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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE DIVISION)

10 DEBORAH A. LANE and JOSHUA E. LOYA,)
11 Plaintiffs,)
12 v.)
13 SANTA CRUZ METROPOLITAN TRANSIT)
DISTRICT, a political subdivision of the State of)
14 California,)
15 Defendant.)

CASE NO. C 02 01808 RMW HRL EAI
ADR
**DEFENDANT SANTA CRUZ
METROPOLITAN TRANSIT
DISTRICT'S REPLY BRIEF IN
SUPPORT OF ITS MOTION TO
DISMISS PLAINTIFFS' 6TH CLAIM
FOR RELIEF FOR FAILURE TO
STATE A CLAIM UPON WHICH
RELIEF MAY BE GRANTED
[F.R.C.P. §12(b)(6)]**
Date: October 18, 2002
Time: 9:00 a.m.
Courtroom: 6, 4th Floor
Judge: Hon. Ronald M. Whyte
Action Filed: April 16, 2002
Trial Date: Not Set

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20 Defendant, Santa Cruz Metropolitan Transit District (hereafter "Metro"), respectfully
21 submits its Reply to Plaintiffs Deborah Lane and Joshua Loya's (hereafter "Plaintiffs")
22 Opposition to Metro's Motion to Dismiss Plaintiffs' Sixth Claim for Relief, which alleges
23 that Metro violated the Unfair Competition Act, California Business & Professions Code
24 § 17200, et seq.

25 **INTRODUCTION AND SUMMARY**

26 Plaintiffs' opposition studiously ignores the persuasive authority provided by four
27 separate California Court of Appeal decisions, each of which unambiguously holds that
28 governmental entities are not subject to suit under the Unfair Competition Act (hereafter

1 UCA) because they are not "persons" within the meaning of the Act. Instead of focusing
2 on case law directly resolving this issue under California law, Plaintiffs attempt to create
3 an argument by analogizing to other cases, including a Court of Appeal decision that is
4 "not citable" because of a grant of review by the Supreme Court, and Supreme Court
5 cases that do not apply to the UCA. Nevertheless, this Court should consider the law
6 directly applicable to a governmental entity's liability under the UCA and dismiss the sixth
7 claim for relief.

8 ARGUMENT

9 **A. Plaintiffs' Concession That It Will Not Seek Disgorgement of** 10 **Profits Under the UCA Renders Metro's Tort Claims Act** 11 **Argument Moot.**

12 For the first time, Plaintiffs have clarified in their Opposition that they do not and will
13 not seek "money or damages" or disgorgement of profits from Metro under the UCA
14 (Opposition, p.3, l.17-18 and fn. 1.) Accordingly, Metro believes that the only remaining
15 issue in this motion is whether the UCA applies to Plaintiffs' apparent desire to obtain an
16 injunction against Metro under California Business and Professions Code §17203, the
17 "injunction" provisions of the UCA.

18 **B. Metro Is Not Subject to Suit Under the UCA Because It Is Not One of** 19 **the "Persons" Enumerated Therein.**

20 In Trinkle v. California State Lottery (1999) 71 Cal.App.4th 1198 [84 Cal.Rptr. 2d
21 496], one of the most recent cases discussing the amenability of a governmental entity to
22 suit under the UCA, the court upheld a trial court's dismissal of a suit under the UCA
23 against the California State Lottery. The court first stated that "Nowhere in the Unfair
24 Competition Act (UCA; Bus. & Prof. Code §17200 et seq.) is there a provision imposing
25 governmental liability for violations of the act. Because there is no statute making public
26 entities liable under the UCA, the general rule of governmental immunity must prevail."
27 Trinkle, supra, at p. 1202. However, the court upheld the trial court's judgment on a
28 separate ground. The court stated:

1 Words of a statute must be given their ordinary meaning and
2 receive a commonsense construction. (Community Memorial
3 Hospital v. County of Ventura (1996) 50 Cal.App.4th 199, 209
4 [56 Cal.Rptr.2d 732].) The state is neither a natural person,
5 partnership, corporation, association, nor other "organization[]
6 of persons." It is a sovereign entity representing the people.
7 Only through an unreasonable, strained construction can the
8 state be deemed to fall within any of the statute's definitional
9 categories.

10 Trinkle, supra, p. 1203.

11 Thus, Trinkle did not rely on the governmental immunity rule but rather on the
12 court's determination that interpreting the statute's definition of "person" to include a
13 governmental entity would be 'unreasonable and strained.' This simple, straightforward
14 interpretation of the statute establishes that under California law the UCA does not apply
15 to governmental defendants because they do not fall within the statute's definition of
16 "persons." Metro submits that Trinkle accurately states California law, is persuasive
17 authority, and that this Court should follow Trinkle and dismiss the sixth claim for relief.
18 See, also, Janis v. California State Lottery Commission (1998) 68 Cal.App.4th 824 [80
19 Cal.Rptr.2d 549]; Community Memorial Hospital of San Buena Ventura et al. v. County of
20 Ventura (1996) 50 Cal.App.4th 199 [56 Cal.Rptr.732]; and Santa Monica Rent Control
21 Board v. Bluvshstein (1991) 230 Cal.App.3d 308, 318 [281 Cal.Rptr. 298].

22 Plaintiffs contend that the appropriate rule, established by a series of Supreme
23 Court decisions, is that a statute of general application applies to public entities unless the
24 application of the statute would impair the entity's sovereign powers. Opposition, p. 4,
25 lines 9 -10. The cases cited by Plaintiffs do not support their contention that the UCA
26 statute should be interpreted in a similar fashion. For example, the statute at issue in
27 Hoyt v. Board of Civil Service (1942) 21 Cal.2d 399 [132 P.2d 804], Code of Civil
28 Procedure §1060, allows *any person* to bring an action for declaratory relief. *That* statute
does not define "person." Likewise, in People v. Terry Lee Crow (1993) 6 Cal.4th 952 [26
Cal.Rptr.2d 1], the statute at issue, Government Code § 13967, requires a defendant to
pay restitution to "a victim" of criminal conduct. The defendant contended that a

1 governmental entity could not be a "victim." The court held that a defrauded
2 governmental agency is not a natural person, but is nevertheless a "victim." Id., p. 957.
3 In Flournoy v. State of California (1962) 57 Cal.2d 497 [20 Cal.Rptr. 627], the court held
4 that the wrongful death statute, § 377 of the Code of Civil Procedure, applies to
5 governmental entities. Again, *that* statute applies to "the person causing the death"
6 without any definition of person. Finally, City of Los Angeles v. City of San Fernando
7 (1975) 14 Cal.3d 199, 276-277 [123 Cal.Rptr. 1] dealt only with a statute that stated "no
8 possession by any person, firm or corporation", without further defining "person."

9 Unlike the statutes in the cases cited by Plaintiffs, the UCA specifically defines the
10 term "person." Only someone falling within the definition of "person" can be liable under
11 the UCA. The UCA defines a "person" as "natural persons, corporations, firms,
12 partnerships, joint stock companies, associations and other organizations of persons."
13 Cal. Bus. & Prof. Code §17201. Trinkle, supra, simply held that a governmental entity
14 does not fall within that definition and therefore cannot be liable under the statute.
15 Plaintiffs' added requirement, that in order to escape liability under a general statute the
16 statute must impair the entity's sovereign powers, was not considered in Trinkle because
17 the statute at issue in that case, the UCA, specifically defined who would and who would
18 not be liable. In other words, the additional requirement, the infringement of sovereignty,
19 does not apply because the UCA is not a statute of general application; it is one of
20 *specific application to designated persons.*

21 This distinction between statutes of general application and those that specifically
22 identify the parties who are to be held liable thereunder is illustrated by a case cited by
23 Plaintiffs, California Medical Association, Inc. v. The Regents of the University of
24 California, et al. (2000) 79 Cal.App.4th 542 [94 Cal.Rptr.2d 194]. The medical association
25 sought an injunction against the University of California relating to the University's
26 operation of a hospital in Santa Monica. The court discussed two statutes: Business and
27 Professions Code § 2400, which provides, in part, that "[c]orporations and other artificial
28 legal entities shall have no professional rights, privileges and powers. . ." and the UCA.

1 The court noted that section 2400 does not apply to a governmental entity because even
2 though it is a statute of general application, application of the statute to the University “. . .
3 would result in an infringement upon the powers granted to it as an instrumentality of the
4 state.” *Id.* p. 548. The court did not use the same analysis in dealing with the UCA. As to
5 the UCA, the court cited Trinkle, among other cases, and held that the University of
6 California is a public entity and not a “person” within the meaning of section 17201 of the
7 UCA.

8 **C. Because the Statute Clearly and Unambiguously Does Not Apply to**
9 **Governmental Entities, It Is Unnecessary to Decide Whether It Impairs**
10 **the Exercise of Metro’s Sovereign Powers.**

11 Plaintiffs’ efforts to establish that the operation of a governmental bus system is not
12 an exercise of sovereign powers is both wasted, as discussed above, and flawed.
13 Plaintiffs primarily rely on a decision that has no precedential value and is not citable,
14 Lopez v. California Rapid Transit District (1984) 153 Cal.App.3d 1135 [200 Cal.Rptr. 779],
15 *superceded by grant of review*, 40 Cal.3d 780. See, Cal. Rules of Court, rules 976(d) and
16 977(a). The only *published* decision regarding this case, Lopez v. Southern California
17 Rapid Transit District (1985) 40 Cal.3d 780 [221 Cal.Rptr. 840], cited in footnote 3 (page
18 6) of the Opposition, does not support Plaintiffs’ position. Lopez merely confirms that
19 another statute of general application, Civil Code section 2100, which does not define or
20 specify the parties to be held liable, does apply to governmental entities. However, Civil
21 Code section 2100 applies generally to tort liability for injuries to passengers of “carriers
22 for hire,” and does not establish that the operation of governmental entity bus systems is
23 not an exercise of sovereign powers.

24 In fact, there is nothing more intrinsically “sovereign” about the operation of a
25 lottery or a hospital than the operation of a public bus system. All are commercial, albeit
26 typically non-profit, operations, and all potentially compete with other commercial entities
27 in the marketplace. See, for example, Trinkle v. California State Lottery, *supra*, 71
28 Cal.App.4th 1198 and Community Memorial Hospital of San Buena Ventura, et al. v.

1 Ventura, et al., supra, 50 Cal.App.4th 100 (operation of a county hospital is within
 2 County's sovereign powers). The fact that a public bus operation can be held liable in tort
 3 is irrelevant to the question of sovereignty; public agencies operating hospitals are just as
 4 liable for medical malpractice as are private hospitals.

5 Moreover, Plaintiffs' argument that the operation of a public transit system is not an
 6 exercise of sovereign power is an attempt to "have their cake and eat it too." Plaintiffs'
 7 First Claim for Relief, violation of Title II of the American's with Disabilities Act, 42 U.S.C.
 8 § 12131 et seq., provides for the right to obtain compensatory damages, as well as
 9 injunctive relief. Title II, however, only applies to governmental entities. 42 U.S.C.
 10 § 12132. Title III of the ADA, 42 U.S.C. § 12181 et seq., applies to private companies, but
 11 does not allow for the right to obtain compensatory damages. See Botosan v. Fitzhugh
 12 (S.D.Cal. 1998) 13 F.Supp.2d 1047, 1051. In other words, Plaintiffs seek to take
 13 advantage of the fact that Metro is a public entity for purposes of Title II of the ADA, but
 14 denies that its operations are an exercise of sovereignty for purposes of the UCA. This
 15 duplicity does not withstand careful analysis and should not be condoned by this Court.

16 CONCLUSION

17 As indicated above, under California law directly applicable to the UCA, Plaintiffs
 18 have no claim for relief of any sort under the UCA against Metro, a public entity.
 19 Moreover, since they do not claim recovery of money, damages or disgorgement of profits
 20 under the UCA (which Metro contends is not available for a variety of reasons), their claim
 21 for injunctive relief under the UCA is of little or no value to them. For each of the reasons
 22 discussed above, Metro respectfully requests that this Court grant the relief sought and
 23 dismiss the sixth claim for relief.

24 DATED: October 4, 2002

Respectfully submitted,

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 TRANSIT DISTRICT

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