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June 30, 2021

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

**Re: *California Medical Association v. Aetna Health of California***
**Case No. S269212**
**Amici Curiae Letter in Support of Petition for Review**

Dear Chief Justice Cantil-Sakauye and Associate Justices:

We submit this letter on behalf of the American Medical Association, the California Society of Anesthesiologists, La Cooperativa Campesina de California, La Casa del Diabetico Gualan, and California Rural Legal Assistance Foundation in support of the petition for review filed by Plaintiff and Appellant California Medical Association (CMA). The CMA's petition raises a significant and recurring issue of statewide importance regarding the right of organizations to enforce the state's unfair competition law to protect themselves and the public from unlawful, unfair, and fraudulent business practices.

## INTERESTS OF AMICI

Amici are nonprofit membership organizations and associations that represent individuals in a variety of fields. In addition to supporting the interests of their members, these organizations pursue issues affecting their respective industries and the public interest generally.

The American Medical Association (AMA) is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in

1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state, including California. The AMA joins this amici letter on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

The California Society of Anesthesiologists (CSA) is a nonprofit mutual benefit corporation with nearly 4,000 active and resident members. The purposes of the CSA include the betterment of individual members and their patients, protecting the members' interests, ensuring patient access to anesthesiologists, and promoting progress in the economic aspects of the specialty of anesthesiology. Consistent with these purposes, the CSA advocates on behalf of itself and its members with the Legislature and regulatory authorities, and when the circumstances require, through the courts. This amici curiae letter will assist the Court in understanding the importance of the CSA's access to the courts on behalf of itself and its members.

La Cooperativa Campesina de California is the association of the National Farmworker Jobs Program—providing education, training, placement, and self-sufficiency services to California's migrant and seasonal farmworkers and other rural and semi-rural poor. La Cooperativa's members provide services in 82 access points located in all 34 of California's significant agricultural counties serving over 200,000 farmworkers a year. This amici curiae letter will assist the Court in understanding the importance of La Cooperativa Campesina de California's access to the courts on behalf of itself and its members.

La Casa del Diabetico Gualan is a nonprofit organization that serves low-income Californians suffering from diabetes and in need of quality health care services. Many of the individuals that La Casa del Diabetico Gualan serves and represents are challenged by poverty, food insecurity, violence, language barriers and are underinsured and unemployed. This amici curiae letter will assist the Court in understanding the importance of La Casa del Diabetico Gualan having access to the courts on behalf of itself and people suffering from chronic conditions.

California Rural Legal Assistance Foundation (CRLAF) is a statewide nonprofit civil legal aid organization providing free legal services and policy advocacy for California's rural poor since 1981. CRLAF focuses on some of the most marginalized communities: the unrepresented, the unorganized, and the undocumented. CRLAF's goal is to help the rural poor improve their economic, social, and health conditions and become more civically engaged in their communities. CRLAF advocates for policies and laws that promote health access, coverage, and rights of farmworkers.

## WHY REVIEW SHOULD BE GRANTED

The Unfair Competition Law (UCL), as amended by Proposition 64, confers standing on any person or organization that "has suffered injury in fact and has lost money or property as a result of the unfair competition." (Bus. & Prof. Code, § 17204.) The Second Appellate District, however, held that the CMA lacked standing under the UCL, even though the organization itself suffered injury and lost money as a result of the unfair business actions undertaken by Defendant and Respondent Aetna Health of California (Aetna). The court reasoned that because the physician members of the CMA were *also* harmed—and perhaps even more so—by Aetna's unfair practices, the CMA could not bring this action on behalf of itself as an organization. That is not the law. Standing under the UCL is not a balancing test to determine which party suffered greater injury or lost more money. Quite simply, a plaintiff has standing, or it doesn't.

The principle established by the court below, if allowed to stand, would effectively preclude any membership organization from ever seeking relief under the UCL and undercut a central plank of private enforcement of one of the state's most important consumer-protection laws. The decision below also conflicts with a decision of the First Appellate District, which held that an organization injured in the same manner as was the CMA had standing to bring UCL claims. Amici respectfully urge the Court to grant review to resolve these conflicting decisions, to correct the Second Appellate District's overly restrictive reading of the law, and to avoid shutting out membership organizations from enforcing the UCL.

### A. The UCL Confers Standing on Persons or Organizations That Are Themselves Injured

The UCL prohibits "any unlawful, unfair or fraudulent business act or practice" (Bus. & Prof. Code, § 17200), which the Court has recognized carries an expansive scope intended "to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services" (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320, quotation marks and citation omitted).

While private suits under the UCL could once be brought by any person acting for the interests of itself, its members, or the general public, the range of parties that may now enforce the UCL's provisions is more limited. (*Id*. at pp. 320-321.) Seeking to curtail the filing of "frivolous lawsuits as a means of generating attorneys' fees" where "no client has been injured in fact" (Prop. 64, § 1, subd. (b) ["Findings and Declarations of Purpose"]), the electorate adopted Proposition 64 in 2004 to restrict standing under the statute to a litigant that "has suffered injury in fact and has lost money or property as a result of the unfair competition" (Bus. & Prof. Code, § 17204).

Under Proposition 64, therefore, "a plaintiff now must demonstrate some form of economic injury." (*Kwikset*, *supra*, 51 Cal.4th at p. 323.) There are, however, "innumerable ways in which economic injury from unfair competition may be shown," including instances in which a plaintiff may "be required to enter into a transaction, costing money or property, that would otherwise have been unnecessary." (*Ibid.*) Critically, "the quantum of lost money or property necessary to show standing is only so much as would suffice to establish injury in fact," which "is not a substantial or insurmountable hurdle." (*Id*. at p. 324.) Rather, "[i]f a party has alleged or proven a personal, individualized loss of money or property in any nontrivial amount, he or she has also alleged or proven injury in fact." (*Id*. at p. 325.)

Applying these principles properly, the First Appellate District in *Animal Legal Defense Fund v. LT Napa Partners LLC* (2015) 234 Cal.App.4th 1270 (*ALDF*) held that an organization that has diverted and expended its own resources as a result of a defendant's unfair practices has established sufficient economic injury to have standing under the UCL. (*Id*. at pp. 1280-1282.) The *ALDF* court noted that both this Court and federal authorities have acknowledged that the diversion of organizational resources to investigate wrongdoing by a defendant can constitute injury in fact to satisfy standing requirements. (*Id*. at pp. 1280-1281.)

### B. The UCL Does Not Confer Standing on Organizations That Sue Solely on Behalf of Injured Members

At the same time, UCL standing does require that the plaintiff "must establish that he or she has personally suffered such harm." (*Kwikset*, *supra*, 51 Cal.4th at p. 323.) Thus, in *Amalgamated Transit Union Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 992 (*Amalgamated Transit*), the Court rejected a suit brought by union organizations based on injury suffered only by their members. The unions, in fact, conceded that they suffered no actual harm personally and thus did not themselves satisfy the UCL's standing requirements. (*Id*. at p. 1001.) Instead, they argued that the members could assign their UCL causes of action to the unions (*id.* at pp. 1001-1002), or, alternatively, that the unions had associational standing to sue on behalf of the members (*id*. at pp. 1003-1004). Rejecting those arguments, the Court concluded that both theories of standing would conflict with Proposition 64's requirement that private UCL actions "be brought *exclusively* by" the person who has suffered injury in fact and has lost money or property. (*Id*. at pp. 1002, 1004.)

### C. The Court Below Misapplied These Principles to Hold That an Organization with Injured Members Does Not Have UCL Standing Even When That Organization Is Itself Injured

The Court's UCL jurisprudence has thus established two central principles:

- An organization has standing when the organization itself has suffered economic injury under the UCL. (*Kwikset*.)

- An organization does not have standing when the organization has suffered no UCL injury, and only its members have been injured and lost money. (*Amalgamated Transit*.)

But what happens when *both* the organization itself *and* its members have suffered injury under the UCL? Amici maintain that under the plain language of the UCL and the Court's precedents, such an organization, which has been thus doubly injured, does indeed have standing to pursue UCL claims, and that the injury to the organization's members does not negate the separate injury suffered by the organization itself.

The court below held otherwise, ruling that the CMA suffered no economic injury to the organization because CMA members were also harmed by Aetna's unfair practices.

(*California Medical Association v. Aetna Health of California Inc.* (2021) 63 Cal.App.5th 660 [278 Cal.Rptr.3d 302] (*Aetna*).) On the law, the court viewed *Amalgamated Transit* as controlling. (278 Cal.Rptr.3d at p. 308.) But that decision held only that injury to an organization's members is insufficient by itself to establish standing for an organization. It did not hold that such member injury disqualifies an organization from ever having standing in its own right based on its own injury.

As the First Appellate District recognized in *ALDF*, *supra*, 234 Cal.App.4th 1270, an organization can establish UCL standing for itself when it is forced to expend resources to counteract a defendant's wrongdoing. In that case, an animal rights organization demonstrated that it had diverted significant staff time and resources in investigating a restaurant that was violating a ban on foie gras sales and in seeking to persuade local authorities to enforce the ban. (*Id*. at pp. 1280-1282.) The *ALDF* court found that such expenditures, undertaken independent of the litigation and in furtherance of the organization's mission, constituted sufficient economic injury to allow the organization to pursue its UCL claims. (*Id*. at pp. 1282-1283.)

The situation here is on all fours with *ALDF*. The CMA submitted evidence establishing that in furtherance of the organization's mission "to promote the science and art of medicine" and to "prevent[] conduct that interferes with the physician-patient relationship" (Joint Appendix (JA) 958, ¶ 4; JA 1148), the CMA "diverted their staff time from other CMA projects and duties" to "investigate Aetna's business practice" of restricting patient referrals (JA 958, ¶ 6; JA 1152-1154) and to persuade California insurance regulators to "take action to address Defendants' illegal actions" (JA 960, ¶¶ 9-10; JA 1182-1188). In total, CMA showed that it had expended approximately 200 to 250 hours of staff time to these efforts, which were independent of any time related to pursuing this litigation. (JA 960, ¶¶ 11-12; see also Plaintiff/Appellant's Petition for Review, pp. 7-8.)

The court below nevertheless found that the CMA's expenditures did not establish economic injury for the organization to sue. The court sought to distinguish *ALDF* based on the appellate court's incorrect presumption that the CMA brought this case solely as a "representative action to rectify injury to its aggrieved physician members." (*Aetna*, *supra*, 278 Cal.Rptr.3d at pp. 307-308.) The trial court made no such finding (JA 1568-1600), and nothing in the record would support one. Rather, the CMA pled and proved that this action was brought not only on behalf of its injured members but also on the

organization's own behalf based on actual injury suffered by the CMA. (JA 379-380, ¶¶ 25, 29-25; JA 402, ¶ 111; JA 957-960.) And pursuant to a stipulated order, the CMA subsequently agreed to pursue only its claim for injunctive relief under the UCL (JA 564-565), with the claims of absent putative class members being dismissed (JA 565, 568).

The court appears to have concluded that the CMA's expenditures of its own resources didn't count as injury to the organization because the CMA "was founded to advocate on behalf of its physician members" and the CMA staff time spent here "was typical of the support CMA provides its members in furtherance of CMA's mission." (*Aetna*, *supra*, 278 Cal.Rptr.3d at p. 308.) That conclusion is erroneous.

*First*, the court again misunderstood the record. The CMA's mission includes not only supporting its members' interests, but also, more broadly, preserving the art and science of medicine and preventing conduct that interferes with the physician-patient relationship. (JA 958, ¶ 4; JA 1148.) No one disputes that these are genuine and longstanding interests of the CMA. Aetna's practices at issue here both harmed CMA members and frustrated these other more expansive purposes of the organization, and the CMA therefore expended resources and lost money in order to protect its members and also itself.

*Second*, the UCL draws no distinction between an organization that expends resources to support members and one that expends resources for other purposes. Both have standing as long as they were injured and lost money as a result of alleged unfair competition. (Bus. & Prof. Code, § 17204.) As the court below acknowledged, the "staff time spent here" by the CMA was "*in response* to Aetna's termination and threats to terminate physicians." (*Aetna*, *supra*, 278 Cal.Rptr.3d at p. 308, italics added.) In other words, the CMA lost money because of Aetna's unfair practices. That is all that is required to establish standing under the UCL.

The UCL does not share the Second Appellate District's concern that "any organization acting consistently with its mission to help its members through legislative, legal and regulatory advocacy could claim standing based on its efforts to address its members' injuries" (*Aetna*, *supra*, 278 Cal.Rptr.3d at p. 308). As long as such an organization itself suffers injury and loses its own money because of a defendant's conduct and independent of pursuing litigation, it has standing under the UCL. This is so regardless of whether that organization's actions ultimately serve its mission to prevent improper insurer interference, protect its members' interests, or accomplish both.

In effect, the decision below adds a new requirement applicable only to membership organizations that would deny standing if a court decides that it is the organization's members who were "truly"—however that determination is made—injured by the defendant's conduct. Such a rule is not only contrary to the plain language of the UCL and the Court's precedents, it is entirely unworkable and illogical. Courts are not authorized to weigh which party is injured more in assessing UCL standing. How would that even be possible, especially when intangible interests, such as the protection of the medical profession or the preservation of the physician-patient relationship, are at stake? Why would injury to an organization's members preclude the organization from suing for its own injuries and lost money? If an organization cannot seek redress for such injury to itself, who could? And how would such a restriction serve the consumer-protection purposes of the UCL or the intent of Proposition 64 "to eliminate frivolous unfair competition lawsuits while protecting the right of individuals to retain an attorney and file an action for relief" under the UCL (Prop. 64, § 1, subd. (d) ["Findings and Declarations of Purpose"])?

If the decision below is allowed to stand, the standing requirements of the UCL would be thrown into doubt and the UCL rights of membership organizations thwarted. Amici therefore respectfully urge the Court to step in to restore clarity to its UCL jurisprudence.

Respectfully submitted,

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**PROOF OF SERVICE**

STATE OF CALIFORNIA

Re: *California Medical Association v. Aetna Health of California*
Case No. S269212

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **June 30, 2021**, I served the foregoing document(s) described as **AMICI CURIAE LETTER IN SUPPORT OF PETITION FOR REVIEW, DATED JUNE 30, 2021** on all appropriate parties in this action, as listed on the attached Service List, by the method stated:

☒ If Electronic Filing Service (EFS) is indicated, I electronically filed the document(s) with the Clerk of the Court by using the EFS/TrueFiling system as required by California Rules of Court, rule 8.70. Participants in the case who are registered EFS/TrueFiling users will be served by the EFS/TrueFiling system. Participants in the case who are not registered EFS/TrueFiling users will be served by mail or by other means permitted by the court rules.

☒ If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **June 30, 2021**, at Los Angeles, California.

LaKeitha Oliver

**SERVICE LIST**

*California Medical Association v. Aetna Health of California*

S269212

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