No. S184929

IN THE

# Supreme Court

OF THE
STATE OF CALIFORNIA

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JAMSHID ARYEH, *Plaintiff and Appellant*

v.

CANON BUSINESS SOLUTIONS, INC.,
*Defendant and Respondent*

---

REVIEW AFTER DECISION BY THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION EIGHT, NO. B213104
LOS ANGELES COUNTY SUPERIOR COURT NO. BC 384674

## *AMICUS CURIAE* BRIEF ON BEHALF THE ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL IN SUPPORT OF RESPONDENT

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## INTRODUCTION

Statutes of limitation provide a procedural need to provide litigants with uniformity and predictability by specifying the time limits within which a claim may be brought. The need for such certainty is critical to our adversarial system. Statutes of limitation promote the legislative goal of providing a level playing field for litigants by preventing stale claims, giving stability to transactions, protecting settled expectations, promoting diligence, encouraging the prompt enforcement of substantive law, and reducing the volume of litigation by providing legal finality. These policy goals are particularly relevant in the context of the Unfair Competition Law (UCL) under Business and Professions Code § 17200, et seq., where the purpose of the statute is to "protect both consumers and competitors by promoting fair competition in commercial markets for goods and services. [Citation.]" *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949. Without adequate assurance as to whether the continuing accrual doctrine applies to extend the UCL's statute of limitations, the UCL's protections for consumers and business competitors and the cause of justice will be poorly served.

In its decision below, the majority of the Second District court of appeal held that causes of action under the UCL, for purposes of determining when the four-year statute of limitation begins to run, are triggered when the defendant's conduct occurs, not when the plaintiff learns

about the conduct. The court below further concluded that when allegations of a defendant's conduct covers a period of time, the cause of action under the UCL accrues at the time of the initial conduct. Based on this analysis, the court below held that the continuing violations doctrine did not apply to a UCL claim, and concluded that appellant failed to assert any facts establishing that delayed discovery would save his claim based on application of the equitable tolling doctrine. Unlike the majority, the Dissent interprets *Snapp & Associates Ins. Services, Inc. v. Robertson* (2002) 96 Cal.App.4th 884 very narrowly, and concludes that the "continuous accrual" doctrine applies to a case such as this because instead of there being one UCL claim, each test copying charge constitutes a separate UCL claim, some of which occurred within the statute of limitations. The Dissent's overly expansive view of what constitutes a cause of action under the UCL is inconsistent with the important policy goals of having a finite and clearly defined statute of limitations that provides litigants with certainty as to the outer limits of when a claim may be asserted.

This case presents an opportunity for the Court to clarify the scope of the trigger of the statute of limitations under the UCL, to highlight the important policy considerations underlying having a finite period of repose, and to give guidance to California litigants and courts regarding application

of the continuous accrual doctrine in the context of UCL claim. For the reasons discussed below, this Court should hold as follows:

- ***First,*** the Court should affirm that the four-year statute of limitation under the UCL begins to run when the defendant's conduct occurs, not when the plaintiff learns about the conduct. As such, the Court should affirm that under *Snapp*, *supra,* when allegations regarding a defendant's conduct covers a period of time, the cause of action accrues at the time of the initial conduct. Accordingly, the Court should find that the "continuous accrual" doctrine is inapplicable to claims asserted under the UCL.

- ***Second***, the Court should affirm that the continuing violation doctrine does not apply to the UCL.

- ***Third***, the Court should affirm that there is no tolling provision in the UCL – express or implied – that would toll a plaintiff's obligation to purse a UCL claim while a contractual relationship remains in place.

- ***Fourth,*** the Court should hold that a plaintiff may not wait until expiration of a contractual relationship and then assert that the running of the statute of limitations was tolled simply by asserting that a series of separate wrongs were committed during the course of a contractual relationship to retroactively enable him to defeat the purpose of the time-bar.

## SUMMARY OF CALIFORNIA LAW REGARDING THE STATUTE OF LIMTIATIONS GOVERNING UCL CLAIMS AND THE DECISION OF THE COURT OF APPEAL BELOW

The parties, and the court below, are in general agreement that UCL claims are governed by the four-year statute of limitations set forth in Bus. & and Prof. Code § 17208. The parties, and the court below, are in general agreement that neither the delayed discovery rule nor the continuing violation doctrine apply to UCL claims.[1] They disagree, however, about whether the continuous accrual doctrine applies to UCL claims and whether this doctrine allows for a single fraud allegation to be divided into multiple, separate and distinct, UCL claims to extend the statute of limitations.

### A. The Four-Year Statute of Limitation for UCL Claims.

The UCL prohibits "any unlawful, unfair or fraudulent business act or practice...." Bus. & Prof. Code § 17200. As this Court recently addressed in *Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1401 the UCL governs both private and public claims, and provides a vehicle by which a private litigant plaintiff with colorable claims may seek to be restored to the status quo.

Claims under the UCL are subject to a four-year statute of limitations. Bus. & Prof. Code § 17208. As section 17208 makes clear,

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[1] Although review was granted by this Court to address the potential applicability of "delayed discovery," "continuing violations," and "continuous accrual," Appellant's Opening Brief concedes that he is proceeding before the Court only on the question of applicability of the continuous accrual doctrine to UCL claims. (Opening Br. pp. 26, 39.)

"Any [UCL] action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued." *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 178–179; *Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336, 364. As nothing about the language in section 17208 is ambiguous, the statute must be strictly construed to effectuate its purpose:

> "In construing a statute, our fundamental task is to ascertain the Legislature's intent so as to effectuate the purpose of the statute. [Citation.] We begin with the language of the statute, giving the words their usual and ordinary meaning. [Citation.] The language must be construed 'in the context of the statute as a whole and the overall statutory scheme, and we give "significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.' " [Citation.] In other words, " 'we do not construe statutes in isolation, but rather read every statute 'with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.' [Citation.]' " [Citation.] If the statutory terms are ambiguous, we may examine extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such circumstances, we choose the construction that comports most closely with the Legislature's apparent intent, endeavoring to promote rather than defeat the statute's general purpose, and avoiding a construction that would lead to absurd consequences. [Citation.]"

*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.

The intent of the Legislature in promulgating statutes of limitations is to require plaintiffs to act with diligence to place defendants on notice of their claims so as to avoid stale claims, topics this Court has had frequent

occasion to address. "[T]he legislative goal underlying limitations statutes is to require diligent prosecution of known claims so that legal affairs can have their necessary finality and predictability and that claims can be resolved while evidence remains reasonably available and fresh." *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 756.)

The policy behind this legislative goal is to provide litigants with certainty as to when claims may be made, and when claims expire: "[w]hile the bar of the statute of limitations may be considered a harsh result ... as a matter of policy, this defense 'operates conclusively across-the-board. It does so with respect to *all* causes of action, both those that do not have merit and also those that do. That it may bar meritorious causes of action as well as unmeritorious ones is the "price of the orderly and timely processing of litigation" [citation]-a price that may be high, but one that must nevertheless be paid.' [Citation.]" *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1282; *State of California ex rel. Metz v. CCC Information Services, Inc.* (2007) 149 Cal.App.4th 402, 413.

As recently explained, "[t]he statute of limitations serves noble public policies. It "'promote[s] justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.' [Citations.]" *Estate of Ziegler v. W.C. Cox and Company, et al.* (2010) 187 Cal.App.4th

1357, 1359. Other purposes served by statutes of limitations include prevention of stale claims, giving stability to transactions, protecting settled expectations, promoting diligence, encouraging the prompt enforcement of substantive law, and reducing the volume of litigation. *Marin Healthcare Dist. v. Sutter Health* (2002) 103 Cal.App.4th 861, 872; *Hebrew Academy of San Francisco v. Goldman* (2007) 42 Cal.4th 883, 894; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 395; *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 787.

Further, as this court emphasized in *Stockton Citizens for Sensible Planning v. City of Stockton* (2010) 8 Cal.4th 481, 498, "a statute of limitations "'necessarily fix[es]' a 'definite period[ ] of time' [citation], and hence operates conclusively across-the-board. It does so with respect to *all* causes of action, both those that do not have merit and also those that do. That it may bar meritorious causes of action as well as unmeritorious ones is the 'price of the orderly and timely processing of litigation' [citation]—a price that may be high, but one that must nevertheless be paid." (*Norgart, supra,* at p. 410, 87 Cal.Rptr.2d 453, 981 P.2d 79, fn. omitted; see generally *Chase Securities Corp. v. Donaldson* (1945) 325 U.S. 304, 314, 65 S.Ct. 1137, 89 L.Ed. 1628 [operation of statute of limitations "does not discriminate between the just and the unjust claim"].)"

Against the backdrop of such a clearly defined policy, the UCL statute of limitations much be strictly construed.

### B. The Majority Opinion Correctly Defines Accrual of a Cause of Action Under the UCL as Commencing When the Defendant's Conduct Occurs, Not When the Plaintiff Learns of the Conduct

As discussed by this Court in *Pineda, supra,* a limitations period "begins to run when a cause of action has accrued, that is, when the cause " 'is complete with all of its elements.' [Citations.]" *Pineda* at 50 Cal.4th 1397. As noted by the court below, "appellant asserts the statutory clock begins not only at the time of the first occurrence –i.e., the time an allegedly offending act was committed and caused injury—but rather 're-starts' each time the defendant invades the plaintiff's rights and causes injury." *Aryeh, supra,* at 185 Cal.App.4th at 1165. In light of the unambiguous statutory language in section 17208, as well as the practical difficulties that would arise under appellant's interpretation, the majority the decision below concluded that the statute of limitations for a UCL claim begins to run when the defendant's conduct occurs, not when the plaintiff learns about the conduct. *Snapp & Associates Ins. Services, Inc. v. Robertson* (2002) 96 Cal.App.4th 884, 891.

As *Snapp* emphasized, the "'discovery rule,' which delays accrual of certain causes of action until the plaintiff has actual or constructive knowledge of facts giving rise to the claim, does not apply" to causes of action under section 17200. *Id.* When the allegations regarding a defendant's conduct covers a period of time, the cause of action accrues at

the time of the initial conduct. *Id.* at p. 892. *Snapp* emphatically rejected the argument that a claim for "on-going" or continuously accruing violations of the UCL could be maintained where the complaint alleged wrongdoing that began more than four years before action commenced. *Id.* Further, no language in the UCL extends accrual of its statute of limitations based on continuous accrual.

Moreover, *Snapp* is factually "on all fours" with *Aryeh*. In *Snapp*, an insurance agency brought an action against competitor for various causes of action in connection with work which agency's former employee had done for competitor on files which former employee had brought with him from insurance agency. *Snapp* concluded that because the operative complaint contained allegations that the competitor's wrongdoing began in 1993 and that the competitor's "solicitation of [Snapp's] former employees and customers started in or about May 1993, and [was] on-going" the insurance agency knew of potential claims against the competitor more than four years before it filed its complaint. *Snapp* at 892. As the insurance agency's UCL action began to run upon accrual in1993, and was not equitably tolled, its action was time-barred. *Id.* Notably, in both *Snapp* and *Aryeh*, the conduct complained of was alleged to be a continuing pattern and course of conduct, not unrelated discrete acts which might form the basis of continuous accrual. *Komarova v. National Credit Acceptance, Inc.* (2009) 175 Cal.App.4th 324, 344.

According to the Dissent, however, *Snapp* does not support the majority's conclusion because under the continuous accrual doctrine, "respondent's conduct in violating the terms of the parties' agreement comprised a series of unfair business practices" and "[t]hose acts occurring within four years of the filing of the complaint are actionable." *Id.* at 1171, 1173. Under the Dissent's analysis, the actions of defendant do not extend the impact of prior conduct but instead "one can breach the same contract over and over again in substantially the same manner." *Id.* at 1174.

In reaching this conclusion, the Dissent relies on *Cruz v. Pacific Gas & Electric Co.* (2000) 82 Cal.App.4th 1167, 1178, *Howard Jarvis Taxpayers Ass'n. v. City of La Habra* (2001) 25 Cal.4th 809; *Hogar Dulce Hogar v. Community Development Com'n of City of Escondido* (2003) 110 Cal.App.4th 1288; *Dryden v. Board of Pension Com'rs. of City of Los Angeles* (1936) 6 Cal.2d 575, 580–581, and *Armstrong Petroleum Corp. v. Tri–Valley Oil & Gas Co.* (2004) 116 Cal.App.4th 1375, 1388. As the Dissent acknowledges, most of these continuous accrual cases involve public entities. *Aryeh, supra*, at 1174-175. What is missing from the Dissent's analysis, however, is that application of the continuous accrual doctrine has been limited to "the obligation to make periodic payments under ... statutes or regulations," such as taxes or pension and welfare benefits (*Hogar, supra*, 110 Cal.App.4th at 1295-1296), or continuing nuisances (*Baker v. Burbank-Glendale-Pasadena Airport Authority* (1985)

39 Cal.3d 862, 869). Notably, the allegations in the *Aryeh* complaint relating to alleged excess copy charges for test copies do not fit within this narrowly tailored area.

This is not a distinction without difference, as the Dissent's application of the continuous accrual doctrine fundamentally re-crafts the bright line outer limits of Section 17208's four year limitation on UCL claims. Such re-invention is outside the limits permitted by the California Legislature in drafting this statute. *In re Firearm Cases* (2005) 126 Cal.App.4th 959, 979, citing *Cel-Tech Communications, Inc., et al. v. Los Angeles Cellular Telephone Company* (1999) 20 Cal.4th 163, 182 ("Although the scope of the UCL is sweeping, it is not unlimited, and courts may not simply impose their own notions of the day as to what is fair or unfair; the definition of unfairness to competitors must be tethered to some legislatively declared policy or proof of some actual or threatened impact on competition.") As proclaimed, "When specific legislation provides a "safe harbor," plaintiffs may not use the general unfair competition law to assault that harbor." *Cel-Tech.*, 20 Cal.4th at 182. As nothing in the UCL or the express language of Section 17208 contains any "safe harbor" language permitting application of the continuous accrual doctrine, and as nothing in the particular facts of *Aryeh* or the UCL in general pertains to periodic payments made pursuant to statutes or regulations or any continuing nuisance, the Dissent has not demonstrated

any legitimate policy reason that such a radical change in interpretation of UCL law is warranted.[2]

The statute of limitations on a UCL claim begins to run upon accrual unless equitably tolled. *Snapp*, *supra*, 96 Cal.App.4th 884, 891. Here, it is conceded that there was no basis to assert equitable tolling. *Aryeh* 185 Cal.App.4th at 1171. Undoubtedly had the Legislature intended there to be any statutory basis for equitable tolling in the UCL, or for application of the continuous accrual doctrine, it could have crafted a express provision.[3]

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[2] *Armstrong* is inapposite as it involved a series of severable breaches of contract. Here, the Dissent concedes that the "multiple acts" in question are a "repeated wrong" – i.e., a single breach of contract (periodic imposition of "excess copy charges" for "test copies") – not a failure to make the separate installment payments to which these acts are compared. *Aryeh* 185 Cal.App.4th at 1175.

[3] Such a tolling provision was included in Code of Civil Procedure § 340.6 which governs claims for attorney malpractice:

> "Except for a claim for which the plaintiff is required to establish his or her factual innocence, in no event shall the time for commencement of legal action exceed four years except that the period ***shall be tolled during the time that any of the following exist:***
> (1) The plaintiff has not sustained actual injury.
> (2) The attorney continues to represent the plaintiff regarding the specific subject matter in which the alleged wrongful act or omission occurred.
> (3) The attorney willfully conceals the facts constituting the wrongful act or omission when such facts are known to the attorney, except that this subdivision shall toll only the four-year limitation.

The Dissent's application of the continuous accrual doctrine would permit a plaintiff to sever a single fraud cause of action into a series of separate wrongs so as to assert multiple UCL claims, and would vitiate the unambiguous legislative goal of providing a level playing field for litigants by preventing stale claims, promoting diligence, encouraging the prompt enforcement of substantive law, and reducing the volume of litigation by providing legal finality.

## ALLEGATIONS OF A SINGLE "WRONG" SHOULD NOT BE PERMITTED TO BE SPLIT INTO "MULTIPLE SEPARATE AND DISTINCT" UCL CLAIMS AS AN END-RUN AROUND THE STATUTE OF LIMITATIONS

Although in his complaint appellant conceded that he discovered the fact of the excess copy charges for test copies in or about February 2002, the record on appeal makes clear that he took no steps to perfect any claim about this until commencing this action in 2008, some six (6) years later. As this Court has directed in *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 816, a cause of action accrues and the statute of limitations begins to run when the plaintiff has reason to suspect an injury and some wrongful cause. As admitted by the original complaint, appellant was aware of the accrual of a cause of action, yet did not diligently pursue relief. Given the public policy to avoid stale claims and provide legal certainty discussed above, appellant's

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(4) The plaintiff is under a legal or physical disability which restricts the plaintiff's ability to commence legal action."

(Emphasis added.)

apparent failure to take any steps to prosecute a claim under the UCL is diametrically opposed to the UCL's "overarching legislative concern to provide a streamlined procedure for the prevention of ongoing or threatened acts of unfair competition." *Cortez*, *supra*, 23 Cal.4th at 173-174 (emphasis in original omitted). Given this backdrop, no public policy concerns would appear to be met by rewarding such a lapse in due diligence by resuscitating this stale claim.

Moreover, nothing in appellant's briefing or in the Dissent explains how any public policy benefit would gained by allowing appellant to wait for years and until after his contractual relationship with Canon expired before asserting that the continuous accrual doctrine served to toll the UCL simply by asserting that a series of separate wrongs were committed during the course of a contractual relationship and that this retroactively enables appellate to defeat the purpose of the statute of limitations. On the contrary, the very failure to seek redress is incompatible with the basic tenets of the UCL. Rewarding such dilatory behavior would have an adverse effect on the legislative goals, the adversarial process, and the interests of justice. Allowing a plaintiff to circumvent the statute of limitations in the manner at issue would create uncertainty in the context of business and contractual transactions, where a party who took no action to protect its alleged interests during the existence of the relationship could seek to undermine the other party's benefits in engaging in that transaction

by retroactively using the UCL as a means to challenge the other party's conduct undertaken during the course of the relationship.

## CONCLUSION

The UCL's four-year statute of limitation provides a brightline cut-off date under which a claim may be brought where, as here, there is no equitable tolling. Appellant seeks to undermine that certainty by arguing that the extends the time for his UCL claims. Nothing in the UCL or any published case interpreting the UCL applies the continuous accrual doctrine to extend the UCL statute of limitations. Enforcing the four-year statute of limitation under the UCL, and maintaining a clearly defined termination date for UCL claims would further the policy goals of preventing stale claims, reducing the volume of litigation by providing legal finality, and would serve the interests of justice.

Dated: April 25, 2011

BOWMAN AND BROOKE LLP

By: _____

Larry R. Ramsey
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*ASSOCIATION OF SOUTHERN CALIFORNIA DEFENSE COUNSEL*

## CERTIFICATE OF COMPLIANCE WITH RULE 8.204(c)(1)

I certify that the attached Amicus Curiae Brief on behalf of the Association of Southern California Defense Counsel in Support of Respondent uses a 13-point Times New Roman font and contains 4,5146 words.

Dated: April 25, 2011

BOWMAN AND BROOKE LLP

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*Jamshid Aryeh v. Canon Business Solutions, Inc.*

Los Angeles Co. Sup. Ct. - No. BC 384674

Second Appellate Distr. Ct. of Appeal, Division Eight - No. B213104

Supreme Ct. of CA - No. S184929

## PROOF OF SERVICE

I, the undersigned, declare:

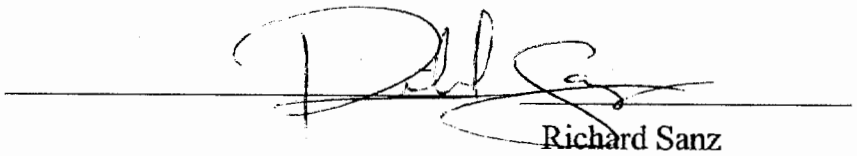
I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 225 Bush Street, #250, San Francisco, California 94104

On April 25, 2011, I served the foregoing document described as: ***AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT*** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**SEE ATTACHED SERVICE LIST**

(X) **BY MAIL (C.C.P.§§ 1013a and 2015.5)**: I deposited such envelope(s), with postage paid, in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 25, 2011, at San Francisco, California.



Richard Sanz

*Aryeh v. Canon Business Solutions, Inc.*

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