

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

YVONNE R. MERÉ
OWEN CLEMENTS
DEPUTY CITY ATTORNEYS
Complex and Affirmative Litigation
Team

DIRECT DIAL: (415) 554-3874
E-MAIL: yvonne.mere@sfcityattf.org

August 9, 2018

Via Electronic Service and U.S. Mail

The Honorable Tani Cantil-Sakauye, Chief Justice,
and Honorable Associate Justices
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-3600

Re: *Abbott Laboratories v. Superior Court (People)*
California Supreme Court No. S249895
California Court of Appeal, Fourth Appellate District, Division 1, Case No. D072577
Civil Case No. 30-2016-00879117-CU-BT-CXC (Orange County Superior Court)

Amicus Letter Brief In Support of Petition for Review (Rule 8.500(g))

Dear Chief Justice Cantil-Sakauye and Honorable Associate Justices:

Amici Curiae the City Attorneys of San Francisco, Los Angeles, San Diego, and San Jose, the California State Association of Counties (“CSAC”), the League of California Cities (the “League”) and the Santa Clara County Counsel (collectively, “Amici”) respectfully submit this letter brief pursuant to California Rules of Court, rule 8.500(g) in support of the Petition for Review filed by the Orange County District Attorney’s Office, acting on behalf of the People of the State of California (the “People’s Petition”).¹ The People’s Petition seeks review of a published decision by Division One of the Fourth Appellate District. (*Abbott Laboratories v. Superior Court (the People)* (2018) 24 Cal.App.5th 1 (“*Abbott Labs*”).) Over a strong dissent, the majority of that court held that statewide monetary relief is not an available remedy in cases brought by local prosecutors, such as the Orange County District Attorney, under the Unfair Competition Law, Business and Professions Code section 17200 et seq. (the “UCL”).²

¹ The Filer of this Document attests that all signatories have consented and concurred to the filing of this document.

² All statutory references are to the California Business and Professions Code unless otherwise indicated.

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California Rules of Court, rule 8.500(b) vests this Court with the discretion to grant review “[w]hen necessary to secure uniformity of decision or to settle an important question of law.” The People’s Petition does just that. It raises an important and vital question of constitutional and statewide concern: do local prosecutors have the authority under the California Constitution and the UCL to secure restitution and civil penalties for statewide violations? Amici respectfully submit that the answer to this question is a resounding “yes” and that this issue fits squarely within California Rules of Court, rule 8.500(b).

As the Court of Appeal noted in its decision, “[w]hether a district attorney acting in the name of the People of the State of California may obtain restitution and civil penalties for UCL violations occurring outside his or her county **is in our view an important legal issue, and one that implicates constitutional principles.**” (*Abbott Labs, supra*, 24 Cal.App.5th at p. 15 (maj. opn.), emphasis added.)

It is imperative that this Court grant the People’s Petition and resolve these issues now. Otherwise, the authority of California Legislature to deputize local prosecutors to enforce violations of state laws such as the UCL will remain opaque. More pointedly, local prosecutors will be uncertain about the scope of their authority to bring UCL actions. And superior courts may refrain from ordering vital relief to consumers in UCL cases brought by local prosecutors. The chilling effect that *Abbott Labs* will have if not reviewed will seriously undermine the power of the California Legislature, the Legislative goals of ensuring robust public prosecution of UCL violations, and the courts’ broad powers to fashion appropriate monetary relief. (*People v. Superior Court (Jayhill Corp.)* (1973) 9 Cal.3d 283, 286 [restitution]; *People v. Custom Craft Carpets, Inc.* (1984) 159 Cal.App.3d 676, 686 [civil penalties].) This Court should grant the People’s Petition and resolve these uncertainties now.

I. AMICI’S INTEREST IN THIS CASE

Amici’s interest in the issues raised by the People’s Petition are manifest. The City Attorneys or County Counsels of San Francisco, Los Angeles, San Diego, San Jose, and Santa Clara represent five of the largest local jurisdictions in California. These Amici have devoted extensive resources to investigating and litigating consumer protection actions under the UCL and its sister statute, the False Advertising Law (the “FAL”). (§ 17500 et seq.) These 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. Their ability to bring cases of statewide significance, protecting consumers throughout California, may be sharply curtailed if the *Abbott Labs* decision is left in place, since that decision effectively

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eliminates the ability of local prosecutors to bring actions for statewide monetary relief pursuant to the UCL and the FAL.

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 Litigation Overview Committee, comprised of county counsels throughout the state. CSAC supports and coordinates litigation brought by its members, including many significant consumer protection cases. CSAC's Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties. The League is an association of 474 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.

II. THIS COURT SHOULD REVIEW THE COURT OF APPEAL'S NOVEL AND FAR-REACHING INTERPRETATION OF THE UCL'S REMEDIAL PROVISIONS.

A. The Court of Appeal's Decision Concludes that the California Legislature Does Not Have the Power to Choose Who Can Secure Statewide UCL Monetary Penalties.

The Court of Appeal's decision finds that the Attorney General is the only prosecutor who can secure statewide monetary remedies in UCL actions, limiting local prosecutors to monetary remedies within their respective geographic boundaries. The Court of Appeal counsels that to read the UCL in any other way would be to undermine the Attorney General's constitutional powers. Yet as discussed in further detail below, there is nothing in the text of the UCL that would indicate that the Legislature chose to limit local prosecutions, and nothing in the California Constitution that mandates this conclusion.

As Justice Dato noted in his dissent, "... the majority rely on a phantom constitutional concern to craft a cure that is worse than even the perceived disease.... Consistent 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." (*Abbott Labs, supra*, 24

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Cal.App.5th at p. 35 (dis. opn. of Dato, J.).) Justice Dato concluded that “... in seeking to avoid a supposed constitutional conflict, the majority’s expansive interpretation of these constitutional provisions may have unwittingly created one.” (*Id.* at p. 38.)

B. The Decision Below Will Harm Consumer Protection Efforts Throughout California.

The UCL is designed to protect California consumers from business acts or practices that are unlawful, unfair, fraudulent, and/or deceptive. And although private and public plaintiffs have 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. 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 hundreds of thousands of Californians. They have secured statewide injunctive and monetary relief, reforming business acts and practices that preyed upon innocent California consumers.

In recent years, defendants in UCL actions brought by local prosecutors have increasingly resorted to the tactic of challenging the local prosecutor’s ability to obtain statewide relief. (See People’s Petition at pp. 22-24 [discussing mixed results in several superior court cases].) Such defendants often profess that they are doing so out of respect for the statewide powers of the Attorney General, or to avoid friction between various local prosecutors. But Justice Dato, in his dissent, had no trouble pointing out “what is really going on here”:

[F]or a defendant in a state the size of California, a law enforcement action alleging a statewide unlawful business practice and seeking monetary relief creates, at least potentially, a substantial economic exposure. To the extent law enforcement can be Balkanized and monetary relief limited to local jurisdictions—especially early in the litigation—a defendant’s “management” of the exposure is greatly facilitated.

(*Abbott Labs, supra*, 24 Cal.App.5th at p. 32 (dis. opn. of Dato, J.).)

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Abbott Labs is the first Court of Appeal decision to analyze the issue of statewide monetary relief in a UCL case brought by a local prosecutor, and its rule prohibits superior courts from granting statewide restitution to consumers or award civil penalties based on statewide violations in such cases. Unless this Court grants review, this newly announced rule could bring statewide UCL enforcement by local prosecutors to a grinding halt. All superior courts in the state will be bound to follow the holding of *Abbott Labs*, since it would be “the only appellate court opinion in the books that had considered and passed upon this precise question.” (*Auto Equity Sales Inc. v. Superior Court* (1962) 57 Cal.2d 450, 454.) *Abbott Labs* itself emphasizes this outcome, and celebrates it, in its Answer to the People’s Petition. (*Abbott Labs’ Answer to People’s Petition* at p. 20.) Because of this Balkanization of the UCL’s remedies, local prosecutors may refrain from bringing many otherwise meritorious UCL cases. And it would potentially take years for this issue to percolate back up to a different panel of the Court of Appeal, or to this Court. In the meantime, UCL violators will enjoy a holiday from effective local UCL enforcement, and California consumers will not receive the protection they deserve.

This Court should grant review now to determine, conclusively, whether courts can award statewide monetary relief under the UCL in cases brought by local prosecutors. Review is especially important to protect the prerogative of the Legislature, which has expressly authorized local prosecutors to assist with the enforcement of the UCL and the FAL, and which has placed no geographic limits on the ability of the courts to grant complete relief in such cases.

C. The Text of the UCL Provides No Support for the Holding of *Abbott Labs*.

The fundamental problem with the majority decision in *Abbott Labs* is that nothing in the text of the UCL itself “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 p. 35 (dis. opn. of Dato, J.)) To the contrary, by enacting the UCL the California Legislature endowed specific government officials with authority to prosecute UCL cases on behalf of the People of the State of California. It imposed no geographical limits upon the scope of remedies, nor did it distinguish between the respective powers of designated government prosecutors.

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Section 17204, excerpted below,³ unambiguously bestows upon district attorneys, certain city attorneys, and the Attorney General coextensive authority to enforce the UCL on behalf of the People. Similarly, section 17203, also excerpted below,⁴ grants broad authority to any “court of competent jurisdiction” to enjoining UCL violations and to award restitution to “any person in interest.” Section 17206 authorizes courts to assess civil penalties of up to \$2,500 for violations in all actions brought in the name of the People. These sections “specifically and affirmatively authorized by statute” the statewide relief the People seek in this case. (Compare with Abbott Labs’ Answer to People’s Petition at p. 17 [professing an inability to find a source specifically authorizing the People’s action].) Nothing in the text of any of these sections suggests that courts may not award statewide relief in cases brought by local prosecutors, if such relief is appropriate based on the evidence presented. In many contexts, courts have broadly interpreted these provisions of the UCL. (See, e.g., *Loeffler v. Target Corp.* (2014) 58 Cal.4th 1081, 1125 [the UCL was intended to “permit tribunals to enjoin on-going wrongful business conduct in whatever context such activity might occur and to enable judicial tribunals to deal with the innumerable new schemes which the fertility of man’s invention would contrive.” [citation and quotations omitted]].)

Moreover, when the voters adopted Proposition 64 in 2004, they amended section 17203 to explicitly state that the new standing requirements that Proposition 64 imposed on private parties did not apply to public prosecutors. The Legislature (and the voters) have thus expressed a clear preference for robust public enforcement of the UCL.

Additional provisions of the UCL confirm that local government officials may seek remedies that extend beyond the geographic boundaries of their jurisdictions. For instance, section 17207, subdivision (b), provides that when an injunction has issued in

³ Section 17204 reads, in pertinent 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.”

⁴ Section 17203 provides that: “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.”

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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.) Perhaps in light of this provision, Abbott Labs conceded below that the Superior Court could enter a statewide injunction against it under section 17203. Why then should the court be unable to enter a statewide award of restitution (also under section 17203) or civil penalties (under section 17206)?

Had the Legislature wanted to limit local government prosecutions under the UCL to the jurisdictional boundaries of their counties or cities, it certainly knew how to do so. For example, the statute governing the abatement of public nuisances contains such an express limitation. District attorneys, city attorneys, and county counsel of any county or city “in which the nuisance exists” are authorized to bring actions in the name of the People to abate a public nuisance. (Code Civ. Proc., § 731.) But the Legislature chose *not* to so limit local prosecutions under the UCL. The Legislature simply did not create a hierarchy among public offices within the UCL, nor give the Attorney General exclusive authority to seek or approve statewide relief. When the Legislature omits a limitation from statutory language, there is a presumption that the Legislature intended not to impose that limitation. (*People v. Sinohui* (2002) 28 Cal.4th 205, 213; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 94-95.)

Other provisions of the UCL also place express limitations on certain public prosecutors. For example, section 17204 does not permit any city attorney to file a UCL action, but rather confers standing only on city attorneys from cities with populations exceeding 750,000 or a city attorney of a city and county. That same section puts limitations on actions filed by county counsels and full-time city prosecutors, requiring them to seek permission from the district attorney of their jurisdiction before commencing an action. The UCL and the FAL do not grant any similar powers to the Attorney General.

Relatedly, the UCL has express language regarding when the Attorney General is entitled to receive notice regarding a UCL proceeding: section 17209 mandates that copies of all appellate briefs must be served upon the Attorney General when the appeal involves a UCL violation. Similarly, where a locality sends a pre-litigation letter pursuant to section 17508, such letters must also be served upon the Attorney General. These provisions ensure that the Attorney General’s Office receives notice of, and an opportunity to weigh in on, significant UCL and FAL issues. But the Legislature did not

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see fit to add any further restrictions to the power of designated local prosecutors to seek statewide relief under the UCL and the FAL.

The Legislature thus knows precisely how to invite the Attorney General's involvement in UCL and FAL actions initiated by designated local prosecutors, and how to limit local prosecutors' authority to bring such actions. And the Legislature clearly and unambiguously chose to vest designated local prosecutors with the power to enforce the UCL and the FAL, without geographic or remedial limitations on seeking statewide relief. Despite this clear statutory language, *Abbott Labs* would impose a geographic boundary on local prosecutors. This outcome would rewrite the UCL's language to impose a limitation never adopted by the Legislature. Courts are not free to take such liberties in the guise of statutory interpretation. (See *People v. Superior Court (Pearson)* (2010) 48 Cal.4th 564, 571 ["we may not add to the statute or rewrite it to conform to some assumed intent not apparent from that language"].) This is especially true with respect to an important remedial statute like the UCL, which should be interpreted broadly to further the legislative goal of providing more effective consumer protection. (*Abbott Labs*, *supra*, 24 Cal.App.5th at p. 35 (dis. opn. of Dato, J.).)

D. Hy-Lond Does Not Bar Statewide Remedies.

In reaching its conclusion that courts could not award statewide monetary relief in UCL actions brought by local prosecutors, the *Abbott Labs* majority opinion relied heavily on *People v. Hy-Lond Enterprises, Inc.* (1979) 93 Cal.App.3d 734 ("Hy-Lond"). As the majority opinion recognizes, *Hy-Lond* stands for the undisputed propositions 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 (maj. opn.) [noting that the judgment purported to immunize Hy-Lond "from future unfair competition lawsuits" and designated the Napa County District Attorney as "the exclusive government agency that may enforce the provisions" of the injunction].) These were the issues addressed by *Hy-Lond*. Beyond that, *Hy-Lond* says little about the ability of local prosecutors to seek, or courts to award, statewide monetary relief for *past* violations of the UCL.

The majority opinion in *Abbott Labs* had "no difficulty applying *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." (*Id.* 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. As discussed below, these

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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' investigation ("DHS") of Hy-Lond's Napa City convalescent hospital. DHS investigated that 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 County District Attorney ("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 (*id.* 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 give the Napa DA the exclusive ability to enforce the injunction's provisions to the exclusion of the People more broadly and any state administrative agency, granted Hy-Lond immunity for future actions of unfair competition, and limited 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." (*Id.* at p. 739.) The Napa DA did not appear or defend the stipulated judgment on appeal. (*Ibid.*)

The parties' briefing from *Hy-Lond* makes clear the limited nature of the Attorney General's 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 Request for Judicial Notice in Support of Petition for Rehearing at RJN 030-031, emphasis added.)

Despite this fact, the briefs filed by the Attorney General 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" (*id.* 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

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\$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 ability of the court 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 district attorney to bring actions for violations of UCL injunctions. (*Id.* 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. (*Id.* at RJN 021, underlining in original.) 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.*, underlining in original.)

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." (*Id.* 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.

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Based on this briefing, the *Hy-Lond* court agreed that the stipulation’s overbroad injunctive provisions robbed the 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.)

Thus any discussion of the “geographic” breadth of the injunction in *Hy-Lond* was plainly dicta. The District Attorney in *Hy-Lond* had no power to grant immunity from state enforcement against *future* offenses, whether by the DHS or by the Attorney General—even as to future violations occurring within Napa County. Not even the Attorney General can grant immunity for future violations of the UCL. Former Attorney General Harris confirmed this rule in her amicus curiae brief in *Whole Foods*, which correctly states that “the government is prohibited from abdicating its police powers and granting future immunity.” (Petitioners’ Appen. at p. 142, citing *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800 and *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal.App.4th 172, 180-181.)

“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, the dissent in *Abbott Labs* was clearly 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* is read in the context of the issues the parties actually addressed in their briefs. Section 17207, discussed above, preserves the ability of the Attorney General and designated local prosecutors to enforce statewide injunctions, regardless of where the violations occur. For that reason, **no** public prosecutor has the ability to confer upon itself the role of sole enforcer of its injunctions. *Abbott Labs*’ 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*.

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When read in this context, and in light of the language of the UCL itself that is discussed above, *Hy-Lond* cannot carry the load that *Abbott Labs* puts on it. That singular, nearly forty-year-old decision cannot be stretched to invalidate the Legislature's grant of statewide UCL remedial power in cases brought by public prosecutors, including district attorneys and authorized city attorneys. Such a limitation can only be imposed by the Legislature, not the courts. Until the Legislature does so, the courts must enforce the existing statutory scheme as written. Accordingly, this Court should grant review to address this crucial issue now.

III. CONCLUSION

For the foregoing reasons, Amici respectfully request that the People's Petition for Review be granted.

Dated: August 9, 2018

Very truly yours,

DENNIS J. HERRERA
City Attorney for the City and County of
San Francisco

By: /s/ Yvonne R. Meré
Yvonne R. Meré
Chief of Complex and
Affirmative Litigation

CALIFORNIA STATE ASSOCIATION
OF COUNTIES

By: /s/ Jennifer Henning
Jennifer Henning
Litigation Counsel

LEAGUE OF CALIFORNIA CITIES

By: /s/ Alison Leary
Alison Leary
Counsel

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MIKE FEUER
City Attorney for the City of Los
Angeles

By: /s/ Michael Walsh
Michael Walsh
Deputy City Attorney
Civil Liability Appeals Division

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

By: /s/ Mark Ankcom
Mark Ankcom
Deputy City Attorney
Affirmative Civil Enforcement Unit

RICK DOYLE
City Attorney for the City of San Jose

By: /s/ Nora Frimann
Nora Frimann
Assistant City Attorney

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

By: /s/ Greta Hansen
Greta Hansen
Chief Assistant County Counsel

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PROOF OF SERVICE

I, Martina Hassett, declare as follows:

1. 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.

2. On August 9, 2018, I served the following document(s):

Amicus Letter Brief In Support of Petition for Review (Rule 8.500(g))

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

KIRKLAND & ELLIS LLP
Michael Shipley
333 S. Hope Street
Los Angeles, CA 90071
Telephone: 213.680.8400
Email: mshipley@kirkland.com

MUNGER, TOLLES & OLSON LLP
Jeffrey I. Weinberger
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Telephone: 213.683.9100
Email: Jeffrey.weinberger@mto.com

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

*Attorneys for Petitioners AbbVie Inc. and
Abbott Laboratories*

BLANK ROME LLP
Yosef Adam Mahmood
2029 Century Park E F16
Los Angeles, CA 90067
Telephone: 424.239.3400
Email: YMahmood@blankrome.com

ORANGE COUNTY DISTRICT
ATTORNEY
Tony Rackauckas, District Attorney
Joseph D'Agostino, District Attorney
Kelly Ernby, Deputy District Attorney
Orange County District Attorney's Office
401 Civic Center Drive West
Santa Ana, CA 92701
Telephone: 714.834.3600
Facsimile: 714.648.3636
Email: kelly.ernby@da.ocgov.com
joe.dagostino@da.ocgov.com

*Attorneys for Petitioner Abbott
Laboratories*

*Attorneys for The People: Real Party in
Interest*

The Honorable Tani Cantil-Sakauye, Chief Justice,
and Honorable Associate Justices
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ROBINSON CALCAGNIE, INC.

Mark P. Robinson, Jr.
Kevin F. Calcagnie
Daniel S. Robinson
Scot 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*

CALIFORNIA DEPARTMENT OF JUSTICE

Office of the Attorney General
Xavier Becerra, Attorney General of
California
Nicklas A. Akers, Senior Assistant Attorney
General
Michelle R. Van Gelderen, 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

*Attorney General of California – Amicus
Curiae*

LAW OFFICE OF VALERIE T. MCGINTY

Valerie T. McGinty
524 Fordham Road
San Mateo, CA 94402
Telephone: 415.305.8253
Email: valerie@plaintiffsaappeals.com

*Attorneys for Consumer Attorneys of
California: Amicus Curiae*

CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION

Mark Zahner
921 11th Street, #300
Sacramento, California 95814
Telephone: 916.443.2017
Email: mzahner@cdaa.org

*Attorneys for California District
Attorneys*

The Honorable Tani Cantil-Sakauye, Chief Justice,
and Honorable Associate Justices
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August 9, 2018

**SAN DIEGO COUNTY DISTRICT
ATTORNEY'S OFFICE**

Thomas A. Papageorge
330 W. Broadway, Suite 750
San Diego, CA 92101
Telephone: 619.531.3971
Email: thomas.papageorge@sdcdsda.org

*Attorneys for California District Attorneys
Association – Amicus Curiae*

**OFFICE OF THE SAN DIEGO CITY
ATTORNEY**

Mara Elliott, City Attorney for the City of
San Diego
Mark Ankorn, Deputy City Attorney
1200 3rd Avenue, Suite 700
San Diego, CA 92101
Telephone: (619) 533-5600
Email: mankorn@sandiego.gov

*Attorneys for City of San Diego – Amicus
Curiae*

**LOS ANGELES CITY ATTORNEYS'
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 City of Los Angeles – Amicus
Curiae*

Michael Walsh

Los Angeles City Attorney
City Hall East

200 N. Spring Street, 14th Floor
Los Angeles, CA 90012

Telephone: 213.978-1870

Email: michael.walsh@lacity.org

*Attorneys for City of Los Angeles:
Amicus Curiae*

LEAGUE OF CALIFORNIA CITIES

Alison Leary, 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**

Rick Doyle, City Attorney for the City of
San Jose

Nora 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 City of San Jose: Amicus
Curiae*

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and Honorable Associate Justices
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SANTA CLARA COUNTY OFFICE OF
THE COUNTY COUNSEL

James R. Williams, City Attorney
Greta Hansen, Chief Assistant County
Counsel

Laura Trice, Lead Deputy
70 W. Hedding St.

East Wing, 9th Floor

San Jose, CA 95110

Telephone: (408) 299-5993

Email: laura.trice@cco.sccgov.org

*Attorneys for Attorneys for Santa Clara
County: 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*

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*

CALIFORNIA STATE ASSOCIATION
COUNTIES

Jennifer 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*

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*

The Honorable Tani Cantil-Sakauye, Chief Justice,
and Honorable Associate Justices
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Appellate Coordinator
Office of the Attorney General
Consumer Law Section
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013-1230

Michele Van Gelderen
California Department of Justice
Office of the Attorney General
300 S. Spring Street, Suite 1702
Los Angeles, CA 90013

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

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

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

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.

3. On August 9, 2018, I also served the above document(s):

Amicus Letter Brief In Support of Petition for Review (Rule 8.500(g))

on the following persons as follows:

- ☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be served electronically through TrueFiling in portable document format ("PDF") Adobe Acrobat.

The Honorable Tani Cantil-Sakauye, Chief Justice,
and Honorable Associate Justices

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PERSON SERVED	EMAIL ADDRESS	TYPE	DATE
Jay Lefkowitz Kirkland & Ellis, LLP	lefkowitz@kirkland.com	e-service	8-9-2018
Jeffrey Weinberger Munger Tolles & Olson LLP	Jeffrey.weinberger@mto.com	e-service	8-9-2018
Joseph D'agostine Orange County District Attorney	Joe.d'agostino@da.ocgov.com	e-service	8-9-2018
Mark Robinson Robinson Calcagnie Inc.	mrobinson@robinsonfirm.com	e-service	8-9-2018
Mark Robinson Robinson Calcagnie Inc.	Beachlawyer51@hotmail.com	e-service	8-9-2018
Michael Shipley Kirkland & Ellis LLP	mshipley@kirkland.com	e-service	8-9-2018
Michael Walsh Office of the Los Angeles City Attorney	Michael.walsh@lacity.org	e-service	8-9-2018
Stuart Senator Munger Tolles & Olson LLP	Stuart.senator@mto.com	e-service	8-9-2018

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and Honorable Associate Justices
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PERSON SERVED	EMAIL ADDRESS	TYPE	DATE
Yosef Mahmood Blank Rome LLP	Yosef.mahmood@kirkland.com	e-service	8-9-2018

4. On August 9, 2018, I also served the above document(s):

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on the following persons as follows:

State of California Department of Justice
Office of the Attorney General

By uploading the document through the State of California Department of Justice website: <https://oag.ca.gov/services-info/17209-brief/add>

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

Executed August 9, 2018, at San Francisco, California.



MARTINA HASSETT