SUPREME COURT OF THE STATE OF CALIFORNIA

ABBOTT LABORATORIES; ABBVIE INC.; TEVA PHARMACEUTICAL INDUSTRIES, LTD.; TEVA PHARMACEUTICALS USA, INC.; BARR PHARMACEUTICALS, INC.; DURAMED PHARMACEUTICALS, INC.; DURAMED PHARMACEUTICALS SALES CORP., Petitioners, vs. THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF ORANGE, Respondent. THE PEOPLE OF THE STATE OF CALIFORNIA. Real Parties in Interest.	Case No. S249895 Fourth Appellate District, Division 1 No. D072577 County of Orange Superior Court No. 30-2016-00879117-CU-BT-CXC

APPLICATION TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF LOCAL PROSECUTORS, THE LEAGUE OF CALIFORNIA CITIES, AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF THE PEOPLE OF THE STATE OF CALIFORNIA

The Honorable Kim G. Dunning

DENNIS J. HERRERA, State Bar #139669
City Attorney
*YVONNE R. MERÉ, State Bar #173594
Chief of Complex and Affirmative Litigation
OWEN J. CLEMENTS, State Bar #141805
Chief of Special Litigation
SAN FRANCISCO CITY ATTORNEY'S OFFICE
Fox Plaza, 1390 Market Street, 6th Floor
San Francisco, California 94102-5408

Telephone: (415) 554-3874
Facsimile: (415) 437-4644
E-Mail: yvonne.mere@sfcityatty.org
Attorneys for the San Francisco City Attorney's Office

Michael N. Feuer, State Bar #111529
City Attorney
Michael M. Walsh, State Bar #150865
Deputy City Attorney
Affirmative Litigation Division
OFFICE OF THE LOS ANGELES CITY ATTORNEY
200 North Main Street, 17th Floor
Los Angeles, California 90012
Telephone: (213) 978-2209
Facsimile: (213) 978-0763
E-Mail: michael.walsh@lacity.org
Attorneys for the Los Angeles City Attorney's Office

Mara W. Elliot, State Bar #175466
City Attorney
Mark D. Ankcorn, State Bar #166871
Chief Deputy City Attorney
OFFICE OF THE SAN DIEGO CITY ATTORNEY
1200 3rd Avenue, Suite 700
San Diego, CA 92101
Telephone: (619) 533-5600
Email: mankcorn@sandiego.gov
Attorneys for the San Diego City Attorney's Office

Richard Doyle, State Bar #88625
City Attorney
Nora V. Frimann, State Bar #93249
Assistant City Attorney
OFFICE OF THE SAN JOSE CITY ATTORNEY
200 E. Santa Clara Street
San Jose, CA 95113-1905
Telephone: (408) 998-3131
Email: nora.frimann@sanjoseca.gov
Attorneys for the San Jose City Attorney's Office

Barbara J. Parker, State Bar #69722
City Attorney
Maria S. Bee, State Bar #167716
Chief Assistant City Attorney
Erin B. Bernstein, State Bar #231539
Supervising Deputy City Attorney
OAKLAND CITY ATTORNEY'S OFFICE
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612
Telephone: (510) 238-6392
Email: EBernstein@oaklandcityattorney.org
Attorneys for the Oakland City Attorney's Office

James R. Williams, State Bar #271253
County Counsel
Greta S. Hansen, State Bar #251471
Chief Assistant County Counsel
Laura S. Trice, State Bar #284837
Lead Deputy County Counsel
OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA
70 W. Hedding Street
East Wing, 9th Floor
San Jose, CA 95110
Telephone: (408) 299-5940
Email: Greta.Hansen@cco.sccgov.org
Attorneys for the Santa Clara County Counsel's Office

Alison E. Leary, State Bar #305215
Deputy General Counsel
LEAGUE OF CALIFORNIA CITIES
1400 K Street, Suite 400
Sacramento, CA 95814
Telephone: (916) 658-8200
Email: aleary@cacities.org
Attorneys for the League of California Cities

Jennifer B. Henning, State Bar #193915
Litigation Counsel
CALIFORNIA STATE ASSOCIATION OF COUNTIES
1100 K Street, Suite 101
Sacramento, CA 95814
Telephone: (916) 327-7535
Fax: (916) 443-8867
Email: jhenning@counties.org
Attorneys for the California State Association of Counties

TABLE OF CONTENTS

TABLE OF AUTHORITIES

State Cases

Federal Cases

Rules

State Statutes and Codes

Constitutional Provisions

Other References

APPLICATION FOR PERMISSION TO FILE AMICI CURIAE BRIEF

To the Honorable Chief Justice Tani Cantil-Sakauye and the Associate Justices of the California Supreme Court:

Pursuant to California Rules of Court, rule 8.520(f), the City Attorneys of San Francisco, Los Angeles, San Diego, San Jose, and Oakland; the Santa Clara County Counsel; the League of California Cities; and the California State Association of Counties (collectively "Amici"), respectfully request permission to file the attached amici curiae brief. This application is timely made, as this Court granted Amici's extension of time to file this brief to March 25, 2019. (See Order Granting Extension of Time [filed Feb. 8, 2019].)

Amici are concerned that the Court of Appeal's conclusions are in error and if not reversed, will harm consumers, and could seriously undermine the power of the California Legislature, the legislative goals of ensuring robust public prosecution of California Business and Professions Code section 17200 et seq. ("UCL") violations, and the courts' broad powers to fashion appropriate equitable and monetary relief. (*People v. Superior Court (Jayhill)* (1973) 9 Cal.3d 283, 286 [restitution]; *People v. Custom Craft Carpets, Inc.* (1984) 159 Cal.App.3d 676, 686 [civil penalties].)

Therefore, Amici respectfully request leave to file their brief below.

IDENTITY OF AMICI AND STATEMENT OF INTEREST

In California, the Unfair Competition Law, Business and Professions Code section 17200 et seq.,[1] is designed to protect consumers from business acts or practices that are unlawful, unfair, fraudulent, and/or deceptive. Although private plaintiffs have limited standing under the UCL to bring an action, the proliferation of arbitration clauses and class action bans in consumer agreements have limited the reach of private-plaintiff consumer protection suits. In addition, the limited resources of the Attorney General cannot adequately address the ever-growing size of the California economy. As a result, UCL cases filed by local public prosecutors have become one of the increasingly limited ways to obtain meaningful relief for consumers.

For the last several decades, hundreds of consumer protection actions have been brought by district attorneys, city attorneys, and county counsels from across California seeking statewide remedies such as restitution, civil penalties, and injunctive relief against a multitude of different companies. These consumer protection actions have resulted in significant relief for millions of Californians.

Amici Curiae City Attorneys of San Francisco, Los Angeles, San Diego, San Jose, Oakland, and the Santa Clara County Counsel represent six of the largest jurisdictions in California. Amicus Curiae the California State Association of Counties ("CSAC") is a non-profit corporation, whose members are California's 58 counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's

[1] All statutory references are to the California Business and Professions Code unless otherwise indicated.

Litigation Overview Committee, comprised of county counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties. Amicus Curiae League of California Cities ("League") is an association of 475 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or national significance. The Committee has identified this case as having such significance.

Amici have devoted extensive resources to investigating, litigating and supporting actions under the UCL and its sister statute, the False Advertising Law (the "FAL"). (§ 17500 et seq.) Amici have filed cases and obtained statewide UCL and FAL relief against large corporations including tobacco companies, payday lenders, national banks, debt collectors, arbitration organizations, national retail chain stores, and pharmaceutical and medical product manufacturers. Examples of those actions include:

- *People ex rel. Herrera v. Check 'N Go* (Super. Ct. S.F. City and County, 2007, No. CGC-07-462779); see also (N.D. Cal., Aug. 20, 2007, No. C 07-02789 JSW) 2007 WL 2406888 [remand order]. The San Francisco City Attorney's Office brought a UCL action against two national payday lenders that engaged in a "rent a bank" scheme to evade California statutory interest rate restrictions. The case resulted in statewide injunctive relief and civil penalties, and several million dollars' worth of restitution to borrowers throughout the state.
- *People ex rel. Herrera v. National Arbitration Forum Inc. and FIA Card Services, N.A.* (Super. Ct. S.F. City and County, 2008, No. CGC-08-473569). The San

Francisco City Attorney's Office brought a UCL action against a national dispute resolution service that served as a "judgment mill" for credit card companies. The case resulted in statewide injunctive relief and civil penalties. Indeed, the National Arbitration Forum went out of the business of doing credit card arbitrations nationally, in part as a result of this suit.

- *People v. Wells Fargo & Co. et al.* (Super. Ct. L.A. County, 2015, No. BC580778). The Los Angeles City Attorney sued the largest bank in California and its subsidiary under the UCL for misusing customer information and engaging in illegal, unfair, and fraudulent business practices known as "gaming." The alleged "gaming" activities, among other misconduct, included opening fee-generating customer accounts without customer permission.
- *People v. Target Corp.* (Super. Ct. Marin County, 2015, No. CIV 1500474). The San Diego City Attorney and the District Attorneys for the counties of Marin, Contra Costa, Fresno, Sonoma, and Santa Cruz sued Target for FAL and UCL violations for overcharging consumers throughout California.
- *People v. Purdue Pharma L.P. et al.* (Super. Ct. Orange County, 2014, No. 30-2014-00725287-CU-BT-CXC). The Santa Clara County Counsel and the Orange County District Attorney sued five opioid manufacturers under the FAL and public nuisance statutes. The Oakland City Attorney subsequently joined the litigation. The Orange County District Attorney also made a claim under the UCL. That suit claims that the opioid manufacturers engaged in a massive, decades-long scheme to deceive doctors and patients about the risks and benefits of the use of opioids for the long-term treatment of chronic pain.

These actions have sought, and in many instances secured, statewide injunctive and monetary relief, reforming business acts and practices that preyed upon innocent California consumers.

The Court of Appeal's decision not only significantly threatens the breadth and scope of UCL and FAL actions, but also threatens the ability of Amici to continue to protect California consumers. For these reasons, Amici Curiae have a substantial interest in this matter.

Amici's collective knowledge and experience litigating civil consumer protection cases makes them well-suited to respond to

Petitioners' ("Abbott Labs") arguments regarding the scope and breadth of a local prosecutor's authority to seek and secure statewide UCL remedies. Amici are also well-positioned to give an additional perspective about the ramifications of Petitioners' arguments on consumers and the courts.

Dated: March 25, 2019

DENNIS J. HERRERA
City Attorney
OWEN J. CLEMENTS
Chief of Special Litigation
YVONNE R. MERÉ
Chief of Complex and Affirmative Litigation

By: _____
YVONNE R. MERÉ
Attorneys for the San Francisco City Attorney's Office

MIKE FEUER
City Attorney for the City of Los Angeles

By: */s/ Michael M. Walsh*
Michael M. Walsh
Deputy City Attorney

MARA W. ELLIOT
City Attorney for the City of San Diego

By: */s/ Mark D. Ankcorn*
Mark D. Ankcorn
Chief Deputy City Attorney

RICHARD DOYLE
City Attorney for the City of San Jose

By: */s/ Nora V. Frimann*
Nora V. Frimann
Assistant City Attorney

BARBARA J. PARKER
City Attorney for the City of Oakland

By: */s/ Erin B. Bernstein*
Erin B. Bernstein
Supervising Deputy City Attorney

JAMES R. WILLIAMS
County Counsel for the County of
Santa Clara

By: */s/ Greta S. Hansen*
Greta S. Hansen
Chief Assistant County Counsel

LEAGUE OF CALIFORNIA CITIES

By: */s/ Alison E. Leary*
Alison E. Leary
Counsel

CALIFORNIA STATE ASSOCIATION
OF COUNTIES

By: */s/ Jennifer B. Henning*
Jennifer B. Henning
Litigation Counsel

AMICI CURIAE BRIEF
INTRODUCTION

The California Legislature grants the Attorney General, California's 58 district attorneys, as well as some city attorneys and county counsels, the ability to bring civil consumer protection actions for violations of California's Unfair Competition Law, codified at California Business and Professions Code section 17200 et seq. ("UCL").[2] Since the UCL was adopted more than 85 years ago, the Attorney General and local prosecutors have brought hundreds of consumer protection actions on behalf of the People of the State of California (the "People"), securing relief for millions of California consumers. From actions against national banks, arbitration organizations, insurance companies, multinational corporations, chain retailers, and pharmaceutical companies, consumers and small businesses have benefitted from the robust enforcement scheme the California Legislature put in place.

Petitioners ("Abbott Labs") are attempting to bring these consumer protection actions to a grinding halt, undermining the California Legislature's carefully crafted consumer protection scheme. The Court of Appeal, in a divided decision, ratified Abbott Labs' arguments, and inserted geographic limitations into the UCL that are not reflected in its plain language, to take statewide enforcement power away from local prosecutors entirely.

As cities, counties and organizations who have a history of bringing and supporting statewide UCL actions to protect California residents, Amici believe that the Court of Appeal's reasoning distorts the plain

---

[2] Unless otherwise stated, all statutory references are to the California Business and Professions Code.

language, purpose and function of the UCL and invents baseless jurisdictional and constitutional obstacles. Adoption of the Court of Appeal's reasoning and conclusions will harm California consumers. As Justice William S. Dato recognized in his dissenting opinion, "The majority...decid[ed] the ill-framed legal issue in a manner that will materially impair the interests of California consumers by fundamentally altering the structure of consumer protection laws in this state." (*Abbott Laboratories v. Superior Court (Rackauckas)* (2018) 24 Cal.App.5th 1, 32, as modified on denial of rehg. (June 27, 2018) (dis. opn. of Dato, J.) ("*Abbott Labs*").)

ARGUMENT

In a split decision, the Court of Appeal held that the plain language of section 17204 cannot be constitutionally interpreted to grant local prosecutors the authority to seek restitution or civil penalties remedies beyond their jurisdictional borders. The majority determined that to do so would "usurp the Attorney General's statewide authority and impermissibly bind his sister district attorneys, precluding them from pursuing their own relief." (*Abbott Labs, supra,* 24 Cal.App.5th at p. 10.) This conclusion rests on two faulty premises:

1) that the state constitution prohibits the California Legislature from vesting local prosecutors with the ability to seek statewide relief when enforcing state law; and

2) that when local prosecutors enforce state law on behalf of the People they are nonetheless subject to the constitutional confines applicable to their municipal or county jurisdictions.

These premises are demonstrably wrong.

As discussed below, local prosecutors acting as the People of the State of California are not municipal or county actors, but state actors. As such, the constitutional limitations governing their jurisdictions are inapplicable. Extending the enforcement of a particular state law to local prosecutors enhances the Legislature's ability to have its consumer protection laws robustly enforced by a multitude of public law offices. This legislative choice does not undermine or usurp the Attorney General's role or function but rather fulfills the broad legislative and enforcement ambitions of the UCL.

I. THE CALIFORNIA LEGISLATURE DECIDED TO GIVE LOCAL PROSECUTORS THE SAME ENFORCEMENT AUTHORITY AS THE ATTORNEY GENERAL

A. The Plain Language Of The UCL Illustrates That The California Legislature Chose To Deputize Local Prosecutors To Represent The People And To Secure Statewide Remedies.

The California Legislature passed the UCL as a broad consumer protection statute and designated specific government officials with the authority to prosecute UCL cases on behalf of the sovereign, the People of the State of California.

Business and Professions Code section 17204 provides, in relevant part:

> Actions for relief pursuant to this chapter shall be prosecuted exclusively...by the Attorney General or a district attorney or by a county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, or by a city attorney of a city having a population in excess of 750,000, or by a city attorney in a city and county or, with the consent of the district attorney, by a city prosecutor in a city having a full-time city prosecutor in the name of the people of the State of California...

Courts have repeatedly recognized that local prosecutors and the Attorney General have coextensive authority to enforce the UCL. (See *Lavie v. Procter & Gamble Co.* (2003) 105 Cal.App.4th 496, 503 ["The Attorney General and district attorneys have an independent role in the enforcement of this state's false advertising laws. They are authorized to prosecute violations of the UCL criminally (see § 17500) and may also seek redress through the bringing of civil law enforcement cases seeking equitable relief and civil penalties beyond those available to private parties (see §§ 17203, 17206, 17535, 17536)."].)

The express statutory language confirms that the California Legislature wanted the UCL to be enforced by private and public law offices, and that it deputized and entrusted the Attorney General and numerous local prosecutors to represent the People.

The plain text of the UCL also provides for equitable injunctive and restitutionary relief. That relief is available to all UCL plaintiffs: public prosecutors and private litigants alike can seek these equitable remedies when the challenged business acts and practices justify this relief.

Section 17203 provides, in relevant part:

> Any person who engages, has engaged, or proposes to engage in unfair competition **may be enjoined in any court of competent jurisdiction**. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or **as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition**.

(emphasis added.)

Certain public prosecutors are also entitled to obtain civil penalties for UCL violations. Section 17206 provides, in relevant part:

> (a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars ($2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.
>
> . . .
>
> (c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

Nothing in the text of sections 17203 or 17206 mandates, prescribes, or implies a geographic limitation on the entitlement or award of injunctive relief, restitution, or civil penalties.[3]

---

[3] "Section 17203 permits the court, ancillary to its injunctive power, 'to restore to *any person in interest* any money or property, real or personal, which may have been acquired by means of' the unlawful or unfair practice. (§17203, italics added.) Section 17206 similarly authorizes the court to award a civil penalty for each UCL violation, 'recover[able] in a civil action brought . . . by the Attorney General [or] by any district attorney . . . .' (§ 17206, subd. (a).) Nothing in any of these statutes limits a county district attorney to prosecuting UCL actions on behalf of citizens of in that particular county. Nor does anything in the UCL restrict a district attorney to recovering restitution on behalf of only county residents." (*Abbott Labs, supra,* 24 Cal.App.5th at pp. 34-35 (dis. opn. Dato, J.).)

Sections 17203, 17204 and 17206's unambiguous language should be dispositive of their meaning. Where the statutory language is clear and unambiguous, as it is here, the plain meaning of the statute governs. (*Absher v. AutoZone, Inc.* (2008) 164 Cal.App.4th 332, 339.)[4] Here, there is no indication in the plain language of the UCL that the California Legislature intended to distinguish between public prosecutors.

And this is particularly telling given that the Legislature knows precisely how to invite Attorney General involvement in actions initiated by designated local prosecutors and how to limit their authority to bring those actions. (See *California v. M & P Investments* (E.D. Cal. 2002) 213 F.Supp.2d 1208); see also Code Civ. Proc., § 731 ["A civil action may be brought in the name of the people of the State of California to abate a public nuisance, as defined in Section 3480 of the Civil Code, by the district attorney or county counsel of any county in which the nuisance exists, or by the city attorney of any town or city in which the nuisance exists."].) In public nuisance, each delineated officer has a concurrent right to bring an action for a public nuisance existing within a town or city. Yet here the Legislature clearly and unambiguously chose to vest designated local prosecutors with the power to enforce the UCL, without geographic or remedial limitation on seeking statewide relief; the UCL's language confers equal power on public prosecutors to enforce its provisions.

---

[4] Further, the Legislature's chosen language is the most reliable indicator of its intent because "'it is the language of the statute itself that has successfully braved the legislative gauntlet.'" (*California School Employees Assn. v. Governing Bd.* (1994) 8 Cal.4th 333, 338, quoting *Halbert's Lumber, Inc. v. Lucky Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238.) 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.'" (*People v. Canty* (2004) 32 Cal.4th 1266, 1276, quoting *Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.)

B. The California Legislature Also Chose To Vest Private Parties With The Ability To File Actions To Enforce The UCL And Address Statewide Violations Of Law.

Prior to 2004, the UCL granted private parties the ability to bring an action without needing to show injury or damage, and to seek collective remedies without obtaining class certification. This is consistent with the California Legislature's desire to provide for a wide-reaching and vigorous consumer protection enforcement regime. It is incongruous to imagine that the Legislature intended for private litigants to seek and secure statewide remedies but sought to cabin the powers of local prosecutors to achieve those same ends.

Yet, in 2004, the landscape of UCL cases changed. When the voters adopted Proposition 64, they amended section 17203 to explicitly state that private litigants would need to show injury or damage to have standing to bring UCL cases, imposing new standing requirements that only applied to private parties and not public prosecutors. Proposition 64 gave the Attorney General and local public officials the *sole* responsibility to prosecute actions on behalf of the general public and required that civil penalties collected be used for the enforcement of consumer protection laws, rather than for more general purposes. "'[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' 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.'" (*Californians For Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 228, citations omitted.) By passing Proposition 64, California voters chose to favor public prosecutions over private actions, ratifying local

government UCL prosecutions and enhancing governments' tools to bring and fund these cases.

Yet as illustrated below, the Court of Appeal rejected the UCL's plain reading, holding that constitutional and jurisdictional concerns require that a geographic limitation be inferred. This decision not only undermines the power of the California Legislature to choose who can enforce state law, but usurps the Legislature's ability to implement reasoned, balanced, and clear policy objectives.

As Justice Dato noted in his dissent:

> ...constitutional restrictions and limitations on the Legislature's power "are to be construed strictly, and are not to be extended to include matters not covered by the language used." (*Collins v. Riley* (1944) 24 Cal.2d 912, 916, 152 P.2d 169.) "If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action." (*Ibid.*; *Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal.3d 685, 691, 97 Cal.Rptr. 1, 488 P.2d 161.) Indeed, in seeking to avoid a supposed constitutional conflict, the majority's expansive interpretation of these constitutional provisions may have unwittingly created one. (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1218, 70 Cal.Rptr.2d 745 ["the only judicial standard commensurate with the separation of powers doctrine is one of strict construction to ensure that [constitutional] restrictions on the Legislature are in fact imposed by the people rather than by the courts in the guise of interpretation"].)

(*Abbott Labs, supra,* 24 Cal.App.5th at pp. 38-39 (dis. opn. Dato, J.).)

II. DESPITE THE UCL'S PLAIN MEANING, THE COURT OF APPEAL APPLIED CONSTITUTIONAL AVOIDANCE PRINCIPLES TO REWRITE THE STATUTE

The majority ruled that principles of constitutional avoidance require reading a geographic limitation into the monetary remedy provisions of the UCL to address the "constitutional and statutory jurisdictional" issues.

The Court of Appeal did not identify any applicable restrictions on the California Legislature's delegation and distribution of sovereign power. Rather the Court of Appeal pointed to constitutional concerns that appear rooted in 1) a misapplication of the California Constitution to municipal and county entities acting as the People, and 2) a misapprehension of the scope and breadth of the powers of the Attorney General.

A. A Local Prosecutor Acting As The People Is Acting In The Sovereign Capacity, Rather Than In A Municipal Or County Capacity.

When seeking to enforce the UCL, local prosecutors are expressly authorized by the California Legislature to act as the sovereign, not as cities and counties acting pursuant to their authority conferred by Article XI of the California Constitution. Abbott Labs concedes as much (Answering Brief at p. 33), although it disputes the scope of local prosecutors' abilities to act on behalf of the sovereign. Both state and federal courts have had no difficulty concluding that the People are the real party in interest in UCL and FAL cases brought by local prosecutors.[5]

---

[5] See, e.g., *GameStop, Inc. v. Superior Court (the People)* (2018) 26 Cal.App.5th 502, 511 [the People are the real party in interest in a UCL action brought by District Attorneys]; *Nguyen v. Superior Court* (1996) 49 Cal.App.4th 1781, 1788-1789 [same in a Red Light Abatement Law case brought by a District Attorney]; *County of Santa Clara ex rel. Marquez v. Bristol Myers Squibb Co.* (N.D. Cal., Sept. 17, 2012, No. 5:12-CV-03256-EJD) 2012 WL 4189126, at *4; [in FAL context, "the County of Santa Clara is only a nominal or formal party to the proceeding. It is the conduit upon which the real party is tied to this suit—namely the State of California. Since a State is not a citizen, and the County is a mere conduit, the presence of the State of California thus destroys complete diversity"]; *People of California v. Time Warner, Inc.* (C.D. Cal., Sept. 17, 2008, No. CV 08-4446 SVW(RZX)) 2008 WL 4291435, at *2 ["By enacting UCL and FAL, and expressly limiting any civil penalties to the enforcement of consumer protection laws, the State of California has made it an interest of the State to enforce compliance with consumer protection laws"]; *People of California ex rel. Herrera v. Check 'N Go of California, Inc.* (N.D. Cal., Aug. 20, 2007, No. C 07-02789 JSW) 2007 WL 2406888, at *4.

Federal and state cases have repeatedly acknowledged that various public law offices can represent the People—not only the Attorney General. For example, in *People v. Mendez* (1991) 234 Cal.App.3d 1773 ("*Mendez*"), the court held that "[t]he People are ordinarily bound by their stipulations, concessions or representations regardless of whether counsel was the Attorney General or the District Attorney." (*Id.* at p. 1783; see also *People ex rel. Gallegos v. Pacific Lumber Co.* (2008) 158 Cal.App.4th 950, 960-961.)

In a case filed by the San Diego City Attorney, the Ninth Circuit recognized that under the "plain language" of the UCL, actions brought by local prosecutors are "state enforcement action[s] rather than an action brought by the City for individual relief." (*People v. IntelliGender, LLC* (9th Cir. 2014) 771 F.3d 1169, 1177, fn. 7.) The Ninth Circuit rejected IntelliGender's attempt to limit San Diego's prosecutorial reach, concluding: "The clear statutory text of California Business and Professions Code § 17535, which provides, '[a]ctions for injunction under this section may be prosecuted by the Attorney General or any ... city attorney ... in this state in the name of the people of the State of California,' precludes IntelliGender's novel argument." (*Ibid.*)

More recently, a federal district court judge examined the role of a local prosecutor acting as the state in a consumer protection action. In a case involving the capture of Facebook consumer data by the British company Cambridge Analytica, Facebook argued that the very same constitutional and geographic concerns that purportedly limit the district attorney's power to seek equitable remedies in California UCL actions are applicable to the enforcement of Illinois consumer protection laws by the Cook County prosecutor. (*In re Facebook, Inc., Consumer Privacy User*

Profile Litigation (N.D. Cal. 2019) 354 F.Supp.3d 1122.) Facebook pointed to the Court of Appeal decision at issue here to support its argument that Cook County, not the State of Illinois, was the real party in interest for purposes of diversity jurisdiction. The Court held that these types of consumer actions are "the embodiment of a state enforcement action brought in the public interest" (*id.* at p. 1136) and held that Illinois was the real party in interest, finding:

> But just as a system of multiple prosecutors empowered to enforce civil fraud laws for Illinois makes sense from a legal and practical standpoint, it makes sense for California too. Therefore, the majority opinion in *Abbott Labs.*, which strained to narrow California's plain statutory language, is likely wrong. As the dissenting Justice wrote, "[c]onsistent with the UCL's broad remedial purposes and the perceived need for vigorous enforcement, there is nothing unconstitutional about the Legislature's decision to permit and encourage multiple public prosecutors with overlapping lines of authority on the theory that more enforcement in this context is better than less."

(*Id.* at p. 1133, citations omitted.)

To the extent the Court of Appeal's constitutional concerns were tethered to the notion that the Orange County District Attorney is a *county* actor (rather than a *state* actor) when enforcing the UCL, the great weight of authority rejects that premise.

B. *Safer v. Superior Court* Does Not Hinder The Legislature's Ability To Grant District Attorneys The Power To Seek Or Secure Statewide UCL Remedies.

The Court of Appeal and Abbott Labs rely on *Safer v. Superior Court* (1975) 15 Cal.3d 230 ("*Safer*") to argue that the district attorney lacks statewide enforcement authority because the UCL is not sufficiently explicit in conferring that authority. (See Abbott Labs Answering Brief at p. 36 [arguing that *Safer* and its progeny create a "strict interpretive rule"].)

However, as the Santa Cruz District Attorney demonstrates, *Safer* does not support such an interpretive rule. (Santa Cruz District Attorney Amicus Brief at pp. 20-21.)

In *Safer*, this Court found that the district attorney lacked authority to intervene in private civil litigation. (*Safer, supra,* 15 Cal.3d 230.) The principal basis for that holding was the "specificity of [the Legislature's] enactments" which, in piecemeal fashion, authorized a district attorney to participate in civil litigation. (*Id.* at p. 236.) Those statutes would be unnecessary if the Legislature intended for district attorneys to have plenary civil litigation authority. And none of them permitted the kind of intervention that the district attorney desired. (*Ibid.*) The Court also buttressed its reasoning with arguments that were specific to private litigation and contempt proceedings. (*Id.* at pp. 238-241.) Subsequently, this Court found *Safer* applicable to district attorneys' civil litigation authority outside of those particular contexts. (See, e.g., *Pacific Gas & Electric Co. v. County of Stanislaus* (1997) 16 Cal.4th 1143, 1156; *People v. McKale* (1979) 25 Cal.3d 626, 633.)

But it does not follow from a conclusion that district attorneys lack plenary authority in the civil context that statutes conferring authority on local prosecutors must be construed narrowly rather than in accordance with the usual rules. To the contrary, cases applying *Safer* have interpreted legislative intent in the normal ways. (See, e.g., *In re Dennis H.* (2001) 88 Cal.App.4th 94, 100-102; *Worth v. Superior Court* (1989) 207 Cal.App.3d 1150, 1152-1154.) The new interpretive rule sought by Abbott Labs would overturn the approach long followed by the Court of Appeal and create uncertainty as to the scope of the district attorney's authority to enforce the

law. (See Abbott Labs Answering Brief at pp. 42-43, fn. 20 [listing statutes authorizing the district attorney to enforce the law].)

This Court has already held that the UCL properly empowers the district attorney under *Safer*. (See *McKale*, *supra*, 25 Cal.3d at p. 633 ["While we held a district attorney may prosecute civil actions only when the Legislature has specifically authorized, specific power exists in the instant case. The district attorney is expressly authorized to maintain a civil action for either injunctive relief or civil penalties for acts of unfair competition."].) And interpreting the text of the UCL faithfully would in no way make any other statute superfluous.

C. *Hy-Lond* Cannot Be Read To Bar Local Prosecutors From Securing Statewide Remedies, As The Attorney General's Briefing In That Case Makes Clear.

The majority opinion relied heavily on *People v. Hy-Lond Enterprises, Inc.* (1979) 93 Cal.App.3d 734 ("*Hy-Lond*") to support its jurisdictional and constitutional arguments. As the majority opinion recognized, *Hy-Lond* stands for the undisputed proposition that a local prosecutor cannot bind a state agency to a settlement, nor waive liability for future UCL violations. (*Abbott Labs*, *supra*, 24 Cal.App.5th at pp. 23-24 [noting that the judgment purported to immunize *Hy-Lond* "from future unfair competition lawsuits" and designated the Napa County District Attorney ("Napa DA") as "the exclusive government agency that may enforce the provisions" of the injunction].)

Yet the majority improperly extended *Hy-Lond*'s principles to bar a district attorney's unilateral effort to seek restitution and civil penalties for UCL violations occurring outside his or her own county jurisdiction. (*Abbott Labs*, *supra*, 24 Cal.App.5th at p. 25.) This was error. *Hy-Lond*'s holding was limited to the inability of local UCL prosecutors to usurp the

powers of a *state regulatory agency*, to grant immunity, or to contravene the mutual enforcement provisions codified in section 17207. (See Santa Cruz District Attorney Amicus Brief at pp. 17-21.) These limitations are confirmed by the arguments the Attorney General *actually* made in his *Hy-Lond* briefs.

Hy-Lond arose out of the State Department of Health Services' ("DHS") investigation of Hy-Lond's convalescent hospital in the city of Napa. DHS investigated the hospital and issued a report finding "87 noncompliances with state and federal law." (*Hy-Lond*, *supra*, 93 Cal.App.3d at p. 739.) This report was referred to the Napa DA, and became the basis of the Napa DA's original complaint against Hy-Lond. (*Id.* at pp. 740, 746, fn. 6.) The Napa DA subsequently filed a first amended complaint that covered not only the Napa city hospital but also seventeen other facilities located in twelve different California counties. (*Id.* at p. 740.)

Shortly after Hy-Lond filed its answer (*Hy-Lond*, *supra*, 93 Cal.App.3d at pp. 740-741), it entered into a stipulated judgment with the Napa DA. The stipulated judgment covered all of Hy-Lond's California facilities. As part of the judgment, Hy-Lond and the Napa DA agreed to a stipulated injunction with a minimum duration of four years. (*Id.* at p. 742, fn. 4.) That stipulated injunction purported to: limit the ability to enforce the injunction's provisions to the Napa DA alone, (to the exclusion of the Attorney General, other DAs, and any state administrative agency); grant Hy-Lond immunity for future actions of unfair competition; and limit enforcement of future violations. (*Id.* at pp. 741, fn. 1-2, 749 & fn. 7.)

Not surprisingly, the Attorney General challenged this stipulated judgment. But the Attorney General did so only "insofar as it severally

precludes both the Attorney General and the Department [of Health Services] from performing statutory duties." (*Hy-Lond*, *supra*, 93 Cal.App.3d at p. 739.) The Napa DA did not appear or defend the stipulated judgment on appeal. (*Ibid.*)

The parties' briefing from *Hy-Lond* highlights the Attorney General's narrow challenge to that judgment. Hy-Lond's respondent's brief states that, in addition to the provisions set forth above, its judgment with the Napa DA involved a settlement payment of $40,000 in full settlement of "all claims by the People of the State of California." (People's Motion for Judicial Notice in Support of Petition for Rehearing ("People's RJN") at RJN 030-031.)

Despite this fact, the Attorney General's briefing did not attack the scope of the release of past claims, or the fact that all the settlement proceeds were paid to the Napa DA. Rather, the Attorney General sought to set aside the judgment only "insofar as the judgment purports to preclude the [DHS] from performing its statutory duty" (People's RJN at RJN 010) and "to the extent it purports to curtail the statutory powers of the Attorney General and other public officers." (*Id.* at RJN 018.) Despite acknowledging that the $40,000 settlement payment was made to Napa County (*id.* at RJN 021), nowhere in his briefs did the Attorney General raise any issue about the Napa DA's receipt of a $40,000 settlement payment in exchange for settlement of "all claims" by the People. (See *id.* at RJN 006-023 [opening brief], 064-084 [reply].) And the Attorney General of course did not raise any issue about the court's ability to award statewide restitution in *Hy-Lond*, since the settlement in question did not involve the payment of any restitution. (See *ibid.*; see also *Abbott Labs*, *supra*, 24 Cal.App.5th at p. 36 (dis. opn. of Dato, J.) ["Restitution was not

at issue [in *Hy-Lond*], and no one challenged the District Attorney's ability to seek civil penalties for violations occurring outside of Napa County."].)

Instead, the Attorney General's concern was that the settlement purported to make the Napa DA the only public official who could enforce the terms of the injunction in the event of future violations. This provision of the settlement directly conflicted with the UCL's statutory enforcement provisions for violations of an injunction. Those provisions allow the Attorney General and any designated local prosecutor to bring actions for violations of UCL injunctions. (People's RJN at RJN 018-020, quoting § 17207.)

In addition, the Attorney General's briefing addressed the potential res judicata effect of a judgment in a UCL case brought by a district attorney. "It is certainly true that when a district attorney obtains a judgment in an 'unfair competition' action, neither the Attorney General nor any other district attorney could bring another 'unfair competition' action based on the same facts." (People's RJN at RJN 021.) The Attorney General expressed no concern about this concept. Instead, he went on to emphasize that "the evil of the stipulated judgment in this case is that it, in legal effect, enjoins the Attorney General and every district attorney from bringing any statutorily authorized actions for *any future violations* of the law, as long as the injunction is in effect." (*Ibid.*, emphasis added.)

In his reply brief, the Attorney General expanded on this point by noting that if the injunction entered in Napa County was subsequently violated in Santa Clara County, either the Attorney General or the Santa Clara District Attorney would have independent standing to "bring an action in Santa Clara County Superior Court to collect the statutory penalty." (People's RJN at RJN 070.) The Attorney General then went on

to note that "[i]t is true, of course, that the District Attorney of Napa County is also given authority to bring such an action in Napa County and that, if he was the first to file, his doing so would preclude any other action based on the same violation." (*Ibid.*) The Attorney General's briefing in *Hy-Lond* thus expressly recognized the possibility that, once an injunction was in place, a district attorney in one county (there, Napa) could "of course" recover a penalty for a violation occurring in another county.

Ultimately, the *Hy-Lond* court agreed that the stipulation's overbroad injunctive provisions robbed DHS of the authority to oversee and enforce its regulations against Hy-Lond's state-licensed skilled nursing facilities. The stipulation purported to grant immunity from future offenses, and attempted to make the Napa DA the sole enforcer of the injunction. (*Hy-Lond*, *supra*, 93 Cal.App.3d at p. 753.) The court held that the trial court was "charged with notice that the Department was authorized and directed by law to control the operation and licensing of the respondent's skilled nursing facilities [], and that there was no power in the court to restrain the exercise of that power on the stipulation of the district attorney." (*Ibid.*, citations omitted.) The Attorney General's briefing illustrates that any discussion of the "geographic" breadth of the injunction in *Hy-Lond* was plainly dicta and that the Attorney General took no issue with Napa County's representation of the People or the award of statewide civil penalties to the Napa DA.

"It is axiomatic that language in a judicial opinion is to be understood in accordance with the facts and issues before the court. An opinion is not authority for propositions not considered." (*Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1999) 19 Cal.4th 1182, 1195.) Accordingly, Justice Dato's dissent here was correct when it observed that

"[a]ny musings by the *Hy-Lond* court about territorial limitations on the authority of the county district attorney are just that—musings." (*Abbott Labs, supra,* 24 Cal.App.5th at p. 37 (dis. opn. of Dato, J.).)

The *Hy-Lond* court's concerns about potential conflicts of interest cannot be read to invalidate the very statewide remedies that the text of the UCL provides. This is especially true when *Hy-Lond*, a singular forty-year-old decision, is read in the context of the issues the parties actually addressed in their briefs. Any attempt to go beyond this holding and recast *Hy-Lond* as a jurisdictional bar to statewide monetary remedies is a vast and unjustified expansion of the actual holding of *Hy-Lond*.

D. The California Legislature's Grant Of Authority To Local Prosecutors To Seek Statewide Remedies Does Not Usurp The Attorney General's Constitutional Powers Or The Rights Of Other Jurisdictions.

The Court of Appeal's opinion focused on the constitutional characterization of the Attorney General as the "chief law officer."

> [T]he law does not grant the District Attorney in this case authority to unilaterally pursue statewide monetary relief in the name of the state, as such a grant would permit the Legislature to usurp the Attorney General's constitutional authority as the state's chief law officer, and allow the district attorney of one county to impermissibly compromise and bind the Attorney General and the district attorneys of other counties.

(*Abbott Labs*, *supra*, 24 Cal.App.5th at pp. 25-26.)

Yet the Court of Appeal offered little authority to support the conclusion that the nature of the Attorney General's role necessarily restricts the California Legislature from delegating sovereign power to local prosecutors to enforce state law.

In both the criminal and civil contexts, the Attorney General has broad power to prosecute independently of the district attorney. The Attorney General can also take over any local investigation or prosecution.

(Gov. Code, § 12550 [the Attorney General "may, where he deems it necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction."]; see also *People v. Honig* (1996) 48 Cal.App.4th 289, 354-355 ["[Article V, section 13 of the California Constitution] confers broad discretion upon the Attorney General to determine when to step in and prosecute a criminal case"].) In criminal cases, California Penal Code section 923 specifically authorizes the Attorney General to appear in front of a grand jury without the district attorney's consent, impanel special grand juries, and impanel, under certain circumstances, special statewide grand juries.

For civil cases, the Attorney General has independent prosecution powers. *D'Amico v. Board of Medical Examiners* stated that as the Chief Law Officer, the Attorney General "possesses not only extensive statutory powers but also broad powers derived from the common law relative to the protection of the public interest." ((1974) 11 Cal.3d 1, 14, citing *Pierce v. Superior Court* (1934) 1 Cal.2d 759, 761-762.)

However, while the Attorney General has significant power to independently pursue a case or to supersede local prosecutions, the Attorney General has very little ability to actually direct district attorney actions. As the Ninth Circuit has noted: "Though the Attorney General 'shall have direct supervision over every district attorney and sheriff,' the Attorney General's control over the district attorney is quite limited: he or she is limited to requiring a district attorney to 'make reports.'" (*Goldstein v. City of Long Beach* (9th Cir. 2013) 715 F.3d 750, 756, citations omitted.) Accordingly, the Ninth Circuit explained that if the Attorney General was dissatisfied with the district attorney's course of action, there is only one meaningful remedy: "If the Attorney General believes a district attorney is

not adequately prosecuting crime, the Attorney General is not given the power to force a district attorney to act or adopt a particular policy, but instead may step in and 'prosecute any violations of law' himself or herself." (*Id.* at p. 757, citations omitted.)

Although these cases cement the Attorney General's considerable powers, they do not show that the Attorney General's constitutional powers are exclusive or trump a specific legislative grant. And this is because the Attorney General's constitutional role is not at the expense of, or to the exclusion of, other actors. Many California laws, like those cited by Abbott Labs, vest local prosecutors with the ability to bring cases on behalf of the People. (Abbott Labs Answering Brief at pp. 42-43, fn. 20.)

In addition, there are specific cases that confirm the Legislature's ability to delegate sovereign powers to county actors. "The state may, through its Legislature, and in the exercise of its sovereign power and will, in all cases where the people themselves have not restricted or qualified such exercise of that power, apportion and delegate to the counties any of the functions which belong to it." (*Sacramento County v. Chambers* (1917) 33 Cal.App. 142, 149.)

And the Attorney General himself has acknowledged the California Legislature's important role in protecting the rights of Californians. Recently, Attorney General Becerra championed legislation amending the California Consumer Privacy Act, which gives California consumers the broad ability to enforce the data-protection law, "arguing that his office doesn't have the resources to enforce the...law by itself."[6] Attorney

[6] Miller, *Let Consumers Sue Under New Data Privacy Law, Becerra's Office Tells State*, The Recorder (Feb. 20, 2019) <https://www.law.com/therecorder/2019/02/20/let-consumers-sue-under-new-data-privacy-law-becerras-office-tells-state/> [as of March 25, 2019].

General Becerra continued, "I don't think the Legislature wants only the attorney general's office to be able to protect people's rights."[7]

Notwithstanding this considerable authority, the Court of Appeal incorrectly characterized the Attorney General's powers as necessarily overarching and plenary—a characterization that led to the decision's constitutional error. Both the Attorney General and the other government prosecutors derive their UCL enforcement authority from the same place: the text of the UCL. The Legislature granted the Attorney General and the other local prosecutors this standing concurrently, without distinction. The Court of Appeal strained to impose a prosecutorial hierarchy where none exists and none needs to exist.

Perhaps the Court of Appeal's decision was animated by worries about prosecutorial overreach. But those concerns are also unfounded, because there are significant checks to prevent the concerns the Court of Appeal may have had regarding overreach by any one local prosecutor. For example, if a local prosecutor enters into a settlement that raises the Attorney General's concerns, the Attorney General can move to set aside the settlement pursuant to Code of Civil Procedure section 663. This is precisely what happened in *Hy-Lond*. (*Hy-Lond, supra*, 93 Cal.App.3d at p. 745.)

Similarly, if the Attorney General is sufficiently interested in a pending UCL case brought by a local prosecutor, the Attorney General can take over that prosecution pursuant to Government Code section 12550, or seek to intervene in it pursuant to Code of Civil Procedure section 387. Or the Attorney General could file his own UCL action, and move to

---

[7] *Ibid.*

coordinate the pending matters pursuant to Code of Civil Procedure section 404 et seq. Other local prosecutors could follow this path as well. When multiple public prosecutors sue, they are authorized to divide any award of civil penalties amongst them "as approved by the court." (Gov. Code, § 26506.)

The Attorney General surely occupies an important role in the enforcement of state law and possesses a measure of supervisory power enshrined in the California Constitution. But neither the Court of Appeal nor Abbott Labs cite to any authority that supports the notion that the role of the Attorney General is constitutionally compromised by allowing local prosecutors the ability to seek and secure statewide UCL remedies. Where the power of a local prosecutor to bring a UCL action has been questioned, courts have re-affirmed the broad authority of the People to bring such actions through a statutorily designated local public prosecutor—even when a state agency enters the fray to challenge such authority. (See *Blue Cross of California, Inc. v. Superior Court* (2009) 180 Cal.App.4th 1237, 1256-1257 [rejecting challenge to city attorney's power to bring 17200 suit related to rescission of insurance claims and pointing to broad language of UCL empowering such actions]; see also *Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 501 [UCL plaintiff's "request for injunctive relief also would not require the trial court to assume or interfere with the functions of an administrative agency" where the agency was charged with enforcing state law predicates of the UCL suit].)

Lastly, there is no authority supporting the constitutional fear that allowing local prosecutors to seek statewide monetary remedies will "impermissibly compromise and bind" other local prosecutors. (*Abbott Labs*, *supra*, 24 Cal.App.5th at p. 26.) Practically, if one district attorney is

concerned about another district attorney's UCL suit because the suit seeks penalties for violations occurring in the first district attorney's county, the concerned district attorney can file his or her own suit in the name of the People and seek a share of any penalty award. By choosing not to file a UCL action of their own, local prosecutors are effectively consenting to the award of statewide UCL penalties *for past violations* to the local prosecutor(s) who did file the UCL action.[8]

III. THE COURT OF APPEAL'S JURISDICTIONAL CONCERNS WERE UNFOUNDED AND ARE MORE APPROPRIATELY ADDRESSED BY VENUE

The majority's jurisdictional concerns were somewhat opaque and ultimately internally inconsistent. The majority suggested that the UCL's territorial silence is not enough to permit statewide monetary relief, holding that a "statute must do so specifically" to support extending statewide remedies to local prosecutors. (*Abbott Labs*, *supra*, 24 Cal.App.5th at p. 28.) Yet, this argument is at odds with the majority's constitutional holding. If the California Legislature is constitutionally precluded from authorizing local prosecutors to secure statewide monetary relief, a mere clarifying amendment conferring explicit statewide jurisdiction would not allay the constitutional concerns. In other words, if the Court of Appeal is constitutionally correct, then the specificity of the statutory language scarcely matters as any extension of statewide remedies to prosecutors other than the Attorney General would be insufficient to overcome the constitutional problem.

---

[8] However, as demonstrated by *Hy-Lond*, local prosecutors can never waive their ability to sue for future violations. And they also always retain their ability to sue to enforce the terms of an injunction entered in any prior UCL action. (See § 17207, subd. (b).)

Curiously, the majority singled out local prosecutors' abilities to secure California-wide restitution and civil penalties, yet did not address any jurisdictional issues arising out of statewide injunctive relief. The majority in fact qualified its analysis: "Whether the UCL empowers a district attorney to obtain statewide injunctive relief was not a subject of petitioners' motion to strike below, and it is not now before us. We do not address the issue of injunctive relief or the attendant civil penalties authorized in section 17207 for violations of UCL injunctions." (*Abbott Labs*, *supra*, 24 Cal.App.5th at p. 748, fn.14.) The issue of statewide injunctive relief is nevertheless arguably impacted by the majority's ruling. While Abbott Lab's motion to strike identified civil penalties and restitution as its targets, by seeking to strike all references to any statewide activities it also necessarily attacked any request for a statewide injunction. (See *id.* at pp. 32-33 (dis. opn. of Dato, J.).)

This betrayed an error in the majority's approach. The majority examined whether constitutional and jurisdictional principles counsel reading a geographic limitation into the UCL. Yet, by ignoring injunctive relief, the majority did not consider whether there was a basis to distinguish between injunctive and other forms of relief provided by the UCL; and if not, whether its interpretation would be sustainable if applied to injunctive relief.[9] If the majority's reasoning is accepted, it is difficult to imagine how

[9] Notably, section 17207 subdivision (b) provides that when an injunction has been issued in the name of the People, any designated public prosecutor may sue to enforce the injunction "without regard to the county from which the original injunction was issued." (§ 17207, subd. (b).) In order for an injunction to be enforced beyond the jurisdiction in which it was issued, the injunction's scope must necessarily extend beyond the locality in which it was issued. Section 17207 would make no sense if injunctions were limited geographically. (See *People v. Health Laboratories of North America, Inc.* (2001) 87 Cal.App.4th 442, 446-447, 450.)

the articulated jurisdictional and constitutional infirmities would not taint any request or award of statewide injunctive relief in an action brought by a local prosecutor.

The Court of Appeal's jurisdictional concerns are more appropriately addressed by traditional concepts of venue. Section 393 of the California Code of Civil Procedure provides that in actions "[f]or the recovery of a penalty or forfeiture imposed by statute," "the county in which the cause, or some part of the cause, arose, is the proper county for the trial." Thus, if a UCL action is brought by an overzealous local prosecutor from an area that has no connection to the targeted activity, the remedy is to transfer venue of the case to a county that does. There would be no basis under the UCL to dismiss such an action for lack of jurisdiction, because the prosecuting agency is fully authorized to bring it in the name of the People, and the transferee court, being "a court of competent jurisdiction", is fully authorized to hear it. (§ 17204.)

Further, the "some part of the cause" standard fully accords with the UCL's larger purpose. On the one hand, it would make little sense for an authorized prosecutor to bring a UCL action completely unrelated to the prosecutor's home venue. On the other hand, if a corporation's illegal business is hurting consumers in a number of venues, including the prosecutor's, then that prosecutor can sue in the prosecutor's home venue and transform that local pain into a statewide victory for all California consumers.

The California Legislature had little need to be more explicit about geography in the UCL when reasonable and rational venue limits would take hold by default. The Legislature understood that the Code of Civil Procedure already had a remedy for overreach, especially when read

together with section 17206(c), which requires that monetary penalties obtained be remitted, at least in part, to the county where the judgment was entered. A local prosecutor from a city or county that is wholly disconnected from the targeted activity has no incentive to bring such a case, knowing that it would be transferred to a different venue.

IV. THE COURT OF APPEAL'S REASONING ROBS COURTS OF THEIR EQUITABLE POWERS TO METE OUT REMEDIES THAT SUIT THE VIOLATIONS ALLEGED

California courts have a crucial role in determining and awarding equitable remedies, including injunctive, restitutionary, and civil penalty relief in public UCL prosecutions. (See, e.g. *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 330, fn. 15 [it is "the trial court's role to exercise its considerable discretion to determine which, if any, of the various equitable and injunctive remedies provided for by sections 17203 and 17535 may actually be warranted in a given case"].)

Although the Court of Appeal raised no concern about the implication of its decision on the courts, the consequences will significantly restrain judicial equitable powers. California state courts, like federal courts, have broad inherent powers to fashion injunctive relief deriving from a strong tradition at common law.[10] (*Wickersham v. Crittenden* (1892) 93 Cal. 17, 32; cf. *Hecht Co. v. Bowles* (1944) 321 U.S. 321, 329.) In addition to the inherent power of the court, the UCL expressly provides

[10] The scope of a court's injunctive power is not geographically bounded; so long as a court has personal jurisdiction over a defendant, it may grant and enforce even an out-of-state injunction or one otherwise beyond even the court's "territorial jurisdiction." (*Pines v. Tomson* (1984) 160 Cal.App.3d 370, 400, quoting *Allied Artists Pictures Corp. v. Friedman* (1977) 68 Cal.App.3d 127, 137; see also *People ex rel. Mosk v. Nat. Research Co. of Cal.* (1962) 201 Cal.App.2d 765, 772 ("*Mosk*").)

courts with extraordinarily broad discretion to fashion remedies for unfair competition offenses in particular.[11]

The California Legislature through the UCL vests courts with broad powers to mete out restitution to victims of unlawful or unfair business practices. (§ 17203 [courts "may make such orders or judgments...as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition"]; see also *People v. Superior Court* (*Jayhill*) (1973) 9 Cal.3d 283, 286.)[12]

Courts also possess great discretion in determining what constitutes a violation and what amount of penalty to impose, though they may not decline to award penalties where a violation is found. (*People v. Custom Craft Carpets, Inc.* (1984) 159 Cal.App.3d 676, 686; see also *People v. Nat. Assn. of Realtors* (1984) 155 Cal.App.3d 578, 585.) This discretion to award equitable monetary and injunctive relief has never been dependent on the identity of the government prosecutor. Yet to accept the majority opinion, in actions brought by local prosecutors only, courts would be deprived of the ability to consider the breadth of violations and the factors

---

[11] When crafting California's consumer protection laws, "the Legislature ... intended by ... sweeping language to permit tribunals to enjoin ongoing wrongful business conduct in whatever context such activity might occur." (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 111 [discussing predecessor statute to the UCL]; see also *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180; *Mosk*, *supra*, 201 Cal.App.2d at p. 772, citations omitted ["it would be impossible to draft in advance detailed plans and specifications of all acts and conduct to be prohibited . . . since unfair or fraudulent business practices may run the gamut of human ingenuity and chicanery"].)

[12] "The UCL is an exceedingly broad remedial statute designed to encourage multiple avenues of enforcement." (See *Abbott Labs, supra,* 24 Cal.App.5th at p. 35 (dis. opn. of Dato, J.), citing *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949-950.)

enumerated in section 17206 subdivision (b) when evaluating the appropriate amount of penalty to impose.[13]

Although the Court of Appeal did not address this point, Abbott Labs concedes that "a public prosecutor, and indeed any private plaintiff with standing, can obtain an order enjoining a defendant from violating the UCL." (Abbott Labs Answering Brief at p. 44.) Abbott Labs argues and the Court of Appeal held, however, that statewide restitution is somehow constitutionally and jurisdictionally inappropriate. This argument makes little sense. The power of the courts to issue statewide injunctions and order statewide restitution to victims in UCL and FAL actions both spring from the same source: Sections 17203 and 17535. Neither of those sections places any geographic limitations on these powers. Further, to accept Abbott Labs' and the majority's arguments would mean that a state court could not enjoin a defendant from violating the UCL everywhere in the state when the conduct is unlawful everywhere in the state and where the same conduct occurred everywhere in the state.

Furthermore, to the extent the Court of Appeal was concerned about the constitutional and jurisdictional limitations on extraterritorial relief, it makes no sense to conclude that local prosecutors could pursue statewide injunctive relief but could not seek statewide restitutionary relief.

---

[13] "The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth." (§ 17206, subd. (b).)

V. THE COURT OF APPEAL'S INTERPRETATION OF THE UCL WILL LEAD TO ABSURD RESULTS THAT WILL HARM CALIFORNIA CONSUMERS

The majority's interpretation of the UCL would render the procedure for local UCL prosecutions absurd. For instance, imagine that the Orange County District Attorney prevails in his suit against Abbott Labs here based on evidence of uniform statewide business practices. After judgment, the People would achieve a statewide injunction against Abbott Labs to prevent future violations, but only geographically limited restitution for Orange County residents, and civil penalties likewise limited to violations occurring in Orange County. Then, each of the other 57 California counties would have to bring similar actions against Abbott Labs to remedy the same harm. However, under principles of res judicata, Abbott Labs would be unable to re-litigate the issue of whether its statewide practices violated the UCL. Each subsequent action would be limited to a penalty-phase assessment of restitution and penalties. Without assuming the Attorney General's participation in each UCL action, Abbott Labs' theory would have local prosecutors—and the courts—chasing enforcement around the state, at least in those venues where prosecutors had the time and resources to pursue such claims. Such a regime would indeed be absurd, and would waste judicial resources, as well as those of local prosecutors and defendants, and likely to lead to inconsistent relief. (See *In re J.W.* (2002) 29 Cal.4th 200, 209-210 [holding that courts should avoid readings of statutes that lead to absurd consequences].)

The majority's opinion also called into question the dozens of settlements and negotiated stipulated injunctions, entered into by local prosecutors, which secured statewide restitution and civil penalty relief. Would those orders be set aside? Would those settlements be voided?

Further, the UCL is by no means the only time that local prosecutors are asked to take action as the sovereign. As discussed above, there are other examples of state laws that local prosecutors are charged with enforcing that would be impacted if territorial limitations were put in place: for example, statutes passed by the California Legislature to protect Californians from fraud and abuse would be impacted. (See Immigration Consultants Act, Bus. & Prof. Code, § 22446.5, subd. (c).)

And consider when a municipal or county employee is given the statutory ability to act for the sovereign. Will those employees have to operate within constitutional and geographical limitations applicable to their local jurisdictions? Could that affect the ability of peace officers to affect arrests of criminals outside of the peace officer's jurisdiction when harm is imminent? (See Penal Code, § 830.1.)

If the Court of Appeal's reasoning and decision stands, it will send a message to California lawmakers that they are not free to choose who can enforce California law. And it will dictate to state court judges that the scope and breadth of their equitable powers are secondary to those of the Attorney General. To impose legislative and enforcement limitations on the UCL where neither the plain language, nor constitutional concerns, nor jurisdictional limits counsel for such, will only serve to erode the effectiveness of California's consumer protection efforts and undermine the legislative and judicial branches of government.

CONCLUSION

When it enacted the UCL, the California Legislature recognized that civil enforcement over the diverse and ever-expanding California economy required a multifaceted, nonhierarchical approach. For all of the reasons

discussed above, this Court should reverse the Court of Appeal's decision and reaffirm the broad authority granted by the Legislature in the UCL to local prosecutors and courts to protect California businesses and consumers from unlawful, unfair and fraudulent activities.

March 25, 2019

DENNIS J. HERRERA
City Attorney
OWEN J. CLEMENTS
Chief of Special Litigation
YVONNE R. MERÉ
Chief of Complex and Affirmative Litigation

By: _____
YVONNE R. MERÉ
Attorneys for the San Francisco City Attorney's Office

MIKE FEUER
City Attorney for the City of Los Angeles

By: */s/ Michael M. Walsh*
Michael M. Walsh
Deputy City Attorney

MARA W. ELLIOT
City Attorney for the City of San Diego

By: */s/ Mark D. Ankcorn*
Mark D. Ankcorn
Chief Deputy City Attorney

RICHARD DOYLE
City Attorney for the City of San Jose

By: */s/ Nora Frimann*
Nora V. Frimann
Assistant City Attorney

BARBARA J. PARKER
City Attorney for the City of Oakland

By: */s/ Erin B. Bernstein*
Erin B. Bernstein
Supervising Deputy City Attorney

JAMES R. WILLIAMS
County Counsel for the County of
Santa Clara

By: */s/ Greta S. Hansen*
Greta S. Hansen
Chief Assistant County Counsel

LEAGUE OF CALIFORNIA CITIES

By: */s/ Alison E. Leary*
Alison E. Leary
Counsel

CALIFORNIA STATE ASSOCIATION
OF COUNTIES

By: */s/ Jennifer B. Henning*
Jennifer B. Henning
Litigation Counsel

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief has been prepared using proportionately double-spaced 13 point Times New Roman typeface. According to the "Word Count" feature in my Microsoft Word for Windows software, this brief contains 9,215 words up to and including the signature lines that follow the brief's conclusion.

I declare under penalty of perjury that this Certificate of Compliance is true and correct and that this declaration was executed on March 25, 2019.

DENNIS J. HERRERA
City Attorney
OWEN J. CLEMENTS
Chief of Special Litigation
YVONNE R. MERÉ
Chief of Complex and Affirmative Litigation

By: _____
YVONNE R. MERÉ
Attorneys for the San Francisco City Attorney's Office

PROOF OF SERVICE

I, Martina Hassett, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On March 25, 2019, I served the following document(s):

APPLICATION TO FILE AMICI CURIAE BRIEF; AMICI CURIAE BRIEF OF LOCAL PROSECUTORS, THE LEAGUE OF CALIFORNIA CITIES, AND THE CALIFORNIA STATE ASSOCIATION OF COUNTIES IN SUPPORT OF THE PEOPLE OF THE STATE OF CALIFORNIA

on the following persons at the locations specified by U.S. Mail:

KIRKLAND & ELLIS LLP
Michael J. Shipley
333 S. Hope Street
Los Angeles, CA 90071
Telephone: (213) 680-8400
Email: mshipley@kirkland.com

Attorneys for Petitioners Teva Pharms. USA, Inc.; Duramed Pharms., Inc.; Duramed Pharms. Sales Corp., and Barr Pharms. Inc.

MUNGER, TOLLES & OLSON LLP
Jeffrey I. Weinberger
Stuart N. Senator
Blanca F. Young
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Telephone: (213) 683-9100
Email:
Jeffrey.weinberger@mto.com
Stuart.senator@mto.com
Blanca.young@mto.com

Attorneys for Petitioners AbbVie Inc. and Abbott Laboratories

KIRKLAND & ELLIS LLP
Jay P. Lefkowitz
Adam T. Humann
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
Email: lefkowitz@kirkland.com
ahumann@kirkland.com

Attorneys for Petitioners Teva Pharms. USA, Inc.; Duramed Pharms., Inc.; Duramed Pharms. Sales Corp., and Barr Pharms. Inc.

BLANK ROME LLP
Yosef Adam Mahmood
2029 Century Park E F16
Los Angeles, CA 90067
Telephone: (424) 239-3400
Email:
YMahmood@blankrome.com

Attorneys for Petitioner Abbott Laboratories

ORANGE COUNTY DISTRICT ATTORNEY'S OFFICE
Anthony J. Rackauckas, District Attorney
Kelly A. Ernby, Deputy District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701
Telephone: (714) 834-3600
Facsimile: (714) 648-3636
Email: kelly.ernby@da.ocgov.com

Attorneys for The People: Real Party in Interest

ROBINSON CALCAGNIE, INC.
Mark P. Robinson, Jr.
Kevin F. Calcagnie
Daniel S. Robinson
Scot D. Wilson
19 Corporate Plaza Drive
Newport Beach, CA 92660
Telephone: (949) 720-1288
Facsimile: (949) 720-1292
Email:
kcalcagnie@robinsonfirm.com
mrobinson@robinsonfirm.com
swilson@robinsonfirm.com

Attorneys for The People: Real Party in Interest

LAW OFFICE OF VALERIE T. McGINTY
Valerie T. McGinty
524 Fordham Road
San Mateo, CA 94402
Telephone: (415) 305-8253
Email:
valerie@plaintiffsappeals.com

Attorneys for Consumer Attorneys of California – Amicus Curiae

CALIFORNIA DEPARTMENT OF JUSTICE
Office of the Attorney General
Xavier Becerra
Attorney General of California
Nicklas A. Akers
Senior Assistant Attorney General
Michelle R. VanGelderen
Supervising Deputy Attorney General
David A. Jones
Deputy Attorney General
300 South Sprint Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6351
Facsimile: (213) 897-4951
Email: David.jones@doj.ca.gov
Michele.vangelderen@doj.ca.gov

Attorney General of California – Amicus Curiae

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION
Mark L. Zahner, Chief Executive Officer
921 11th Street, #300
Sacramento, California 95814
Telephone: (916) 443-2017
Email: mzahner@cdaa.org

Attorneys for California District Attorneys Association – Amicus Curiae

SAN DIEGO COUNTY DISTRICT ATTORNEY'S OFFICE
Summer S. Stephan, District Attorney
Thomas A. Papageorge, Deputy District Attorney
330 W. Broadway, Suite 750
San Diego, CA 92101
Telephone: (619) 531-3971
Email:
thomas.papageorge@sdcda.org

Attorneys for California District Attorneys Association – Amicus Curiae

OFFICE OF THE SAN DIEGO CITY ATTORNEY
Mara W. Elliott, City Attorney
Mark D. Ankcorn, Chief Deputy City Attorney
Office of the San Diego City Attorney
1200 3rd Avenue, Suite 1100
San Diego, CA 92101
Telephone: (619) 533-5600
Email: mankorn@sandiego.gov
klturner@sandiego.gov
klorenz@sandiego.gov

Attorneys for the City Attorney of San Diego – Amicus Curiae

LOS ANGELES CITY ATTORNEY'S OFFICE
Michael Nelson Feuer, City Attorney
800 City Hall East
200 N. Main Street
Los Angeles, CA 90012
Telephone: (213) 978-8100
Michael.n.feuer@lacity.org

Attorneys for the City Attorney of Los Angeles – Amicus Curiae

Michael N. Feuer, City Attorney
Michael M. Walsh
Deputy City Attorney
Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, 17th Floor
Los Angeles, CA 90012
Telephone: (213) 978-1870
Email: michael.walsh@lacity.org

Attorneys for the City Attorney of Los Angeles – Amicus Curiae

LEAGUE OF CALIFORNIA CITIES
Alison E. Leary
Deputy General Counsel
League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814
Telephone: (916) 658-8200
Email: aleary@cacities.org

Attorneys for League of California Cities – Amicus Curiae

OFFICE OF THE SAN JOSE CITY ATTORNEY
Richard Doyle, City Attorney
Nora V. Frimann, Assistant City Attorney
200 E. Santa Clara Street
San Jose, CA 95113-1905
Telephone: (408) 998-3131
Email:
nora.frimann@sanjoseca.gov

Attorneys for the City Attorney of San Jose – Amicus Curiae

SANTA CLARA COUNTY OFFICE OF THE COUNTY COUNSEL
James R. Williams, City Attorney
Greta S. Hansen
Chief Assistant County Counsel
Laura S. Trice, Lead Deputy County Counsel
70 W. Hedding St.
East Wing, 9th Floor
San Jose, CA 95110
Telephone: (408) 299-5993
Email: laura.trice@cco.sccgov.org
greta.hansen@cco.sccgov.org

Attorneys for Attorneys for Santa Clara County Counsel – Amicus Curiae

CALIFORNIA STATE ASSOCIATION COUNTIES
Jennifer B. Henning, Litigation Counsel
1100 K Street, Suite 101
Sacramento, CA 95814
Telephone: (916) 327-7535
Email: jhenning@counties.org

Attorneys for California State Association of Counties – Amicus Curiae

HORVITZ & LEVY LLP
Jeremy B. Rosen
Stanley H. Chen
3601 West Olive Ave., 8th Floor
Burbank, CA 91505
Telephone: (818) 995-0800
Email: jrosen@horvitzlevy.com
schen@horvitzlevy.com

Attorneys for Chamber of Commerce of the United States of America; and California Chamber of Commerce – Amici Curiae

US CHAMBER LITIGATION CENTER
Janet Y. Galeria
1615 H Street, NW
Washington, DC 20062
Email: jgaleria@uschamber.com

Attorneys for Chamber of Commerce of the United States of America; and California Chamber of Commerce – Amici Curiae

CALIFORNIA CHAMBER OF COMMERCE
Heather L. Wallace
1215 K Street, Suite 1400
Sacramento, CA 95814
Telephone: (916) 444-6670
Email:
Heather.wallace@calchamber.com

Attorneys for Chamber of Commerce of the United States of America; and California Chamber of Commerce – Amici Curiae

Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013-1230
Telephone: (213) 269-6000

SANTA CRUZ COUNTY DISTRICT ATTORNEY
Jeffrey S. Rosell, District Attorney
Douglas B. Allen, Assistant District Attorney
701 Ocean Street, Room 200
Santa Cruz, CA 95060
Telephone: (831) 454-2930
Email:
Douglas.allen@santacruzcounty.us

Attorneys for Santa Cruz County District Attorney: Amicus Curiae

OAKLAND CITY ATTORNEY'S OFFICE
Barbara J. Parker, City Attorney
Maria S. Bee
Chief Assistant City Attorney
Erin B. Bernstein, Supervising Deputy City Attorney
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612
Telephone: (510) 238-6392
Email:
EBernstein@oaklandcityattorney.org

Attorneys for the City Attorney of Oakland – Amicus Curiae

Michele Van Gelderen
Supervising Deputy Attorney General
California Department of Justice
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 269-6000

Clerk of the Court
Court of Appeal of the State of California
Fourth District, Division 1
750 B Street, Suite 300
San Diego, California 92101
Telephone: (619) 744-0760

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
Telephone: (415) 865-7000

Filed Original and 13 Copies by Hand Delivery

Clerk of the Court
Hon. Kim G. Dunning
Department CX104
Superior Court of the State of California
For the County of Orange
751 West Santa Ana Boulevard
Santa Ana, CA 92701
Telephone: (657) 622-5304

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

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

Executed March 25, 2019 at San Francisco, California.

Martina Hassett
MARTINA HASSETT