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## Two New California Class Action UCL Standing Cases Address “Reliance”

Two new companion California Unfair Competition Law (“UCL”)<sup>1</sup> class action opinions provide further certainty in understanding Proposition 64’s standing requirements – *Hale v. Sharp Healthcare*<sup>2</sup> and *Durell v. Sharp Healthcare*.<sup>3</sup> Both cases involve patients who alleged Sharp Healthcare (“Sharp”) engaged in deceptive and unfair practices by billing uninsured patients its full rates for hospital services, when the hospital received substantially discounted rates from patients covered by private insurance or Medicare. Sharp filed a demurrer to the complaints of both patients, on the ground that the complaints did not allege standing under the UCL. Sharp contended the complaints did not allege the plaintiffs sustained injury in fact “as a result of” Sharp’s alleged unfair business practices. The Fourth District Court of Appeal held, in both cases, that the representative plaintiff reliance requirement identified in the recent California Supreme Court case *Tobacco II*<sup>4</sup> applied equally to UCL cases that involve misrepresentation under the “unlawful” as well as the “fraudulent” prong.

The UCL does not proscribe any particular conduct but prohibits any “unlawful, unfair or fraudulent business act and unfair, deceptive, untrue or misleading advertising . . . .”<sup>5</sup> The UCL borrows from other laws by making them independently actionable as unfair competition.<sup>6</sup> Formerly, an individual could bring a UCL action “on behalf of the general public” even if the plaintiff did not personally suffer loss as a result of the unlawful conduct, which many believed led to abuses by attorneys who filed frivolous lawsuits as a means of generating attorneys’ fees. The California voters passed Proposition 64 in November 2004, which allows representative UCL actions only if the procedural requirements for class actions are met. Proposition 64 also limited private UCL actions to individuals who had standing by being able to show they suffered injury in fact and loss of money or property as a result of the unfair competition.<sup>7</sup>

Last year, the California Supreme Court in *Tobacco II* answered two questions: (1) Who in a UCL class action must comply with Proposition 64’s standing requirements, the class representatives or all unnamed class members? and (2) What is the causation requirement for purposes of establishing

standing under the UCL, and in particular what is the meaning of the phrase “as a result of” in Business and Professions Code section 17204?<sup>8</sup> The *Tobacco II* Court concluded: (1) “standing requirements are applicable only to the class representatives, and not all absent class members;” and (2) “a class representative proceeding on a claim of misrepresentation as the basis of his or her UCL action must demonstrate actual reliance on the allegedly deceptive or misleading statements . . . .”<sup>9</sup>

Notably, the *Tobacco II* case involved a claim under the fraudulent prong of the UCL, which left open the question of whether the *Tobacco II* “reliance” rule required plaintiffs in UCL claims brought under the unlawful prong of the UCL to show actual reliance in order to establish standing. The Fourth District Court of Appeal responded in the affirmative in the *Hale* and *Durell* opinions.

In *Hale*, the plaintiff claimed Sharp “deceptively and unfairly charged her and other uninsured patients for medical services that substantially exceeded fees it accepted from patients covered by Medicare or private insurance.”<sup>10</sup> The complaint alleged that Sharp promised in its Admission Agreement to charge its regular rates but that the rates it charged uninsured patients like the plaintiff were not the regular rates but exponentially more than the amounts it accepted for the same services for patients covered by private insurance or Medicare.<sup>11</sup> The plaintiff’s UCL claim was based on the unlawful prong of the UCL, on the theory that Sharp’s conduct violated misrepresentation laws under Civil Code section 1770 and provisions in the Consumers Legal Remedies Act.<sup>12</sup> The Court of Appeal agreed with the trial court’s finding that the complaint adequately pled injury in fact since it alleged Hale was indebted to Sharp for the remainder of her \$14,447.65 medical bill.<sup>13</sup> However, the Court of Appeal disagreed with the trial court that the plaintiff had not adequately pled that she lost money or property as a result of or in reliance on Sharp’s conduct.

The Court of Appeal noted that the “as a result of” language imposes an actual reliance requirement on a plaintiff prosecuting a private enforcement action under the UCL’s fraudulent prong.<sup>14</sup>

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## Two New California Class Action UCL Standing Cases Address “Reliance” (cont’d.)

However, the Court of Appeal faced a novel question by the plaintiff as to whether the reliance requirement was only applicable to a claim under the fraudulent prong of the UCL or applied to a claim under the unlawful prong of the UCL as well. The plaintiff claimed that she was not required to plead actual reliance to pursue a claim under the unlawful prong. The Court of Appeal disagreed, and concluded that *Tobacco II* “applies equally to the ‘unlawful’ prong of the UCL, when, as here, the predicate unlawful conduct is misrepresentation.”<sup>15</sup> The Court of Appeal believed, however, that in *Hale* the plaintiff had adequately pled reliance since she alleged she was expecting to be charged the regular rates and not grossly excessive rates at the time she signed the Admission Agreement.<sup>16</sup>

The *Durell* case involved the same theory of deceptive and unfair practices under the UCL for billing uninsured patients rates substantially more than the rates Sharp accepted for Medicare or private insurance patients.<sup>17</sup> The Court of Appeal similarly held that the *Tobacco II* reasoning “applies equally to the ‘unlawful’ prong of the UCL when, as here, the predicate unlawfulness is misrepresentation and deception.”<sup>18</sup> However, the Court of Appeal reached a different conclusion as to the sufficiency of the pleadings than it did in *Hale*, and concluded that the complaint did not allege that *Durell* adequately pled reliance on Sharp’s alleged misconduct.<sup>19</sup> In contrast to *Hale*, *Durell* did not allege that he read and relied upon the hospital’s services agreement, or on representations on Sharp’s website.<sup>20</sup>

The Court of Appeal also concluded the complaint did not adequately plead a claim under the “unfair” prong of the UCL. The plaintiff in *Durell* seemed to suggest that because his unfair UCL claim was not fraud-based, he was not required to plead reliance.<sup>21</sup> The Court of Appeal believed the complaint’s vague references to a violation of public policy and “immoral, unethical, oppressive and unscrupulous” conduct did not sufficiently allege an unfair business practice, as it did “not allege the conduct is tethered to any underlying constitutional, statutory or regulatory provision, or that it threatens an incipient violation of antitrust law, or violates the policy or spirit of an antitrust law.”<sup>22</sup>

Ultimately, the Court of Appeal did not decide whether the complaint adequately pled standing.<sup>23</sup> It thus left the question of whether a plaintiff must

plead that he or she suffered injury in fact and loss of money or property in reliance on the defendant’s misconduct in asserting a UCL claim under the unfair prong unanswered. The Court of Appeal also left unanswered the question of whether a plaintiff must plead that he or she suffered injury in fact and loss of money or property in reliance on a defendant’s misconduct in asserting a UCL claim that does not involve misrepresentation under the unlawful prong. These questions will likely be addressed by future courts as interpretations of *Tobacco II* continue to unfold.

### Endnotes

- 1 California Business and Professions Code §§ 17200 *et seq.*
- 2 *Hale v. Sharp Healthcare*, No. D054637 (Fourth District Court of Appeal, 4/19/10), Super. Ct. No. 37-2007-0060598-CU-BT-CTL.
- 3 *Durell v. Sharp Healthcare*, No. D054261 (Fourth District Court of Appeal, 4/19/10) Super. Ct. No. 37-2007-00064220-CU-BT-CTL.
- 4 *In Re Tobacco II Cases*, 46 Cal.4th 298 (2009).
- 5 Bus. & Prof. Code § 17204.
- 6 *Korea Supply Co. v. Lockhead Martin Corp.*, 29 Cal.4th 1134, 1143 (2003).
- 7 Bus. & Prof. Code §§ 17203, 17204.
- 8 *Tobacco II*, *supra*, 46 Cal.4th at 305.
- 9 *Id.*
- 10 *Hale*, *supra*, Slip Op. at 2.
- 11 *Id.* at 3.
- 12 *Id.* at 10.
- 13 *Id.* at 10-11.
- 14 *Id.* at 12.
- 15 *Id.* at 13.
- 16 *Id.* at 14.
- 17 *Durell*, *supra*, Slip Op. at 2.
- 18 *Id.* at 14.
- 19 *Id.*
- 20 *Id.*
- 21 *Id.* at 15-16.
- 22 *Id.* at 19.
- 23 *Id.*, fn. 9.

### About the Author

Karen R. Palmersheim is a litigation partner in the Los Angeles office of Locke Lord. Ms. Palmersheim is a member of the firm’s class action practice group and she represents health care entities, insurers and other companies in complex business and reimbursement litigation, class actions and related regulatory matters.