

Superior Court of the State of California

County of Orange

NOTICE OF LAW & MOTION PROCEDURE IN DEPARTMENT CX102

- The court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by calling (714) 568-4822. If no appearance is made by either party, the tentative ruling will be the final ruling. Rulings are normally posted on the Internet by 4:30 p.m. on the day before the hearing. Visit <http://www.occourts.org/rulings/cannon.asp> .
- Upon filing a motion, moving party shall mail a copy of this notice to opposing counsel. If opposing counsel appears unnecessarily because of moving party's failure to give notice of the above, sanctions may be levied.

DATE: 12-16-04

#	Case	Tentative Ruling
1	C.A. Rasmussen vs Irvine Comm. Dev 01CC01143	<p><u>Motion to Compel C.A. Rasmussen to Withdraw Certain Objections and Provide Further Responses to Special Interrogatories and Requests for Production of Documents and Request for Sanctions.</u></p> <p>Moving Party: Defendant, Irvine Community Development Co.</p> <p>Responding Party: Plaintiff, C.A. Rasmussen, Inc.</p> <p>RELIEF SOUGHT:</p> <p>Requests further responses to request for production of documents (There was other requested relief, but the declaration of counsel December 10, 2004 indicates the other issues have been resolved.</p> <p>ANALYSIS:</p> <p>The Motion will be denied. There are other ways to challenge Responding Party's methodology besides seeking seven (7) years worth of documents regarding other projects. Moving Party has not sufficiently explained why</p>

wrongful act or from a condition wrongfully created and maintained, such as a continuing nuisance or trespass, there is not only a cause of action for the original wrong arising when the wrong is committed, but separate and successive causes of action, for the consequential damages arise as and when such damages are from time to time sustained; and therefore so long as the cause of the injury exists and the damages continue to occur, Plaintiff is not barred of a recovery for such damages as have accrued within the statutory period beyond the action, although a cause of action based solely on the original wrong may be barred."

Moving Party has not set forth any affirmative evidence the alleged nuisance is not a continuing one. Therefore, Moving Party has not met its burden to show the cause of action is barred by the statute of limitations.

RULING:

The Motion for Summary Judgment- Adjudication is denied.

(As Moving Party has not met its initial burden of proof, all objections with regard to the opposition are overruled.)

3 Coe vs Anna's
Linen
Company

Demurrer

Moving Party: Defendant, Anna's Linens Company

04CC00660

Responding Party: Plaintiffs

ANALYSIS:

The Demurrer will be sustained with leave to amend.

Generally, unless the Legislature has indicated intention otherwise, new statutes operate prospectively, not retrospectively. *Evanelatos v. Superior Court* (1988) 44 Cal.3d 1188. Both parties agree there is no such expressed intent contained in Prop.64.

However, if a newly enacted statute merely changes the procedures to be used in the conduct of existing litigation, its application is not considered retrospective. "[W]hat is determinative is the effect that application of the statute would have on substantive rights and liabilities." *Moore v. State Bd. of Control* (2003) 112 Cal.App.4th 371.

Here, Prop. 64 does not impose new, additional or different liabilities based on past conduct. Nor does it deprive the Defendant of any substantive defense to the action. It simply withdraws the authority for a private citizen to prosecute a claim under § 17200 if he or she has not personally suffered any damage from the alleged practice. The action may still be prosecuted, but the Plaintiff must have proper standing.

RULING:

The Demurrer is sustained with twenty (20) days leave to amend.

4	Grant vs American Mult-Cinema 03CC00429	<p>Motion to Strike Class Allegations and Representative Claims under 17200 filed by Defendant, American Multi-Cinema was continued to January 6, 2005 at 1:30 p.m. in Department CX102, pursuant the request of the Moving Party.</p> <p>Motion to Deny Class Certification filed by Defendant, American Multi-Cinema was taken off calendar, pursuant the request of the Moving Party. Moving Party to give written notice.</p>
5	Hernandez vs Main Street and Main Corp. 03CC00012	<p>Motion for Class Certification was continued to an undetermined date. Court is awaiting counsel to provide the Court with their new briefing schedule as to this motion. Moving Party to give written notice.</p>
6	Madigan vs Bristol Park Medical Group 01CC11177	<p>Defendant's PacifiCare Health Systems, Inc and PacifiCare of California's Demurrer to the 7th Amended Complaint was taken off calendar. Plaintiff and said Defendant have reached a settlement.</p> <p><u>Demurrer of Robert Moss 7th Amended Complaint</u></p>