

Case No. H039770

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

STOP ANIMAL EXPLOITATION NOW,
Plaintiff, Appellant, and Cross-Respondent

vs.

SANTA CRUZ BIOTECHNOLOGY, INC.,
Defendant, Respondent, and Cross-Appellant,

Appeal from the Superior Court,
County of Santa Cruz,
Case No. CV176022
The Honorable Paul Marigonda, Judge

**AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER STOP ANIMAL
ENDANGERMENT NOW ON THE ISSUE OF ORGANIZATIONAL STANDING
UNDER BUSINESS AND PROFESSIONS CODE §17200 OF LOS ANGELES .
COMMUNITY ACTION NETWORK, CALIFORNIA RURAL LEGAL
ASSISTANCE FOUNDATION, CALIFORNIA RURAL LEGAL ASSISTANCE
FOUNDATION, DISABILITY RIGHTS EDUCATION & DEFENSE FUND,
DISABILITY LEGAL RIGHTS CENTER, INNER CITY LAW CENTER, LAW
FOUNDATION OF SILICON VALLEY, NATIONAL HOUSING LAW
PROJECT, PUBLIC COUNSEL,
PUBLIC INTEREST LAW PROJECT,
WESTERN CENTER ON LAW AND POVERTY**

LEGAL AID FOUNDATION OF LOS ANGELES

Barbara J. Schultz (State Bar No. 168766)

Paul J. Estuar (State Bar No. 167764)

1550 West Eighth Street,

Los Angeles, California 90017

(213) 640-3823 | (213) 640-3802 (fax)

bschultz@lafla.org | pestuar@lafla.org

Attorneys for Proposed Amici Curia

TABLE OF CONTENTS

	Page
I. Introduction.....	1
II. Diverting Resources to Counteract Unfair Practices that Frustrate a Charitable Organization’s Mission is an Injury.	1
III. Proposition 64 Does Not Abrogate But Reaffirms Traditional Notions of Standing.....	4
IV. Proposition 64 Did Not Alter the Required Nexus Between the Alleged Unfair Competition and the Plaintiff’s Injury.....	5
V. Conclusion	6

TABLE OF AUTHORITIES

State Cases

<i>Californians for Disability Rights v. Mervyns LLC</i> (2006) 39 Cal. 4 th 223, 228.....	4
<i>Delaney v. Superior Court</i> (1990) 50 Cal.3d 785, 759.....	5
<i>Kwikset Corp. v. Superior Court</i> (2011) 51 Cal.4 th 310, 323.....	4
<i>Kwikset Corporation v. Benson</i> (2011) 51 Cal. 4 th 301, 322-3	1
<i>Lujan v. Defenders of Wildlife</i> (1992) 504 U.S. 555, 560-61	5
<i>People v. Spark</i> (2004) 16 Cal. Rptr. 3d 840, 846.....	5

Federal Cases

<i>Fair Housing of Marin v. Combs</i> (9th Cir. 2002) 285 F.3d 899, 902, 905.....	1
<i>La. ACORN Fair Hous. v. LeBlanc,</i> 211 F.3d 298, 305 (5th Cir. 2000).....	2
<i>Ragin v. Harry Macklowe Real Estate Co.,</i> 6 F.3d 898 (2d Cir. 1993).....	2
<i>Spann v. Colonial Vill., Inc.,</i> 283 U.S. App. D.C. 216, 899 F.2d 24 (D.C. Cir. 1990).....	1
<i>Valle Del Sol Inc. v. Whiting</i> (2013) 732 F.3d 1006	2

TABLE OF AUTHORITIES
(Continued)

Other Authorities

Business & Professions Code §17200 <i>et. seq</i>	1, 3, 4, 5
Internal Revenue Code §501(c)(3).....	2

I. Introduction

The trial court correctly decided that Stop Animal Exploitation Now (SAEN) had organizational standing under Business & Professions Code §17200 *et. seq.* based on diversion of resources and frustration of mission. This issue is of great importance to community-based organizations like amicus curiae Los Angeles Community Action Network (LA CAN), and public interest law firms that represent such organizations, as with the remaining amici. The missions of these non-profits serve the public interest. If this Court agrees with Santa Cruz Biotechnology, Inc. (Biotech) and narrows organizational standing requirements, SAEN, LA CAN and numerous other organizations risk losing access to the courts to stop a myriad of unfair business practices that impact the public welfare. As shown below, there is no legal justification for the additional standing criteria Biotech proposed, and making such a ruling would frustrate the mission of non-profits and harm the public good.

II. Diverting Resources to Counteract Unfair Practices that Frustrate a Charitable Organization's Mission is an Injury.

It is clear from *Kwikset* that economic injury is an injury in fact for purposes of standing, and diversion of resources is just such an economic injury. *Kwikset Corporation v. Benson* (2011) 51 Cal. 4th 301, 322-3; *see* SAEN reply brief p. 27. Biotech claims that such a diversion must be “forced” to “avoid some other actual harm” (BRB, p.35), yet nothing in Proposition 64 or §17200 so states. Even were that the law, avoiding frustration of mission would be the “other actual harm.” In a Ninth Circuit fair housing case, the organizational plaintiff “suffered injury to its ability to carry out its purposes” and the Court upheld damage awards for both a diversion of resources and frustration of mission. *Fair Housing of Marin v. Combs*

(9th Cir. 2002) 285 F.3d 899, 902, 905. In that case the Ninth Circuit set out a detailed analysis of cases in other Circuits that found that a diversion of resources to counteract unfair practices is enough to confer standing. [*Id.*, 903-4 citing *Spann v. Colonial Vill., Inc.* (D.C. Cir. 1990) 283 U.S. App. D.C. 216, 899 F.2d 24 (“...to monitor and to counteract on an ongoing basis public impressions created by defendants’ use of print media” is injury in fact); *La. ACORN Fair Hous. v. LeBlanc* (5th Cir. 2000) 211 F.3d 298, 305 (standing exists if an organization’s resources were drained “resulting from counteracting the effects of the defendant’s actions.”); *Ragin v. Harry Macklowe Real Estate Co.* (2d Cir. 1993) 6 F.3d 898 (“...the fair housing organization was forced to devote significant resources to identify and counteract the defendants’ advertising practices...”)] The Court confirmed that such damages as staff pay, funds expended in support of volunteer services, funds for dissemination of literature aimed at redressing impact and inability to undertake other efforts should be compensated. *Id.* at 905. In none of these cases were the plaintiff made to show injury beyond that which has been traditionally recognized as sufficient for organizational standing. The Ninth Circuit has not limited this approach only to fair housing cases. Last year the court found that several organizations had standing to challenge enforcement of an Arizona statute attempting to criminalize the harboring and transporting of “unauthorized aliens.” *Valle Del Sol Inc. v. Whiting* (9th Cir. 2013) 732 F.3d 1006. The Court found that the organizations would have to divert resources for education of their members and counteract its frustration of mission which was defined as deterring participation in the organizations’ activities (transportation of undocumented people). *Id.* at 1018.

Biotech appears to have a misunderstanding of how charitable organizations function by stating that that any diversion of resources is “self inflicted costs” since an organization “voluntarily” challenges certain practices. BRB, pp. 34-35.

Pursuant to the Internal Revenue Code, charitable organizations, such as SAEN and LA CAN, must limit their activities to those that further their exempt purpose. IRC §501(c)(3). Such organizations are funded by government or foundation grants and individual donations specifically to fulfill their mission. They will not receive the funds to sustain them if they do not proactively seek to fulfill their mission and counteract any practices that could harm their ability to do so. And they would lose their tax exemption if they stray from their charitable purpose. For example, LA CAN's mission is to empower people dealing with poverty to find their voice and improve their communities through organizing and collective action. LA CAN organizers must go out into these communities and engage in activities to further their mission, including litigation.

LA CAN has been forced to sue several landlords who have engaged in unfair business practices, because the unfair practices impeded their mission. For example, LA CAN was a plaintiff in a housing displacement case that recently settled (*Moon et.al. v. 752 S. Main Street, et. al.*, Los Angeles Superior Court, BC 475184). The §17200 claim included several violations of local and state laws, wrongful eviction and harassment. LA CAN is a very small organization and -- before bringing suit -- had to divert a substantial portion of its limited resources to trying to resolve the unfair practices through activities such as investigating complaints, finding, educating, and organizing displaced tenants, and trying to negotiate with the landlord. It was important to the sustainability of the organization that LA CAN was able to recover the expended resources, primarily staff pay, as damages, as well as win injunctive relief. It was also important to the community that LA CAN be an actual party in the lawsuit, because while some individual tenants were also parties, LA CAN was able to bring a broader community perspective to the table, and win relief for the broader community, such as injunctive relief relating to the affordability level of the units.

III. Proposition 64 Does Not Abrogate But Reaffirms Traditional Notions of Standing

To the extent Proposition 64 functions as a limitation on traditional standing, it is only by defining the injury in fact as “lost money or property”, *i.e.*, economic injury. *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 323.¹ This was a voter response to concern over a spate of lawsuits “where no client [had] been injured in fact” and which appeared to be brought solely as a means of “generating attorneys’ fees without creating a corresponding public benefit.” 2004 Cal. Legis. Serv. Prop. 64 (Proposition 64), §1, Findings and Declarations of Purpose.

The measure amends §17204, which prescribes who may sue to enforce the Unfair Competition Law (UCL), by deleting the language that had formerly authorized suits by any person “acting for the interests of itself, its members or the general public,” and by replacing it with the phrase, “who has suffered injury in fact and has lost money or property as a result of unfair competition.” *Californians for Disability Rights v. Mervyns LLC* (2006) 39 Cal. 4th 223, 228. As the Supreme Court recognized, Proposition 64 prevents *uninjured* persons from suing for restitution on behalf of others. *Id.* at p. 232. It does not prevent *injured* persons, *i.e.*, those who satisfy traditional standing requirements, from obtaining relief under the statute.²

§17204, as amended, is intended to be consistent with definition of standing under the United States Constitution. Prop. 64, §1(e). Proposition 64’s findings and declaration of purpose state: “It is the intent of the California voters in enacting this Act to prohibit private attorneys from filing lawsuits for unfair competition

¹ The Court listed a number of instances where plaintiffs obtained federal standing where the injury in fact involved recreational or aesthetic harms, none of which are applicable here. *Kwikset, supra*, at p. 324, fn. 6.

² The UCL defines “person” to include “corporations, firms ... and organizations of persons”. *B&P Code*, §17201.

where they have no client who has been injured in fact *under the standing requirements of the United States Constitution.*” *Id.* (emphasis added). Standing under Article III of the U.S. Constitution requires the following: (1) injury in fact; (2) a causal connection between the injury and the conduct complained of; and (3) redressability. *Lujan v. Defenders of Wildlife* (1992) 504 U.S. 555, 560-61.

IV. Proposition 64 Did Not Alter the Required Nexus Between the Alleged Unfair Competition and the Plaintiff’s Injury

There is also nothing in the plain language of §17204 supporting Biotech’s contention that an aggrieved party must have a “prior relationship or business dealings” with the defendant. [BRB 31] *See Delaney v. Superior Court* (1990) 50 Cal.3d 785, 759 (to determine statutory intent, “the court turns first to the words themselves for the answer”). If the language of a statute is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of intent of the voters. *People v. Spark* (2004) 16 Cal. Rptr. 3d 840, 846. If the drafters had intended to require this special or heightened relationship in the manner advocated by Biotech, they would have clearly and unequivocally done so, rather than leave the matter to interpretation.

To require a “prior relationship or business dealings” between the parties could effectively keep most non-profit and civil rights organizations, like amicus curiae LA CAN, from ever prosecuting a UCL claim. Such a result was never contemplated by the drafters of Proposition 64.³

³ There is nothing in the history of Prop. 64 to indicate that public interest lawsuits by non-profit organizations were a motivating factor for the amendment of section 17204. As we indicated earlier in Section III, the drafters were, instead, concerned by the perceived increase in frivolous lawsuits solely to obtain attorneys fees, without regard for the public interest.

V. Conclusion

SAEN had standing to sue under §17200 because they had to divert their resources and counteract frustration of their mission due to Biotech's unfair business activities. Biotech is attempting to narrow the definition of organizational standing via additional criteria not found in Proposition 64. Doing so would impede the ability of amici, and thousands of other non-profits, to fulfil their charitable missions for the public good. State standing law should be interpreted to facilitate--not curtail--these contributions. Appropriately expansive, meritorious organizational standing cases remain critical to realizing California's long-standing commitment to robust implementation and enforcement of civil rights and public interest legislation, and curbing unfair business practices. This Court should not reverse the trial court's holding regarding SAEN's organizations standing.

DATED: January 24, 2014

LEGAL AID FOUNDATION OF LOS ANGELES

By: _____


BARBARA J. SCHULTZ

Attorneys for Amici Curiae

CERTIFICATE OF WORD COUNT

Pursuant to rule 8.520(c) of the California Rules of Court, I, Barbara J. Schultz, counsel for *amici curiae*, certify that the word count for this brief is 1,838, excluding cover, tables, and certificates. I certify that I prepared this document in Microsoft Word, and that this is the word count generated by the program for this document.

I declare under penalty of perjury the foregoing is true and correct. Executed this 24th of January 2014, in Los Angeles, California.



Barbara J. Schultz

CERTIFICATE OF SERVICE

I declare that I am over the age of 18, not a party to this action and my business address is Legal Aid Foundation of Los Angeles, 1550 West Eighth Street, Los Angeles, California,
On the date shown below I served

**AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER STOP ANIMAL
ENDANGERMENT NOW ON THE ISSUE OF ORGANIZATIONAL STANDING
UNDER BUSINESS AND PROFESSIONS CODE §17200 OF LOS ANGELES
COMMUNITY ACTION NETWORK, CALIFORNIA RURAL LEGAL
ASSISTANCE FOUNDATION, CALIFORNIA RURAL LEGAL ASSISTANCE
FOUNDATION, DISABILITY RIGHTS EDUCATION & DEFENSE FUND,
DISABILITY LEGAL RIGHTS CENTER, INNER CITY LAW CENTER, LAW
FOUNDATION OF SILICON VALLEY, NATIONAL HOUSING LAW
PROJECT, PUBLIC COUNSEL,
PUBLIC INTEREST LAW PROJECT,
WESTERN CENTER ON LAW AND POVERTY**

On the following parties by placing a true copy, enclosed in a sealed envelope with postage fully prepared, in the United States mail, in Los Angeles, California, addressed to:

Randall Edwards
Daniel H. Brooking
O’Melveny & Meyers, LLP
Two Embarcadero
San Francisco, CA 94111
**[Attorneys for Respondent/ Cross –Appellant
Santa Cruz Biotechnology, Inc.]**

Matthew Liebman
Daniel Lutz
Animal Legal Defense Fund
170 E. Cotati Avenue,
Cotati, CA 94931
**[Attorney for Appellant/ Cross- Respondent
Stop Animal Exploitation Now]**

Mandana Massoumi
Jill A. Gutierrez
Dorsey & Whitney, LLP
600 Anton Boulevard, Ste. 2000
Costa Mesa, CA 92626
**[Attorney for Appellant/ Cross- Respondent
Stop Animal Exploitation Now]**

Office of the Attorney General
California Department of Justice
Attn.: False Claims Section
1300 "T" Street
Sacramento, CA 95814-2919

Clerk to the Hon. Paul Marigonda
Santa Cruz County of Superior Court
701 Ocean Street
Santa Cruz, CA 95060
[Civil Case No. CV176022]
Santa Cruz District Attorney's Office
701 Ocean Street, Room 200
Santa Cruz, CA 95060

I declare under penalty of perjury that the foregoing is true and correct. Executed
this 24th day of January 2014, in Los Angeles, California.



KAREN RUIZ