

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

LEAH BALLEJOS,

Plaintiff and Appellant,

v.

META PLATFORMS, INC.,

Defendant and Respondent

A167824

(San Mateo County Case

No. 18-CIV-03607

Hon. Robert D. Foiles)

Appeal from judgment

entered March 14, 2023

**APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF
and BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF
CALIFORNIA AS AMICUS CURIAE SUPPORTING RESPONDENT**

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Application for Permission to File Amicus Brief

The Civil Justice Association of California (CJAC) applies for permission to file an amicus brief pursuant to California Rules of Court, rule 8.200 (c), supporting Respondent.

CJAC is a nonprofit organization whose members are businesses from a broad cross section of industries. CJAC's principal purpose is to educate the public and its governing bodies about how to make laws determining who gets paid, how much, and by whom when the conduct of some causes harm to others – more fair, certain, and economical. Toward this end, CJAC regularly appears as amicus curiae in numerous cases of interest to its members, including those that raise issues of concern to the business community. CJAC and its members are particularly interested in the proper development of clear and consistent rules regarding application of the Unfair Competition Law (UCL) and the False Advertising Law (FAL). CJAC was an official sponsor of Proposition 64, which limited standing to bring UCL and FAL actions.

CJAC's amicus brief will assist the Court by providing a broader perspective on the issue before the Court than that provided by the individual defendants involved in the pending appeal.

No party to this appeal nor any counsel for a party authored CJAC's proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief.

No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than CJAC and its members.

Dated: October 1, 2024

GUTIERREZ, PRECIADO & HOUSE, LLP
By /s Calvin House
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Amicus Brief

Although the Unfair Competition Law (UCL) and the False Advertising Law (FAL) used to confer standing to any person acting for the interests of herself or the general public to file a lawsuit, Proposition 64 limited standing to bring a private enforcement action to “a person who has suffered injury in fact and has lost money or property as a result of [an unlawful practice].” (Bus. & Prof. Code, §§ 17204, 17535.) Proposition 64 was directed at “unscrupulous lawyers who exploited the generous standing requirement of the UCL to file ‘shakedown’ suits to extort money from small businesses.” (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 316.) As the Supreme Court has explained:

Proposition 64 should be read in light of its apparent purposes, i.e., to eliminate standing for those who have not engaged in any business dealings with would-be defendants and thereby strip such unaffected parties of the ability to file “shakedown lawsuits,” while preserving for actual victims of deception and other acts of unfair competition the ability to sue and enjoin such practices.

(*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 317.) The position that the plaintiff-appellant is urging the Court to adopt would undermine the purpose of Proposition 64, and saddle California businesses with having to defend against lawsuits filed on behalf of parties with no concrete stake in the outcome.

A The tenuous nature of the plaintiff’s “interest” in this action.

The plaintiff, like millions of other individuals with Facebook accounts, read news reports about Cambridge

Analytica’s misuse of information obtained from Facebook, and then received a notice from Facebook that her information “may” have been accessed. Although she apparently claims that she posted personal information on Facebook in reliance on promises of confidentiality, she does not allege what information she posted, whether she posted it for viewing by the public at large or only by a limited audience, whether she has ever derived any economic value from information of the sort she posted on Facebook, or even whether her personal information made its way to Cambridge Analytica. In short, she is no different from any other member of the general public who reads the news and happens to have a Facebook account. According to Statista, Facebook has over 3 billion users worldwide in 2024, with 194 billion users in the United States.¹

B The standard for determining whether a plaintiff has suffered a sufficient injury to confer standing under Proposition 64.

To limit the opportunities for shakedown lawsuits, the voters of California passed CJAC-sponsored Proposition 64, which imposed the limitation now found in the UCL and the FAL that only a plaintiff who has suffered injury in fact *and* has lost money or property as a result of an unlawful practice has standing. As the Supreme Court has explained, “the electorate has materially curtailed the universe of those who may enforce

¹ See www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users and www.statista.com/statistics/268136/top-15-countries-based-on-number-of-facebook-users.

[those enactments]. (*Kwikset, supra*, 51 Cal.4th at p. 320.) In other words, “in sharp contrast to the state of the law before passage of Proposition 64, a private plaintiff filing suit now must establish that he or she has personally suffered such harm.” (51 Cal.4th at p. 323.) By adopting Proposition 64,

the voters found and declared that the UCL’s broad grant of standing had encouraged “[f]rivolous unfair competition lawsuits [that] clog our courts[,] cost taxpayers” and “threaten[] the survival of small businesses” (Prop. 64, § 1, subd. (c) [“Findings and Declarations of Purpose”].) The former law, the voters determined, had been “misused by some private attorneys who” “[f]ile frivolous lawsuits as a means of generating attorney’s fees without creating a corresponding public benefit,” “[f]ile lawsuits where no client has been injured in fact,” “[f]ile 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 the defendant,” and “[f]ile lawsuits on behalf of the general public without any accountability to the public and without adequate court supervision.” (Prop. 64, § 1, subd. (b)(1)–(4).) “[T]he intent of California voters in enacting” Proposition 64 was to limit such abuses by “prohibit[ing] private attorneys from filing lawsuits for unfair competition where they have no client who has been injured in fact” (*id.*, § 1, subd. (e)) and by providing “that only the California Attorney General and local public officials be authorized to file and prosecute actions on behalf of the general public” (*id.*, § 1, subd. (f)).

(*Californians for Disability Rights v. Mervyn’s, LLC* (2006) 39 Cal.4th 223, 228.)

Recent Court of Appeal decisions have continued to point out that the standing requirement established by Proposition 64 is a rigorous one. For example, in *Lagrisola v. North American*

Financial Corp. (2023) 96 Cal.App.5th 1178, the plaintiffs obtained a loan from the defendant. Three years later they learned from public information that the defendant was not licensed to make loans in California, and filed a lawsuit claiming that they would not have entered into the loan if they had known about the defendant’s unlicensed status. The Court of Appeal affirmed the dismissal of the claim following the sustaining of a demurrer. The allegations did not support a claim of economic loss, because the plaintiffs “do not allege that they did not want a loan in the first instance, that they paid any more for their loan than they otherwise would have, or that they could have obtained the loan at the same or lower price from another lender that was licensed.” (96 Cal.App.5th at p. 1189.)

In *Murphy v. Twitter, Inc.* (2021) 60 Cal.App.5th 12, a Twitter user asserted that Twitter had unfairly suspended her account permanently for posting several messages critical of transgender women. The user had 25,000 followers and had been given a blue verification badge by Twitter. Although she alleged that she had lost a tangible property interest in her Twitter account and that her livelihood as a freelance journalist and writer depended upon maintenance of a Twitter account, she did not allege any actual economic loss. (60 Cal.App.5th at pp. 39-40.)

The plaintiff’s allegations in this case do not meet the rigorous standard imposed by Proposition 64. Unlike the plaintiffs in *Kwikset* who had standing because they alleged that they purchased the defendant’s products because they had been “Made in U.S.A.,” and would not have purchased them without

those labels, the plaintiff here does not allege that she paid any money to anyone as a result of the Cambridge Analytica misuse of Facebook information. Like the plaintiff in *Lagrisola*, the plaintiff here seized on public information about wrongdoing to file a lawsuit, but did not back it up with an allegation of any actual economic loss. Like the plaintiff in *Murphy*, the plaintiff here claims that her interactions with Facebook created something of value, but has not alleged that she lost any money, or that her interactions have been used in a way that caused her economic harm.

Conclusion

If the plaintiff in this case has standing to pursue an unfair business or false advertising claim against Facebook based on an allegation that some of her information “might” have made its way to an unauthorized third person, social media platforms could face lawsuits from all their users. Allowing her to proceed based on an allegation that her personal information might have some value would open almost any business that collects such information to potential liability from anyone they do business with. The Court should affirm the trial court’s ruling that such allegations do not satisfy Proposition 64’s restrictive standard for standing to sue.

Dated: October 1, 2024

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that, pursuant to Rule 8.204 (c)(1) of the California Rules of Court, the enclosed Respondents' brief is produced using 13-point Roman type including footnotes and contains approximately 1,878 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

s/ Calvin House