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California Supreme Court Holds Organizational Plaintiffs Have Standing To Sue Under UCL When They Incur Costs In Responding To Allegedly Unfair Competition

Client Alert | July 20, 2023

Decided July 17, 2023 ***California Medical Association v. Aetna Health of California, Inc.*, S269212 This week, the California Supreme Court held that organizations have standing to sue for violations of California's Unfair Competition Law if they spent resources fighting the business practice they challenge as unfair. Background:** The California Medical Association ("CMA"), a nonprofit organization that advocates on behalf of member physicians, sued Aetna Health of California over Aetna's implementation of a "Network Intervention Policy," which limited in-network providers' ability to refer patients to out-of-network providers. The CMA alleged that the policy violated California's Unfair Competition Law ("UCL"). Under the UCL, private plaintiffs have standing to sue only if they have "suffered injury in fact" and "lost money or property as a result of" the business practice they challenge as unlawful or unfair. (Bus. & Prof. Code, § 17204.) CMA argued that it met this standard because it had diverted more than 200 hours of staff time to responding to Aetna's Network Intervention Policy. CMA alleged that, among other things, it prepared a letter to California regulators and advised affected physicians about the policy. Aetna argued that CMA lacked statutory standing because it had not lost money or property as a result of the policy. The trial court agreed that the diversion of organizational resources is not the same as the loss of money or property and entered summary judgment for Aetna. The Court of Appeal affirmed. **Issue:** California's Unfair Competition Law requires private plaintiffs to have "suffered injury in fact" and "lost money or property as a result of the unfair competition" the plaintiffs challenge. Can plaintiffs satisfy this requirement by pointing to the costs they incurred in responding to the challenged business practice? **Court's Holding:** Yes. When an organization incurs costs responding to perceived unfair competition that threatens its bona fide, preexisting mission, and those costs were not incurred through litigating or preparing to litigate the organization's UCL claims, the organization has satisfied the UCL's standing requirements.

> *"[T]he UCL's standing requirements are satisfied when an organization … incurs costs to respond to perceived unfair competition that threatens [its] mission…"*

Justice Evans, writing for the Court **What It Means:**

- The opinion gives organizational plaintiffs, such as nonprofits and unions, a new way to establish standing to bring claims under the UCL. Because these types of membership organizations are unlikely to suffer a direct economic injury aside from the diversion of resources, the decision potentially opens the door to lawsuits that would previously have been barred.
- Even so, the Court imposed significant limitations on the circumstances that may

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give rise to standing. Organizations may not manufacture standing by relying on expenditures made "in the course of UCL litigation, or to prepare for UCL litigation." And the organization's diversion of resources must occur through its sincere pursuit of "missions separate from the planned UCL litigation," and not through a "brief stint of advocacy."

- The Court clarified that its decision was "limited to organizational standing; we say nothing about individual standing." Thus, an individual plaintiff cannot establish standing under the UCL by pointing to her own expenditure of "personal, uncompensated time responding to the alleged unfair competition."
- In a footnote, the Court indicated that organizational plaintiffs with standing may seek injunctive relief that would primarily benefit the public—and that such actions would not be considered "representative" actions.

The Court's opinion is available here. Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court. Please feel free to contact the following practice leaders:

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