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May 4, 2015

The Hon. Chief Justice Tani Cantil-Sakauye
and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Animal Legal Defense Fund v. LT Napa Partners LLC and Kenneth Frank*
Supreme Court Case No. S225790
First Appellate District, Division 5, Case No. A139625

Dear Chief Justice and Associate Justices:

In *Animal Legal Defense Fund v. LT Napa Partners LLC and Kenneth Frank*, the First Appellate District adopted a test for standing to bring a lawsuit under the Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et seq. (the "UCL")) that contradicts this Court's precedent and substantially undermines the limitations on UCL standing that California's voters enacted in Proposition 64. Under the Court of Appeal's errant test, an organization can establish standing simply by showing that it has voluntarily chosen to expend funds to "investigate" the defendant's supposed violations of the law and to (unsuccessfully) lobby the local prosecutor to bring a legal action against the defendant.

The Court of Appeal's opinion threatens to expose businesses in California to a flood of lawsuits from advocacy organizations and other self-appointed private attorneys general. Rather than having to show that the defendant's conduct was the proximate cause of an injury to the plaintiff's business or property, any person or organization with an abstract interest in any subject could manufacture standing by undertaking a similar investigation against almost anyone

with respect to any alleged misconduct. The Chamber of Commerce of the United States respectfully asks this Court to depublish the decision below.

I. Interest of the Chamber of Commerce of the United States

The Chamber of Commerce of the United States is the world's largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country, including in California.

Left uncorrected, the decision below could significantly erode the minimum requirements of statutory standing under the UCL. That threat is of grave concern to the business community because (as this case illustrates) advocacy organizations can unilaterally initiate investigations of, or advocacy against, any large or small business without suffering any actual injury. If such organizations can bring lawsuits without the need to demonstrate any injury beyond the costs of their voluntary investigation or advocacy, businesses will predictably be exposed to an unchecked flood of private enforcement lawsuits, exactly the result that California voters intended to prevent in passing Proposition 64.

II. This Court Should Depublish the Opinion Below

This Court should depublish the opinion below, which departs from the meaning and intent of Proposition 64 and from this Court's precedent. If left standing, the opinion below threatens to return California law to essentially the same place it was before the passage of Proposition 64. As this Court has explained, through Proposition 64, California voters intended "to confine standing to those actually injured by a defendant's business practices." *Kwikset Corp. v. Superior Court*, 51 Cal.4th 310, 321 (2011). Consistent with that intent, this Court has explained that a UCL plaintiff must allege an "injury in fact," which is defined as a concrete and particularized "invasion of a legally protected interest." *Id.* at 322-323. And, the plaintiff's alleged injury must have been "caused by" the defendant's conduct. *Id.* at 326. These basic requirements of standing bar the type of injury alleged by the plaintiff in this case, yet the decision below failed to properly follow this Court's direction.

The plaintiff in this case does not allege that defendants' conduct invaded any legally protected interest of plaintiff's. Rather, plaintiff alleges that it voluntarily chose to investigate defendant based on its belief that defendant was violating a generally applicable law, California's ban on the sale of foie gras. Neither does plaintiff allege that defendants' conduct was the proximate cause of the purported injury. "The reason [plaintiff] incurred pre-litigation costs was to generate evidence" for this lawsuit. *Two Jinn, Inc. v. Gov't Payment Serv., Inc.*, 233 Cal. App. 4th 1321, 1334 (2015). Plaintiff's "longstanding interest in effective enforcement" of California's ban on foie gras, relied upon by the court below, is immaterial. Courts have consistently rejected this type of self-inflicted injury as a basis for establishing standing to sue. *See id.* at 1335 ("[P]roof that [plaintiff] spent money to investigate [defendant's] activities would

not show that those allegedly unfair business activities had any independent economic impact on [plaintiff's] ... business."); *Fair Employment Council of Greater Wash., Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276-77 (D.C. Cir. 1994) (voluntary expenditures to investigate a defendant's conduct are a "self-inflicted" harm); *Project Sentinel v. Evergreen Ridge Apartments*, 40 F. Supp. 2d 1136, 1139 (N.D. Cal. 1999) ("Plaintiff cannot manufacture standing by first claiming a general interest in lawful conduct and then alleging that the costs incurred in identifying and litigating instances of unlawful conduct constitute injury in fact.").

The court below relied almost exclusively on *Southern Cal. Housing Rights Ctr. v. Los Feliz Towers Homeowners Ass'n*, 426 F. Supp. 2d 1061, 1069 (C.D. Cal. 2005), to support its decision. But that case is not persuasive authority. It provided just a single sentence analyzing the organizational plaintiff's standing, which did not even explain the specific facts on which standing was being asserted. And the case that *Southern Cal. Housing* relied on for its standing analysis, *Havens Realty v. Coleman*, 455 U.S. 363 (1982), is readily distinguishable. In *Havens*, the alleged injury was not the cost of investigation or advocacy. Rather, the plaintiff organizations provided counseling services, above and beyond mere investigation and publicity, to actual victims of discrimination, and the United States Supreme Court found that those counseling services were impaired. *See Fair Employment Council*, 28 F.3d at 1277 (distinguishing *Havens* on this basis). To the extent that the one-sentence analysis in *Southern Cal. Housing* can be understood to have extended *Havens* to mean that an organization can assert standing based on the cost of an investigation it chose to initiate, that is both a misreading of *Havens* and contrary to this Court's precedents under Proposition 64.

This Court should minimize the decision's drastic and deleterious effect on the California law governing UCL standing by depublishing the decision of the Court of Appeal.

Very truly yours,

Henry Weissmann /TR

Henry Weissmann

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action.** I am employed in the County of San Francisco, State of California. My business address is 560 Mission Street, Twenty-Seventh Floor, San Francisco, CA 94105-2907.

On May 4, 2015, I served true copies of the following document(s) described as on the interested parties in this action as follows:

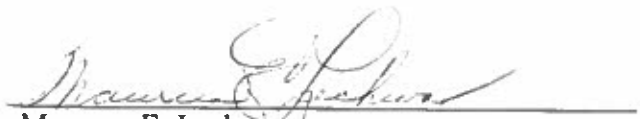
U.S. CHAMBER OF COMMERCE LETTER REQUESTING DEPUBLICATION

See Attached Service List

BY FedEx: I enclosed the document(s) in a sealed FedEx envelope addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is schedule for pickup in the ordinary course of business with FedEx, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 4, 2015, at San Francisco, California.



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