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

REAL PARTY IN INTEREST'S CONSOLIDATED ANSWER TO AMICUS BRIEFING

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I. INTRODUCTION

Pursuant to California Rule of Court 8.520, subd. (f), subd. (7), Real Party In Interest, the Plaintiff, People of the State of California (the "People"), hereby submit the following consolidated answer to the amicus briefing filed in this matter, including: (1) the Brief Amicus Curiae by the Santa Cruz County District Attorney ("SCDA Brief"); (2) the Amicus Curiae Brief of Consumer Attorneys of California in Support of Real Party in Interest the People of the State of California (the "the CAC brief"); (3) the Amicus Curiae Brief of Chamber of Commerce of the United States of America and California Chamber of Commerce in Support of Petitioners (the "Chambers' Brief"); (4) the Brief of the California Attorney General as *Amicus Curiae* in Support of Defendants (the "AG Brief"); (5) the Amici Curiae Brief of Local Prosecutors, the League of California Cities, and the California State Association of Counties in Support of the People of the State of California (the "Local Prosecutors' Brief"); and (6) the Amicus Curiae Brief in Support of Geographical Limitations on the Authority of Local Prosecutors Under the California Unfair Competition Law of the State of California by the California District Attorneys Association (the "CDAA Brief").[1]

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[1] Unless otherwise defined herein, all capitalized terms shall have the same meaning as described in the People's Opening Brief on the Merits (the "Opening Brief"). The "Answering Brief" refers to the Answering Brief on the Merits and the "Reply Brief" refers to the Reply Brief on the Merits in

II. THERE IS NO DISPUTE THAT THE FOURTH DISTRICT ERRED IN IMPORTANT RESPECTS

As an initial matter, none of the amicus parties dispute that the Fourth District erred in at least two important ways. First, no amicus party supports the Majority Opinion to the extent it holds that a district attorney must have the "written consent of the Attorney General and other county district attorneys" to prosecute a UCL action involving statewide misconduct. (Opening Brief at pp.47-48 [arguing the Fourth District erred in so holding].)

Second, none of the amicus parties suggest that there was any error by the trial court in denying a motion to strike truthful factual allegations regarding statewide misconduct in a UCL complaint. (*See* Opening Brief at pp. 50-52 [arguing that the trial court correctly denied the motion to strike at issue below].) In fact, while not taking an official position on the merits of the motion to strike, the Attorney General confirmed "that a local prosecutor's allegations of statewide (or even nationwide) misconduct in a complaint may be entirely proper" because (1) the "court has inherent authority to issue" a statewide injunction; and (2) such facts are potentially relevant to the penalty analysis required under Business and Professions Code Section 17206. (AG Brief at p.6, fn. 1.)

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this matter. On the merits of the scope of the penalty that may be assessed in this case, the Chambers, Attorney General and CDAA are opposed to the legal arguments of the OCDA and are hereby collectively referred to as the "Opposing Amicus Parties."

III. THE OPPOSING AMICUS PARTIES' ARGUMENTS ARE WRONG ON THE MERITS

In their Opening Brief, the People set forth the express and unambiguous terms of the UCL that grant district attorneys standing to bring UCL actions on behalf of the public and authorize "any court of competent jurisdiction" to award all appropriate relief for the benefit of the public in such actions. (Opening Brief at pp.2-31.) There is no language in the UCL that limits the trial courts' powers to afford complete relief to the public when these cases are properly brought in a court of competent jurisdiction by a district attorney. (Opening Brief at pp.24-31.) The Opposing Amicus Parties do not dispute these points in their briefs, but argue that the language of the UCL must be more specific in order to constitutionally grant statewide prosecutorial authority to district attorneys. (Chambers Brief at p.17; AG Brief at pp. 6-7; CDAA Brief at p.23) Like the Petitioners' arguments to the same effect, the legal premise behind the Opposing Amicus Parties' argument is not correct.[2] (*See* Opening Brief at pp.34-39; Reply Brief at pp.7-10.)

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[2] To the extent the amicus briefing duplicates the arguments of the real parties in interest, the People do not herein duplicate the arguments on the merits, but rather, hereby incorporate by reference the legal argument and authorities set forth in the People's Opening Brief and Reply Brief on the Merits.

A. There Is No "Jurisdictional" Issue, Or Question Of "Authority" By The OCDA To Bring This Case

Throughout, the Opposing Amicus Parties use legal terms such as "jurisdiction" and undefined terms such as "authority" and "power" in a confusing patchwork of arguments unrelated to the actual pleading and circumstances of this case. (AG Brief at pp.5-7 [discussing the "authority," "power" and "jurisdiction" of district attorneys]; Chambers' Brief at pp.13-31 [discussing the "authority," "power" and "jurisdiction" of courts]; CDAA Brief at pp.12-24 [referring to "jurisdictional principles," "authority" and "local jurisdiction"].) Yet, there is no dispute that the OCDA has the authority and power (properly known as "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. (*See* Opening Brief at p.4; Cal. Code Civ. Proc. §§ 393, 395, 395.5 & 410.10.) There is thus no jurisdictional issue or question that the OCDA has standing to bring the present case as these arguments seem to suggest. (*See* Santa Cruz DA Amicus Brief at pp.5-24 [detailing further the legal reasons why the issues presented are not jurisdictional questions].)

B. The "Authority" With "Power" To Issue An Order For Penalties Under The UCL Is Vested With The Courts, Not The Particular Prosecutor That Files The Case

By singularly focusing on the type of prosecutor that files the case, the Opposing Amicus Parties largely ignore the express powers of the courts to order appropriate statewide relief in their argument. However, under well-settled law, the "authority" that determines the appropriate remedy, including all civil penalty amounts, in a UCL action is vested with the *courts* of the state, not the particular public prosecutor that brings the case. (Opening Brief at pp.18-21 & Reply Brief at pp.18-20 [citing authorities explaining that the issue is a matter within the court's discretion].) Neither the Attorney General, nor any particular prosecuting agency, has the absolute "power" or "authority" to determine the ultimate remedy in a properly filed UCL action such as this.

Furthermore, taken to the logical extreme, if these amicus arguments were correct, and the available remedy must be determined by the particular prosecutor that files the case, it is the power of the courts to make a proper penalty order to protect consumers that would be restricted, not the "power" of authorized prosecuting attorneys to file UCL cases. There is no law, policy or other legal authority cited to support such an extreme departure from the laws of equity that guarantee the *courts'* "inherent equitable powers" to exercise their discretion to protect California consumers in such

matters. (*Kraus v. Trinity Management Services* (2000) 23 Cal.4th 116, 132-133 & 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" (emphases added)]; *see also In re Tobacco II Cases* (2009) 46 Cal.4th 298, 334 (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].).

Despite the seemingly contradictory arguments in the CDAA Brief here, the CDAA has long agreed that the *courts* have broad authority to issue appropriate procedural orders and remedies to protect *all* California consumers in UCL actions. In 2000, Justice Werdegar publicly agreed with the CDAA in her dissenting opinion in *Kraus*, explaining:

> Under existing precedent, the District Attorneys note, courts have discretion to require class-action-like procedures in particular UCL matters, although they are not required to do so. ...
>
> ...
>
> I agree with the District Attorneys that we should retain a flexible construction of section 17203, permitting trial courts to countenance the full range of equitable and statutory UCL remedies ... even absent class certification. The District Attorneys amply demonstrate that the deterrent effect of private UCL actions is an essential component of California's scheme for combating unfair competition. And, as we have understood for over 20 years, obtaining ***"the full impact of the deterrent force [of UCL remedies] is essential if adequate enforcement [of the law] is to be achieved.*** One requirement of such enforcement is a basic policy that those who have engaged in proscribed conduct surrender all profits flowing therefrom." (*Fletcher, supra*, 23 Cal.3d at p.451 ...; *see also Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1267, 10

> Cal.Rptr.2d 538, 833, P.2d 545, superseded by statute on another point [Legislature considered UCL deterrence "so important that it authorized courts to order restitution without individualized proof of deception, reliance and injury."].)

(*Kraus, supra,* 23 Cal.4th at p.148 (dis. opn. of Werdegar, J.) (emphasis added).) Although the standing of private persons to bring statewide UCL actions was curtailed by the enactment of Proposition 64 in 2004, the power of the courts recognized by CDAA -- to issue the full range of remedies and appropriate procedural orders -- in UCL actions brought by public prosecutors (as here) on behalf of the People of the State of California was unchanged.

C. The AG's Constitutional Duties Do Not Preempt District Attorney Actions Expressly Authorized Under The UCL

As the "chief law officer" of the state, the Opposing Amicus Parties contend, the Attorney General has exclusive powers to bring statewide enforcement actions under the California Constitution. (Chambers' Brief at pp.14-17 & 40 [arguing there is a "prosecutorial hierarchy imposed by the Constitution" in UCL actions]; AG Brief at p.13.)[3] This is not so. Although

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[3] On this point, it is noteworthy that the Chambers' argument is biased towards addressing perceived "unfair[ness] to California businesses, which have the basic right to negotiate with prosecutors throughout the state without subjecting themselves to legal jeopardy from potentially conflicting authorities who purport to represent the state as a whole." (Chambers Brief at p.14.) The Chambers argument, however, ignores the intent of the UCL to provide an *efficient* streamlined system to remediate unfair competition to protect both consumers *and competing businesses* in a *single* court of competent jurisdiction. The UCL is not unfair to business in this way; to

"it is true that the Attorney General is the state's chief law enforcement officer," over the *State's* business, 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 State v. Altus Finance, S.A. et al.* (2005) 36 Cal.4th 1284, 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].) There is nothing unconstitutional about legislative grants of authority to individuals other than the Attorney General to handle such matters. (*See* Opening Brief at pp.39-47.)

When it comes to the UCL, there is no question that the Legislature intended to grant both the "Attorney General *and* other specified government officials," including district attorneys, concurrent jurisdiction to pursue representative relief on behalf of the People of the State. (*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

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the contrary, the efficient streamlined public enforcement contemplated in the UCL is expressly intended to *benefit* law-abiding businesses and promote a fair marketplace for the sales of goods and services.

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" and that the "monetary penalties recovered by [the] Attorney General *or local government prosecutors* [would be dedicated] to enforcement of consumer protection laws." (Voter Information Guide, Official Title and Summary, Proposition 64 (Nov. 2004) (emphases 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"].) There is no statute, case, legislative history, or other authority cited by the Opposing Amicus Parties that suggests an intent to grant the Attorney General exclusive authority to bring UCL actions on behalf of the People of the State.

D. District Attorney Actions Do Not "Usurp" The Role Of The Attorney General Either

According to the Chambers, district attorney UCL actions that involve statewide wrongdoing "unduly impede on the chief law officer's duty to

'uniformly and adequately enforce[]' the laws." (Chambers' Brief at p.15.)[4] In making this argument, the Chambers confuse the Attorney General's duty to *oversee* the adequate enforcement of state laws with a duty to actively *prosecute* actions in a court of law. To be sure, under the California Constitution, it is "the duty of the Attorney General to *see* that the laws of the state are uniformly and adequately enforced," not to initiate every worthwhile action. (Cal. Const. Art. V, § 13 [emphasis added].) Only when the law is "not being adequately enforced in any county," does the Attorney General have a "duty ... to *prosecute* any violation of law of which the superior court shall have jurisdiction ..." (Cal. Const. Art. V, § 13 [emphasis added].) "[A]nd," when the Attorney General is constitutionally required to prosecute a case to ensure uniform and adequate enforcement of California law, "the Attorney General shall have all the powers of a district attorney." (Cal. Const. Art. V, § 13; *see also* Cal. Gov. Code § 12550.)[5]

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[4] The Chambers also cite the duties of the Attorney General to represent the state when the state, is itself, a private party to a lawsuit. (Chambers' Brief at p.16; *see also* CDAA Brief at p.13 [same].) Actions brought by district attorneys under the UCL, however, are not actions on behalf of the state itself, and do not, therefore, interfere with the representative role of the Attorney General when the state is a party.

[5] In addition to "tak[ing] full charge of any investigation or prosecution" when "he deems it necessary," the Attorney General may also "assist the district attorney in the discharge of his duties" if "directed to do so by the Governor" or "he deems it advisable or necessary in the public interest." (Cal. Gov. Code § 12550.)

Hence, there is no constitutional basis for the supposed absolute "duty" of the Attorney General to prosecute all statewide violations under the UCL, or any other law for that matter. In fact, it is only with the support of the entire network of state prosecutors that the Attorney General could possibly meet his duty to ensure uniform and adequate enforcement of state law. Thus, when it comes to protecting consumers under the UCL, uniform and adequate enforcement can *only* be reasonably and constitutionally achieved by encouraging broad enforcement by all authorized local prosecutors as the law intends.

E. There Is No Constitutional Concern Necessitating The "Avoidance Principle" Of Statutory Construction

In their Opening Brief, the People argued that, under California law, there is nothing unconstitutional about the UCL's grant of standing to local prosecutors to pursue statewide relief in any court of competent jurisdiction. (Opening Brief at pp.39-47.) This is because there is nothing in the state Constitution that prohibits the Legislature from granting such authority to state prosecutors. (*See Cal. Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 254 [confirming the courts "do not look to the Constitution to determine whether the Legislature is authorized to act, but only to see if it is prohibited" from so doing when evaluating the constitutionality of a statute].) Other than setting forth the general rule that courts should avoid an interpretation of a statute that is unconstitutional, the Opposing Amicus

Parties fail to rebut the People's argument entirely.[6] (*See, e.g.*, Chambers Brief at pp.29 & 31-32 [arguing the "avoidance principle" applies but failing to point to any language in the state constitution that prohibits the Legislature from granting statewide standing to local prosecutors].) Since there is nothing prohibiting the Legislature from granting standing to district attorneys to bring statewide claims, the "avoidance principle" does not require the geographical boundaries to relief crafted by the Fourth District Majority in their Opinion.

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[6] Without any law or authority in support, the Chambers also suggest there could be a "due process" violation in locally prosecuted UCL cases because the defendants do not know whether a settlement will have statewide finality. (*See* Chambers Brief at pp.34-35.) There is no basis for this premature "concern." There is no possible constitutional due process violation that may arise, as long as the defendant (as here) has proper notice and a right to appear and litigate the case. Whether, and to what extent, a future final judgment (under the UCL, or any other law) is binding against other 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. (*See, e.g.*, *Tennison, supra,* 152 Cal.App.4th at pp.1173-1180; *Cal. State Automobile Assn. Inter-Insurance Bureau v. Superior Court* (1990) 50 Cal.3d 688, 663-665; *Landeros v. Pankey* (1995) 39 Cal.App.4th 1167, 1171-1174.) Because the trial court must approve any UCL settlement, it is presumed that the trial court will enter a constitutionally valid judgment at the proper time. (*See Kraus, supra,* 23 Cal.4th, dis. opn., at pp.158-161 [rejecting a similar policy argument concerning "repetitive suits" and "double" monetary awards because "as in all UCL actions, a court has power and authority to fashion a constitutional remedy."].)

F. District Attorneys Act On Behalf Of The People As A Representative Body, Not On Behalf Of Their Counties

By conflating the district attorneys with their counties, the amicus parties equate the district attorneys' offices with the counties themselves. The actions district attorneys bring under the UCL, however, are not brought on behalf of any county (or the state for that matter), such that any county or state, as a private party, needs independent counsel or to sign-off before a judgment may be entered on their behalf. Rather, UCL actions are brought on behalf of the "People of the State" as a representative body of consumers.[7] All expressly authorized state prosecutors represent the same group of "People" when bringing UCL cases. Much like lead counsel in a private class action lawsuit, therefore, one county district attorney's law office may competently litigate the case on behalf of the entire public -- without requiring separate counsel for each individual geographic region in the state. Unless the district attorney is incompetent and/or unable to adequately litigate the case, there is no need for the Attorney General, much less every sister district attorney to duplicate the efforts of the lead prosecuting office and waste their valuable government resources in the same case.

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[7] The public as a represented sovereign body is expressly, and automatically, certified under the UCL when the action is brought by any of the authorized government prosecutors. (*See, e.g.*, Cal. Bus. & Prof. Code § 17203 [confirming government prosecutors are exempt from complying with class certification procedures under Section 382 of the Code of Civil Procedure].)

The same is true whether the remedy sought includes statewide injunctive relief or civil penalties in a law enforcement UCL action. The "client" represented by a district attorney is the same in either case. And, the law enforcement objective of seeking civil penalties is the same as well. In fact, civil penalties were:

> adopted because the injunctive and misdemeanor provisions of the old law were not adequate to stop advertising rackets. The injunction is little more than a cease and desist order. [Without penalties,] [t]he guilty party keeps his gains and is merely ordered not to defraud people in the same way.

(*People v. Jayhill* (1973) 9 Cal.3d 283, 286 & fn.3; *see also* RJN at p.137 [attaching history of A.B. 1937 (1972) (as amended May 25, 1972) noting the purpose of adding civil penalties as a remedy to the UCL was because "the injunctive remedy [alone] often proves ineffective as a deterrent to the resumption of such unlawful acts of fraudulent or unfair business practices"]; *see also People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 732 [noting the "[c]ivil penalties, like punitive damages, are intended to punish the wrongdoer and to deter future misconduct" but noting the "fundamental difference between punitive damages and such penalties" because UCL actions are "fundamentally law enforcement actions brought to protect the public"].)

Thus, unlike monetary damages typically sought to compensate private individuals in class actions, civil penalties are not sought to reimburse any particular county (or city) consumer individually, but rather, to punish

and deter a defendant's unlawful conduct and quickly put an end to the unfair competition -- for the benefit of all California consumers and competing businesses.

IV. THE OPPOSING AMICUS PARTIES' CONCERNS ARE ADVERSE TO CONSUMER PROTECTION

In support of the supposed need for "geographic limitations" in UCL actions filed by local prosecutors, the Opposing Amicus Parties largely ignore, and do not even attempt to explain, how their views comport with the UCL's clear legislative intent -- to protect businesses and consumers from unfair competition in a "streamlined," efficient fashion. (*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].) This is because geographical barriers to relief designed to protect Californians from unfair competition do not comport with the UCL's legislative intent.

A. Achieving The Maximum Possible Relief For Consumers In Every Case Does Not Lead To "Unreasonable Results"

The Attorney General argues that the "plaintiff's interpretation" of the UCL would lead to "unreasonable results," because it would: (1) "encourage local prosecutors to act alone in enforcing this State's consumer protection laws"; (2) "undermine the legitimate authority of the Attorney General and other local prosecutors to discharge their duties"; (3) "it would destabilize the orderly enforcement of the State's consumer protection laws," and (4)

"all to the detriment of consumers and honest competitors." (AG Brief at p.5.) Although stated in different ways, the Attorney General essentially claims that only he should have the power to decide what UCL cases of statewide impact are brought and resolved in the courts of this state, and that it would be "unreasonable" to hold otherwise. This is not correct. There is nothing unreasonable about the UCL's intent to encourage more action, not less, in protecting California consumers.

First, it is *good* to encourage local prosecutors to take the lead and prosecute cases on behalf of the public. (*See* Reply Brief at pp.25-35 [detailing the legislative history of the UCL and the intent to "expand enforcement powers and remedies, not limit their reach"].) More consumer protection is surely better than less, and the added resources of local prosecuting offices ensures that more cases can be filed and more relief will be granted to protect consumers throughout the state. There is nothing unreasonable about the decentralized enforcement model intended to maximize consumer protection under the UCL. (*See* Reply Brief at pp.16-17.)

Second, the fact that local prosecutors may undertake the burden to initiate cases without the Attorney General does not mean that the Attorney General will not be consulted and able to participate in any prosecution if and when deemed necessary. At the hearing on the pleading motions in this case, for example, the trial court assured the parties that: "if the AG comes

in and says I want to be heard about this, you bet I'm going to let them be heard on this; okay?" (A.241.) Enabling broad enforcement by all authorized local prosecutors to end unfair competition will not, therefore, unreasonably "undermine" the authority of the Attorney General.

Third, rather than frustrating cooperative efforts among local prosecutorial offices, ensuring that the courts have the power to order complete relief in one statewide action will encourage it. The fact that one prosecuting office files an action to end unfair competition does not in any way prevent the Attorney General or any other local prosecutor from meeting their own duties to prosecute unlawful conduct under the UCL. Just the opposite. An action by one local prosecutorial office ensures more uniform enforcement can be achieved by guaranteeing the same relief can be uniformly afforded to all consumers in one case. Ensuring that a single action can resolve every case also frees up other prosecutorial offices to bring their own additional cases to further thwart unfair competition throughout the state. As such, there is no risk of "destabilize[ing] the orderly enforcement" of the UCL if *more actions* are filed to protect consumers in a *more efficient, cost effective* manner, rather than less.

B. The More Authorized Prosecutors To Protect Consumers The Better

Despite the obvious benefit of having more authorized prosecutors capable of bringing representative UCL actions on behalf of the public, the

Attorney General argues that it would be unreasonable to have "63 attorneys" with authority to represent the people in UCL cases and potentially 500 in FAL cases.[8] (AG Brief at p.8.) Once again, the Attorney General does not, and cannot, explain why limiting the number of public prosecutors authorized to bring statewide UCL actions would be in the best interest of consumers.

On the other hand, as the CAC recognizes, "meritorious cases that are beyond the resources of the attorney general may never be brought" if statewide relief is not available in a single action, and only the Attorney General has the power to seek such relief. (CAC Brief at p.11.) "Otherwise, a single suit seeking statewide relief brought by a district attorney must become 58 suits brought in each of the 58 counties." (CAC Brief at p.11.) Requiring multiple actions in multiple proceedings to achieve complete relief "would unnecessarily burden courts and would deprive consumers of the 'streamlined procedure' the Legislature intended the UCL to be. (*Solus Industrial Indus., supra*, 47 Cal.5th at 340-341.)." (CAC Brief at pp.10-11.)

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8 CDAA agrees that the holding on the merits in this case stands to impact prosecutions not only under the UCL, but also under California's False Advertising Laws (FAL) and others. This only further supports the need for broad prosecutorial authority to protect consumers. Indeed, false advertising is rarely limited to any one geographical location, and generally involves internet, social media and television advertising. The Attorney General certainly does not have the manpower to hold the hand of every prosecutor in the state in every UCL, FAL and every other similar public prosecution without drastically impeding the quick and efficient resolution of actions on behalf of the public.

C. Coordination Of Resources By Prosecutors Is Permitted And Encouraged To Protect Consumers, But Not Required

According to the Chambers, the Legislative intent can still be achieved -- even with geographical limitations to relief -- if district attorneys go through the extra hoops of getting "sign-off" from the Attorney General and/or co-prosecuting every statewide case with all the other district attorneys' offices in the state. (Chambers' Brief at pp.39-40.) In other words, although not required in the UCL, the Chambers assert that "local district attorneys may still bring [multi-county or statewide] claims [but only] when they coordinate with their sister district attorneys and/or the Attorney General" as part of any multi-county or statewide case. (Chambers' Brief at p.39 [arguing the district attorney simply "may not *unilaterally* bring such claims"].) While the Attorney General maintains that he has "exclusive statewide authority" to prosecute actions involving statewide misconduct, he agrees that "coordination and cooperation" among local prosecuting offices is the "bedrock of California's consumer protection prosecution community." (AG Brief at pp.13-14.) The history of collaborative prosecutorial efforts detailed by the Opposing Amicus Parties however, while commendable, is not determinative of the legal question here.

While coordination with "sister district attorneys" and the Attorney General are good statutorily authorized practices in many cases, there is nothing in the UCL that *mandates* all of the state's prosecutorial resources to

be involved in prosecuting a case before the *court* can enter a judgment affording complete relief to all California consumers in a single case.[9] The idea that 50-plus attorneys are somehow necessary to properly litigate violations of unfair competition in any court of competent jurisdiction is absurd. (*See* CDAA Brief at pp.20-21 [noting "district attorneys from all counties affected" may join to prosecute a case together or with the Attorney General as a "mechanism for statewide UCL enforcement"].)[10]

Nevertheless, the Attorney General urges that "geographic limitations on district and city attorney's UCL authority have formed the basis for decades of interoffice cooperation," and are necessary to promote "continued cooperative enforcement to the benefit of consumers and competition..." (AG Brief at p.20.) This is only partially correct. Indeed, while cooperative

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[9] Certainly, the tax payers of the state would not wish to pay for such an inefficient and costly system -- involving action by every public attorney in the state -- to obtain statewide relief for corporate wrongdoing. This is like saying every private member of a class action needs separate counsel in order for the class to obtain class-wide relief. There is no legal authority or logical reason for making it easier for private class action parties to bring UCL claims on a representative basis than authorized public prosecutors. The fact that county and city prosecutors have opted to work together on some cases, or seek the "sign off" of the Attorney General, in practice, does not mean that every statewide UCL action must be jointly prosecuted. (*See* CDAA Brief at p.20 [stating that "appropriate and effective [cooperative] mechanisms for statewide UCL enforcement are already in place"]; AG Brief at p.15 [noting the history of the Attorney General joining local prosecutors and giving their "sign-on" in UCL prosecutions].)

[10] In a footnote, CDAA requests judicial notice of certain case examples. (CDAA Brief at fn.3.) Since CDAA did not properly seek judicial notice of such matters, the request for judicial notice should be denied. (*See* Cal. Evid. Code §§ 452-453; Cal. R. Ct. 8.252.)

efforts are a statutorily authorized means to prosecute actions on behalf of the People, this practice developed to encourage offices to share resources and bring cases that might otherwise not be brought, not due to any geographic limitations on the ultimate remedy that should be awarded in any particular case. The Attorney General cites no legal authority or legislative history to suggest that cooperative prosecutions or sign-off are legally required pre-requisites before the *court* can order all necessary remedies to protect consumers in one action.

Furthermore, the informal practices adopted in some cases are not universally followed. To be sure, as several amicus parties point out, numerous cooperative prosecution teams have brought actions without the sign-off of every prosecutor in the state or the Attorney General. (CDAA Brief at p.21 & fn.3; Local Prosecutors Brief at p.35.) The fact that CDAA touts the resolution of numerous statewide cases by only a subset of prosecutorial offices (CDAA Brief at p.21 & fn.3), without Attorney General sign-off, proves the point. If the Attorney General's argument were correct, these cases could not possibly have been brought without the Attorney General's sign-off or the sign-off of every prosecutor in the state.

Given that these informal practices have been inconsistently used in the past, as the Local Prosecutors point out, a new judicially created procedure like that adopted by the Majority below suddenly requiring statewide sign-off in every case would place at risk the validity of numerous

prior statewide judgments. (Local Prosecutors Brief at p.35.) To be sure, according to the Local Prosecutors: "The majority's opinion also call[s] into question the dozens of settlements and negotiated stipulated injunctions entered into by local prosecutors, which secured statewide restitution and civil penalty relief." (Local Prosecutors Brief at p.35.) "Would those orders be set aside" for not complying with the new judicially created protocol? (*Id.*) "Would those settlements be voided?" thereby unwinding the public benefits achieved in these prior cases? (*Id.*) If so, adopting the Majority's interpretation of the UCL -- mandating these uncodified cooperative procedures to validate statewide judgments -- could lead to absurd results to the detriment of consumers. (*See Harbor Regional Center v. Office of Administrative Hearings* (2012) 210 Cal.App.4th 293, 310-11 [noting courts must avoid a statutory interpretation that "defeats the statute's general purpose" and leads to "absurd or unintended consequences"].)

In reality, rather than a drastic change in the law, as the Opposing Amicus Parties suggest, obtaining statewide resolutions without the Attorney General's sign-off (or the sign-off of every prosecutor in the state), is one of the ways the UCL has been litigated publicly by local prosecutors for decades. If the Opposing Amicus Parties were right, therefore, it is the Majority holding that would drastically upset the consumer protection model currently in place by requiring more roadblocks to complete consumer relief, not the other way around.

D. The Attorney General's State And Nationwide Enforcement Priorities Should Not Dictate Local Prosecutorial Discretion

As the People recognized in their briefing on the merits, the Attorney General has many important functions in addition to litigating cases. (Reply Brief at pp.13-16.) While advancing California's policy on "Matters of National and International Importance" may be important functions of the Attorney General, the idea that the Attorney General should be the "one voice in consumer law matters" and enforcement because of it would only lead to selective enforcement of state law, not broad uniform enforcement of California law as the UCL intends. (AG Brief at p.12.) Of course, the Attorney General can still "command[] influence over multistate investigations and litigation, as well as the direction of national consumer law enforcement priorities more broadly" – and possibly more so – using the full network of California prosecutors to assist in the process.[11] (AG Brief

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[11] The Attorney General suggests that the district attorney of Trinity County could have interfered with the Attorney General's nationwide litigation against Volkswagen, but noted that in the end there was no interference because the Trinity County District Attorney dismissed its potentially duplicative litigation in favor of the Attorney General's broader action. (AG Brief at p.13.) If the Trinity County District Attorney did not dismiss the case, the Attorney General could have intervened. (Cal. Gov. Code § 12550.) Rather than an example of consumer harm, the Volkswagen example shows that the procedural safeguards protect against any of the hypothetical harms. The lesson to be gleaned from the history of enforcement under the UCL is that such cases are extremely fact and procedurally case specific, and the only way to ensure broad protection of consumers is to ensure more prosecutorial and judicial power, not less.

at p.12.) In fact, in order to ensure statewide enforcement policies are achieved, it makes far more sense for the Attorney General to support local prosecutors' efforts to litigate cases on behalf of the public, rather than rely on its own resources for such matters.

Moreover, all state law enforcement actions are brought to enforce state law and policy, and all state prosecutors generally stand in an equal position to act. The UCL is no different. To be sure, as explained in the legislative history of the UCL:

> Traditionally, county governments are mandated to enforce state laws at the local level. Accordingly, state law has recognized the district attorney (in addition to the Attorney General) as the agency primarily responsible for prosecuting violations of the unfair competition laws .... In response to the increasing burdens on the staff and resources of the district attorneys and to the prosecutorial competency of certain city attorneys, the law has been amended over the years to allow city attorneys of large cities (i.e., cities with population exceeding 750,000 to also prosecute unfair competition actions. . . .

(RJN at p.471.) Rather than frustrating the Attorney General's policy making functions, the use of a broad network of prosecutors to enforce the UCL aids in the uniform enforcement of state law to the benefit of consumers.

V. THE OTHER LEGISLATIVE PUBLIC POLICY CONCERNS ARE ALSO UNFOUNDED

At the heart of the amicus arguments in favor of the Majority Opinion are a series of public policy arguments that suggest, contrary to the express text and intentions of the UCL, that only the Attorney General should have the authority to pursue and resolve statewide UCL actions. None of these

public policy arguments support the exclusive statewide prosecutorial powers of the Attorney General urged by the Opposing Amicus Parties.

A. There Is No Conflict Of Interest Created By The UCL Penalty Scheme

In support of the contention that only the Attorney General may resolve statewide misconduct, the Attorney General points to dicta in the *Hy-Lond* opinion discussing a "possible conflict of interest" if district attorneys are placed in the position of bargaining "for the recovery of civil penalties that would flow into his county's coffers."[12] (AG Brief at pp.9-11; *see also* Chambers Brief at p.37 [same]; *see also People v. Hy-Lond Enterprises, Inc.*, (1979) 93 Cal.App.3d 734.) There are a number of problems with this outdated argument.

First, *Hy-Lond* is not good law for this point. The discussion is not only pure dicta, but it predated and is now superseded by an important change to the penalty statutes under Proposition 64 in 2004. Specifically, with the enactment of Proposition 64, 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

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[12] The Attorney General suggests that this same conflict that incentivizes prosecutors to "line their coffers" also incentivizes prosecutors to compete with each other and to settle cases for a lesser amount than they are worth. The Attorney General cites no examples of any cases involving any of the supposed conflicts in the decades of UCL enforcement.

enforcement of consumer protection laws.'" (*Altus Finance, supra,* 36 Cal.4th at p.1307.) The funds may not, therefore, improperly be used to "line the coffers" of the district attorney.

Second, if the allocation of funds under the UCL to government use created a conflict in the prosecution of such actions, then the Attorney General (and the assigned judge) would be equally conflicted in every case. (*See Altus Finance, supra,* 36 Cal.4th at p.1307 [recognizing if the Attorney General files a UCL action, one half of the penalties are paid to the "state General Fund" and the other half to the "county in which the judgment was entered" [citing Cal. Bus. & Prof Code § 17206, subd. (b); *see also* Voter Information Guide, Official Title and Summary, Proposition 64 (Nov. 2004) (drafted by the Attorney General, confirming for voters, that under Proposition 64, the "monetary penalties recovered by [the] Attorney General or local government prosecutors [are both limited for use] to enforcement of consumer protection laws"].) Whether paid to the state general fund or a county fund, as amended by Proposition 64, all penalties are now statutorily mandated to be used exclusively "for the enforcement of consumer protection laws." (*Altus Finance, supra,* 36 Cal.4th at p.1307.) Given this legislatively established and voter-approved allocation of penalty funds for use by the public, there is neither an appearance nor an actual conflict of interest in either a local or statewide UCL prosecution by any of the authorized public prosecutors (whether it be the Attorney General, any of the

58 district attorneys or other local prosecutors, or some combination between them).

Third, the Attorney General's policy concerns are not in line with well-settled law governing conflicts of interest for public prosecutors, and its own prior arguments to the contrary. For example, in *People v. Eubanks*, the California Supreme Court explained that a district attorney may suffer from a conflict of interest if he or she receives direct "private financial contributions [that] are of a nature and magnitude likely to put the prosecutor's discretionary decision-making within the influence or control of an interested party," and, in such case, "the trial court must consider the entire complex of facts surrounding the conflict to determine whether the conflict makes fair and impartial treatment of the defendant unlikely." (*People v. Eubanks* (1997) 14 Cal.4th 580, 599.) Arguing against the alleged conflict of the district attorney (who accepted an unauthorized payment from a victim in a criminal case), the Supreme Court highlighted:

> The Attorney General argues at length that the financial contributions to the district attorney's office should not, as a matter of law, be considered as creating a conflicting interest for purposes of disqualification, because any interest of the district attorney in such contributions would be an *institutional* rather than *personal* interest. He emphasizes that [the citizen's] payments [to the district attorney] "did not benefit any official's personal pocket book," and contends the case law shows "recusal will usually require a showing of a prosecutor's personal interest in prosecution," or stated differently, "a showing of personal or emotional involvement" on the part of the district attorney.

(*Eubanks, supra,* 14 Cal.4th at p.599.) There is no explanation for the

Attorney General's difference of opinion when it comes to UCL actions in its amicus brief in this case.

Fourth, the UCL is not unique in requiring monetary awards (either criminal fines or civil penalties) to be paid to county funds for use in future prosecutions.[13] (*See, e.g.*, Cal. Labor Code § 3820.) As CDAA pointed out to the California Supreme Court as amici in *Eubanks*, there are numerous "statutes establishing industry-financed funding schemes for certain types of fraud prosecutions."[14] (*Eubanks, supra,* 14 Cal.4th at p.597.) The Supreme

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[13] The amicus parties suggest there is somehow a difference between a criminal prosecution and a UCL action merely because the UCL seeks civil penalties rather than criminal fines. This Court disagreed with this distinction in *Altus Finance*. (*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].)

[14] In their amicus brief here, the CDAA does not contend, like the Attorney General, that the UCL penalty scheme creates a conflict of interest for district attorneys. However, CDAA suggests there could be ethical violations by a district attorney if private outside counsel is retained to aid the district attorney to enforce the UCL and protect California consumers. (CDAA Brief at p.17.) CDAA cites *County of Santa Clara v. Superior Court* (2010) 50 Cal.4th 35 (notably without a pin cite) for the argument that "prosecutorial neutrality is improperly compromised by the use of private contingent fee counsel." (CDAA Brief at p.17 fn.2.) While certain precautions must certainly be taken by prosecutors that hire outside counsel, the *County of Santa Clara* opinion expressly confirms that the use of contingent-fee counsel by local prosecutors who take these precautions (as the OCDA has done here) is fully permissible. (*County of Santa Clara, supra,* at p.58 [confirming, "Indeed, retention of private counsel on a contingent-fee basis is permissible in such cases if neutral conflict-free government attorneys retain the power to control and supervise the

Court noted that "statutory funding schemes are required by law to contribute to prosecution efforts" and found it unlikely that such a scheme would create any undue "influence over the conduct of any particular prosecution" because the funds "are spent on investigation and prosecution" of related law enforcement matters. (*Id.*) The same is true under the penalty scheme under the UCL.

Finally, it is evident from the Legislative history that the "allocation of penalties assessed" in UCL cases was intended to reimburse the costs of prosecuting UCL cases and to encourage more prosecution rather than less. (*See, e.g.*, RJN at p.403 [attaching fiscal analysis for SB 2440 in 1988, confirming the intent that "the entity which brings an action to halt unfair competition practices shares in the allocation of any penalties assessed" and "could receive additional revenues" from the "penalties assessed"]; RJN at p.475 [SB 709 history in 1991, noting "If the district attorney brings action, any penalty collected shall be paid to the treasurer of the county to which the judgment was entered"]; Cal. Bus. & Prof Code § 17206 [directing the allocation of all penalty funds as such].)

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litigation."]). Regardless, while an interesting discussion, the CDAA's point is not relevant to the resolution of the issues presented.

B. There Is No "Accountability" Problem Created By The UCL's Statutory Scheme

"[I]f a district attorney usurps the Attorney General's role," the Chambers argues, "it can do so without ever being held accountable to a statewide voter base." (Chambers' Brief at p.16.) The idea that a district attorney cannot competently prosecute a state law violation because they do not have "statewide accountability" is unheard of. As elected public officials, all such authorized persons are properly held "accountable" to voters. Moreover, as noted above, with the passage of Proposition 64, the voters were assured that all such persons would have the authority to pursue public actions on their behalf. There is accordingly no "accountability" problem presented by the current UCL statutory scheme.

Moreover, although accountability is an important public policy, it has no nexus to the merits of the question here. As discussed above, it is the *court* that determines the proper remedy in a UCL case, and as a neutral trier of fact, it is the obligation of the court to exercise statewide perspective when necessary in UCL actions. There is no reason to assume that a judge in Orange County is any less capable of making a statewide ruling than one in any other county where a UCL case may be brought by the Attorney General.

C. Concerns Over Attorney Incompetence Are Pure Speculation

Without citing any law or examples in support, as a matter of policy, the Attorney General also argues that having "potentially more than 500"

authorized prosecutors could "degrade consumer law enforcement" if district attorneys take "hasty action," "feel pressure to take shortcuts," "act without full knowledge of the facts" or without "fulsome investigations." (AG Brief at p.10; *see also* CDAA Brief at p.17.) In other words, the Attorney General expresses concern that district and city attorneys will become incompetent and engage in a competitive prosecutorial "race to the bottom" to the detriment of consumers if they have statewide authority to protect consumers. There are a number of problems with this unfounded attack on the judgment of local prosecutors with standing to bring UCL actions.

First, as officers of the court, all attorneys have an obligation to act with competence in litigating cases; prosecutors are no different. (*See, e.g.*, Cal. R. Prof. Resp. 1.1 [obligation of attorney "competence"]; Cal. R. Prof. Resp. 1.3 [obligation of attorney "diligence"]; Cal. R. Prof. Resp. 3.1 [obligation to bring "meritorious claims"] & Cal. R. Prof. Resp. 3.8 ["special responsibilities of a prosecutor"].) This means cases must be fully investigated and litigated with competence, not haste. Second, if the Attorney General perceives incompetence, this would certainly be the exception rather than the rule, and the Attorney General has the statutory right and obligation to intervene and correct the situation. (Cal. Gov. Code § 12550.) Third, despite decades of enforcement under the UCL, there is no actual evidence of consumer harm due to overly competitive prosecutors to support these concerns.

Accordingly, these hypothetical rogue prosecutors not doing their job -- to diligently and ethically seek full relief for consumers -- are not a reason to limit the relief *consumers* may obtain from a properly filed action by any of the statutorily authorized prosecutors.

D. Many Of The Opposing Policy Arguments Have Already Been Rejected And Are Not Applicable To District Attorneys

Finally, the Legislature already rejected similar policy based arguments against the decentralized prosecutorial scheme adopted in the UCL to maximize enforcement. For example, in 1973, the Legislature added city attorneys in cities with a population over 750,000 as authorized prosecutors to file UCL cases over the opponents' objection to the use of city attorneys in this way. Specifically:

> The opponents of the bill state[d] that prosecution of unfair competition cases should be a county-wide function, rather than broken up into cities. The opponents feel that by allowing district attorneys and city attorneys to prosecute unfair competition cases, harmful competition will arise between the two entities. Further, they state that there is no evidence that the Attorney General and the district attorneys are not adequately prosecuting such cases.

(RJN at p.159 [history of SB 1725 in 1974].) The legislation was enacted over these policy-based objections. There is no evidence that any "harmful competition" has arisen between the local prosecutors and the district attorneys as a result in the decades since then. (*See* Local Prosecutors' Brief at pp.3-4; RJN at p.180 [noting the city attorneys were granted standing to sue "to permit the Los Angeles City Attorney to prosecute unfair competition

cases – especially those cases that the Attorney General and District Attorney may be unable to prosecute because of other caseloads"].)

In 1988, opponents raised a concern over a "proliferation of un-warranted cases by 'newly authorized' jurisdictions" when legislation was proposed to add the San Jose City Attorney as an authorized public prosecutor under the UCL. (RJN at pp.390-391.) The CDAA argued enforcement "should continue to be limited to only 'those who are accustomed by training and experience to the exercise of prosecutorial discretion." (RJN at pp.390-391.) Since UCL cases are "brought in the name of the people of the State of California" and can lead to large economic judgments, it was argued that city attorneys have "substantially different" interests and lack the "training and experience ... of prosecutorial discretion" necessary to litigate UCL cases on behalf of the public. (RJN at p.416.) These concerns were largely rejected by the Legislature "because the office of the City Attorney of San Jose has demonstrated its competence" and "the enforcement of the laws relating to unfair competition will be enhanced by this act." (RJN at p.399.)[15]

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[15] At that time, the Legislature maintained an express consent provision, for UCL actions filed by small city attorney offices. (*See* Cal. Bus. & Prof. Code §§ 17204 & 17206, subd. (a).) There is no similar consent procedure limiting the ability of district attorneys to bring UCL cases. Since the Legislature knows how to require consent before authorizing filings under the UCL, there is clearly no intent to require consent by the Attorney General for actions by any district attorney under the UCL. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 [noting the general

In 1991, CDAA next opposed extending prosecutorial standing to county counsels to bring UCL cases. (RJN at p.450.) CDAA argued that UCL actions are "rather specialized" and "require[] a certain amount of expertise to ensure that these statutes are judiciously used." (RJN at p.450.) CDAA argued multiple prosecutorial offices "may produce potential conflicts of interest," that there would be "the possibility of confusion if both the district attorney and the county counsel are authorized to enforce unfair competition statutes," and that "[t]hese agencies may wind up competing with one another" to bring cases. (RJN at pp.460-461.) Despite and subject to these objections, standing to any "county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance" was granted. (RJN at p.485; Cal. Bus. & Prof. Code § 17203.)

Many of the policy concerns raised by the Opposing Amicus Parties here are similar to those that have historically been rejected with respect to local city and county counsels. Not only that, but none of these concerns were previously raised in the Legislature to question the authority of *district attorneys* to prosecute UCL actions. Rather, the legislative history confirms that county district attorneys and the Attorney General alike *have* the

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interpretative cannon *"expressio unius est exclusio alterius,"* meaning that "the expression of some things in a statute necessarily means the exclusion of other things not expressed"]; *Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1250 [noting, as a matter of statutory construction, that the courts are to "presume that the Legislature meant what it said."].)

prosecutorial discretion and experience to bring UCL cases, and an understanding that both types of public prosecutors "are directly accountable to the public for their actions." (RJN at p.461 [noting further that both of "their training and experience serve to protect the public interest in this area"].)

E. None Of The Concerns Have Actually Manifested Into The Hypothetical Abusive Prosecution Scenarios

Finally, none of the policy concerns raised by the Opposing Amicus Parties in support of the Petitioners has any merit when you look at the history of prosecutions under the UCL. (*See* CDAA Brief at p.17 [citing three hypothetical problems but no actual examples].) Indeed, the UCL has been used for decades by both local prosecutors and the Attorney General without any of these concerns actually manifesting into any of the hypothetical "unfair" scenarios raised by the amicus groups. (*See e.g.*, CDAA Brief at p.17; *but see Kraus, supra,* 23 Cal.4th at p.130 [noting "public prosecutors" have been bringing UCL actions since "the late 1950's"].) This is evidence that the safeguards already implemented in the statutory scheme, including the need for court approval of any final judgment and the right of the Attorney General to intervene, work to prevent the speculative public policy concerns raised here.

Nevertheless, in an argument better suited to the state Legislature, the Opposing Amicus Parties insist that only the Attorney General *should,*

exclusively, be able to control what UCL actions are brought in the biggest impact cases (*e.g.*, those affecting consumers in more than one county). If that was the intent of the Legislature, however, they would have certainly said so. Instead, in order to best protect consumers, the Legislature granted concurrent authority to both local prosecutors and the Attorney General to bring such matters, and left it to the discretion of the courts to establish the appropriate remedies. [*Kraus, supra,* 23 Cal.4th at p.129 ["A first principle of statutory construction is that the intent of the Legislature is paramount"].) There is nothing unfair about the current Legislatively created system, and definitely nothing unfair about the actual UCL case against Petitioners here merely because it was brought by the OCDA and not the Attorney General.[16]

VI. CONCLUSION

As aptly stated by the Local Prosecutors: "if a corporation's illegal business is hurting consumers in a number of venues, including the prosecutor's, then that prosecutor can sue in the prosecutor's home venue

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[16] One of the primary concerns by the amicus groups appears to be an incompetent UCL prosecution by a "very small" county in the state. (CDAA Brief at p.18.) Of course, Orange County is not among the small counties, but rather, is one of the largest. Hence, the hypothetical concern is not even remotely relevant to the present case. Moreover, as discussed above, if there was a perceived abuse by a small county prosecutor, the Attorney General may always seek to intervene to prevent the supposed unfair prosecution's impact, while at the same time ensuring statewide consumer protection against unlawfully operating businesses. (Cal. Gov. Code § 12550.) If the Attorney General assumes the prosecution, he or she has all the powers of the district attorney in that case. (*Id.*)

and transform that local pain into a statewide victory for all California consumers." (Local Prosecutors' Brief at p.31.) This is precisely the intent of the UCL's decentralized prosecution framework.

For all of the foregoing reasons, and those more fully detailed in the briefing on the merits, the Fourth District's mandate 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 23rd day of May, 2019.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

[California Rules of Court, Rule 8.204(c)(1) & 8.520(f)]

The text of this Consolidated Answer to Amicus Briefing (excluding tables and caption pages) consists of 9,407 words as counted by the word-processing program used to generate this brief.

Dated this 23rd day of May, 2019.

Respectfully submitted,

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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 May 23, 2019, I served the documents described as: **REAL PARTY IN INTEREST'S CONSOLIDATED ANSWER TO AMICUS BRIEFING**

[X] I served the attached documents by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Newport Beach, California, to each party listed below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing; it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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[ ] **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

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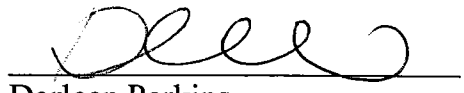
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 23, 2019, at Newport Beach, California.



Darleen Perkins