CALCAGNIE, INC.
19 Corporate Plaza Drive
Newport Beach, CA 92660
Tel: (949) 720-1288; Fax: (949) 720-1292
mrobinson@rcrlaw.net

Attorneys for Real Party In Interest
THE PEOPLE OF THE STATE OF CALIFORNIA

No. S249895

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

ABBOTT LABORATORIES; ABBVIE INC.; TEVA PHARMACEUTICAL INDUSTRIES, LTD.; TEVA PHARMACEUTICALS USA, INC.; BARR PHARMACEUTICALS, INC.; DURAMED PHARMACEUTICALS, INC.; DURAMED PHARMACEUTICALS SALES CORP

Petitioners,

v.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE,

Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Real Parties in Interest.

Petition for Review of a Decision of the Court of Appeal, Fourth Appellate District, Division 1, No. D072577

Superior Court, County of Orange
Civil Case No. 30-2016-00879117-CU-BT-CXC
Honorable Kim G. Dunning

OPENING BRIEF ON THE MERITS

ORANGE COUNTY DISTRICT ATTORNEY
Tony Rackauckas, District Attorney, SBN 51374
Kelly A. Ernby, Deputy D.A., SBN 222969
401 Civic Center Drive
Santa Ana, CA 92701-4575
Tel: (714) 834-3600;
Fax: (714) 648-3636

Attorneys for Real Party In Interest
THE PEOPLE OF THE STATE OF CALIFORNIA

– In Association with –
Mark P. Robinson, Jr., SBN 05442
Kevin F. Calcagnie, SBN 108994
ROBINSON CALCAGNIE, INC.
19 Corporate Plaza Drive
Newport Beach, CA 92660
Tel: (949) 720-1288; Fax: (949) 720-1292
mrobinson@rcrlaw.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. STATEMENT OF THE ISSUES

1. In a complaint filed by a district attorney alleging statewide violations under California's Unfair Competition Law ("UCL"), is the trial court's power to order monetary penalties and restitution limited to protect consumers in only one county, such that the trial court may only order monetary sanctions for the violations occurring in that single county, or does the trial court have the power to order the full range of remedies specified in the UCL to protect all consumers in the state upon a properly filed law enforcement complaint?

2. Must a district attorney, who is expressly authorized to file cases on behalf of the People of the State of California in UCL actions, obtain "written consent by the Attorney General and other county district attorneys" before filing a UCL complaint that alleges statewide misconduct, to enable the court to grant the full remedies available under the UCL to protect California consumers?

3. In providing a judicial opinion on the above questions that were not yet reached by the trial court or the state Legislature, did the Fourth District exceed its jurisdiction and legally err in mandating the Respondent Court to grant a motion to strike true factual references to the State of California from the District Attorney's complaint in this case?

II. INTRODUCTION

District attorneys are expressly authorized to file UCL actions "on behalf of the People of the State of California" for "any unlawful, unfair or fraudulent business act or practice." (Cal. Bus. & Prof. Code §§ 17200, 17204 & 17206, subd. (a).) "[A]ny court of competent jurisdiction" is, in turn, expressly authorized to: (1) enjoin such behavior; (2) enter orders for restitution to restore "any money or property" to "any person" harmed by the bad acts; and (3) to impose civil penalties "for each violation" so as to punish and deter "any person who engages" in unlawful and unfair competition in this state. (Cal. Bus. & Prof. Code §§ 17200, 17203, 17204 & 17206, subd. (a).) Under this simple framework, district attorneys have been bringing UCL law enforcement actions in courts throughout the state to protect California consumers for decades.

The present case is no exception. However, according to the Fourth District Court of Appeal's unprecedented holding below, courts may no longer order the full range of monetary remedies authorized in the UCL to protect the public if the case is filed by a district attorney without the prior "written consent" of the Attorney General and other state prosecutors. In support of its holding, the Fourth District reasoned that district attorneys are county officers who are constitutionally limited to pursuing monetary remedies solely for violations impacting their constituents within their county's borders. The Fourth District's Opinion is clearly erroneous.

Indeed, the purported geographic limitations on the UCL's remedies are not found anywhere in the UCL, the State Constitution or elsewhere. To the contrary, the UCL expressly grants the Attorney General, district attorneys and certain city attorneys standing to file public law enforcement actions for unfair competition -- without geographic restriction. The UCL also expressly grants the judiciary the power to order all authorized statutory remedies as necessary to protect "any person" and to penalize "each violation" of law upon a properly filed complaint -- without geographic restriction. The nature of the remedy awarded is expressly intended to be punitive in nature, driven by the defendants' misconduct and the facts of the case, not the particular prosecutor that files the enforcement action.

To hold otherwise is plainly contrary to the intent of the UCL to protect consumers statewide in an efficient, streamlined fashion, using the state's full network of public prosecutors and courts in the process. It makes no sense to shield defendants from any part of the expressly authorized remedies in the UCL upon a properly filed complaint, merely because it is brought by a district attorney rather than the Attorney General. A court in any "competent jurisdiction" is equally capable to enter an appropriate order to protect consumers, regardless of the prosecutor that files the case. (Cal. Bus. & Prof. Code § 17206, subd. (a).)

For each of these reasons, and those described in more detail below, the Fourth District's Opinion and mandate should be reversed.

III. STATEMENT OF THE CASE

This is a government law enforcement action for unlawful and unfair competition under California Business and Professions Code Section 17200 *et seq.* (also known as the "UCL") filed by the District Attorney of the County of Orange on behalf of the People of the State of California.[1] The People allege that Defendants engaged in anticompetitive, unfair and unlawful business practices by intentionally delaying the sale of a generic version of a popular pharmaceutical drug to maximize their profits. (*See* Petitioner's Appendix, Ex. 7, at A.075-A.111 [attaching the operative complaint].)[2] The purpose of this action is to protect consumers and punish the corporate wrongdoers for their unlawful, unfair and fraudulent business practices as an exercise of the District Attorney's police powers. (FAC ¶¶ 1 & 4.)

A. The Complaint Adequately Alleges Standing, Jurisdiction, And Venue For This Action To Proceed In Orange County

The Complaint alleges "Plaintiff's Authority" for bringing the present action "pursuant to section 17200 of the California Business and Professions

---

[1] Real Party in Interest, the People of the State of California, is herein referred to as the "People" or the "Plaintiff."

[2] The complaint was filed on October 4, 2016. (A.11-A.43.) The People filed their First Amended Complaint for Violations of California Unfair Competition Law, Seeking Restitution, Civil Penalties and Injunctive Relief (hereinafter the "Complaint" or the "FAC") on December 27, 2016. (A.75-A.111.) All further citations to "A" herein are to the page numbers in the Petitioner's Appendix.

Code." (FAC ¶ 4.) There is no dispute that district attorneys have standing to pursue such claims "in the name of the people of the State of California." (*See* Cal. Bus. & Prof. Code §§ 17204 & 17206 [expressly authorizing "any district attorney" to file civil actions under the UCL in the "name of the People of the State of California"].) The Complaint further alleges a proper basis for jurisdiction over the Petitioners in Orange County, and adequately pleads that Orange County is a proper venue for this case to be heard. (*See* FAC ¶¶ 17-18.)

B. The FAC Alleges One Count Of Unlawful And Unfair Business Practices Under The UCL

The Complaint alleges that "the brand name manufacturers of Niaspan entered into agreements with generic drug manufacturers" whereby the generic drug manufacturers were paid to delay bringing "generic versions of Niaspan to market in the United States." (FAC ¶ 2.) Through this conspiracy, the Complaint alleges Petitioners: (a) illegally maintained monopoly power in the market for Niaspan in the United States from 2005 through March 2014; (b) illegally maintained the price of Niaspan at supracompetitive levels; and (c) caused consumers, their insurers, public healthcare providers, and other government payors to overpay millions of dollars by depriving them of access to less expensive generic versions of Niaspan. Petitioners spared no geographic market in their wrongdoing. Their unlawful monopoly thus affected the "geographic market" of the entire

United States and its territories," including the State of California, and the County of Orange. (FAC ¶ 144.)

Based on the foregoing, the Complaint alleges one Count of Unfair Competition under Section 17200 against Petitioners for their unfair, anti-competitive, and unlawfully monopolistic, business practices. (FAC ¶¶ 162-169.) The corporate conspiracy is alleged to be unlawful under several federal, state, statutory and/or common laws. (FAC ¶ 164.) The conduct is further alleged to be "unfair" under the UCL because it is offensive to "public policy," "substantially injurious to consumers," and such conduct stands to "significantly threaten and harm competition." (FAC ¶ 165.)

C. Just As In Any Other Complaint, The FAC Properly Prays For The Maximum Relief Authorized By Law

Plaintiff's "Prayer for Relief" seeks declaratory relief, injunctive relief, restitution and civil penalties, as well as costs, fees and any further relief the court deems proper. (A.110.) The prayer is alleged in a fashion to seek the maximum relief expressly authorized by law. (A.110; FAC, at p.35.) There is nothing defective in the manner of pleading the District Attorney's UCL case.

D. Defendants Filed A Motion To Strike True Factual References To "California" In the Complaint

In addition to filing a demurrer, in response to the Complaint, Defendants filed a Motion to Strike (the "Motion") virtually all factual

references to the State of California from the Complaint. (*See* A.116-126 [seeking to strike the word "California" and phrases containing the word California, such as "in California," "within California," "California users," "such as California purchasers," "across and within California," etc.].) Defendants did not contend that any such allegations were false, but rather, argued that all factual references to California should be stricken on the grounds that "district attorneys and other local prosecutors have no jurisdiction to enforce and thus, can make no claims under the Unfair Competition Law outside the geographic boundaries of their local jurisdictions." (A.119.) Plaintiff opposed the Motion, citing the applicable statutory language in the UCL that grants the district attorneys standing and jurisdiction to seek the relief precisely as prayed for in the Complaint. (A.185-201.)

E. Respondent Court Denied The Motion To Strike, Reserving Judgment On The Amount Of Penalties For Another Day

At the hearing on the pleading motions, the Respondent Court found no legal authority supporting Defendants' Motion, and held that a ruling regarding the scope of penalties at the pleading stage was "premature." (A.239-246; *see also* A.229-230, A.232 & A.244.) Nevertheless, Defendants argued that the court should consider:

> an issue like the scope of the remedy that this plaintiff can obtain, in advance, on a motion to strike. Because it will focus the case. It will focus discovery, it will ensure that ... these parties can negotiate with

> this plaintiff to resolve the proceeding, to understand the scope of any potential settlement that this plaintiff could enter into.

(A.243; *see also* A.246 [arguing "it makes sense to have the complaint reflect the recovery that this plaintiff can seek, which is why we have moved to strike"].) Respondent Court rejected the request to prematurely rule on the scope of relief in the case, and denied the Motion.

In support of this ruling, the trial court explained: "We all agree that the court can issue an injunction that applies throughout the state ... So the question really becomes, like everything else in the courthouse, money, right? So how much money are we talking about and where is the money going?" (A.244-246 & A.252.) "But that's kind of aways down the road." (A.244.) Defendants were given 30 days to answer the Complaint.

F. The Petition For Writ Of Mandate

The matter was presented to the Fourth District Court of Appeal on an extraordinary petition for writ of mandate following the denial of Defendants' Motion to Strike. Petitioners argued, once again, that their Motion should have been granted because the Orange County District Attorney ("OCDA") does not have "authority" to seek relief for California consumers outside the "geographic boundaries" of Orange County. (A.116-126.) Without reference to any of the particular allegations subject to the Motion, the Petitioners submitted the following legal question for review: "Does Business & Professions Code section 17204 ("§ 17204") permit a

county district attorney to bring a claim that seeks relief for alleged injuries to residents of California counties whom he or she does not represent, based on conduct occurring outside the county he or she serves." (Petition, at p.8.) The Fourth District entered an order to show cause on September 18, 2017, and invited formal briefing from the parties on the Petition at that time.

In Return to the Petition, the People demurred, arguing, among other things, that the legal question presented was premature and not ripe for review because "the trial court never ruled" on the scope of remedies to be awarded in the case. (Return at pp.12-14.) The People argued that the "only potentially justiciable issue presented" at this stage of the case was whether the Respondent Court abused her discretion in denying the Motion to Strike, and under well settled law, the People argued she did not. (Return at pp.26-51.) On the merits of Petitioners' legal question about the scope of permissible remedies, the People argued that there is no "geographical limitation" in the UCL on the remedies that a court of "competent jurisdiction" can award in a properly filed UCL case, and any suggestion to the contrary was not supported by the express language and intent of the UCL, or any other authority. (Return at pp.26-51.)

G. The Fourth District Granted The Petition And Mandated That The Motion To Strike Be Granted In A 2-1 Decision

On May 31, 2018, after full briefing and a hearing on the Petition, in a 2-1 decision, the Fourth District overruled the People's

demurrer to the writ, granted the writ and ordered Respondent Court "to vacate its order denying the motion to strike ... and to enter a new and different order striking the allegations" subject to Defendants' Motion. (Opinion at p.39 [Majority Opinion by J. O'Rourke; Concurring, J. Huffman].) Although they did not analyze the Motion to Strike in any detail, in support of this ruling, the Majority answered the question presented as follows:

> Though section 17204 confers standing on district attorneys to sue in the name of the people of the State of California, it cannot constitutionally or reasonably be interpreted to grant the District Attorney power to seek and recover restitution and civil penalty relief for violations occurring outside the jurisdiction of the county in which he was elected. A contrary conclusion would permit the District Attorney to ursurp the Attorney General's statewide authority and impermissibly bind his sister district attorneys, precluding them from pursuing their own relief. Thus, in the absence of written consent by the Attorney General and other county district attorneys, the District Attorney must confine such monetary recovery to violations occurring within the county he serves.

(Opinion at pp.4-5.)

The Majority concluded their Opinion by stating that the "foregoing conclusions are not broad policy pronouncements," but rather, a necessary "constitutional and statutory" interpretation of the UCL "to avoid doubts concerning the UCL's validity." (Opinion at p.38.)

H. Justice Dato's Dissenting Opinion Reached A Different Result Entirely

The dissenting opinion, by Justice Dato, could not possibly disagree more. According to the dissent, the Majority Opinion "violates" the general guidelines for intermediate appellate courts to "avoid broad legal policy pronouncements, leaving that to the Supreme Court and the Legislature." (Dis. Opn. at p.1.) "The majority then compound these judgmental errors by deciding the ill-considered legal issue incorrectly in a manner that will materially impair the interests of California consumers by fundamentally altering the structure of consumer protection laws in this state." (Dis. Opn. at p.1.)

The dissent pointed out an "immediate problem with the use of the motion-to-strike mechanism" for addressing the legal issue presented here. According to the dissent, "what the District Attorney requests in terms of civil penalties and restitution is largely irrelevant, for it is the *court* that ultimately decides the proper scope of monetary relief" in UCL cases. (Dis. Opn. at p.3 [emphasis in original].)

In response to the reasoning of the Majority, Justice Dato noted that "the majority rely on a phantom constitutional concern to craft a cure that is worse than even the perceived disease." (Dis. Opn., at p.7; *see* Maj. Opn. at p.38 [finding its holding necessary to avoid

incentivizing district attorneys to "race [their colleagues] to the courthouse" in order to "obtain all of the civil penalties"].) "Consistent with the UCL's broad remedial purposes and the perceived need for vigorous enforcement, there is nothing unconstitutional about the Legislature's decision to permit and encourage multiple public prosecutors with overlapping lines of authority on the theory that more enforcement in this context is better than less." (Dis. Opn. at p.7.)

Justice Dato indicated that he "would deny the petition," concluding:

> Well-tested principles underlie the traditional reticence of intermediate appellate courts to engage in interlocutory writ review of trial court procedural rulings such as the one at issue in this case. (*See Omaha Indemnity Co. v. Superior Court* (1989) 209 Cal.App.3d 1266, 1273.) Rarely do those principles so uniformly counsel against issuance of writ relief as they do here. In choosing to ignore these sound prudential considerations, the majority reach out to unnecessarily resolve – incorrectly in my view – an internecine dispute among public prosecutors, to the ultimate detriment of the "public" we are all charged with serving.

(Dis. Opn. at p.13.)

I. The People's Petition For Rehearing Was Denied

The People filed a timely petition for rehearing in the Fourth District. On June 27, 2018, the Fourth District denied the Petition. At the same time, the Fourth District entered an order modifying its

Opinion in minor respects unrelated to the challenged portions of the Opinion, without making a change in judgment. The Opinion, as modified on June 27, 2018 was certified for publication.[3]

IV. ARGUMENT

A. Standard of Review

The meaning and interpretation of the UCL presents a question of law subject to de novo review. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 311.) The rules of statutory construction are "well settled." (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1250.) The Court "must look first to the words of the statute, 'because they generally provide the most reliable indicator of legislative intent.'" (*Id.*) "If the statutory language is clear and unambiguous," the plain, commonsense meaning of the language controls, and the Court is instructed to "presume that the Legislature meant what it said." (*Id.*) "Only when the statute's language is ambiguous or susceptible of more than one reasonable interpretation, may the court turn to extrinsic aids to assist in interpretation." (*Id.*)

When reviewing the statutory language to effectuate the Legislative intent:

---

[3] The Fourth District's May 31, 2018 Opinion (the "Opinion") is attached to the Fourth District's June 27, 2018 order Denying Rehearing, Denying Motion for Judicial Notice and Modifying Opinion with No Change in Judgment.

> A statute's literal meaning must be aligned with its purpose. Its meaning may not be determined from a single word or sentence. Instead, the words must be construed in context, and provisions relating to the same subject matter or that are part of the same statutory scheme must be read together and harmonized to the extent possible.
>
> We must select a construction that: best fits the Legislature's apparent intent; promotes instead of defeats the statute's general purpose; and avoids absurd or unintended consequences. The statute cannot be construed in a way that would make its provisions void or ineffective, especially if that would frustrate the underlying legislative purpose.

(*Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, 310-11; *see also Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 340 ["As in any case involving statutory interpretation, our fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose"].)

B. History Of District Attorney Prosecutions Under The UCL

"The district attorney is the public prosecutor, except as otherwise provided by law." (Cal. Gov't Code § 26500.) As the "public prosecutor," it is the job of the district attorney to "initiate and conduct on behalf of the people all prosecutions for public offenses."[4] (*Id.*) In addition to filing criminal actions, district attorneys are authorized to bring civil actions to

---

[4] A public offense can be redressed in both a civil and criminal context. (*See* Cal. Civ. Proc. Code § 22 [defining a civil action to include a "proceeding in a court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense"]; Cal. Pen. Code § 15 [defining a "public offense [as] an act committed or omitted in violation of aa law forbidding or commanding it, and to which is annexed, upon conviction, ... [certain] punishments"].)

enforce state law and protect the people in certain situations. (*See* Cal. Gov't Code § 26501 [acknowledging the district attorney's role may include prosecuting "civil cases on behalf of the people"].)

Business and Professions Code Section 17200 *et seq.* (the UCL), for example, expressly authorizes the district attorney to seek injunctive and other equitable relief against parties that engage in any "unlawful, unfair or fraudulent business act or practice." (Cal. Bus. & Prof. Code § 17200 *et seq.*) With limited exceptions not applicable here, the UCL mandates that "[a]ctions for relief pursuant to [the UCL] shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or a district attorney ... in the name of the people of the State of California upon their own complaint . . . " (Cal. Bus. & Prof. Code § 17204; *see also id.* § 17206(a).)

1. Background Of The UCL

The UCL began as a law aimed at curbing trade mark abuse and deceptive, anti-competitive practices in the late 1800's and early 1900's. (Cal. Bus. & Prof. Code § 17200 *et seq.* [formerly codified in 1933 at Civil Code § 3369, subd. (3)].) Since then, the definition of what constitutes "unfair competition" has broadened greatly to include any type of unlawful, unfair or fraudulent business practice. (*Int'l Ass'n of Cleaning & Dye House Workers v. Landowitz* (1942) 20 Cal.2d 418, 421-422 ["the common law concept of unfair competition has been broadened"]; Cal. Bus. & Prof. Code

§ 17200 *et seq.* [defining "unfair competition" today as any "unlawful, unfair or fraudulent business act or practice"].)

This Court discussed the expanding notion of unfair competition in *Barquis v. Merchants Collection Association of Oakland, Inc.*, explaining:

> As originally enacted in 1933, section 3369 defined "unfair competition" only in terms of "unfair or fraudulent business practice[s]"; most of the reported cases, dealing in deceptive conduct, arose under the statute as so worded. In 1963, however, the Legislature amended section 3369 to add the word "unlawful" to the types of wrongful business conduct that could be enjoined. Although the legislative history of this amendment is not particularly instructive, nevertheless, as one commentator has noted "it is difficult to see any other purpose than to extend the meaning of unfair competition to anything that can properly be called a business practice and that at the same time is forbidden by law." (Note, *Unlawful Agricultural Working Conditions as Nuisance or Unfair Competition* (1968) 19 Hastings L.J. 398, 408-409.)

(*Barquis v. Merchants Collection Ass'n of Oakland, Inc.* (1972) 7 Cal.3d 94, 112-113.)

The purpose of the UCL "is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320 [quoting *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949].) "In service of that purpose, the Legislature framed the UCL's substantive provisions in "broad, sweeping language." (*Kwikset, supra,* 51 Cal.4th at 320 [quoting *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 181].)

Under the "unlawful" business practices prong of the UCL, "section 17200 'borrows' violations of other laws and treats them as unlawful practices *independently* actionable" under Section 17200 *et seq.* (*Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390, 396.) An unlawful business practices action can be based on the violation of "any law, civil or criminal, statutory or judicially made[,] federal, state or local." (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1474 [internal citations omitted].) In this way, the UCL "provides its own distinct and limited equitable remedies for unlawful business practices, using other laws only to define what is 'unlawful.'" (S*olus Industrial Innovations, LLC v. Superior Court* (2018) 4 Cal.5th 316, 341 [quoting *Rose, supra*, at p.397].)

There is no intent to restrict application of the UCL to any particular subset of laws, but rather, an intent to "permit tribunals to enjoin on-going wrongful business conduct in whatever context such activity might occur." (*Barquis, supra,* 7 Cal.3d at p.111; *Cel-Tech, supra,* 20 Cal.4th at p.180 ["the unfair competition law's scope is broad"; "Its coverage is 'sweeping, embracing anything that can properly be called a business practice and that at the same time is forbidden by law.'" (internal citations omitted)]; *People v. Nat'l Research Co. of Cal.* (1962) 201 Cal.App.2d 765, 770-772 ["The very breadth of the terms used by the Legislature [in defining unfair competition] indicate, in our judgment, an intent to be inclusive rather than restrictive in the practices to be enjoined"]; *Stoiber v. Honeychuck* (1980)

101 Cal.App.3d 903, 927 ["the section 17200 proscription of 'unfair competition' is not restricted to deceptive or fraudulent conduct but extends to any *unlawful* business practice"].)

Business practices that violate public policy and are particularly offensive may also be prosecuted as "unfair" business practices under the UCL. (*See, e.g., FTC v. Sperry & Hutchinson Co.* (1972) 405 U.S. 233; *Motors, Inc. v. Times Mirror Co.* (1980) 102 Cal.App.3d 735; *Klein v. Earth Elements, Inc.* (1997) 59 Cal.App.4th 965; *Community Assisting Recovery, Inc. v. Aegis Security Ins. Co.* (2001) 92 Cal.App.4th 886.) A business practice is "unfair" if it is "immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers" and that unfairness is generally determined by weighing the utility of the practice against the "gravity of the harm" to the consumer. (*Cel-Tech, supra,* 20 Cal.4th at p.184; *Bardin v. DaimlerChrysler Corp.* (2006) 136 Cal.App.4th 1255, 1264-1267.)

2. Courts Have Express Statutory Power To Order Appropriate Remedies For "Each Violation"

Unlike a private civil action for damages, the primary objective of a government UCL action is to protect the public by putting an end to the unlawful, unfair or fraudulent business practice(s), and to deter the defendant, as well as others in the industry, from committing similar violations. (*State v. Altus Finance, S.A.* (2005) 36 Cal.4th 1284, 1306.) These objectives are typically achieved through injunctive relief and civil

penalties. (*Id.* [noting restitution may also be awarded but restitution is "only ancillary to the primary remedies sought for the benefit of the public"].) Like the substantive reach of the UCL, the scope of equitable relief contemplated by the legislature is broad, including any:

> orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition . . . or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

(Cal. Bus. & Prof. Code § 17203.)

In addition to injunctive and other appropriate equitable relief, government prosecutors are expressly authorized to seek civil penalties in an amount "not to exceed two thousand five hundred dollars ($2,500) for each violation." (Cal. Bus. & Prof. Code §§ 17206 & 17206.1.) "Unless otherwise expressly provided," the remedies and penalties are intended to be "cumulative to each other and to the remedies or penalties available under all other laws of this state." (Cal. Bus. & Prof. Code § 17205; *see also People v. Toomey* (1984) 157 Cal.App.3d 1, 22; *People v. Dollar Rent-A-Car Sys., Inc.* (1989) 211 Cal.App.3d 119, 132.)

In response to a UCL complaint, it is the job of the court to "make such orders ... as may be necessary" to enjoin the unlawful business practices or provide restitution "to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such

unfair competition." (Cal. Bus. & Prof. Code § 17203.) Additionally, the UCL mandates that the court "shall impose a civil penalty for each violation of this chapter" under Section 17206. In setting the civil penalty, the court is required to take into account all of the relevant facts and circumstances unique to any particular case. In this regard, Section 17206, subdivision (b), specifically mandates that:

> The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(Cal. Bus. & Prof. Code § 17206(b).)

3. What Constitutes A "Violation" Is A Question Of Fact To Be Decided On A Case-By-Case Basis By The Court

What constitutes a "violation" in any particular case is intentionally not defined and not limited in the UCL. (*See Toomey, supra*, 157 Cal.App.3d at p.22 ["[Business and Professions Code] [s]ections 17206 and 17536 fail to specify what constitutes a single violation, leaving it to the courts to determine appropriate penalties on a case-by-case basis."].) Indeed, it has long been held in UCL actions that, while an award of penalties is mandatory, it is within the Court's discretion "to determine [the amount of] appropriate

penalties on a case-by-case basis." (*People v. Beaumont* (2003) 111 Cal.App.4th 102, 127-130.) Thus, what constitutes a violation in any UCL action is a question of fact to be determined in the trial court's discretion based on the totality of the facts and circumstances of the particular case. (*See, e.g., Beaumont, supra,* 111 Cal.App.4th at pp.127-130; *Motors Inc., supra,* 102 Cal.App.3d, at pp.740-741.)

The Court thus "has broad authority to fashion a remedy," and enter judgment against UCL defendants, including orders for injunctive relief, restitution and civil penalties, as necessary to protect the public. (*Kraus v. Trinity Management Services* (2000) 23 Cal.4th 116, 132-134 & 137 (superseded by statute on other grounds) [evaluating the "powers of the court in a UCL action" to issue an appropriate remedy and noting the legislative intent "to vest the trial court with broad authority to fashion a remedy"]; *see also In re Tobacco II, supra,* 46 Cal.4th at p.337 (conc. & dis. opn. of Baxter, J.) [noting "the court may order the full range of remedies specified in the statute" in public law enforcement actions under the UCL].).

4. There Is No Burden To Prove Injury Or Financial Harm To Consumers In Any Geographic Area In Public UCL Actions

Unlike a private right of action, a district attorney is expressly *not* required to plead, or prove, that any particular person in his or her county "has suffered injury in fact and has lost money or property as a result of the unfair competition" to sufficiently assert a claim for relief under the UCL.

(Cal. Bus. & Prof. Code §§ 17203-17204.) Indeed, while "[a]ny person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure," the UCL specifically states that "these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state." (Cal. Bus. & Prof. Code § 17203.) In other words, public prosecutions under the UCL are not tied to the "harms" or injuries suffered by particular consumers in the same way as a private action for damages; the focus of a UCL action is on the violating conduct and the offending parties.

5. Proposition 64 Preserved Standing For Public Prosecutors Under The UCL In 2004

In 2004, the "electorate ... materially curtailed the universe of those who may enforce" the UCL's provisions in private suits. (*Kwikset, supra*, 51 Cal.4th at p.320-321.) Under Proposition 64:

> the electorate substantially revised the UCL's standing requirement; where once private suits could be brought by 'any person acting for the interests of itself, its members or the general public' (former § 17204, as amended by Stats. 1993, ch. 926, §2, p.5198), now private standing is limited to any 'person who has suffered injury in fact and has lost money or property' as a result of unfair competition.

(*Id.* at pp.320-321.) Prosecutorial standing for the "Attorney General *and* other specified government officials," was then preserved as the primary

means to ensure enforcement of the UCL. (*Altus Finance, supra,* 36 Cal.4th at p.1307 [emphasis added].) Indeed, in its official summary of Proposition 64, the Attorney General confirmed for California voters that, while Proposition 64 would restrict private actions under the UCL, either "the California Attorney General or local government prosecutors" would still be authorized "to sue *on behalf of the general public* to enforce unfair competition laws." (Voter Information Guide, Official Title and Summary, Proposition 64 (Nov. 2004) (emphasis added); *see also In re Tobacco II Cases*, *supra*, 46 Cal.4th at p.334 (conc. & dis. opn. of Baxter, J.) [citing the Attorney General's summary of Proposition 64 and arguments in favor of Proposition 64 similarly advising voters of the intent to authorize "only the Attorney General, district attorneys and other public officials to file lawsuits on behalf of the People of the State of California" and to "permit[] only real public officials like the Attorney General or District Attorneys to file lawsuits on behalf of the People of the State of California"].)

The only change to public prosecutions under Proposition 64 involved amending the statutory allocation of penalties awarded in such cases. In particular, Section 17206 was amended to require "that the penalty funds [from law enforcement UCL actions] 'shall be for the exclusive use by the Attorney General [and other public prosecutors] for the enforcement of consumer protection laws.'" (*Altus Finance, supra,* 36 Cal.4th at p.1307.) This modification reaffirmed the standing of government prosecutors to

enforce the UCL and confirmed that penalties must be used to protect public interests (whether sought by the Attorney General or an authorized local prosecutor).

C. There Is No Express Or Implied Geographic Limitation On Relief In UCL Actions Brought By District Attorneys

In support of their Motion to Strike below, Defendants argued that "a district attorney's enforcement authority under [the UCL] is limited to the geographic boundaries of the county for which the district attorney was elected." (A.120.)[5] In their view, Defendants can only be penalized in this case for violations occurring in Orange County. The so-called "geographic boundaries" limitation that Defendants proposed, however, is not supported by the text of the UCL, the legislative history of the UCL, or the purposes of the UCL. To the contrary, as detailed above, the Business and Professions Code expressly authorizes "any district attorney" to file civil claims under the UCL in the "name of the People of the State of California." (Cal. Bus. & Prof. Code §§ 17204 & 17206.) The UCL further equates the authority of the District Attorney to seek both equitable relief and civil penalties with that of the Attorney General, making no distinction

---

[5] The framing of the issue below in terms of the "authority" of the district attorney is wrong. There is no dispute that the District Attorney has "authority" (properly known as "standing") to bring the present case. It is the *court* that has the statutory "authority" to award penalties under the UCL; hence, the real question here is whether the UCL restricts the *court's* authority to granting relief when the case is filed by a district attorney.

between the two. (Cal. Bus. & Prof. Code §§ 17204 & 17206.) Subject only to the other laws governing jurisdiction and venue in this state (which are met in this case), the clear and unambiguous language of the UCL expressly confers authority, standing and jurisdiction on "any district attorney" to pursue UCL violations and remedies without any geographic limitations on the relief demanded.

If the words of a statute are reasonably free of ambiguity and uncertainty, as here, courts should look no further than those words to determine the meaning of that language. Importantly here, the Court may not "read into the statute a limitation that is not there," including the broad geographic limitation urged by Petitioners in this case. (*Cortez v. Abich* (2011) 51 Cal.4th 285, 290-299; *Elsner v. Uveges* (2004) 34 Cal.4th 915, 928-933; *Suarez v. Pacific Northerstart Mechanical, Inc.* (2010) 180 Cal.App.4th 430, 440-445.)

1. There Is No Dispute That Injunctive Relief Can Be Sought On A Statewide Basis By All Authorized Prosecutors

There is no dispute that the district attorney may seek injunctive relief in this case under the UCL (Cal. Bus. & Prof. Code §§ 17203-17204) and that such relief may be enforced on a statewide basis. (A.244.) Section 17207 expressly recognizes this intent by authorizing further penalties for the violation of any injunction prohibiting unfair competition "issued in the name of the People of the State of California by the Attorney General or by

any district attorney ... in any court of competent jurisdiction within his or her jurisdiction *without regard to the county from which the original injunction was issued.*" (Cal. Bus. & Prof. Code § 17207, subd. (b) [emphasis added].) The statute obviously contemplates an injunction in one county enforced with respect to conduct in another -- that is, a statewide injunction.

Moreover, pursuant to its jurisdiction over Defendants, the trial court plainly has the power to enjoin *them* from engaging in conduct anywhere in California in violation of the UCL regardless of how many consumers were harmed in one county versus another. Indeed, any person performing or proposing to perform an act of unfair competition within California may be so enjoined in any court of competent jurisdiction. (*Churchill Vill., L.L.C. v. GE* (N.D. Cal. 2000) 169 F.Supp.2d 1119; *Committee On Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197; *People ex rel. Mosk v. National Research Co. of Cal.,* (1962) 201 Cal.App.2d 765.)

2. There Is Likewise No Geographical Limitation On The Court's Equitable Powers To Grant Appropriate Restitution

Unless the law states otherwise, government prosecutors have the same broad legislative mandate to seek restitution on behalf of the People of the State of California, not just residents of a particular geographical area, in UCL actions. (*See Altus Finance, supra,* 36 Cal.4th at pp.1303-1307; *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508,

531.) In turn, under Section 17203, courts have wide discretion "to restore to *any person* in interest any money or property . . . which may have been acquired by means of unfair competition." (Cal. Bus. & Prof. Code § 17203 [emphasis added].) In adopting this language, the Legislature recognized that "a court of equity may exercise the full range of its inherent powers in order to accomplish complete justice between the parties" in a UCL action, just as in any other situation where it may do so. (*People v. Superior Court (Jayhill Corp.)* (1973) 9 Cal.3d 283, 286.) A "trial court has the inherent power to order restitution as a form of ancillary relief" in an action brought by the People. (*People v. Kraus, Co.* (1977) 20 Cal.3d 10, 19, fn. 9; *see also Jayhill Corp., supra*, 9 Cal.3d at p.286 [even in the absence of statutory authority, courts retain "inherent power" to order restitution to any identifiable victim of fraud].)

There is accordingly no intended geographic limitation on the scope of restitution that may be granted in a UCL action. (*See Altus Finance, supra*, 36 Cal.4th at p.1303 [noting restitution is a remedy that may broadly be sought in a UCL action "prosecuted by the Attorney General, by certain specified local law enforcement officials," or by private parties harmed by the unfair competition].) Restitution is a matter expressly vested in the sound discretion of the trial court in a properly filed UCL action, regardless of the attorney that files the case. (Cal. Bus. & Prof. Code § 17203.)

3. Under The UCL, Courts Have The Power To Order Monetary Penalties For "Each Violation"

Under the express terms of the UCL, the "court shall impose a civil penalty for each violation of this chapter" under Section 17206. There is no language in the UCL that indicates any intent to restrict the court's power to enter an appropriate penalty to only a narrow subset of violations in one county if the case is brought by a district attorney. There is also no language in the UCL that expresses any intent to restrict the standing of district attorneys to seek any portion of the authorized statutory penalties. On its face, and under the plain terms of the UCL, therefore, district attorneys with proper jurisdiction over the claims alleged have broad standing to pursue the full UCL remedies on behalf of the public without any geographic restrictions.

4. Geographic Limitations Are Contrary To The Express Intentions And Enforcement Objectives Of The UCL

"As in any case involving statutory interpretation, [the Court's] fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose." (*Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 340.) Limiting the publicly available remedies in a UCL action properly brought by a district attorney to one county's borders would arbitrarily shield Defendants from liability for the full extent of their illegal misconduct contrary to the policy objectives of the UCL. Indeed, "the

'overarching legislative concern [of the UCL is] to provide a streamlined procedure for prevention of ongoing or threatened acts of unfair competition.'" (*Graham v. Bank of Am., N.A.* (2014) 226 Cal.App.4th 594, 609 [quoting *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1150].) As amended by Proposition 64, the UCL now clarifies the specific intent to rely primarily on public prosecutors to bring such actions "on behalf of the general public." (*Troyk v. Farmers Grp., Inc.* (2009) 171 Cal.App.4th 1305, 1345 [citation omitted].) Whether the action is brought by the Attorney General or any other government prosecutor, their intended "client" (the People) is the same, and the relief available should be the same.

Given that the UCL is specifically designed to promote "fair competition in commercial markets," (*Hale v. Sharp Healthcare* (2010) 183 Cal.App.4th 1373, 1381), effective remedies must logically provide relief congruent with those markets. Here, the People allege that Petitioners' violations were statewide, and there is no statutory or logical basis for truncating that market.

There is further no logical reason why the People should be limited to obtaining restitution only for those victims who happen to live in Orange County. Such relief is not awarded to the district attorney, but to consumers directly, in whatever form the courts may deem appropriate. The UCL prosecutor does not "stand in the shoes" of any particular victim of a

challenged business practice but, rather, represents the People of the State. (*People v. James* (1981) 122 Cal.App.3d 25, 39-40 [noting a law enforcement UCL "is not an action by individuals who were victimized"].) Private parties (with standing), however, may certainly secure statewide relief under the UCL in a single class action lawsuit. It would be absurd if public prosecutors, charged with enforcing the same "broad, sweeping language" of the UCL, (*Kwikset, supra,* 51 Cal.4th at p.320), were more restricted in their efforts to secure effective statewide relief then private class action attorneys.

Most importantly, in this case, unlike a private right of action:

> "An action filed by the People seeking injunctive relief and civil penalties is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of injunctive relief is to prevent continued violations of the law and prevent violators from dissipating funds illegally obtained. Civil penalties, which are paid to the government [citations] are designed to penalize a defendant for past illegal conduct. The request for restitution ... is only ancillary to the primary remedies sought for the benefit of the public ... [and] is not the primary object of the suit, as it is in most private class actions.

(*Altus Finance, supra*, 36 Cal.4th at p.1306.) It makes no sense to limit the punitive powers of a UCL action merely because the case is brought by a district attorney instead of the attorney general. Both sets of prosecutors are charged with protecting the same public interest. (*See, e.g., Tennison v. Cal. Victim Compensation and Government Claims Board* (2007) 152 Cal.App.4th 1164, 1174-75 [holding the Attorney General was in privity

with a district attorney for purposes of collateral estoppel, in part, due to the Attorney General's supervisory role and its duty to intervene if necessary to ensure adequate enforcement of the law].)[6]

D. The District Attorney Represents The State, Not His Or Her County, In Civil UCL Enforcement Actions

In holding otherwise, the Fourth District looked past the UCL and determined that a district attorney is necessarily limited to representing the county in civil UCL cases unless the law expressly "extend[s] the limits of [the] district attorneys' territorial jurisdiction." (*See* Opinion at p.33 [holding that although section 17204 grants standing to sue, it "does not explicitly extend the limits of district attorneys' territorial jurisdiction" and this "means the district attorney has" no power to

---

[6] The fact that a UCL judgment may be binding on the People of the State and give finality to the judgment in a UCL case (just like any other case) brought by a district attorney does not prevent the Attorney General or other prosecutors from performing their statutory duties as the Fourth District Majority Opinion suggests. There is nothing in the UCL, State Constitution or elsewhere that renders the Attorney General or other state prosecutors immune from the doctrines of collateral estoppel and res ju dicata that govern the potentially binding nature of a final UCL judgment. Whether, and to what extent, a final judgment (under the UCL, or any other law) is binding against future actions, is a complex question that depends on the terms of the final judgment, and the totality of the unique facts and circumstances of the particular case. Since the terms of any UCL judgment are subject to court approval, it is presumed that the trial court (once again, as the UCL's gate-keeper) will ensure that a legal and constitutional judgment is entered in UCL cases. (*Kraus, supra,* 23 Cal.4th at pp.158-161 (dis. opn.) [noting "as in all UCL actions, a court has power and authority to fashion a constitutional remedy."].)

seek statewide restitution or civil penalties; the "statute must do so specifically"].) The Majority recognized that a district attorney is the "public prosecutor, except as otherwise provided by law," (Cal. Gov. Code § 26500), and that "[a]s a matter of state law, a district attorney represents the state when preparing to prosecute and when prosecuting criminal violations of state law." (Opinion at p.17.) They distinguished the role of the district attorney in UCL cases because they are civil cases, not criminal cases. From there, the Majority determined that "with respect to civil cases, a district attorney has no plenary power" and acts only in a limited capacity as a county officer. (Opinion at p.19.)

There are a number of problems with this analysis.

1. Fundamentally, There Is No Difference Between Criminal And Civil Law Enforcement Actions For Penalties

First, there is fundamentally no difference between a criminal prosecution and a UCL action merely because the UCL seeks civil penalties rather than criminal fines. As this Court has recognized, the law enforcement objectives are the same regardless. (*See Altus Finance, supra,* 36 Cal.4th at p.1308 ["We fail to discern a difference, for present purposes, between the Attorney General's seeking criminal penalties or civil penalties."].) "'Civil Penalties, which are paid to the government are designed to penalize a defendant for past illegal conduct'" in precisely the same way as criminal

fines. (*Id.* [citations omitted].)

2. District Attorneys Are State Agents When Prosecuting Actions On Behalf Of The People

Second, like civil actions under the UCL, "criminal prosecutions are brought on behalf of the People of the State of California, whether by a county district attorney or by the Attorney General." (*People v. Garcia,* (2006) 39 Cal.4th 1070, 1081.) In all such matters, the district attorney "acts as an agent of the state" and "represents the state, not the county." (*Id.* at pp.1080-1081 [quoting *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 345]; *see also Manduley v. Superior Court* (2002) 27 Cal.4th 537, 551-552 [district attorneys are "executive branch" public officers]; *Pacific Land Research Co., supra*, 20 Cal.3d at p.17 ["An action filed by the People seeking injunctive relief and civil penalties is fundamentally a law enforcement action designed to protect the public and not to benefit private parties"]; *Gamestop Inv. v. Superior Court* (2018) 26 Cal.App.5th 502, 236 Cal.Rptr.3d 874, 879-880 [holding a district attorney "acts in his or her capacity as a state officer" in civil UCL law enforcement actions]; *Nguyen v. Superior Court* (1996) 49 Cal.App.4th 1781, 1787-1788 [holding a district attorney acts a state officer in civil nuisance actions]; 3 Witkin, Cal. Proc. *Actions* § 873 (5th ed., 2008) ["the district attorney represents the People of the state, rather tha[n] his or her county"]; 27B Cal. Jur. 3d District and Municipal Attorneys § 34 ["The public

prosecutor is the representative of the People as a body, not an ordinary party to a controversy"].)

Of course, a district attorney must have proper jurisdiction and venue in "the boundaries" of his or her county in order to bring an action on behalf of the People of the State in that locale, but this does not render the action a "county" prosecution.[7]

3. The "*Safer* Rule" Does Not Support The Fourth District's Holding To The Contrary

The Fourth District's holding is based on a false legal premise. In holding that district attorneys lack the power to seek statewide relief in UCL cases because the UCL does not "expressly" grant them "statewide" authority, the Fourth District relied on language from the 1975 opinion of this Court in *Safer v. Superior Court* (1975) 15 Cal.3d 230, 236, which was referenced in a subsequent decision, *People v. Superior Court (Humberto S.)* (2008) 43 Cal.4th 737, 753 n.12, stating: "a district attorney has no authority to prosecute civil actions absent specific legislative authorization." (Opinion

---

[7] In his amicus brief below, the Attorney General does not dispute this basic principle, but argues in a UCL action, a district attorney "exercises the State's sovereign police powers, but does so only within the boundaries of that prosecutor's represented geographic territory." (AG Amicus Brief, at p.6.) There is no law cited in support of this statement. At most, this general statement is an accurate summary of the undisputed requirement that a prosecutor must have proper jurisdiction and venue in "the boundaries" of their county in order to bring an action on behalf of the People of the State.

at pp.20, 25 & 33.)[8] The Fourth District's reliance on the "*Safer* rule" in this context is erroneous.

a. The "*Safer* Rule" Was Only Intended To Apply To Civil Representation Of *Private* Parties, Not *Public* Prosecutions

The "*Safer* rule," when properly interpreted, impacts a prosecutor's standing to act as counsel for *private* parties in private civil matters under a few unique circumstances. (*See, e.g., Humberto S, supra,* 43 Cal.4th at p.753 [addressing whether a district attorney could "formally represent" the *private* and individual interests of victims seeking restitution in a criminal case under *Safer*].) Yet, this is a *public* prosecution in the name of the People. There is no reason for expanding the "*Safer* rule" into a district attorney's intended prosecution of public offenses under the UCL, and none of the concerns raised in *Safer* regarding private actions are present so as to warrant the extension of its holding here. (*See Safer, supra,* 15 Cal.3d at p.235.)

---

[8] The *Safer* rule has been cited and relied upon to limit prosecutorial standing by the Fourth District before. (*See, e.g., People v. Superior Court [Solus I]* (2014) 224 Cal.App.4th 33, 41-43 [holding the district attorney lacked standing to seek civil penalties under Labor Code sections 6428-6429 under the *Safer* rule].) The Fourth District cites *Solus I* as authority for its Opinion here, but according to the decision in *Solus I*, the UCL "explicitly *confer[s]* standing on district attorneys" as required under the *Safer* rule. (*Solus I, supra*, at p.43.) The Fourth District here stretches the *Safer* rule even further -- applying the rule to mandate even more specificity with respect to the statutorily authorized remedies in a properly filed and expressly authorized civil case.

b. Government Code Section 26500, As Amended In 1980 After *Safer*, Sets Forth The Controlling Standard

Government Code Section 26500, and not the "*Safer* rule," sets forth the applicable legal standard to apply when evaluating prosecutorial standing to pursue penalties under a civil penalty statute. Section 26500 provides that the "District Attorney is the public prosecutor, *except as otherwise provided by law*." (Cal. Gov. Code § 26500 [emphasis added].)

The applicable language from Government Code Section 26500 was added after the *Safer* decision was published. In 1975 (when *Safer* was decided), the first sentence of Government Code Section 26500 simply stated that the "District Attorney is the public prosecutor." (Cal. Gov. Code § 26500 [Stats.1947, c. 424, p. 1139, § 1].) Five years later, in 1980, the Legislature amended Section 26500 to add the phrase "except as otherwise provided by law," and confirmed the standard that applies today to prosecutorial standing in relation to public offenses brought under the UCL. (Cal. Gov. Code § 26500 [Stats.1980, c. 1094, p. 3507, § 1].)

The Fourth District's reading of *Safer* -- as generally *prohibiting* civil remedies for public offenses "unless expressly authorized by law" -- is in conflict with the empowering language of Section 26500 *authorizing* prosecutions for public offenses by district attorneys and turns the phrase "except as otherwise provided by law" on its head. There is no doubt that the underlying violations of law alleged in this case are "public offenses" and

the UCL expressly authorizes district attorney to pursue relief for such offenses. Hence, the Fourth District's interpretation of *Safer* cannot be reconciled with the express language of Section 26500.[9]

c. The Fourth District's Application Of The *Safer* Rule Is Inconsistent With The Express Terms Of The UCL

The Fourth District's analysis is also in conflict with the more reasoned analysis of the UCL by the Second District in *Blue Cross of California Inc. v. Superior Court* (2010) 180 Cal.App.4th 1237. In that case, the Second District held a city attorney had the authority to pursue a UCL action for violations of the Knox-Keene Act because "no statute provides to the contrary." (*Id.* at p.1251.) Rather than applying the *Safer* rule, the Second District looked to the language of the UCL and held:

> The Legislature did, however, supply a rule for the situation before us – the UCL and the FAL expressly provide that the city attorney may sue for redress under the UCL and the FAL *unless some other statute provides to the contrary*. (Bus. & Prof. Code §§ 17205, 17534.5; *Altus*, *supra*, 36 Cal.4th at p.1303 ...; *Stop Youth Addiction*, *supra*, 17 Cal.4th at p.573 ...) Because no statute provides to the contrary, the city attorney may sue.
> ....
> ... in order for a statute to deprive the city attorney of

---

[9] Currently, in the Second District, broad prosecutorial standing under the UCL *presumptively exists* unless otherwise specified, but in the Fourth District, civil prosecutorial power presumptively *does not exist*, unless expressly specified. (*See, e.g.*, *Blue Cross of California Inc. v. Superior Court* (2010) 180 Cal.App.4th 1237.) Resolving this conflict is one of the reasons the People sought review by this Court in this matter.

> authority to sue under the UCL or FAL, it must do so *expressly*.

(*Id.* [emphasis in original].)

d. UCL Civil Enforcement Actions Are Aids In Furtherance Of Criminal Law Enforcement Objectives

Finally, under the pre-*Safer*, "*Simpson* rule" (*Board of Supervisors v. Simpson* (1951) 36 Cal.2d 671, 674) "it is . . . clear that the district attorney's duties as public prosecutor embrace more functions than the prosecution of criminal actions." (*Rauber v. Herman* (1991) 229 Cal.App.3d 942, 948 [quoting 64 Ops. Cal. Atty. Gen. 418, 422 (1981)].) As explained in *People v. Parmar*:

> In addition to its usual duties, a district attorney has the authority to participate in noncriminal actions or proceedings that are in aid of or auxiliary to the district attorney's usual duties. While, as a general rule, district attorneys may not use their funds and powers to intervene in purely private litigation, some functions, though civil in nature, are so closely related and in the furtherance of criminal law enforcement that the district attorney may properly perform them.

(*People v. Parmar* (2001) 86 Cal.App.4th 781, 798.)

UCL actions, although civil in nature, are "in aid of and ancillary to" the district attorney's exercise of his police powers in criminal prosecutions. (*Parmar, supra*, at p.798; *Rauber, supra,* 229 Cal.App.3d at pp.947-952; *Simpson, supra*, 36 Cal.2d at p.674.) Thus, just as the district attorney acts as a state officer in prosecuting criminal cases, so too does the district attorney act as a state officer in civil actions he or she is

authorized to file on behalf of the public under the UCL. By adopting and applying the *Safer* rule to restrict the use of the civil remedies expressly authorized in the UCL, the Fourth District applied the wrong standard and reached the wrong conclusion.

E. The UCL's Grant Of Standing To District Attorneys To Pursue The Same Relief As the Attorney General Is Not Unconstitutional

Although the argument is hard to decipher, the Defendants suggested, and the Fourth District appeared to agree, that a grant of power to district attorneys to seek statewide civil penalties under the UCL would be unconstitutional. (*See* Maj. Opn. at p.29 [holding the "law does not grant the District Attorney in this case authority to unilaterally pursue statewide monetary relief in the name of the State, as such a grant would permit the Legislature to usurp the Attorney General's constitutional authority as the state's chief law officer, and allow the district attorney of one county to impermissibly compromise and bind the Attorney General and the district attorneys of other counties."].) Under the "fundamental principles of constitutional adjudication," this holding is erroneous. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180.)

1. The Burden To Establish Unconstitutionality Was Not, And Cannot Be, Met Here

"In analyzing [a] challenge to the constitutionality" of a statute, this Court:

> start[s] from several fundamental principles of constitutional adjudication. "Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. (Citations.) Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people's right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly, or by necessary implication denied to it by the Constitution. (Citations.) ... (P) Secondly, all intendments favor the exercise of the Legislature's plenary authority: 'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations (imposed by the Constitution) are to be construed strictly, and are not to be extended to include matters not covered by the language used.' (Citations.)"

(*Pacific Legal Foundation, supra,* 29 Cal.3d at p.180 (internal emphases omitted) [quoting *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691].)

As such, in evaluating state constitutional challenges, the Court:

> start[s] from the premise that the Legislature possesses the full extent of the legislative power and its enactments are authorized exercises of that power. Only where the state Constitution withdraws legislative power will we conclude an enactment is invalid for want of authority. "In other words, 'we do not look to the Constitution to determine whether the legislature is authorized to act, but only to see if it is prohibited.'"

(*California Redevelopment Assn v. Matosantos* (2011) 53 Cal.4th 231, 254 [quoting *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691].)

Further:

> Given that legislative power is "practically absolute," any constitutional limitations on this power are strictly construed and may not be given effect as against the general power of the Legislature "unless such limitations clearly inhibit the act in question." Accordingly, in the face of a constitutionally based limitation on its power, "if there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action."

(*Matosantos, supra,* 53 Cal.4th at p.279 [internal citations omitted] [conc. & dis. opn., C.J. Cantil-Sakauye].)

2. Nothing In The Constitution Prohibits The Legislature Or Voters From Granting Standing To Multiple Prosecutors To Bring UCL Actions For Statewide Relief

In holding the UCL would be unconstitutional if it granted authority for statewide relief in actions filed by district attorneys, the Fourth District Majority Opinion cites three portions of the California Constitution: Article V, § 13. Article XI, § 1, subd (b), and Article XI, § 7. As explained below, none of these provisions conflicts with, or prohibits, legislation authorizing courts to grant statewide relief in UCL actions brought by district attorneys.

a. The Attorney General's Constitutional "Chief Law Officer" Role Does Not Provide Exclusive Statewide Prosecutorial Power

Article V, Section 13 provides that "the Attorney General shall be the chief law officer of the State." (Cal. Const. Art. V, § 13; *see People v. Brophy* (1942) 49 Cal.App.2d 15, 27-29 [noting this language was originally added as Article V, Section 21 "by the people of the state as an initiative measure on November 6, 1934"]; *see also Pierce v. Superior Court* (1934) 1 Cal.2d 759, 761 [noting "The attorney general, as chief law officer of the state, has broad powers derived from the common law"].) Section 13 explains the intended "chief law officer role" of the Attorney General in detail:

> It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.

(Cal. Const. Art. V, § 13.)[10]

The Constitution does not confer upon the Attorney General exclusive statewide law enforcement authority. (*Brophy, supra*, 49 Cal.App.2d at p.29 [interpreting the "chief law officer" language to "be no more than descriptive" and finding such language "confers no such authority"].) To be sure, it is well-established that:

> the powers of the Attorney General are not without limitation. Manifestly, "direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law" does not contemplate absolute control and direction of such officials. Especially is this true as to sheriffs and district attorneys, as the provision plainly indicates. These officials are public officers, as distinguished from mere employees, with public duties delegated and entrusted to them, as agents, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which they, as agents, are active. Coulter v. Pool, 187 Cal. 181, 201 P. 120. Moreover, sheriffs and district attorneys are officers created by the Constitution. In that connection it should be noted that there is nothing in section [13] of article V that indicates any intention to depart from the general scheme of state government by counties and cities and counties, as well as local authority in cities, as provided

---

[10] Both the Attorney General's supervisory role and the district attorney's statutory role as "public prosecutor" are also codified. (*See* Cal. Gov. Code § 12550 [added by Stats 1945, c.111, p. 462, § 3] & § 26500 [added by Stats 1947, Ch. 424].) Given the constitutional and statutory pronouncements, the Legislature was necessarily aware of the powers and duties of the Attorney General vis-a-vis the district attorneys of the state when the UCL was re-codified in the Business and Professions Code in 1977. (*See* Cal. Bus. & Prof. Code §§ 17200 *et seq.* [added by Stats 1977, Ch. 299].) Proposition 64 was also enacted with these provisions in mind. If there was any intent to limit relief in actions by district attorneys in these cases, the Legislature or voters would have expressly said so. (*See Matosantos, supra*, 53 Cal.4th at 260-261 [noting "the drafters of legislation 'do [] not, one might say, hide elephants in mouseholes'" (quoting *Whitman v. American Trucking Assns., Inc.* (2001) 531 U.S.457, 468)].)

> by ... article XI. By interpreting section [13] of article V in the light of the above–mentioned provisions, it is at once evident that "supervision" does not contemplate control, and that sheriffs and district attorneys cannot avoid or evade the duties and responsibilities of their respective offices by permitting a substitution of judgment. The sole exception appears to be that whenever "in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute," in which cases "he shall have all the powers of a district attorney." ...

(*Brophy, supra*, 49 Cal.App.2d at p.28.)

Accordingly, notwithstanding the Attorney General's chief law enforcement officer role, the Legislature may (and often does) grant standing to other state agencies or prosecutors to seek statewide relief, either exclusively, or concurrently, on behalf of the People of the State. (*See Altus Finance, supra*, 36 Cal.4th at p.1305 [noting the Attorney General's "chief law enforcement officer" role, but holding the legislature granted the Insurance Commissioner exclusive standing to seek relief on behalf of "creditors and policyholders of the insolvent company" under section 1037(f) of the Insurance Code]; *People v. New Penn Mines, Inc.* (1963) 212 Cal.App.2d 667; *see also* Cal. Const. Art IV, § 1 [confirming the "legislative power of this State is vested in the California Legislature"].)

As such, there is nothing in Article V that prohibits the legislative grant of power to district attorneys to bring UCL actions to courts of "competent jurisdiction" in their counties in order to secure the full

statutorily authorized remedies on behalf of the people of the state.[11] There is also nothing in the Constitution that requires the Legislature to limit the remedies available upon a properly filed UCL action. There is thus nothing in Article V that renders the UCL unconstitutional on its face, or as applied.

b. The "Local Government" Provisions Likewise Do Not Render A District Attorney's Statewide UCL Action Unconstitutional

Article XI of the State Constitution generally requires the Legislature to "prescribe uniform procedure" for the formation of cities and counties and to "provide for county powers" and "city powers." Like Article V, there is nothing in Article XI that bars the Legislature from granting standing to county or city prosecutors to bring statewide actions, so as to render the broad grant of power to such officials in the UCL unconstitutional.

Pursuant to Article XI, Section 1:

> (a) The State is divided into counties which are legal subdivisions of the State. The Legislature shall prescribe uniform procedure for county formation, consolidation, and boundary change. Formation or consolidation requires approval by a majority of electors voting on the question in each affected county. A boundary change requires approval by the governing body of each affected county. No county seat shall be removed unless two-thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

---

[11] Notably, the Attorney General's supervisory powers do not extend to city attorneys who are also authorized to file UCL actions. It would be odd indeed if the grant of authority to district attorneys was unconstitutional under Art V, Section 13 given the Attorney General's supervisory role, but the same could not be said for other authorized local prosecutors.

> (b) The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. Except as provided in subdivision (b) of Section 4 of this article, each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum. The Legislature or the governing body may provide for other officers whose compensation shall be prescribed by the governing body. The governing body shall provide for the number, compensation, tenure, and appointment of employees.

Article XI, section 7, states that "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." Neither of these sections requires a restrictive reading of the standing of local prosecutors to bring UCL actions as the Fourth District held.

Instead, both sections are broad statements of the powers granted to counties and cities in this State. The prosecutorial powers granted to the district attorney are not specifically detailed are constrained therein. Despite the designation of the district attorney as a county officer, "over 100 years ago," this Court recognized that:

> "The district attorney in the discharge of the duties of his office performs two quite distinct functions. He is at once the law officer of the county and the public prosecutor. While in the former capacity he represents the county and is largely subordinate to, and under the control of, the board of supervisors, he is not so in the latter. In the prosecution of criminal cases he acts by the authority and in the name of the people of the state."

(*See Pitts v. County of Kern* (1998) 17 Cal.4th 340, 359 [quoting *County of Modoc v. Spencer* (1894) 103 Cal.498, 501].)

Notwithstanding the "fact that district attorney's authority is territorially limited ... 'District attorneys are often considered ... state officials, even though they ... have limited jurisdictions and are elected locally.'" (*Pitts, supra*, 17 Cal. 4th at p.361 [quoting *McMillian v. Monroe County* (1997), 520 U.S. 781].) Thus, the county role of the district attorney recognized in the Constitution is fully "consistent with an understanding of [district attorneys] as state officials who have been locally placed throughout the State" to enforce state law under the UCL. (*Id.* [alteration in original].)

Since no section of Article XI mandates any restriction on the Legislative power to grant standing to agencies or officers of the state to enforce California state law, there is nothing unconstitutional about the express grant of standing to county and city prosecutors to represent the entirety of the people of the state in UCL actions when appropriate.

F. There Is No Jurisdictional "Written Consent" Requirement In The UCL

According to the Fourth District's Majority Opinion below, the UCL requires "written consent by the Attorney General and other county district attorneys" before a UCL action is filed by a district attorney alleging "statewide" misconduct. (Opinion at pp.4-5.) There is nothing in the UCL, or any other law in the state for that matter, that supports this new vaguely

described, judicially created protocol.[12]

Yet, "'[i]n construing ... statutory provisions a court is not authorized to insert qualifying provisions not included and may not rewrite the statute to conform to an assumed intention which does not appear from its language.'" (*In re Hoddinott* (1996) 12 Cal.4th 992, 1002 [quoting *Napa Valley Wine Train, Inc. v. Public Utilities Com.* (1990) 50 Cal.3d 370, 381; *People v. One 1940 Ford V-8 Coupe* (1950) 36 Cal.2d 471, 475].) Hence, by adopting a written consent procedure not found in the UCL, the Fourth District engaged in a legislative function in excess of its jurisdiction.

Moreover, despite its reliance on *People v. Hy-Lond Enterprises, Inc.*, (1979) 93 Cal.App.3d 734, to support this new consent procedure, it is clear that the *Hy-Lond* decision does not support the Fourth District's ruling in this regard.[13] To be sure, according to the Attorney General's own briefing in

---

[12] There are a number of procedural and policy considerations that have not, and properly cannot, be vetted in a judicial forum with respect to this new written consent procedure envisioned by the Fourth District. For example, when is this written consent required? What must the consent entail? Is a full, and duplicative, factual investigation now required by every prosecutor prior to granting such consent? Must all 58 district attorneys sign off on every case that alleges statewide misconduct, or is a majority sufficient? What if one county refuses consent for political purposes, or due to a conflict of interest? Does that shield the defendant from liability for their violations in that venue? There are numerous other questions that are raised by this mysterious new "written consent" procedure, and the courts are not equipped to address them all. This is a legislative function, and the Fourth District's Majority Opinion erred to the extent it steps into the jurisdiction of the legislative branch in this way.

[13] In *Hy-Lond*, the Fourth District held that the particular "terms embodied by the judgment" in that case legally void and unenforceable

Hy-Lond, as a matter of law: "A district attorney does not need authorization from ... anyone ... to bring an action for 'unfair competition' pursuant to" the UCL. (*See* People's Request for Judicial Notice in Support of Petition for Rehearing (RJN), Ex. A, at pp.8-9 & 17 [attaching Appellant's Opening Brief in *People v. Hy-Lond* by the Attorney General].) In concluding their opening brief in *Hy-Lond*, the Attorney General repeated the point, confirming: district attorneys "do not need the permission of any State agency, the Attorney General or any other district attorney" to file a UCL action "seeking injunctions and penalties." (RJN, Ex. A, at p.17.)

Also, the First District's holding in *Hy-Lond* did not pronounce any hard-and-fast rule against statewide UCL actions by district attorneys. The *Hy-Lond* opinion also did not say that the Attorney General has exclusive authority to bring statewide UCL actions, or that the court erred in ordering civil penalties for all statewide violations established in that case. These issues were not presented to the First District for review in *Hy-Lond*. Since

---

because the judgment purported to "limit the powers of other state agents or entities" to commence other authorized actions as may be necessary to ensure compliance with the law. (*Hy-Lond*, *supra*, at pp.747, 749, 752, fn.1 & fn.2 [noting the judgment in question improperly granted "immunity for future actions for unfair competition with respect to future alleged violations of law" by the "People of the State" and required any future actions to be brought "exclusively" in Napa County].) Because of the plain legal error in the judgment, the *Hy-Lond* court held, only, that the Attorney General and the Department of Health had standing to file a motion to set aside and vacate the judgment, and thereby remanded the case to the lower court to entertain that motion. (*Id.* at p.739.) There is no similar judgment or issue faced in this case.

"an opinion is not authority for a proposition not therein considered," the opinion offers little support to the questions presented here. (*Ginns v. Savage* (1964) 61 Cal.2d 520, 524, fn 2.)

G. Respondent Court Did Not Abuse Its Discretion In Denying The Motion to Strike

The Fourth District erred in mandating the Respondent Court to grant the Defendants' Motion to Strike. The standard of review with respect to a trial court's denial of a motion to strike is generally abuse of discretion. (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528; *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.) The Respondent Court did not abuse her discretion when denying the Motion to Strike here.

First, there is no authority that supports striking truthful factual allegations from a UCL complaint concerning the massive scale of the alleged violations, harms and offending conduct. To the contrary, the fact that the violations alleged in this case are pervasive, occurring statewide (and nationwide), and impacted consumers and payors throughout the state, over a prolonged period of time, are all relevant *facts* that the court "shall" consider under established law governing UCL actions when determining the appropriate relief in this case. (*See* Cal. Bus. & Prof. Code § 17206, subd. (b).) There is nothing false, improper or unlawful about these allegations so as to support a Motion to Strike. (Cal. Civ. Proc. Code §§ 435-437.)

Moreover, the analysis in the Fourth District Opinion is fundamentally flawed to the extent it deems statewide injunctive relief not to be "a subject of petitioner's motion to strike below." (Opinion at p.33, n.14.) Indeed, the undisputed fact that the court may grant statewide injunctive relief in this case was one of the considerations relied upon by the trial court when it denied the motion to strike. (*See* A.244-245.) By setting aside this portion of the trial court's holding, the Majority failed to apply the proper analysis and standard of review to the ruling on the Motion to Strike. To be sure, even if the Respondent Court is required to limit the penalty awarded in this case to violations in Orange County as the Majority held, the trial court still had ample grounds to deny the Motion. This is because the factual allegations about the Defendants conduct throughout the state are relevant, if for no other reason, than to support the statewide injunctive relief sought in the Complaint.

Additionally, contrary to the Fourth District's Majority Opinion, "a motion to strike is [not] proper where petitioners challenge the scope of UCL recovery sought by the District Attorney's pleading." (Opinion at p.12.) There is no law that supports such a vast expansion of the use of the motion to strike at the pleading stage in UCL cases. While a motion to strike may properly be used to challenge an entire prayer for punitive damages in private actions, or an entire "claim of right" for relief raised in a cause of action, it has never been held to permit a partial challenge to an otherwise legally

viable theory of penalties in this way. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1682 [addressing the proper use of a motion to strike].)

Rather, it is well established that the "use of the motion to strike should be cautious and sparing." (*PH II, Inc., supra,* 33 Cal.App.4th at p.1683.) It is not to be used as "a procedural 'line item veto' for the civil defendant" or to permit premature challenges to factual issues at the pleading stage. (*Id.*) Even a motion for summary adjudication may not properly be brought to partially challenge the *amount* of penalties (or damages in private actions) to be awarded in a case. (*See, e.g., DeCastro West Chodorow & Burns, Inc. v. Superior Court* (1996) 47 Cal.App.4th 410, 422 [holding a motion for summary adjudication could not properly be brought to challenge "a single item of compensatory damage which does not dispose of an entire cause of action"].)

As such, Respondent Court did not abuse its discretion in denying the Motion here and the Fourth District's mandate ordering the Motion to be granted should accordingly be reversed.

V. CONCLUSION

"As an action designed to protect the public rather than benefit private parties, ... '[o]nly the violation of statute is necessary to justify an injunctive relief and civil penalties.'" (*Toomey, supra*, 157 Cal.App.3d at p.23 [quoting *Pacific Land Research Co., supra*, 20 Cal.3d at p.18, fn.7; *Hernandez v. Atlantic Finance Co.* (1980) 105 Cal.App.3d 65, 72].) There is no dispute

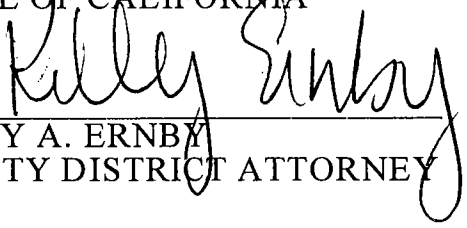
that the Orange County District Attorney has standing to bring the present UCL case. There is also no dispute that there is proper subject-matter and personal jurisdiction, as well as venue, for the case to be heard in Orange County. There is thus no issue concerning jurisdiction or standing of the District Attorney to bring the present case. There are no express or implied restrictions on the trial court's powers to issue all appropriate remedies in this case in the UCL, the State Constitution or otherwise.

For all of the foregoing reasons, the Respondent Court did not abuse its discretion in refusing to strike the well-pled factual allegations containing the word "California" at the pleading stage in this case. The Fourth District's mandate to the contrary should be reversed and the matter remanded to the Fourth District with instructions to enter a new order denying the Petition for Writ of Mandate.

Dated this 21st day of September, 2018.

Respectfully submitted,

TONY RACKAUCKAS, DISTRICT ATTORNEY COUNTY OF ORANGE, STATE OF CALIFORNIA

BY: 
KELLY A. ERNBY
DEPUTY DISTRICT ATTORNEY

CERTIFICATE OF WORD COUNT

[California Rules of Court, Rule 8.520(c)(1)]

The text of this Opening Brief on the Merits (excluding tables and caption pages) consists of 13,596 words as counted by the word-processing program used to generate this brief.

Dated this 21st day of September, 2018.

Respectfully submitted,

TONY RACKAUCKAS, DISTRICT ATTORNEY COUNTY OF ORANGE, STATE OF CALIFORNIA

BY: _____
KELLY A. ERNBY
DEPUTY DISTRICT ATTORNEY

CERTIFICATE OF SERVICE

COURT: Supreme Court of the State of California

Case Nos.: Court of Appeal, Fourth Appellate District, 1st Division D072577

Orange County Superior Court Case No. 30-2016-00879117-CU-BT-CXC *People of the State of California vs. Abbott Laboratories, et al.*

1. I declare at the time of service I was a citizen of the United States, employed in the County of Orange, State of California. My business address is 19 Corporate Plaza Drive, Newport Beach, California 92660.

2. On September 21, 2018, I served the documents described as:

APPELLANT'S OPENING BRIEF

on the parties and entities below by placing a true copy thereof in a sealed Federal Express envelope as follows:

ORANGE COUNTY DISTRICT ATTORNEYS OFFICE
Joseph D'Agostino
Kelly Ernby
401 Civic Center Drive
Santa Ana, California 92701
Telephone: (714) 834-3600
joe.dagostino@da.ocgov.com
kelly.ernby@da.ocgov.com

ROBINSON CALCAGNIE, INC.
Mark P. Robinson, Jr.
Kevin F. Calcagnie
Scot D. Wilson
19 Corporate Plaza Drive
Newport Beach, California 92660
Telephone: (949) 720-1288
mrobinson@robinsonfirm.com
kcalcagnie@robinsonfirm.com
swilson@robinsonfirm.com

KIRKLAND & ELLIS LLP
Michael Shipley
333 S. Hope Street
Los Angeles, California 90071
Telephone: (213) 680-8400
mshipley@kirkland.com

Attorneys for Petitioners/Defendants Teva Pharms. USA, Inc.; Duramed Pharms, Inc.; Duramed Pharms. Sales Corp., and Barr Pharms, Inc.

KIRKLAND & ELLIS LLP
Jay P. Lefkowitz
Adam T. Humann
601 Lexington Avenue,
New York, New York 10022
Telephone: (212) 446-4800
lefkowitz@kirkland.com
ahumann@kirkland.com

Attorneys for Petitioner/Defendants Teva Pharms. USA, Inc.; Duramed Pharms., Inc.; Duramed Pharms. Sales Corp., and Barr Pharms. Inc.

MUNGER,TOLLES & OLSON LLP
Jeffrey I. Weinberger
Stuart Senator
Blanca Young
350 S. Grand Avenue, 50th Floor
Los Angeles, California 90071
Telephone: (213) 683-9100
jeffrey.weinberger@mto.com
stuart.senator@mto.com
blanca.young@mto.com

Attorneys for Petitioners/Defendants AbbVie and Abbott Laboratories

BLANK ROME, LLP
Yosef Adam Mahmood
2029 Century Park E. Fl. 16
Los Angeles, California 90067
Telephone: (424) 239-3400
ymahmood@blankrome.com

Attorneys for Petitioner Abbott Laboratories

CALIFORNIA DEPARTMENT OF JUSTICE
Xavier Becerra, Attorney General of California
David Jones, Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 269-6351
david.jones@doj.ca.gov

Attorney General of California - Amicus Curiae

CITY AND COUNTY OF SAN FRANCISCO
Dennis J. Herrera, City Attorney
Yvonne R. Meré
Owen Clements
Fox Plaza, 1390 Market St., 6th Fl.
San Francisco, California 94102
(415) 554-3874
yvonne.mere@sfcityatty.org
yvonne.mere@sfgov.org
owen.clements@sfcityatty.org

Attorneys for Consumer Attorneys of California – Amicus Curiae

LAW OFFICE OF VALERIE T. MCGINTY
Valerie T. McGinty
524 Fordham Road
San Mateo, California 94402
Telephone: (415) 305-8253
valerie@plaintffsappeals.com

Attorneys for Consumer Attorneys of California – Amicus Curiae

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION
Mark Zahner
921 11th Street, #300
Sacramento, California 95814
Telephone: (916) 443-2017
mzahner@cdaa.org

Attorneys for California District Attorneys Association – Amicus Curiae

SAN DIEGO COUNTY
DISTRICT ATTORNEY'S
OFFICE
Thomas A. Papageorge
330 W. Broadway, Suite 750
San Diego, California 92101
Telephone: (619) 531-3971
thomas.papageorge@sdcda.org

Attorneys for California District Attorneys Association – Amicus Curiae

LOS ANGELES CITY
ATTORNEYS' OFFICE
Michael Nelson Feuer
800 City Hall East
200 N. Main Street
Los Angeles, California 90012
(213) 978-8100
mike.n.feuer@lacity.org

Monica Danielle Castillo
Los Angeles City Attorney
City Hall East
200 N. Spring Street, 14th Floor
Los Angeles, California 90012
(213) 978-1870
monica.castillo@lacity.org

Attorneys for City of Los Angeles – Amicus Curiae

OFFICE OF THE SAN DIEGO
CITY ATTORNEY
Kathryn Turner
Mara Elliott
1200 3rd Avenue, Suite 700
San Diego, California 92101
Telephone: (619) 533-5600
klturner@sandiego.gov
klorenz@sandiego.gov
cityattorney@sandiego.gov

Attorneys for City of San Diego – Amicus Curiae

OFFICE OF THE SAN JOSE
CITY ATTORNEY
Nora Frimann
200 E. Santa Clara Street
San Jose, California 95113-1905
Telephone: (408) 998-3131
nora.frimann@sanjoseca.gov

Attorneys for City of San Jose – Amicus Curiae

SANTA CLARA COUNTY
OFFICE OF THE COUNTY
COUNSEL
James R. Williams
Laura Trice
70 W. Hedding Street
East Wing, 9th Floor
San Jose, California 95110
Telephone: (408) 299-5993
laura.trice@cco.sccgov.org

Attorneys for Santa Clara County – Amicus Curiae

HORVITZ & LEVY LLP
Jeremy B. Rosen
Stanley H. Chen
3601 West Olive Ave., 8TH Flr
Burbank, California 91505
Tel: 818-9955-0800
jrosen@horvitzlevy.com
schen@horvitzlevy.com

Attorneys for Chamber of Commerce of the United States of America; and California Chamber of Commerce

CALIFORNIA CHAMBER OF
COMMERCE
Heather L. Wallace
1215 K Street, Suite 1400
Sacramento, California 95814
916-444-6670
heather.wallace@calchamber.com

Attorneys for Chamber of Commerce of the United States of America; and California Chamber of Commerce

CALIFORNIA STATE
ASSOCIATION OF
COUNTIES
Jennifer Henning
1100 K Street, Suite 101
Sacramento, California 95814
Telephone: (916) 327-7535
jhenning@counties.org

Attorneys for California State Association of Counties – Amicus Curiae

US CHAMBER LITIGATION
CENTER
Janet Y. Galeria
1615 H Street NW
Washington, DC 20062
Tel: 202-463-5747
jgaleria@uschamber.com

Attorneys for Chamber of Commerce of the United States of America; and California Chamber of Commerce

[X] **FEDEX TO INTERESTED PARTIES**: I placed the document(s) listed above in a sealed overnight courier envelope addressed to the parties below and routing the envelope for pick up by Federal Express on that same day in the ordinary course of business, with charges fully prepaid for next day delivery.

[ ] **BY ELECTRONIC SERVICE TO INTERESTED PARTIES:** I further declare that I caused the document(s) listed above to be served on all interested parties via email addresses listed above.

[X] **BY ELECTRONIC SERVICE ON STATE OF CALIFORNIA DEPARTMENT OF JUSTICE:** I caused the above listed document to be electronically uploaded to the State of California Department of Justice website: https://oag.ca.gov/services-info/17209-brief/add

[X] **FEDEX TO COURTS AND ATTORNEY GENERAL**: I placed the document(s) listed above in a sealed overnight courier envelope addressed to the parties below and routing the envelope for pick up by Federal Express on that same day in the ordinary course of business, with charges fully prepaid for next day delivery.

Clerk of the Court
Court of Appeal of the State of California
Fourth District, Division 1
750 B Street, Suite 300
San Diego, California 92101
(619) 744-0760

Clerk of the Court
Hon. Peter Wilson, Department CX-102
Superior Court of the State of California
County of Orange
751 West Santa Ana Boulevard
Santa Ana, California 92701
(657) 622-5304

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street, Suite 1702
Los Angeles, California 90013-1230
(213) 269-6000

Michele Van Gelderen
California Department of Justice
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, California 90013
(213) 269-6000

Supreme Court of California
350 McAllister Street
San Francisco, California 94102-4797
(415) 865-7000

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

Executed on September 21, 2018. at Newport Beach, California.

/s/ Darleen Perkins
Darleen Perkins