

9

CLJ 133645

AUGUSTUS PUGLIA, ET.AL. VS. MICHAEL FRIED
AUGUSTUS PUGLIA MARK EPSTEIN
MICHAEL FRIED

APPEARANCE OF JUDGMENT DEBTOR MICHAEL FRIED

- **Appear.**

10

CLJ 435057

MILLER WASTER MILLS VS. SWART INDUSTRIES CORPORATION
MILLER WASTE MILLS, INC. GARY L. SWEET
SWART INDUSTRIES CORPORATION

APPEARANCE OF JUDGMENT DEBTOR SWART INDUSTRIES CORPORATION

- **Appear.**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

LAW AND MOTION CALENDAR
JUDGE: HONORABLE BETH LABSON FREEMAN
DEPARTMENT 3

400 COUNTY CENTER, REDWOOD CITY
Courtroom 7B

DECEMBER 15, 2004

If you plan to appear on any case on this calendar,
Please call (650) 363-1882 before 4:00 p.m.

CASE	TITLE/NATURE OF CASE
------	----------------------

9:00

1

CIV 428022

JOSEPH A. ATENCIO,ET.AL. VS. RANEY FERIANTE, ET.AL.
JOSEPH A. ATENCIO MARIO B MUZZI
RANDY FERIANTE J BRIAN MCCAULEY

MOTION FOR STATUTORY AWARD OF ATTORNEY'S FEES TO
PREVAILING PTY FILED BY RANDY FERIANTE

9

CIV 440481

PLAINTIFF'S OVERTIME WAGE, ET.AL. VS. FEDEX KINKO'S, ET.AL.
 PLAINTIFF'S OVERTIME WAGE ENFO SCOTT EDWARD COLE
 FEDEX KINKO'S OFFICE & PRINT S JENNIFER L FIELD

1. DEMURRER TO PETITION of PLAINTIFF'S OVERTIME WAGE
 ENFORCEMENT & BY FEDEX KINKO'S OFFICE & PRINT SERVICES, INC.

- **GRANT** Defendant FedEx Kinko's Request for Judicial Notice, items 1-8. **DENY** as to items 9,1
- **SUSTAIN** Defendant FedEx Kinko's Demurrer to the Complaint. The court finds that Prop 64, amending Bus. & Prof Code sec. 17200, et seq. applies to this case. The parties agree that Plaintiff does not allege that it suffered any injury alleged in the complaint and that the case is not brought as a class action under CCP sec. 382. They agree that the amendments to sec. 17204, if applicable to this case, would preclude the action going forward in the name of Plaintiff POWERG. They disagree as to whether the newly enacted statute applies to this case, which was filed prior to the effective date of Prop 64. The court finds that Prop 64 does not change the legal consequences of past conduct by imposing new or different liabilities based on such conduct. See, Tapia v. Superior Court (1991) 53 Cal. 3d 282, 291. The court finds that Prop 64 is "procedural" as to the issues of standing and the elimination of private party representative actions absent allegation under CCP sec. 382 and thus Prop 64 applies to this case. See, Physicians' Committee for Responsible Medicine v. Tyson's Foods, Inc. (2004) 119 Cal. App. 4th 120, 125; Brenton v. Metabolife International, Inc. (2004) 116 Cal. App. 4th 679,689. The court further **SUSTAINS** the Demurrer on the grounds that POWERG has failed to allege facts sufficient to establish that it is a proper party under the pre-Prop 64 provisions of sec. 17200, et seq. There are no allegations that POWERG may maintain this action under sec. 17201, or 17204. Leave to amend on this ground would have been granted but for the court's ruling regarding the applicability of Prop 64.
- Defendant shall submit an order pursuant to CRC 391
- In the event that the court does not adopt this tentative ruling, the presiding judge will assign this case to a judge for all purposes shortly.

2. MOTION FOR LIMITED STAY OF DISCOVERY FILED BY FEDEX
 KINKO'S OFFICE & PRINT SERVICES, INC.

- **MOOT.**

3. MOTION TO STRIKE PORTIONS OF COMPLAINT FILED BY
 FEDEX KINKO'S OFFICE & PRINT SERVICES, INC.

- **MOOT.**