SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 12/14/04			DEPT. 69
HONORABLE EDWARD A. FERNS	JUDGE	L. MARKMILLER	DEPUTY CLERK
HONORABLE 10	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
A. AYALA, C.A.	Deputy Sheriff	NONE	Reporter

8:30 am	BC312007	Plaintiff Counsel
	DANIEL BANALES VS AT & T WIRELESS SERVICES INC	Defendant Counsel
	170.6 - MACKEY	

NATURE OF PROCEEDINGS:

MOTION BY DEFENDANT AT&T WIRELESS SERVICES INC FOR JUDGMENT ON THE PLEADINGS;

In this matter taken under submission on 12-7-2004, the court rules as follows.

The motion is granted without leave to amend.

Proposition 64 amended Business and Professions Code §17203 so that an action "for any relief pursuant to this chapter shall be prosecuted...by any person who has suffered injury in fact and has lost money or property as a result of such unfair competition." The proposition became effective November 3, 2004, and does not state whether or not it acts prospectively or retroactively. As plaintiff is not alleged to have lost money or property, Proposition 64, if it is determined to operate retroactively, will act to divest plaintiff of standing to maintain this action.

In order to determine whether or not a statute operates prospectively or retroactively, the courts look to the nature of right impacted by the enactment. As a general rule, where a substantive right is involved, the statute is presumed to apply prospectively. The converse is true where a procedural right is involved.

Also, as a general rule, standing is a procedural

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issue. Killian v. Millard (1991) 228 Cal.App.3d 1601, 1605. Moreover, where a remedy is purely statutory, "'a repeal of the statute without a saving clause will terminate all pending actions based thereon.'" Governing Board of Rialto Unified School District v. Mann (1977) 18 Cal.3d 819, 829 (quoting Southern Serv. Co., Ltd. v. Los Angeles (1940) 15 Cal.2d 1, 11-12). Finally, it appears from the language of the statute, that Proposition 64 was meant to apply to existing cases as that section applies to persons who are "pursuing" and "prosecuting" actions, not just to those who bring or file actions.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 12-14-2004 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 12-14-2004

MINUTES ENTERED
12/14/04
COUNTY CLERK

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BY:

NATURE OF PROCEEDINGS:

John A. Clarke, Executive Officer/Clerk

By: _____
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