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**PROPOSITION 64 IMPOSES NEW RESTRICTIONS  
ON CALIFORNIA'S UNFAIR COMPETITION LAW**

**WHAT IT MEANS FOR CALIFORNIA BUSINESSES**

On November 2, 2004, California voters passed Proposition 64, which amends Business & Professions Code 17200, et seq. and 17500, et seq., known as the Unfair Competition Law ("UCL"). The amendments introduce tighter restrictions on suits alleging UCL violations. Businesses, and the lawyers who represent them, view the surprisingly easy passage of Proposition 64 as a significant victory.

The UCL prohibits businesses from engaging in "unfair competition," which is defined as "any unlawful, unfair or fraudulent business act or practice." Prior to enactment of Proposition 64, businesses considered unfair competition claims as "shake-down" lawsuits which enriched private plaintiff lawyers by allowing them to file suits on behalf of the general public against companies accused of nothing more than trivial matters. Plaintiffs did not have to be personally affected and class action procedural requirements did not apply.

The new amendments under Proposition 64 require plaintiffs themselves to have suffered actual injury and have lost money or property as a result of such unfair competition in order to file a UCL cause of action. The amendments also mandate that an individual may pursue representative claims or relief on behalf of others only if the claimant suffers actual injury and complies with the requirements for class actions in accordance with California Code of Civil Procedure section 382. The amendments do not alter former law providing that only the California Attorney General and local public officials can recover civil penalties for proven violations.

Proposition 64 does not expressly set the date when it becomes effective. An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election unless the measure provides otherwise. (Cal. Const., art. II, § 10.) Accordingly, upon certification of the election results by the Secretary of State on December 11, 2004, the Proposition 64 amendments will be deemed effective on November 3, 2004.

Proposition 64 also does not state specifically whether it applies only to suits filed after the effective date or applies to all pending cases. Most new laws are applied to cases filed in the future unless a contrary intent is indicated. (See *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1212 [Prop 51 (the Fair Responsibility Act of 1986) held nonretroactive in absence of a clear intent for immediate application to pending cases].)

Where an initiative measure is involved, the court must look to the nature of the change resulting from the new law and the intent of the voters to determine its applicability to pending suits. Most statutory changes are applied only to cases filed in the future if they impose new, additional or different liabilities based on past conduct or affect substantive rights; but measures that are merely procedural in nature apply to all pending cases. (*Brenton v. Metabolife International, Inc.* (2004) 116 Cal.App.4<sup>th</sup> 679, 688-691.) Also, where the proposition's statement of purpose clearly indicates that the voters intended the new amendments to apply to all pending cases, the amendments will apply to all cases pending on the effective date of the measure, even if substantive rights are affected. (See *Yoshioka v. Superior Court* (1997) 58 Cal.App.4<sup>th</sup> 972, 978 [retroactive application of Prop 213 (Civ. Code, § 333.4) initiative prohibiting uninsured motorists and drunk drivers from collecting noneconomic damages in motor vehicle cases, does not violate due process].)

Language in the Findings and Declarations of Purpose of the Proposition 64 amendments to the UCL evidences an intent of the voters to apply the changes to **all** pending lawsuits. Included are findings that the UCL "is being misused by some private attorneys who: (a) file frivolous unfair competition actions as a means of generating attorneys' fees without creating a corresponding public benefit; (b) file lawsuits where no client has been injured in fact; (c) file lawsuits for clients who have not used the defendant's product or service, viewed the defendant's advertising, or had any other business dealing with defendant; (d) file lawsuits on behalf of the general public without any accountability to the public and without adequate court supervision." The Findings and

Declarations of Proposition 64 also declare that "frivolous unfair competition lawsuits clog our courts and cost taxpayers. Such lawsuits cost California jobs and economic prosperity, threatening the survival of small businesses and forcing businesses to raise their prices or to lay off employees to pay lawsuit settlement costs or to relocate to states that do not permit such lawsuits." Determination of whether the UCL amendments apply is, however, certain to be hotly disputed in pending suits.

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