

ENDORSED
FILED
San Francisco County Superior Court

MAR 25 2005

GORDON PARK-LI, Clerk
BY: RENE A. PASCUAL
Deputy Clerk

CALIFORNIA SUPERIOR COURT, UNLIMITED JURISDICTION
CITY AND COUNTY OF SAN FRANCISCO
LAW AND MOTION DEPARTMENT

ELLEN CORBETT and CONSUMER
ACTION, as private attorneys general,

Plaintiffs,

v.

NATIONAL ARBITRATION FORUM, a
Minnesota corporation,

Defendant.

No. CGC-04-431430

**ORDER GRANTING WITH LEAVE TO
AMEND DEFENDANT'S MOTION
FOR JUDGMENT ON THE
PLEADINGS**

Defendant's Motion for Judgment on the Pleadings came on for hearing on March 3, 2005, before the Honorable Ronald Evans Quidachay. Michael Mallow and Matthew Ball appeared for moving defendant and Cliff Palefsky and F. Paul Bland, Jr. appeared for plaintiffs. Upon reviewing the written submissions, cited authorities, and the arguments of counsel, the court GRANTS WITH LEAVE TO AMEND. *See* CCP 438(h)(2).

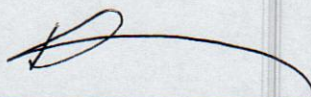
Proposition 64 alters the standing requirements of Cal. Business and

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2 Professions Code sec. 17204 and requires that “[a]ctions for any relief pursuant to this
3 chapter shall be prosecuted exclusively in a court of competent jurisdiction by...any person
4 who has actually suffered injury in fact and has lost money or property as a result of such
5 unfair competition.” Proposition 64 applies to all pending actions under the statutory repeal
6 doctrine. “When a pending action rests solely on a statutory basis, and when no rights have
7 vested under the statute, ‘a repeal of the statute without a saving clause will terminate all
8 pending actions based thereon.’” Governing Bd. of Rialto Sch. Dist. v. Mann, (1977) 18
9 Cal.3d 819, 829.
10

11 Here, plaintiffs allege that they are “private attorneys general” and they do not
12 contend that they been individually harmed by defendant’s business practice. In other words,
13 plaintiff’s complaint does not presently contain sufficient allegations for standing under
14 Proposition 64. Accordingly, the court rules that plaintiffs have leave to amend to plead
15 injury to themselves or substitute a suitable plaintiff into this action. “[T]he California
16 Supreme Court and courts of appeal have permitted amendments to substitute new plaintiffs
17 under certain circumstances when the named plaintiffs are not able to maintain the alleged
18 claims, so long as the amendment does not present an entirely new set of facts and the
19 defendant is not prejudiced.” Branick v. Downey Sav. and Loan Ass'n, (2005) 24
20 Cal.Rptr.3d 406, 417.
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25 Dated: 8/25/05
26

431 430

27 By: 
28 The Honorable Ronald E. Quidachay
Judge of the Superior Court

CALIFORNIA SUPERIOR COURT
CITY AND COUNTY OF SAN FRANCISCO
WRITS & RECEIVERS, ROOM 302

ELLEN CORBETT and CONSUMER ACTION, as)
private attorneys general,)

Plaintiffs,)

vs.)

NATIONAL ARBITRATION FORUM, a)
Minnesota corporation,)

Defendant.)

NO. CGC-04-431430

**CERTIFICATE OF SERVICE BY
MAIL (CCP 1013a(4))**

I, Gordon Park Li, Clerk of the Superior Court of the City and County of San Francisco, certify that:

- 1) I am not a party to the within action;
- 2) On MAR 25 2005, I served the attached:

**ORDER GRANTING WITH LEAVE TO AMEND DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

by placing a copy thereof in a sealed envelope, addressed as following:

Cliff Palefsky, Esq.
McGuinn, Hillsman & Palefsky
535 Pacific Ave.
San Francisco, CA 94133

Michael L. Mallow, Esq.
Kirkpatrick & Lockhart Nicholson Graham
10100 Santa Monica Blvd., 7th Floor
Los Angeles, CA 90067

Matthew L. Ball, Esq.
Kirkpatrick & Lockhart Nicholson Graham
4 Embarcadero Center, Suite 1000
San Francisco, CA 94111

F. Paul Bland, Jr., Esq.
Trial Lawyers for Public Justice
1717 Massachusetts Ave., NW, Suite 800
Washington, D.C., 20036

and,

3) I then placed the sealed envelope in the outgoing mail at 400 McAllister Street, San Francisco, CA, 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practice.

DATED: MAR 25 2005

Gordon Park Li

By: , Deputy