

**ORIGINAL FILED**

DEC 21 2004

**LOS ANGELES  
SUPERIOR COURT**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

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MARCIA SPIELHOLZ, et al.,  
Plaintiffs,

v.

LOS ANGELES CELLULAR TELEPHONE  
COMPANY, et al.,  
Defendants.

Case No: BC186787

**STATEMENT OF DECISION RE:  
DEFENDANTS' MOTION FOR  
JUDGMENT ON THE PLEADINGS &  
PLAINTIFFS' MOTION FOR LEAVE TO  
AMEND**

**I. BACKGROUND**

California voters passed Proposition 64 on November 2, 2004, and its amendments took effect on November 3, 2004. Cal. Const. Art. II, § 10(a) ("initiative statute or referendum . . . takes effect the day after the election unless the measure provides otherwise"). Those amendments changed the standing requirements of the unfair competition laws (UCL) by altering three sections of the Business & Professions Code.

Under the newly amended law, private individuals may pursue claims only where the

purported plaintiff has “suffered injury in fact and has lost money or property as a result of such unfair competition.” Cal. Bus. & Prof. Code § 17204. A private claimant may now “pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure.” *Id.* at § 17535.

Defendants move for judgment on the pleadings, asserting that Proposition 64 prohibits plaintiffs’ UCL claim. While opposing defendants’ motion, plaintiffs move for leave to amend their complaint to add three plaintiffs who arguably possess standing under the newly amended UCL. There is no dispute that the current plaintiff, the Wireless Consumer’s Alliance (WCA), suffered no injury in fact and lost no money or property as a result of AT&T Wireless Services, Inc.’s (AWS) alleged conduct. The question before the Court is whether the new UCL standing requirements apply to WCA’s claim.

## II. DISCUSSION

### A. Defendants’ Motion For Judgment on the Pleadings

When interpreting the effect of an initiative, courts apply the same principles as those governing statutory construction. *People v. Canty* (2004) 32 Cal. 4th 1266, 1276. Where voters amend a statute, any omitted sections are deemed repealed, *see* Cal. Gov. Code § 9605, and where a right or remedy depends on a statute, “the repeal of the statute without a savings clause destroys such a right.” *Beckman v. Thompson* (1992) 4 Cal. App. 4th 481, 489. When a remedial statute is amended prior to final judgment, the “court will apply the law in force at the time of the decision.” *Brenton v. Metabolife Int’l, Inc.* (2004) 116 Cal. App. 4th 679, 690; *Beckman*, 4 Cal. App. 4th at 489.

WCA’s right to sue depended entirely upon the UCL and was not based on common law. *See Bank of the West v. Superior Court* (1992) 2 Cal. 4th 1254, 1263-64 (stating that the UCL cannot be equated with the common law tort of unfair competition). Proposition 64 repealed the standing

of private persons who suffer no injury in fact to sue under the UCL. *See* Proposition 64. Proposition 64 contains no savings clause. *See id.* Because a statutory right to sue is not a “vested right”, no exception to the repeal doctrine applies. *See Governing Bd. of Rialto Unified Sch. Dist. v. Mann* (1977) 18 Cal. 3d 819, 822-29 (statutory right to sue not a vested right); *S. Serv. Co. v. County of L.A.* (1940) 15 Cal. 2d 1, 12 (finding an exception to the repeal doctrine only where a vested right is impaired).

The statutory repeal rule renders unnecessary the inquiry into legislative intent suggested by plaintiffs. “The only legislative intent relevant in such circumstance would be a determination to save this proceeding from the ordinary effect of repeal.” *Younger v. Superior Court* (1978) 21 Cal. 3d 102, 110. In the absence of a savings clause, as in this case, repeals are presumed immediately applicable to all pending cases. *Id.*; *Mann*, 18 Cal. 3d at 829. Proposition 64's repeal of private standing without injury in fact eliminated WCA's standing effective November 3, 2004. The discussion of retroactivity or retrospective application of Proposition 64 is moot. Defendants' motion for judgment on the pleadings is granted.

#### **B. Plaintiffs' Motion for Leave to Amend**

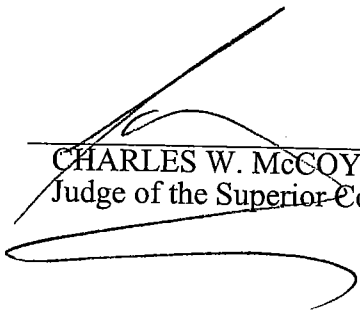
Amendment is allowed at any time before or after the commencement of trial. Cal. Code Civ. Proc. § 576. Leave to amend is granted liberally by California courts. *See People v. Duvall* (1995) 9 Cal. 4th 464, 482. In considering requests for leave to amend, courts consider (1) whether facts or legal theories are being altered, and (2) whether granting leave will prejudice the opposition. *See City of Stanton v. Cox* (1989) 207 Cal. App. 3d 1557, 1563.

Plaintiffs have pursued this litigation for more than 7 years and, in doing so, have expended significant resources. In light of Proposition 64, plaintiffs seek to continue the same litigation by adding three individuals purporting to meet the newly imposed standing requirements. Adding these individuals will neither change the legal theories involved in this litigation nor prejudice defendant. Plaintiffs motion for leave to amend is granted.

### III. CONCLUSION

Defendants' motion for judgment on the pleadings is granted. Plaintiffs' motion for leave to amend is granted.

DATED: December 21, 2004



CHARLES W. MCGOY, JR.  
Judge of the Superior Court