

Tentative Ruling Announcement

Monday, December 13, 2004

If the Tentative Ruling in your case is satisfactory, you need not appear at the scheduled time, the ruling becomes final, and the prevailing party prepares the order.

However, if you are not satisfied with the Tentative Ruling, and wish to appear and argue the matter, **YOU MUST NOTIFY** the Clerk's office and opposing counsel of your intent before **3:00 p.m. TODAY**. Please refer to Local Rule of Court 3.31(e) concerning court reporter fees.

The following are the tentative ruling cases calendared before Judge Hurl W. Johnson in Dept 4:

345216 – BRAVO VS. SOARES DAIRY: Plaintiff Lorenzo Bravo's Motion to Compel Defendant Germano Soares Further Responses and Production of Documents and/or Other Tangible Things, (Set One) and Sanctions, Continued from November 16, 2004 – **GRANTED** in part and **DENIED** in part as follows: Requests Nos. 2, 4, 6, 7, 8, 10, 18, 24, 26 are **GRANTED**. All other requests are **DENIED**. On the basis of the letter briefs filed by the parties the Court finds that the Plaintiffs' unfair business practices claims under Business and Professions Code Section 17200 can proceed. The text of Proposition 64 passed by California voters on 11/3/04 does not clearly make the effect of the statute retroactive, and therefore the change in the law cannot be enforced retroactively. "A statute may be applied retroactively only if it contains express language of retroactivity or if other sources provide a clear and unavoidable implication that the Legislature intended retroactivity." *McClung v. Employment Development Department* (November 4, 2004) 2004 Cal. Lexis 10527. This strong presumption applies equally forcefully to ballot initiatives enacted by the electorate. See e.g. *Evangelatos v. Superior Court* (1988) 44 Cal 3d 1188, holding that Proposition 51 should only be applied prospectively.

272850 – TURLOCK IRRIGATION DISTRICT VS. ZANKER: Defendant/Cross-Complainants, Allen S. Zanker and Kristina Zanker's Motion to Tax Costs – **DENIED**. The Court finds that Plaintiff TID's claimed costs were all reasonable and necessary costs incurred in the course of this matter and therefore awards them pursuant to the judgment entered in Plaintiff's behalf.

The following is the tentative ruling case calendared before Judge Roger M. Beauchesne in Dept 5:

348363 – CONWAY VS. MEDERIOS: Defendant/Cross-Complainant's Motion to Compel Plaintiff's Responses to Form Interrogatories, Request for Production of Documents, Request for Admissions; Attendance at a Deposition – on the Court's own motion, the matter is **CONTINUED** to December 21, 2004 at 8:30 a.m. in Dept #5 for hearing with a related motion.

The following is the tentative ruling case calendared before Judge Linda McFadden in Dept 6:

330905 – SORORI VS. BEITSAYAD: Defendant's Motion for New Trial – **HEARING REQUIRED**.

The following are the tentative ruling cases calendared before Judge William A. Mayhew in Dept 15:

348449 – WESTERFIELD vs. VINTAGE FAIRE: Defendant Hyland Convalescent/dba Beverly Health & Rehabilitation's Demurrer to Plaintiff's First Amended Complaint and Defendant's Motion to Strike First Amended Complaint – The Demurrers are **OVERRULED**. Its motion to strike is **GRANTED** as to items 3, 4, 5, 6, 7, 8, 9, 10, 12, and 13, and **DENIED** as to items 1, 2, 11 and 14.

Defendant Hyland Convalescent/dba Beverly Health & Rehabilitation shall file an answer within ten (10) days of service of notice of entry of order on these motions.

351138 – HNYP VS. LUGO: Defendant's Motion to Set Aside Default – **DENIED**. It Fails to comply with the