



1-1-2008

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Recommended Citation

39 McGeorge L. Rev. 392

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Chapter 17: Giving San Francisco a Leg to Stand on in UCL Actions

Robert Carlin

Code Sections Affected

Business and Professions Code §§ 17204, 17206 (amended).
SB 376 (Migden); 2007 STAT. Ch. 17.

I. INTRODUCTION

Imagine that you own a vehicle that has become inoperable.¹ You cannot find anyone willing to purchase it or even take it off your hands for free.² When you go to dispose of the vehicle, the towing company makes you a seemingly fantastic offer: surrender title of the vehicle to us, and we will tow it free of charge.³ Years later, you are bewildered to discover a bill of several hundred dollars from the towing company for the cost of towing and storing the vehicle you relinquished!⁴ Not willing to spend several times more than the claimed amount in attorney's fees or risk damaging your credit, you begrudgingly pay the bill.⁵

The above scenario is precisely the sort of situation for which California's Unfair Competition Law (UCL)⁶ was crafted. California's UCL empowers the Attorney General of California, district attorneys, and city attorneys of cities with a population over 750,000 to bring an action on behalf of the people against any person engaging in unfair competition.⁷ The City and County of San Francisco have a tradition of defending consumers against unfair competition by unscrupulous businesses.⁸ But with the recent 2006 census data placing San

1. This hypothetical is loosely based on a press release issued by City Attorney Dennis Herrera's office. See Press Release, Office of the City Attorney: City & County of S.F., Herrera Moves to Halt City Tow Overcharges (July 28, 2004), http://www.sfgov.org/site/cityattorney_page.asp?id=26658 (on file with the *McGeorge Law Review*) (describing consumer complaints and allegations related to alleged fraud by a San Francisco towing company).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* As fate would have it, consumers did not just take this abuse lying down. *Id.* They contacted San Francisco City Attorney Dennis Herrera and fought back, recovering roughly \$340,000. Rachel Gordon, *City Tow Storage-Fee Case Settled--Deal Includes Refunds*, S.F. CHRON., Nov. 30, 2004, at B4 (discussing the underlying facts of the settlement between the City of San Francisco and City Tow).

6. CAL. BUS. & PROF. CODE §§ 17200-17210 (West 1997 & Supp. 2008).

7. *Id.* §§ 17204, 17206(a).

8. See Press Release, Carole Migden, Governor Signs Sen. Migden Bill that Allows San Francisco's City Attorney to Maintain its Power to Prosecute Businesses Under California's Unfair Competition Law (June 29, 2007), http://dist03.casen.govoffice.com/index.asp?Type=B_PR&SEC={ADFFA2AD-C29A-4592-8781-7EC330958F3C}&DE={085BFF4F-9CA3-4260-89A9-20CA037920E4} [hereinafter Governor Signs Bill] (on file with the *McGeorge Law Review*) (mentioning two notable cases brought by the City Attorney of San Francisco).

Francisco County's population at 744,000,⁹ the San Francisco City Attorney's standing to bring such actions was in jeopardy.¹⁰ Chapter 17 ensures that the City and County of San Francisco will still be able to protect consumers from unfair business practices.¹¹

II. LEGAL BACKGROUND

California's UCL is a "ginormous"¹² beast. Although the statute itself is not exceedingly long, there is a plethora of case law that interprets it.¹³ What follows is a brief, bare bones¹⁴ discussion of the UCL, focusing primarily on public prosecution¹⁵ by a city attorney.

9. U.S. CENSUS BUREAU, 2006 POPULATION ESTIMATES tbl.1 (2006), http://factfinder.census.gov/servlet/GCTTable?_bm=y&context=gct&ds_name=PEP_2006_EST&mt_name=PEP_2006_EST_GCTT1_ST2&-CONTEXT=gct&-tree_id=806&-geo_id=04000US06&-format=ST-2IST-2S&-lang=en (on file with the *McGeorge Law Review*).

10. Cheryl Miller, *Population Control Bill Would End Claim S.F. Too Small for 17200 Suits*, S.F. RECORDER, Feb. 6, 2006 (noting that some defendants are beginning to argue that San Francisco lacks standing to bring UCL actions because of its shrinking population).

11. Governor Signs Bill, *supra* note 8 ("SB 376 removes any uncertainty about the San Francisco City Attorney's standing in UCL cases . . .").

12. If the reader is particularly peeved by the usage of the word "ginormous" to describe the size of the UCL, you have my sympathies. I was equally dismayed to discover my childrens' frequent usage of it, not to mention its addition to the dictionary. See Adam Gorlick, *New Dictionary Includes 'Ginormous.'* SFGATE.COM, July 10, 2007, <http://sfgate.com/cgi-bin/article.cgi?f=/n/a/2007/07/10/national/a114035D37.DTL&tsp=1> (on file with the *McGeorge Law Review*) (describing dictionary publisher Merriam-Webster's adoption of "ginormous," among other trendy words).

13. For some of the highlights, see *Californians for Disability Rights v. Mervyn's, LLC*, 39 Cal. 4th 223, 138 P.3d 207 (2006) (holding that Proposition 64's amendments to the UCL apply to pending cases); *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 63 P.3d 937 (2003) (holding that restitution was the only monetary remedy authorized under the UCL); *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 999 P.2d 706 (2000) (holding that improperly withheld wages were an authorized restitutionary remedy in an UCL action); *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 973 P.2d 527 (1999) (setting forth a new test for unfair business practices between competitors); *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.*, 17 Cal. 4th 553, 950 P.2d 1086 (1998) (holding that the UCL conferred standing on private individuals acting for themselves or the general public, as well as named public officials); *Comm. on Children's Television, Inc. v. Gen. Foods Corp.*, 35 Cal. 3d 197, 673 P.2d 660 (1983) (holding that plaintiffs stated a cause of action against cereal manufacturer and advertiser for ads promoting sugary cereal for children).

14. For a good overview of the UCL, see JULIA B. STRICKLAND & LISA M. SIMONETTI, 2007 OVERVIEW OF CALIFORNIA'S UNFAIR COMPETITION LAW AND CONSUMERS LEGAL REMEDIES ACT (2007), <http://www.stroock.com/SiteFiles/Pub488.pdf> (on file with the *McGeorge Law Review*) (providing a comprehensive discussion of the provisions of the UCL). Those looking for in-depth coverage of all things relating to California's UCL should visit Kimberly A. Kralowec's excellent weblog, *The UCL Practitioner*, <http://www.uclpractitioner.com/Welcome.html> (last visited on Dec. 27, 2007) (on file with the *McGeorge Law Review*).

15. The use of the term "public prosecution" refers simply to the fact that the individual "prosecuting" the UCL action is one of the designated public officials having standing to do so, namely "the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state." CAL. BUS. & PROF. CODE § 17203 (West 1997 & Supp. 2008).

A. California's Unfair Competition Law—A Primer

California's UCL is a powerful and all-encompassing tool against business wrongdoing and misconduct.¹⁶ It defines unfair competition in a broad, tripartite form, prohibiting (1) "any unlawful, unfair or fraudulent business act or practice,"¹⁷ (2) any "unfair, deceptive, untrue or misleading advertising,"¹⁸ and (3) any act prohibited by California's False Advertising Law.¹⁹ Any person²⁰ who engages in unfair competition is subject to liability under this statute.²¹

The unlawful conduct prong of the UCL is arguably the most powerful—it provides a civil cause of action for conduct that violates any "law other than the UCL."²² Given the numerous categories of law that have been found to act as predicates for an "unlawful" UCL claim, the scope of "unlawful" conduct is breathtakingly broad.²³ Courts are quite flexible in defining what conduct is actually unfair conduct.²⁴ Courts have traditionally employed two tests to determine whether conduct is unfair.²⁵ The first test employs a traditional balancing of the utility of the business practice against the harm inflicted upon the victim.²⁶ In the second test, the court finds conduct unfair when it "offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers."²⁷ The California Supreme Court criticized these definitions in the context of a business' conduct against a competitor,²⁸ but whether this criticism will apply to unfair conduct by a business against consumers is unclear.²⁹

16. *Cel-Tech Commc'ns*, 20 Cal. 4th at 180, 973 P.2d at 539 ("It governs 'anti-competitive business practices' as well as injuries to consumers, and has as a major purpose 'the preservation of fair business competition.'" (quoting *Barquis v. Merchants Collection Ass'n*, 7 Cal. 3d 94, 110, 496 P.2d 817, 829 (1972))).

17. CAL. BUS. & PROF. CODE § 17200 (West 1997 & Supp. 2008).

18. *Id.*

19. *Id.*; *id.* §§ 17500-17509 (West 2007).

20. The definition of person is just as broad as the conduct prohibited. "[T]he term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons." *Id.* § 17201 (West 1997).

21. *Id.* §§ 17203, 17204, 17206 (West 1997 & Supp. 2008).

22. See STRICKLAND & SIMONETTI, *supra* note 14, at 10 (quoting the California Supreme Court's statement that the unlawful conduct prong "borrows" violations of other laws).

23. *State Farm Fire & Cas. Co. v. Super. Ct.*, 45 Cal. App. 4th 1093, 1103, 53 Cal. Rptr. 2d 229, 234 (2d Dist. 1996); STRICKLAND & SIMONETTI, *supra* note 14, at 10 (citing to California cases that have found the violation of "federal statutes; federal regulations; state statutes; state regulations; local ordinances; prior case law; and standards of professional conduct" as a sufficient basis to state an unlawful claim under the UCL).

24. See STRICKLAND & SIMONETTI, *supra* note 14, at 12 (noting that courts have had difficulty in defining "unfair" and discussing the two tests used to define "unfairness").

25. *Id.*

26. *State Farm Fire & Cas. Co.*, 45 Cal. App. 4th at 1103-04, 53 Cal. Rptr. 2d at 234.

27. STRICKLAND & SIMONETTI, *supra* note 14, at 12 (citing to several cases that discuss this language).

28. *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 185-87, 973 P.2d 527, 543-44 (1999) (criticizing the prior tests and articulating a new test for unfairness in the context of two competitors). The court described the new test for unfairness as follows:

When a plaintiff who claims to have suffered injury from a direct competitor's "unfair" act or

The unfair advertising prong of the UCL was intended to protect the public from misleading advertising or representations, whether based upon outright falsehoods or simple misrepresentation by the business.³⁰ However, what constitutes unfair advertising for the purpose of the UCL is currently uncertain.³¹ Before the enactment of Proposition 64,³² a plaintiff only had to show that an advertisement was likely to deceive the general public.³³ Whether this standard will survive or be replaced with a narrow requirement of reliance on the misrepresentation by each plaintiff is a pending question.³⁴

A violation of California's False Advertising Law also constitutes unfair competition under the UCL.³⁵ This additional prong of the UCL is somewhat less potent than the first two, in part because it requires the plaintiff to show that the defendant knew or through reasonable care should have known the advertisement was misleading.³⁶

The three primary types of unfair competition all operate independently; any one type of unfair competition by itself is sufficient to constitute unfair competition.³⁷ Thus an unfair though perfectly legal act is actionable under the UCL,³⁸ and the violation of any other law is actionable as unfair competition, even if the conduct is fair.³⁹ Importantly, all penalties and injunctive relief

practice invokes section 17200, the word "unfair" in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition.

Id.

29. STRICKLAND & SIMONETTI, *supra* note 14, at 14.

30. Sharon J. Arkin, *The Unfair Competition Law After Proposition 64: Changing the Consumer Protection Landscape*, 32 W. ST. U. L. REV. 155, 162-63 (2005) (quoting *Day v. AT&T Corp.*, 63 Cal. App. 4th 325, 332-33, 74 Cal. Rptr. 2d 55, 59-60 (1st Dist. 1998)).

31. See STRICKLAND & SIMONETTI, *supra* note 14, at 16 (noting that pending developments in the law may change the current standard that does not require proof of actual reliance into a standard that does).

32. See *infra* Part II.B (discussing Proposition 64 in greater detail).

33. STRICKLAND & SIMONETTI, *supra* note 14, at 16 (noting that before Proposition 64 the UCL did not require "proof of intent, scienter, actual reliance or damages" for conduct to be fraudulent).

34. *Id.* at 16 (noting that the issue will likely be resolved when the California Supreme Court hears *Pfizer v. Super. Ct.*, 141 Cal. App. 4th 290, 45 Cal. Rptr. 3d 840 (2d Dist. 2006), *cert. granted*, 51 Cal. Rptr. 3d 707, 146 P.3d 1250 (2006)).

35. CAL. BUS. & PROF. CODE § 17200 (West 1997 & Supp. 2008).

36. *Id.* § 17500. Courts have, however, granted broad interpretation to the circumstances under which the False Advertising Law applies. Arkin, *supra* note 30, at 163-64 ("To establish a § 17500 violation, it must be shown that the defendant publicly disseminated advertising which contained the false statements. Both 'public dissemination' and 'advertising' have been very broadly construed by the courts to include one-on-one oral statements to a single individual and even product labels.").

37. *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632, 647, 58 Cal. Rptr. 2d 89, 98 (2d Dist. 1996) ("Because [the UCL] is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent. 'In other words, a practice is prohibited as "unfair" or "deceptive" even if not "unlawful" and vice versa.'" (quoting *State Farm Fire & Cas. Co. v. Super. Ct.*, 45 Cal. App. 4th 1093, 1102, 53 Cal. Rptr. 2d 229, 233 (2d Dist. 1996))).

38. *State Farm Fire & Cas. Co.*, 45 Cal. App. 4th at 1102, 53 Cal. Rptr. 2d at 233-34.

39. *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 949, 45 P.3d 243, 249 (2002) ("By defining unfair competition

available under the UCL “are cumulative to each other and to the remedies or penalties available under all other” state laws.⁴⁰

A private party “who has suffered injury in fact and has lost money or property as a result of such unfair competition”⁴¹ may bring a UCL action for restitution⁴² or injunctive relief.⁴³ Public officials⁴⁴ may bring the same actions that private parties can, but on behalf of the general public and without the requisite “proof of harm” requirement.⁴⁵ These “attorney general” actions may also be brought by public prosecutors against wrongdoers to impose civil penalties.⁴⁶

B. Proposition 64—Private Attorney Generals No More

In November of 2004, Californians enacted Proposition 64 through the initiative process.⁴⁷ The support for this initiative largely grew out of the abuses of the UCL statute by the Trevor Law Group⁴⁸ and others.⁴⁹

to include any ‘unlawful . . . business act or practice,’ the UCL permits violations of other laws to be treated as unfair competition that is independently actionable.” (citation omitted)). *But see In re Tobacco Cases II*, 41 Cal. 4th 1257, 1265-70, 63 Cal. Rptr. 3d 418, 423-29 (2007) (discussing cases where federal law can preempt the UCL).

40. CAL. BUS. & PROF. CODE § 17205 (West 1997). Although the remedies the UCL offers are cumulative, it is worth noting that the statute of limitations is “four years after the cause of action accrued.” *Id.* § 17208 (West 1997).

41. *Id.* § 17204 (West 1997 & Supp. 2008). Prior to 2004, California’s UCL authorized any person to act as a “private attorney general” and bring lawsuits against anyone engaging in unfair competition. Unlike most private civil lawsuits, there was no need for a plaintiff to have been injured by the unfair competition—the mere fact of unfair competition by itself could be the basis of a suit. *See infra* Part II.B (discussing the impact that Proposition 64 had on “private attorney general” actions).

42. STRICKLAND & SIMONETTI, *supra* note 14, at 28-31 (discussing how California case law has interpreted restitution generally and under the UCL).

43. *Id.* at 34-35 (“Courts have expansive powers to award injunctive relief under the UCL.”).

44. The following public officials may bring UCL actions on behalf of the public: “the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.” CAL. BUS. & PROF. CODE § 17203 (West Supp. 2007); *see also id.* §§ 17204, 17206(a) (stating that the city attorney of a city and county can only bring UCL actions if the city’s population exceeds 750,000).

45. CAL. BUS. & PROF. CODE § 17203.

46. *Id.* § 17206(a) (providing that civil penalties are not to exceed \$2,500 per violation).

47. Dale Kasler, *Businesses Hail Prop. 64 Victory: Opponents Call it a Victory for Polluters & Scofflaws*, SACRAMENTO BEE, Nov. 4, 2004, at A8.

48. The Trevor Law Group employed numerous duplicitous tactics against small auto-repair shops.

[T]he firm had a habit in their suits of naming just one repair shop and tens of thousands of Does. A few days after filing or sometimes even on the same day, Trevor Law Group would file dozens of Doe amendments, making it much harder for defendants to know who their codefendants were or to coordinate with them. To save money on filing fees, the firm also lumped in the same lawsuit defendants who were not involved in the same event. When defense attorneys for the shops challenged joinder, the Trevor attorneys just dismissed the dissenting shop to avoid forcing a decision on the issue and risk having the entire suit thrown out. Then they would file an individual suit against them.

When it came time to settle, they really showed their teeth. Numerous stories in the State Bar’s

Before Proposition 64, any individual could bring a UCL action on behalf of the public as a sort of “private attorney general.”⁵⁰ There was no need to demonstrate any harm on the part of the plaintiff or the public—only that the defendant had engaged in unfair competition.⁵¹

Proposition 64 placed “private attorney general” actions in the dustbin of history.⁵² Proposition 64 changed the UCL so that a private party must now demonstrate that it “has suffered injury in fact and has lost money or property as a result of such unfair competition.”⁵³ Furthermore, actions brought by private plaintiffs on behalf of the public must now comply with California’s class action requirements.⁵⁴ The ability of public prosecutors to bring UCL actions on behalf of the public was not affected by Proposition 64.⁵⁵

C. An Exception is Made—San Jose is Given a Reprieve

Granting exceptions for UCL standing because of a smaller-than-required city population is not without precedent. In 1988, California’s legislature faced a similar problem with the City of San Jose’s ability to prosecute UCL actions.⁵⁶

complaint describe how the attorneys-in particular Trevor-would call up and harangue shop owners and employees who they knew were already represented by counsel, threaten that settlement amounts would increase unless they paid by day’s end, mail them letters urging settlement printed on red paper, and scare them by saying they would force the shops to produce four years’ worth of business records for the firm to scrutinize. Some defendants developed health problems from the stress or closed their shops for good.

Lucia Hwang, *The Rise and Fall of the Trevor Law Group: Behind the Scandal that Threatens to Gut the Unfair Competition Law*, CAL. LAW., <http://www.dailyjournal.com/callawyer/index.cfm?sid=&tkn=&eid=624004&evid=1> (on file with the *McGeorge Law Review*).

49. Kevin Yamamura, *Business Law is Targeted Prop. 64: Work to Find a Compromise to Improve the Law has Failed*, SACRAMENTO BEE, Oct. 15, 2004, at A3 (describing the shakedown lawsuits brought by the Trevor Law Group and noting how pro-business interests had capitalized on this example); see also Arkin, *supra* note 30, at 167 (noting the “extensive media coverage of alleged abuses of the Unfair Competition Law”).

50. Arkin, *supra* note 30, at 166.

51. *Id.* at 167-68 (explaining that prior to Proposition 64 “traditional standing principles did not apply and there was no transactional nexus required between the plaintiff and the defendant”).

52. *Californians for Disability Rights v. Mervyn’s, LLC*, 39 Cal. 4th 223, 227, 138 P.3d 207, 209 (2006).

California law previously authorized any person acting for the general public to sue for relief from unfair competition. After Proposition 64, . . . a private person has standing to sue only if he or she “has suffered injury in fact and has lost money or property as a result of such unfair competition.”

Id. (citations omitted).

53. CAL. BUS. & PROF. CODE § 17204 (West 1997 & Supp. 2008); see also STRICKLAND & SIMONETTI, *supra* note 14, at 3 n.14 (collecting cases dealing with the ramifications of Proposition 64).

54. CAL. BUS. & PROF. CODE § 17204; CAL. CIV. PROC. CODE § 382 (West 2004). Although section 382 does not spell out the requirements of a class action, courts “have interpreted [it] to impose the requirements that usually apply in other state and federal courts—commonality, typicality, adequacy of representation and superiority.” STRICKLAND & SIMONETTI, *supra* note 14, at 4-5.

55. STRICKLAND & SIMONETTI, *supra* note 14, at 5.

56. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 376, at 3 (June 18, 2007); CAL. BUS. & PROF. CODE § 17204.5 (West 1997).

The Legislature passed legislation enabling San Jose to bring UCL actions, even though its population was below the threshold 750,000 people requirement.⁵⁷ The Legislature granted San Jose UCL standing based upon its population nearly reaching 750,000 and the competence of the San Jose City Attorney's Office.⁵⁸

III. CHAPTER 17

Chapter 17 ensures that the City Attorney of San Francisco will have standing to bring actions under the UCL.⁵⁹ Existing law requires that a city and county have a population of over 750,000 for a city attorney to sue under the UCL.⁶⁰ Chapter 17 also grants standing to any city attorney of a city and county to pursue injunctive relief or to recover penalty fees under the UCL.⁶¹

IV. LEGAL ANALYSIS

Chapter 17 is needed to ensure that the City Attorney of San Francisco can continue to bring UCL actions on behalf of the public.⁶² San Francisco's fluctuating population places it in a precarious position when questions of standing arise, giving malfeasant businesses a procedural escape from substantive wrongs.⁶³ Chapter 17 eliminates any possibility that population size will prevent the San Francisco City Attorney's Office from bringing UCL actions.⁶⁴

San Francisco City Attorney Dennis Herrera has highlighted the importance of city attorneys bringing UCL actions to police the marketplace.⁶⁵ Although he conceded that the UCL was not necessary to pursue actions against business misconduct, he stressed the UCL's benefits to a city attorney: the ability to focus primarily on the wrongful conduct of the defendant, the deterrence value of being able to bring suit on behalf of the public, powerful injunctive relief and civil

57. Unlike Chapter 17, San Jose's population exception was only to apply until the city attained a population of 750,000, at which point San Jose's UCL standing would be based upon population like any other city. *Id.* at 3; *see also* CAL. BUS. & PROF. CODE §§ 17204.5, 17206.5 (West 1997) (codifying the San Jose exception to UCL standing).

58. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 376, at 3-4 (June 18, 2007).

59. *Id.* at 1.

60. CAL. BUS. & PROF. CODE §§ 17204, 17206(a) (West 1997 & Supp. 2008).

61. *Id.* §§ 17204, 17206(a) (amended by Chapter 17).

62. *Let S.F. Enforce Consumer Rights*, S.F. CHRON., June 27, 2007, at B10.

63. *See id.* ("San Francisco's city attorney would lose standing to file such lawsuits, if the city's population were to drop below 750,000 . . .").

64. Governor Signs Bill, *supra* note 8.

65. Dennis Herrera, City Attorney of S.F., Public Prosecution: Using §17200 to Police the Marketplace, Remarks at California Bar's Antitrust & Unfair Competition Section Program on §17200, at 2 (May 7, 2004), <http://www.sfgov.org/site/uploadedfiles/cityattorney/17200SPEECH.PDF> (on file with the *McGeorge Law Review*).

penalties, and the ability to protect both consumers and other businesses from anti-competitive conduct.⁶⁶

As one commentator has noted, many of California's laws do not provide a private right of action against a wrongdoer.⁶⁷ Before Proposition 64 was enacted, private groups could bring UCL actions against businesses that violated such laws.⁶⁸ Now, such actions can only be brought through public prosecutors, such as the City Attorneys' Office.⁶⁹

The sole opposition to Chapter 17 came from the California Chamber of Commerce.⁷⁰ They feared that creating yet another exception to the defenses available to defendants under the UCL would create a precedent for even more exceptions.⁷¹ This fear was apparently strengthened by San Francisco's "history of establishing ordinances and policies that are particularly burdensome to businesses."⁷² While businesses are understandably concerned with expanding litigation, it appears that such fears of burdensome litigation may not be entirely unfounded.⁷³ On the other hand, it is not clear that the City Attorney of San Francisco has ever utilized the UCL in an abusive manner.⁷⁴

V. CONCLUSION

The enactment of Chapter 17 guarantees San Francisco's ability to continue bringing UCL actions to police the marketplace and protect the public from unfair competition.⁷⁵ In the wake of Proposition 64's eradication of "private attorney general" UCL actions, the need for public prosecutions is more

66. *Id.* at 4-5.

67. Arkin, *supra* note 30, at 169 ("There are numerous state environmental laws and privacy laws . . . that provide no private right of action.").

68. *Id.* at 167.

69. *Id.* at 168-69.

70. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 376, at 4 (June 18, 2007). One commentator has argued that even after the passage of Proposition 64, the UCL is still in need of serious remedial treatment. See Eugene S. Suh, Comment, *Stealing from the Poor to Give to the Rich? California's Unfair Competition Law Requires Further Reform to Properly Restore Business Stability*, 35 SW. U. L. REV. 229, 246-51 (2006) (arguing that the UCL is duplicative of existing statutes and, in its current form, does not serve the interests of consumers).

71. ASSEMBLY COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF SB 376, at 4 (June 18, 2007).

72. *Id.*; see also SMALL BUS. COMM'N, GETTING A BUSINESS STARTED: A GUIDE TO DOING BUSINESS IN SAN FRANCISCO (2003), http://www.ci.sf.ca.us/site/uploadedfiles/biz_start/21_GettingBusStarted.pdf (on file with the *McGeorge Law Review*) (discussing what the guide itself refers to as the "maze" of rules and regulations businesses must comply with in San Francisco).

73. See Justin Scheck, *Plaintiff Lawyers Hunt for Partners Needing Public Faces for Private AG Lawsuits, Lawyers Turn on Das, City Attorneys*, S.F. RECORDER, Feb. 25, 2005 (describing that while most district attorneys are shy about partnering up with private lawyers, many city attorneys do not share the same apprehension).

74. *Let S.F. Enforce Consumer Rights*, *supra* note 62 ("In a letter to legislators in opposition to SB376, the California Chamber of Commerce offered not a single example of the city attorney's abuse of this law.").

75. Governor Signs Bill, *supra* note 8.

imperative now than ever.⁷⁶ The San Francisco City Attorney's Office may not be capable of eradicating business misconduct altogether, but by punishing the fraudulent conduct of tow truck companies and others, the Office lets malfeasant businesses know that all businesses must operate within the law when doing business in the City by the Bay.

76. *Let S.F. Enforce Consumer Rights*, *supra* note 62.

California voters approved Proposition 64 to cut back the ability of individuals, who were not personally damaged by an unfair business practice, to sue companies under the law. That measure, which we supported, was intended to stop the "shakedown lawsuits" that were being peppered against businesses such as auto dealers and nail salons. Proponents of 64 argued that the enforcement of such laws should be handled by the attorney general, district attorneys and city attorneys of major municipalities

Id.