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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Appellant, v. E*POLY STAR, INC., et al., Defendants and Respondents.	B233008 (Los Angeles County Super. Ct. No. BC450218)

APPEAL from an order of the Superior Court of Los Angeles County, Rolf Michael Treu, Judge. Reversed and remanded.

Steve Cooley, Los Angeles District Attorney, Stanley P. Williams, Leslie A. Hanke, Thomas R. Wenke, Deputy District Attorneys; Elizabeth A. Egan, Fresno County District Attorney, Michael Brummel, Deputy District Attorney; Edward S. Berberian, County of Marin District Attorney, and Robert E. Nichols, Deputy District Attorney, for Plaintiff and Appellant.

Patton Martin & Sullivan, John H. Patton; Tod M. Ratfield, APC, and Tod M. Ratfield, for E*Poly Star, Inc., Zhi Zhong Sun, Steven Choi and Donald V. Schmahl, Defendants and Respondents.

The district attorneys of Los Angeles, Marin and Fresno Counties on behalf of the People of the State of California filed an action for injunctive relief and civil penalties against E*Poly Star, Inc. and several of its officers and directors under Business and Professions Code sections 17200 (unfair competition) and 17500 (untrue or misleading representations).[1] The district attorneys' complaint alleges E*Poly Star, which manufactures and distributes polyethylene and paper products to state and local government entities, has for a period of years and "continuing through the present" misrepresented the length, width, thickness and count of its packaged products and commodities in violation of state law. The trial court sustained E*Poly Star's demurrer to the complaint without leave to amend and dismissed the action, finding the claims were barred by the applicable statutes of limitations, which began to run no later than August 2, 2006 when E*Poly Star was notified by the Weights and Measures Office of the Los Angeles County Department of Agricultural Commissioner that its products were found to be short weighted in violation of several provisions of the Business and Professions Code. Because the district attorneys' have adequately alleged E*Poly Star has violated California's unfair competition law (UCL) (§ 17200 et seq.) within four years of filing this action, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

1. *The Complaint*

Pursuant to sections 17203, 17206, subdivision (a), 17535, and 17536, subdivision (a), on November 29, 2010 the district attorneys of Los Angeles, Marin and Fresno County filed a civil action in the name of the People of the State of California against E*Poly Star and three of its officers and directors, Zhi Zhong Sun (chief executive officer), Steven Choi (executive vice president) and Donald V. Schmahl (director). E*Poly Star manufacturers and imports polyethylene products (plastic bags) and paper products (toilet paper) for sale to various state and local government entities.

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[1] Statutory references are to the Business and Professions Code unless otherwise indicated.

The district attorneys' complaint alleges E*Poly Star has violated California's false advertising law (first cause of action) and the UCL (second cause of action) by making false and misleading statements regarding the dimensions, quantity and thickness of its products when it sold those products to 17 different governmental entities.[2] Specifically, E*Poly Star is alleged to have misrepresented the net quantity of the contents of its packaged products; misrepresented the length, width, thickness and count of its packaged products; distributed products without labels; and distributed products with labels that do not conform to various statutory and regulatory requirements. The violations are alleged to have begun "at a date unknown but occurring within four years of the filing of this Complaint and continuing through the present." In addition, the complaint alleges, "[u]nless enjoined by order of this Court, Defendants are likely to continue to engage in such acts of unfair competition."

The complaint prays for injunctive relief, a civil penalty of $2,500 for each violation of section 17500, a civil penalty of $2,500 for each violation of the UCL and costs of suit including the costs of investigation.

2. *E*Poly Star's Demurrer and Request for Judicial Notice*

On February 14, 2012 E*Poly Star and the individual defendants demurred to the complaint, contending among other grounds the two causes of action asserted by the district attorneys on behalf of the People were barred by the three-year statute of limitations for false advertising claims (Code Civ. Proc., § 338, subds. (a) & (h)) and the four-year limitations period for UCL claims (§ 17208). With their supporting papers

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[2] Paragraph 13 of the complaint alleges E*Poly Star was awarded contacts with governmental agencies throughout California, including, County of Los Angeles: Probation Department, County Sheriff's Department, County Clerk Recorder, Department of Animal Control, Internal Services Division, Department of Beaches and Harbors, Department of Health Services, Department of Water and Power, Fire Department; the University of Southern California Hospital; County of Fresno: Parks Department, Central Warehouse; The Los Angeles Unified School District; The San Gabriel Unified School District; the State of California: Department of Corrections, Department of Transportation; and Port of Oakland.

defendants requested the trial court take judicial notice, pursuant to Evidence Code section 452, subdivision (c) (official acts of the United States or any State), of an August 2, 2006 notice of violations to E*Poly Star from the Los Angeles County Department of Agricultural Commissioner/Weights and Measures. The notice described several instances in which E*Poly Star's products were found to be "short weight" or "short count" (see § 12024), as well as in violation of the Fair Packaging and Labeling Act (§ 12601 et seq.), based on four inspections that had been conducted between May 25, 2006 and June 23, 2006. Defendants argued the claims asserted in the complaint accrued no later than August 2, 2006 and, as a result, were time-barred.

In opposition the district attorneys explained the complaint alleges E*Poly Star has engaged in an ongoing course of illegal conduct that continued through the date of filing the lawsuit. Accordingly, under the continuing violation doctrine the complaint, filed within the statutory period for the last asserted occurrence of the unlawful practices, was timely. No opposition to E*Poly Star's request for judicial notice was filed.

In its reply memorandum E*Poly Star argued the continuing violation doctrine was developed in discrimination cases and has not been generally applied by California courts outside that context to delay accrual of a cause of action or otherwise toll the running of a governing statute of limitations. According to E*Poly Star, although there may be multiple claims, the cause of action for false advertising or a violation of the UCL accrues upon discovery of the first act, which here was no later than August 2, 2006. In support of its argument E*Poly Star cited and discussed the Court of Appeal's decision in *Aryeh v. Canon Business Solutions, Inc.* (2010) 185 Cal.App.4th 1159, review granted Oct. 20, 2010 (S184929) (*Aryeh*), explaining, "While the case is not precedent, nor citable, its decision is instructive."

3. *The Trial Court's Order Sustaining the Demurrer Without Leave To Amend*

The court heard argument on E*Poly Star's demurrer on March 30, 2011. The court's tentative ruling was to sustain the demurrer without leave to amend, finding both causes of action had accrued on August 2, 2006 and were time-barred. The written

tentative ruling cited the Court of Appeal decision in *Aryeh,* noted Supreme Court review had been granted, provided a paragraph description of the case, and then stated, "Even though *Arye[h]* is not citable, the Court has reviewed it for the purpose of considering its analysis. The Court agrees with *Arye[h]*'s analysis; there is no reason to apply the continuing violations doctrine to a cause of action for unfair competition." The court declined to consider the other grounds for demurrer.

Addressing the tentative ruling, Marin County Deputy District Attorney Robert Nichols argued, "This action is based upon unlawful[] business practices. And there have been a number of separate, but distinct unlawful acts occurring, not only [one], occurring within [the] last four years of the statute of limitations, that is essentially what we have pled, that there are acts after act after act, short weighting, short measuring and so forth." To accept E*Poly Star's legal position, Nichols insisted, would be to grant the company immunity from prosecution forever based upon their unlawful business practices. Counsel for E*Poly Star took issue with that characterization of its position, acknowledging, "If there were a new act today, separately investigated, separately argued, then they could bring a new complaint." But, he contended, the causes of action pleaded here all arose out of the same act that was investigated in May and June 2006 and noticed in the August 2, 2006 letter. Fresno County Deputy District Attorney Michael Brummel replied by directing the court's attention to a printout that reflected separate inspections had been conducted throughout 2007 and additional inspections had occurred in subsequent years indicating weight-and-measures violations by E*Poly Star. The court then asked if those more recent violations had been pleaded. Brummel said he believed they were and noted the reason the district attorney offices from three counties had jointly filed the lawsuit was to avoid a multiplicity of actions. However, if the court believed it was necessary to amend the complaint to plead those additional violations with greater specificity, Brummel said they were prepared to do so. E*Poly Star's counsel urged the court not to allow an amendment, contending it was inconsistent for the district attorneys

to now argue there were a number of separate violations when they had previously argued they were all part of a continuing violation of the UCL.

After taking the matter under the submission, the court issued its formal ruling later the same day. The minute order states, "The tentative ruling shall stand. [¶] Demurrer (above) is sustained without leave to amend on grounds fully set forth in said tentative, which is adopted as Court's Order, filed and incorporated herein by reference." On April 27, 2011 the court corrected its March 30, 2011 minute order nunc pro tunc by adding a signed judgment of dismissal of the action.

CONTENTIONS

The district attorneys contend the trial court improperly took judicial notice of the August 2, 2006 notice of violations because the act of a county department is not an official act of a State within the meaning of Evidence Code section 452, subdivision (c); the demurrer to the UCL cause of action should have been overruled under the continuous accrual doctrine as applied to the repeated discrete acts pleaded in the second cause of action;[3] and, even if as pleaded the second cause of action appeared to be barred by the statute of limitations, leave to amend should have been granted.

DISCUSSION

1. *Standard of Review*

On appeal from an order dismissing an action after the sustaining of a demurrer, we independently review the pleading to determine whether the facts alleged state a cause of action under any possible legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) We may also consider matters that have been judicially noticed. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; see *Serrano v. Priest* (1971) 5 Cal.3d 584, 591) We give the complaint a reasonable interpretation, "treat[ing] the demurrer as admitting all material facts properly pleaded," but do not

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[3] The People do not challenge the trial court's order sustaining its demurrer to the first cause of action for violation of California's false advertising law.

"assume the truth of contentions, deductions or conclusions of law." (*Aubry*, at p. 967; accord, *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; see *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 20 [demurrer tests sufficiency of complaint based on facts included in the complaint, those subject to judicial notice and those conceded by plaintiffs].) We liberally construe the pleading with a view to substantial justice between the parties. (Code Civ. Proc., § 452; *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.)

"'"A demurrer on the ground of the bar of the statute of limitations will not lie where the action may be, but is not necessarily barred. [Citation.] In order for the bar . . . to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint [and matters subject to judicial notice]; it is not enough that the complaint shows the action may be barred."'" (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors*, *supra*, 48 Cal.4th at p. 42; *Geneva Towers Ltd. Partnership v. City and County of San Francisco* (2003) 29 Cal.4th 769, 781; *Favila v. Katten Muchin Rosenman LLP* (2010) 188 Cal.App.4th 189, 224; see also *Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1421 [although general demurrer does not ordinarily reach affirmative defenses, it "'will lie where the complaint "has included allegations that *clearly* disclose some defense or bar to recovery"'"].)

2. *The UCL—Business and Professions Code Section 17200*

Unfair competition under the UCL means "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising . . . ." Written in the disjunctive, section 17200 establishes "three varieties of unfair competition—acts or practices which are unlawful, unfair, or fraudulent." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 (*Cel-Tech*); accord, *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949.)

The "unlawful" prong of the UCL "'borrows' violations of other laws by making them independently actionable as unfair competitive practices." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143; accord, *Kasky v. Nike*, *supra*,

27 Cal.4th at p. 949; *Ticconi v. Blue Shield of California Life & Health Ins. Co.* (2008) 160 Cal.App.4th 528, 539.) The "unfair" prong authorizes a cause of action under the UCL if the plaintiff can demonstrate the objectionable act, while not unlawful, is "unfair" within the meaning of the UCL. (*Cel-Tech, supra,* 20 Cal.4th at p. 182.)

Sections 17203, 17204 and 17206 expressly authorize actions for injunctive relief, restitution and civil penalties under the UCL by the Attorney General or a district attorney "in the name of the people of the State of California upon their own complaint."[4] The standing requirements for private actions under the UCL added by Proposition 64 in 2004—that is, that an individual has standing to pursue a claims for violation of the UCL only if he or she "has suffered injury in fact and has lost money or property as a result of unfair competition" (§ 17204; *Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 227)—do not apply to claims brought by the Attorney General or a district attorney. (§ 17203; *Mervyn's*, at pp. 228-229.)

When the Attorney General or a district attorney seeks an injunction that will protect the public and prevent a defendant from committing future unlawful acts, he or she "is fulfilling primarily a law enforcement function." (*State of California v. Altus Finance* (2005) 36 Cal.4th 1284, 1308.) "An action filed by the People seeking

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[4] Section 17203 provides, "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 order 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. . . ."

Section 17204 provides, "Actions for relief pursuant to this chapter shall be prosecuted exclusively in a court of competent jurisdiction by the Attorney General or a district attorney . . . in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association, or by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition."

Section 17206, subdivision (a), provides, "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 . . . ."

injunctive relief and civil penalties is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. . . . Civil penalties, which are paid to the government [citations] are designed to penalize a defendant for past illegal conduct." (*People v. Pacific Land Research Co.* (1977) 20 Cal.3d 10, 17; accord, *Payne v. National Collection Systems, Inc*. (2001) 91 Cal.App.4th 1037, 1145.)

Pursuant to section 17206, subdivision (a), each violation of the UCL established in an enforcement action by the Attorney General or a district attorney is punishable by a civil penalty in the maximum amount of $2,500. "The statute 'requires a court to impose a penalty for each unlawful business practice committed.'" (*People ex rel. Kennedy v. Beaumont Investment, Ltd*. (2003) 111 Cal.App.4th 102, 127 (*People ex rel. Kennedy*); see § 17206, subd. (b) ["court shall impose a civil penalty for each violation of this chapter"]; *Hewlett v. Squaw Valley Ski Corp*. (1997) 54 Cal.App.4th 499, 537.) "However, the amount of the penalty lies within the court's discretion." (*Hewlett*, at p. 537; accord, *People ex rel. Kennedy*, at p. 127.)

The amount of the civil penalty is based in the first instance on the number of violations. (*People v. Superior Court* (*Jayhill*) (1973) 9 Cal.3d 283, 288 [number of violations determined here by number of persons to whom certain misrepresentations were made].) Defining what constitutes a single violation of the UCL for this purpose "'depends on the type of violation involved, the number of victims and the repetition of the conduct constituting the violation—in brief, the circumstances of the case.'" (*People ex rel. Kennedy*, *supra*, 111 Cal.App.4th at p. 129; see, e.g., *People v. Superior Court* (*Olson*) (1979) 96 Cal.App.3d 181, 198 [appellate court rejected concept there could be only one violation for each day an unlawful advertisement appeared in a single edition of a newspaper; publication of a misleading newspaper advertisement constitutes a minimum of one violation per edition of the paper with as many additional violations as there are persons who read advertisement or who respond to it]; *People v. National Association of Realtors* (1984) 155 Cal.App.3d 578, 585 [each act of unfair competition may be subject to separate penalty].)

Actions under the UCL must be brought within four years of accrual of the cause of action. (§ 17208; *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 179 ["[*a*]*ny* action on *any* UCL cause of action is subject to the four-year period of limitations created by that section [§ 17208]"]; see *Grisham v. Philip Morris U.S.A., Inc.* (2007) 40 Cal.4th 623, 639.) As we observed in *Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 920, "The Supreme Court has not yet decided, and the Courts of Appeal are in disagreement, whether the so-called delayed discovery rule applies to claims for unfair competition." (See generally *Grisham*, at p. 639, fn. 10 [declining to address the issue].) In *Broberg*, however, we held, at least in the context of UCL claims based on a defendant's deceptive marketing materials and practices where the harm from the unfair conduct will not reasonably be discovered until a future date, the time to file the action starts to run only when a reasonable person would have discovered the factual basis for the claim. (*Broberg*, at pp. 920-921; see also *Massachusetts Mutual Life Ins. Co. v. Superior Court* (2002) 97 Cal.App.4th 1282, 1295.)

3. *The Trial Court Properly Took Judicial Notice of the August 2006 Notice of Violations*

The district attorneys' complaint does not refer to the August 2, 2006 notice of violations from Los Angeles County and does not disclose on its face any basis for concluding the UCL cause of action is time-barred. (Cf. *Committee for Green Foothills v. Santa Clara County Bd. of Supervisors*, *supra*, 48 Cal.4th at p. 42.) The district attorneys now contend the trial court improperly took judicial notice of the August 2, 2006 notice—and, therefore, improperly sustained E*Poly Star's demurrer—because it is not an official act of the legislative, executive or judicial department of a "state" within the meaning of Evidence Code section 452, subdivision (c).[5] As the district attorneys explain, Evidence Code section 220 defines "state" to mean only "the State of California"

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[5] Evidence Code section 452, subdivision (c), provides judicial notice may be taken of "[o]fficial acts of the legislative, executive, and judicial departments of the United States or of any state of the United States."

or "any state, district, commonwealth, territory, or insular possession of the United States"—a definition that does not include Los Angeles County. (A "county," on the other hand, is included within Evidence Code section 200's definition of "public entity.")

The district attorney's argument suffers from two fatal defects. First, they failed to object to E*Poly Star's request for judicial notice in the trial court. Accordingly, this point has been forfeited. (See *Gentry v. Ebay, Inc*. (2002) 99 Cal.App.4th 816, 833, fn. 9; *Younan v. Caruso* (1996) 51 Cal.App.4th 401, 406, fn. 3; see generally Evid. Code, § 353, subd. (a) [decision based on erroneous admission of evidence will not be reversed in the absence of an objection or motion to exclude or to strike the evidence].) Second, even if the notice of violations may not be judicially noticed under Evidence Code section 452, subdivision (c), that the Los Angeles County Department of Agricultural Commissioner/Weights and Measures sent such a notice on or about August 2, 2006 would appear to be the proper subject for judicial notice as a verifiable fact "not reasonably subject to dispute [that is] capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." (Evid. Code, § 452, subd. (h); see *People v. Vigil* (2008) 169 Cal.App.4th 8, 12, fn. 2 [judicial notice of date of counsel's letter of resignation from State Bar].) Indeed, the district attorneys have never disputed the authenticity of the letter proffered by E*Poly Star, arguing on this point only that the trial court should not have ruled their UCL cause of action accrued on a date not identified (either expressly or by implication) in their complaint. Citation to an incorrect subdivision for judicial notice is, at most, harmless error. (See Code Civ. Proc., § 475; *Pool v. City of Oakland* (1986) 42 Cal.3d 1051, 1069.)

4. *E*Poly Star and the Trial Court's Citation to and Reliance upon a Court of Appeal Decision After Supreme Court Review Has Been Granted Violated the California Rules of Court*

As discussed, E*Poly Star's argument in support of its demurrer and the trial court's ruling in its favor focused in large part on the decision by Division Eight of this court in *Aryeh* that the continuing violation doctrine did not apply to a UCL cause of action and that the statute of limitations in section 17208 barred plaintiff's claim based on

an allegedly unlawful equipment lease agreement signed more than four years prior to the filing of his lawsuit, notwithstanding the additional allegation that impermissible lease payments had been made more recently.

Supreme Court review in *Aryeh* was granted on October 20, 2010 (S184929), more than a month prior to the filing of the district attorneys' lawsuit. As of that date any citation to, or reliance upon, that decision was expressly prohibited by rule 8.1115(a) of the California Rules of Court[6] except under the limited circumstances set forth in rule 8.1115(b), none of which appears to be applicable to the case at bar. (See rule 8.1105(e)(1) ["[u]nless otherwise ordered . . ., an opinion is no longer considered published if the Supreme Court grants review"].) Nonetheless, employing something akin to the rhetorical device formally known as paraleipsis or apophasis—that is, mentioning something while disclaiming any intention of mentioning it—E*Poly Star in the trial court and once again in its brief in this court, after noting the Court of Appeal decision in *Aryeh* is not citable, has discussed the case at length and argues we should defer to its reasoning.[7] This use of an unpublished, noncitable opinion is a direct violation of rule 8.1115(a) and is wholly unacceptable. (Cf. rule 8.276(a)(4) [authorizing

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[6] References to rule or rules are to the California Rules of Court.

[7] E*Poly Star's improper use of *Aryeh* transcends suggesting we consider the case for its persuasive value. While purporting to recognize the split panel decision by our colleagues in Division Eight is no longer even citable, E*Poly Star contends it is, in fact, binding on us: "It is respectfully submitted that it is not the function of this reviewing court to second-guess itself and re-address a prior published decision, merely and especially because the decision is being reviewed by the State Supreme Court." That is simply wrong. Even were the case still published, we would not be obligated to adopt its result; there is no "horizontal stare decisis" in the Court of Appeal. (*Jessen v. Mentor Corp.* (2008) 158 Cal.App.4th 1480, 1489, fn. 10; *In re Marriage of Shaban* (2001) 88 Cal.App.4th 398, 409.) Although, as E*Poly Star states, we frequently follow a prior decision by another division of this court or another district, we will not do so if there is reason to disagree with the conclusion of that case. (*People v. Kim* (2011) 193 Cal.App.4th 836, 847; *Greyhound Lines, Inc. v. County of Santa Clara* (1986) 187 Cal.App.3d 480, 485.)

sanctions on the court's own motion for any unreasonable violation of the Rules of Court].)

Similarly, the trial court's reference to the *Aryeh* opinion and its implicit adoption of its holding with the statement it "agrees with *Aryeh*'s analysis" constitute an impermissible use of a noncitable decision. If the trial court is somehow familiar with an unpublished opinion and finds its analysis persuasive, then it is free to utilize that analysis, just as courts may adopt as their own the analysis contained in the parties' briefs. Any reference to the unpublished case itself, however, violates rule 8.1115(a) even if, as here, accompanied by the qualification, "even though not citable."

5. *The Trial Court Erred in Sustaining the Demurrer to the Unfair Competition Claim*

The trial court focused its analysis of the complaint, as did E*Poly Star in its argument in support of the demurrer, on the district attorneys' characterization of E*Poly Star's activities as constituting a "continuous course of illegal conduct." The court then ruled, in effect, when the allegations regarding a defendant's conduct cover a period of years, the UCL cause of action accrues, if not at the time of the initial violation, then no later than the time plaintiff first learned of it—here, no later than August 2006. Neither the allegation that the defendant had repeatedly engaged in similar unlawful conduct nor the additional allegation that there were separate victims of the illegal activity within the limitations period saves an action filed more than four years after the date of the initial violation.

A somewhat similar rationale appears to be the basis for the decision in *Snapp & Associates Ins. Services, Inc. v. Robertson* (2002) 96 Cal.App.4th 884 (*Snapp*), which affirmed the trial court's determination following a bifurcated bench trial that plaintiff's UCL claim was time-barred. Plaintiff, an insurance broker, had alleged the defendant, a salesman, had improperly solicited customers and wrongfully retained commissions on a number of client accounts starting in May 1993. Plaintiff further alleged the misconduct was "ongoing." The *Snapp* court held the lawsuit, filed more than four years later in August 1997, was untimely: "[Plaintiff] knew of potential claims against [defendant] for

his retention of commissions on the TRG accounts more than four years before it filed its complaint, and thus its action is barred." (*Id.* at p. 892.)

Snapp, supra, 96 Cal.App.4th 884 involved a single victim of the defendant's recurring, related unlawful acts. The district attorneys' complaint in the case at bar, in contrast, alleges E*Poly Star unlawfully sold mislabeled products within four years of the filing of the complaint to nine different departments, divisions or units of the County of Los Angeles; the University of Southern California Hospital; two departments of the County of Fresno; the Los Angeles Unified School District, the San Gabriel Unified School District; several departments of the State of California; and the Port of Oakland. Even if we were to agree with *Snapp*'s limitations analysis as applied in its specific factual context,[8] therefore, here each set of transactions with a different governmental entity, even if not each individual sale, was a separate and distinct violation of the UCL with its own accrual date. (See *People v. Superior Court (Jayhill), supra,* 9 Cal.3d at p. 288; *People ex rel. Kennedy, supra,* 111 Cal.App.4th at p. 129 [number of violations may in a proper case be calculated on a "per act," rather than a "per victim" basis]; cf. *South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 874, fn. 8 [although defendant had for many years calculated interest on loans based upon a 360-day year (the "365/360 method"), "the loans at issue in this lawsuit were those entered into during [the] four-year period" preceding the filing of the complaint]; see also *Suh v. Yang* (N.D.Cal. 1997) 987 F.Supp. 783, 795-796 [UCL claim timely because some of defendant's continuous, allegedly wrongful acts of misuse and dilution of a service mark occurred within four years of filing of complaint; defendant's repeated acts of wrongful appropriation each created "a separate cause of action for unfair competition and trademark infringement"].)

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[8] The Supreme Court in *Aryeh v. Canon Business Solutions, Inc.*, review granted Oct. 20, 2010, S184929, may decide whether each violation of a periodic obligation or duty gives rise to a separate UCL cause of action that accrues at the time of the individual wrongful act.

Thus, the August 2, 2006 letter from a Los Angeles County official, which identified short-weight violations only in connection with products delivered to the Los Angeles County Probation Department, Sheriff's Department, Internal Services Department and Registrar-Recorder's Office in May and June 2006, is simply irrelevant to a determination of the date on which the UCL claims accrued with respect to the eight other governmental entities identified in the district attorneys' complaint as victims of E*Poly Star's unlawful business practices. As to these alleged violations, nothing on the face of the complaint or the matter judicially noticed necessarily bars the UCL action. Moreover, liberally construing the factual allegations of the complaint, as we must (see *Schifando v. City of Los Angeles*, *supra*, 31 Cal.4th at p. 1081; *Beets v. County of Los Angeles* (2011) 200 Cal.App.4th 916, 922), the district attorneys have properly pleaded that five Los Angeles County departments (Animal Control, Beaches and Harbors, Health Services, Water and Power and Fire), in addition to the four identified in the August 2, 2006 letter, entered into contracts with E*Poly Star within four years of the filing of the complaint and that E*Poly Star provided mislabeled products pursuant to those agreements, too. Again, neither the complaint nor the judicially noticed material necessarily bars those claims as untimely. Finally, the district attorneys represented to the trial court they could amend their complaint, if necessary, to allege with greater specificity the separate investigations and discrete weight-and-measures violations by E*Poly Star that victimized each of the governmental entities identified in the complaint, presumably including new and separate violations involving the Los Angeles County departments that were the subject of the May-June 2006 notices. At the very least, the trial court should have given the district attorneys the opportunity to do so. (See *Schifando*, at p. 1081 [leave to amend should be granted when the plaintiff has demonstrated a "reasonable possibility" he or she can amend any of the claims to state viable causes of action].)[9]

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[9] By limiting our analysis to one separate UCL claim on behalf of each contracting governmental entity, we do not intend to suggest the district attorneys have not

Notably, the district attorneys do not contend they are entitled to recover penalties for mislabeled sales that occurred more than four years before the filing of their complaint. Thus, we need not consider whether the continuous violation doctrine, which at least in the context of employment discrimination cases "allows liability for unlawful employer conduct occurring outside the statute of limitations if it is sufficiently connected to unlawful conduct within the limitations period" (*Richards v. CH2M Hill, Inc*. (2001) 26 Cal.4th 798, 802), applies to UCL claims. Rather, the district attorneys have limited their lawsuit to unlawful acts that fall within the four-year period specified in section 17208 and that, for purposes of the request for injunctive relief, are likely to recur in the future. As such, it was error to sustain E*Poly Star's demurrer and to dismiss the action.

DISPOSITION

The order of dismissal is reversed, and the cause remanded for further proceedings not inconsistent with this opinion. The district attorneys are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.

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adequately pleaded, let alone that they are precluded from attempting to prove at trial, that E*Poly Star committed multiple, separate UCL violations in their dealing with each of the governmental entities identified in the complaint during the relevant time period.