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Practice Tips

Standing Requirements in California Law

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California does not have a standing requirement like federal law, which requires all litigants to have suffered a redressable injury in fact caused by the defendant just to open the courthouse doors. The federal standing requirement derives from the restriction in Article III of the U.S. Constitution that federal courts only have the power to hear "Cases" or "Controversies."[1] "There is no similar requirement" in California's Constitution, as the California Supreme Court has explained.[2] Generally speaking, the doors of California courts are wide open, even to those who have not suffered what federal law would call cognizable harm.[3] Showing just how stark the contrast is between federal and California law, California has statutorily authorized broad taxpayer standing, while federal law permits it in only the most narrow of circumstances.[4]

However, that does not mean standing is absent from California law; far from it. At its most basic sense, standing is the question of "who may be heard by a judge."[5] It is about a "party's right to make a legal claim or seek judicial enforcement of a duty or right."[6] Despite not having a general standing requirement, California does impose meaningful limitations about who can bring specific claims. These are found (and often buried), in a maze of statutory requirements or have been solely developed through caselaw and limited to specific causes of action. These standing requirements, sometimes overlooked, can carry even greater weight than Article III's requirements in federal court. When overlooked, they mean the end of the case for that plaintiff.

The most well-known standing requirement in California law is probably the requirement of the Unfair Competition Law (UCL) that private plaintiffs seeking to bring suit for unfair, unlawful, or fraudulent conduct must prove that they have suffered an injury in fact and lost money or property as a result of the unfair competition.[7] Before 2004, the UCL allowed "any person" to sue, which led to lawsuits filed by attorneys who had no injured client.[8] Voters rejected that lawsuit bonanza in Proposition 64 and required UCL plaintiffs essentially to meet the federal standing requirements, but on steroids: The plaintiff not only had to prove she suffered harm caused by the defendant but also that she suffered economic harm caused by the defendant.[9] Unlike Article III in federal court,[10] the standing requirements under the UCL only apply to named plaintiffs in a class action and not to all class members.[11]

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Nonetheless, the UCL standing requirements remain a significant hurdle to UCL claims.

The UCL, however, is far from the only cause of action with strict standing requirements. Another common cause of action brought by plaintiffs in California state courts, particularly in recent years, has been for nuisance. For example, earlier this summer, it made national news when the City of San Francisco was able to prove in federal district court that Walgreens created a public nuisance by substantially contributing to the opioid epidemic in San Francisco.[12]

California does not permit just anyone to bring a public nuisance claim. By statute, it carefully limits the government entities that can bring suit.[13] Furthermore, it has even stricter standing requirements for private plaintiffs: Only "[a] private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise."[14]

This standing provision was front and center in the recent decision, *Rincon Band of Luiseno Mission Indians v. Flynt*.[15] In that case, two federally recognized Indian tribes in California sued nearly every one of the cardrooms in Southern California. The cardrooms offer games like poker and other "nonbanked" card games in which the cardroom (also known as the "house") does not have a monetary stake in the game.[16] The cardrooms are the direct business competitors of the tribes that offer casino gambling similar to what is found in Las Vegas. The tribes' central allegation was that the cardrooms were causing a "nuisance" by the way they were playing their games, allegedly in violation of the state's gambling laws.[17] However, before the case ever proceeded to the merits, the trial court and then the court of appeal recognized that federally recognized Indian tribes lacked standing to bring a nuisance claim under California law for two reasons.

First, the court of appeal held that the tribes lacked standing because they were not "private person[s]"; they were "sovereign domestic dependent nations."[18] The tribes were "just like any other governmental entity" that "would have authority to address any alleged nuisance presented by banked card games within their own communities" but not "seek redress of an alleged public harm that is not within their own jurisdiction."[19]

Second, the court of appeal also recognized that the tribes could not meet the statute's requirement that the alleged nuisance was "specially injurious."[20] The court of appeal interpreted that component of the standing requirement to mean the plaintiff must "have suffered a harm over and above the general public," and of the "same type as those suffered by the members of the general public subject to the interference."[21] As an example, the court of appeal pointed to a 1962 decision that recognized nearby residents could bring a nuisance claim against a dairy farm for nauseating orders and mosquito infestations that affected the community as a whole and them in particular because of their close proximity.[22]

Even statutes that appear to encompass a very broad view of standing have been interpreted more narrowly to preserve the basic idea that California courts should only decide "actual" controversies based on "some recognized or cognizable legal theories."

The tribes in *Rincon* could not meet that threshold standing requirement. The "special harm" they claimed to be suffering was about the loss of gambling revenues at their casinos.[23] That was not the same type of harm that the tribes had identified as allegedly suffered by the general public, which (ironically) were harms caused by gambling itself.[24] Instead, the tribes sought to protect their "own exclusive rights to offer gaming of the very same type they claim is injurious to the general public," which "runs contrary to the purpose of public nuisance laws, which are 'not designed to benefit disadvantaged competitors.'"[25] The court of appeal therefore concluded the tribes lacked standing for this reason as well.[26]

Another noteworthy example of a particular harm requirement is found in Civil Procedure Section 1085—a staple of California litigation. Section 1085 provides broad equitable relief to compel the performance of an act that the law specially enjoins or to secure a right.[27] That writ of mandate may only be pursued by a party who "has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large."[28] This standard also has been described as "equivalent to the federal 'injury in fact' test," which requires demonstration of "a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical."[29]

A 2011 California Supreme Court decision, *Save the Plastic Bag Coalition v. City of Manhattan Beach*, illustrates how this test works in practice.[30] There, a coalition of plastic bag manufacturers and distributors brought a writ of mandate under Section 1085 attempting to block an ordinance prohibiting Manhattan Beach businesses from using plastic bags. The city argued the coalition lacked standing, but the supreme court disagreed because the coalition's "members include[d] manufacturers and suppliers of plastic bags used by businesses in Manhattan Beach," and "[t]he ordinance's ban on plastic bags would have [had] a severe and immediate effect on their business in the city"—they wouldn't be able to sell their plastic bags in Manhattan Beach.[31] The court therefore concluded that "they have a 'particular right to be preserved or protected over and above the interest held in common with the public at large.'"[32]

Economic injury is not always enough, and, when it is not, the standing inquiry can become more difficult to understand. In *San Luis Rey Racing, Inc. v. California Horse Racing Board* for example, a stable for race horses brought a writ of mandate against the California Horse Racing Board, which had set up a fund to subsidize the stabling fees of racehorses.[33] The stable was upset because the fund had decided to no longer reimburse for stables not located at a racetrack, so-called "offsite stables" like the plaintiff's operation. The trial court, and then the court of appeal, held that the stable lacked

standing because it was not a "beneficially interested party."[34] The stable clearly had a strong economic interest in the case: It had a "direct interest in competing for offsite stabling business," which would be far less attractive to its customers—the race associations—without the reimbursement from the fund.[35] Who would pay full freight to board the horse offsite when it could be subsidized at the race track? So long as the stable could allege actual economic losses, that would seem easily to meet the injury in fact requirement of federal law. However, the court of appeal held it was insufficient for standing for a writ of mandate under Section 1085 because there was "no obligation" of any of the race associations to patronize the plaintiff's stable, regardless of the reimbursement, and the stable did not have a "right" to any of that stabling business.[36] Although a bit opaque, the court of appeal appeared to believe the "interest in competing for" the stabling business was therefore "too remote and indirect to support standing."[37]

Even statutes that appear to encompass a very broad view of standing have been interpreted more narrowly to preserve the basic idea that California courts should only decide "actual" controversies based on "some recognized or cognizable legal theories."[38] For example, in *Cummins Corp. v. United States Fidelity & Guaranty Co.*, a parent company sought a declaration about the scope of the subsidiary's insurance coverage. Although the relevant statute, Section 1060 of the Code of Civil Procedure, indicated "any person interested under a written instrument" could bring a declaratory relief action, the court of appeal held that the parent company's "indirect interest" in the rights under a contract—"no matter how enthusiastic [and practical] it may be"—does not "translate[] into 'a legally cognizable theory of declaratory relief.'"[39]

Nor are these thorny standing requirements relegated to longstanding causes of action like nuisance and writs of mandate. With much fanfare, California passed the California Consumer Privacy Act in 2018,[40] and then updated it in 2020 with the California Privacy Rights Act.[41] California law now has a private right of action with statutory damages of $100 to $750 for a "consumer" "whose nonencrypted and nonredacted personal information" or whose login information (e.g., username and password) is subject to data breach caused by a "business's violation of the duty to implement and maintain reasonable security procedures."[42] Nevertheless, it is only a consumer who has the right to bring this cause of action, and the statute defines "consumer" as "a natural person who is a California resident."[43] Thus, nonresidents, for example, lack standing to bring a claim under the statute. That likely means a nationwide class action under California's new privacy law is a nonstarter, even for companies based in California and whose terms of service choose California law. It also means businesses and nonprofits lack standing because they are not natural persons, even when they suffered the precise harm that the statute seeks to prevent and remedy.

These standing requirements—whether they be found in the UCL, nuisance, general writ provisions, or the myriad of other (usually codified) causes of action under California law—are far from technicalities. Not only can they be dispositive of the case, as they were in

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Rincon and numerous other cases, but they also can reverberate outside of the courtroom. The losing parties in the *Rincon* case were so upset about their inability to pursue their UCL and nuisance claims against the cardrooms, they helped fund a ballot initiative to try to give them special standing as a "private attorney general." Specifically, Initiative No. 19-0029-A1, the "California Sports Wagering Regulation and Unlawful Gambling Enforcement Act," is currently set to go before California voters in November.[44] While nearly all of the press coverage and advertisements have focused on its provisions to legalize sports wagering,[45] the initiative also seeks to create a private-enforcement provision that allows "any person or entity" to sue "any person" suspected of violating the criminal gambling laws for massive civil penalties "of up to $10,000 per violation."[46] These include the gambling laws at issue in *Rincon*, and thus the initiative is a direct attempt to sidestep the tribes' lack of standing to bring nuisance claims against their business competitors.

Whether the tribes can rewrite the standing requirements for themselves will be something to certainly keep an eye on this fall. Regardless of how that ultimately plays out, the standing rules in the *Rincon* case and other California law are a good reminder that, while often overlooked, California's standing requirements can play an outsized role in litigation (and even politics). ■

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[1] Lujan v. Defenders of Wildlife, 504 U.S. 555, 560.
[2] Grosset v. Wenaas, 42 Cal. 4th 1100, 1117 n.13 (2008) (citing National Paint & Coatings Ass'n. v. State of California, 58 Cal. App. 4th 753, 761 (1997)).
[3] Joshua Paul Thompson et al., California Standing Doctrine: The Enigma Explained 1 (Apr. 5, 2011), *available at* https://ssrn.com/abstract=1803552 ("strictly speaking, there is no doctrine of standing" in California state courts).
[4] *Id.* at 9, 52 (*comparing* Hein v. Freedom from Religion Found., Inc., 551 U.S. 587, 610 (2007) (Establishment Clause challenges are the "narrow exception to the general constitutional prohibition against taxpayer standing") *with* Code Civ. Proc. §526A (taxpayer standing)).
[5] Joseph Vining, Legal Identity 55 (1978).
[6] Black's Law Dictionary (11th ed. 2019) (definition of standing).
[7] Bus. & Prof. Code §17204.
[8] In re Tobacco II, 46 Cal. 4th 298, 314, 316-17 (2009).
[9] Kwikset Corp. v. Superior Ct., 51 Cal. 4th 310, 324 (2011).
[10] TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2208 (2021).
[11] In re Tobacco II, 46 Cal. 4th at 324.
[12] *See, e.g.*, Juliet Williams, *Judge says Walgreens contributed to San Francisco's opioid crisis*, PBS News Hour (Aug. 10, 2022, 4:55 PM), https://www.pbs.org/newshour/health/judge-says-walgreens-contributed-to-san-franciscos-opioid-crisis.
[13] 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…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"); Civ. Code §3494 ("A public nuisance may be abated by any public body or officer authorized thereto by law.").
[14] Civ. Code §3493.
[15] Rincon Band of Luiseno Mission Indians v. Flynt, 70 Cal. App. 5th 1059 (2021). The authors of this article were counsel for three of the defendants in *Rincon* in the trial court.
[16] *Id.* at 1075.
[17] *Id.* at 1072, 1080.
[18] *Id.* at 1101-02.
[19] *Id.*
[20] Civ. Proc. §3493.
[21] Rincon, 70 Cal. App. 5th at 1103.
[22] Wade v. Campbell, 200 Cal. App. 2d 54, 59-60 (1962).
[23] Rincon, 70 Cal. App. 5th at 1104.
[24] *Id.*
[25] *Id.* (citing Reudy v. Clear Channel Outdoor, Inc., 356 F. App'x (9th Cir. 2009)).
[26] *Id.*
[27] Code Civ. Proc. §1085.
[28] Carsten v. Psych. Examining Comm., 27 Cal. 3d 793, 796 (1980) (citing, among other authorities, Parker v. Bowron, 40 Cal. 2d 344, 351 (1953)).
[29] Cal. Ass'n for Health Servs. at Home v. State Dep't of Health Servs., 148 Cal. App. 4th 696, 706–07 (2007) (citations omitted).
[30] Save the Plastic Bag Coal. v. City of Manhattan Beach, 52 Cal. 4th 155 (2011).
[31] *Id.* at 170.
[32] *Id.* (citation omitted).
[33] San Luis Rey Racing, Inc. v. California Horse Racing Bd., 15 Cal. App. 5th 67, 69-70 (2017).
[34] *Id.* at 74.
[35] *Id.* at 75.
[36] *Id.* at 75-76.
[37] *Id.* at 76.
[38] Cummins Corp. v. United States Fidelity & Guar. Co., 246 Cal. App. 4th 1484, 1489 (2016).
[39] Id. at 1489, 1491.
[40] Civ. Code §§1798.100 *et seq.*
[41] Prop. 24, *available at* https://vig.cdn.sos.ca.gov/2020/general/pdf/topl-prop24.pdf.
[42] Civ. Code §1798.150(a)(1).
[43] *Id.*; Civ. Code §1798.140(i).
[44] Initiative No. 19-0029 (California Sports Wagering Regulation and Unlawful Gambling Enforcement Act), *available at* https://www.oag.ca.gov/system/files/initiatives/pdfs/19-0029A1%20%28Sports%20Wagering%20%26amp%3B%20Gambling%29.pdf (last visited Sept. 28, 2022) [hereinafter Initiative No. 19-0029].
[45] *See, e.g.*, Martin Green, *California Sports Betting on November Ballot: What You Need to Know*, Fresno Bee, July 23, 2022, *available at* https://www.fresnobee.com/sports/article263383213.html; Brad Allen, *California Tribes Hit Airwaves To Fight Online Sports Betting Initiative*, Legal Sports Report (Mar. 21, 2022), https://www.legalsportsreport.com/66620 /tribes-launch-ad-against-california-sports-betting-measure.
[46] Initiative No. 19-0029, *supra* note 44.

Invitation for Public Comment on the Reappointment of U.S. Bankruptcy Judge Deborah J. Saltzman

The current term of the Honorable Deborah J. Saltzman, U.S. Bankruptcy Judge for the Central District of California, is due to expire in March 2024. The U.S. Court of Appeals for the Ninth Circuit is considering the reappointment of Judge Saltzman to a new 14 year term of office. The Court invites comments from the bar and public about Judge Saltzman's performance as a bankruptcy judge. The duties of a bankruptcy judge are specified by statute, and include conducting hearings and trials, making final determinations, and entering orders and judgments.

Members of the bar and public are invited to submit comments concerning Judge Saltzman for consideration by the Court of Appeals in determining whether or not to reappoint her. Anonymous responses will not be accepted. However, respondents who do not wish to have their identities disclosed should so indicate in the response, and such requests will be honored.

Comments should be submitted no later than **Thursday, December 22, 2022**, to the following address:

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