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ENDORSED  
FILED  
San Francisco County Superior Court

FEB 15 2005

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

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

11 JOHN ANDRES, in a Representative Capacity,  
12 on behalf of the General Public,  
13 Plaintiffs,  
14 vs.  
15 CROSS LINK INC. dba WESTAR MARINE  
SERVICES, and DOES 1 through 30, inclusive,  
16 Defendants.

Case No. CGC-04-431220  
~~PROPOSED~~ ORDER DENYING  
DEFENDANT'S DEMURRER  
Date: January 27, 2005  
Time: 9:30 A.M.  
Dept: 302  
Judge: Ronald E. Quidachay  
Trial Date: None

*OVERRULING* *JAM*

18 The Motion form Demurrer to Second Amended Complaint brought by the Defendant to  
19 this action came on regularly for hearing before this Court on January 27, 2005. Plaintiff was  
20 represented by Alan G. Crowley of Weinberg, Roger & Rosenfeld. Defendant was represented  
21 telephonically by Joel D. Peterson of Marc D. Roberts & Associates. The issue presented in this  
22 demurrer is whether Proposition 64 applies to cases already on file as of the effective date of  
23 Proposition 64, so as to require that Plaintiff's action be dismissed. The parties stipulated that after  
24 the effective date of Proposition 64, Plaintiff does not have standing to bring this action. As a  
25 preliminary matter, the court grants Plaintiff's Request for Judicial Notice over Defendant's  
26 Objections.

27 Contrary to Defendant's assertions, this Court finds that the voters passing Proposition 64  
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1 did not intend to terminate pending unfair competition law actions such as the present case. A new  
2 ballot proposition is presumed to operate prospectively unless there is either an express declaration  
3 of retrospectivity or a clear indication that the electorate intended otherwise. Tapia v. Superior  
4 Court, (1991) 53 Cal.3d 282, 287. The California Supreme Court in Evangelatos v. Superior  
5 Court, (1988) 44 Cal.3d 1188, found that ballot propositions are presumed to operate prospectively  
6 unless the propositions language or materials considered by the voters can be read as an explicit  
7 expression of an intent to have retroactive application so as to overcome the presumption of  
8 prospective operation. Under this standard, the language in the initiative specifying that the  
9 Attorney General may "prosecute" cases under the Unfair Competition Laws is too ambiguous to  
10 be understood as an explicit expression by voters that the initiative would have retroactive  
11 application.

12 Proposition 64 effects substantive rights, not only procedural rights as Defendant's argue.  
13 Therefore, Proposition 64 cannot be applied retroactively to pending actions. While standing, as a  
14 general matter, is usually a question of procedure, the labels of "procedures" or "substance" do not  
15 control the Court's analysis. Rather, it is the "laws *effect*, not its form or label" that guides. Tapia  
16 v. Superior Court, (1991) 53 Cal.3d 282, 289, (emphasis added). Were Proposition 64 to be  
17 determined to apply retroactively, rather than leaving the parties' substantive rights intact, the  
18 effect would be to terminate this lawsuit altogether and in the process reduce the claimed liability  
19 of Defendant. While it is indeed possible that these claimed liabilities could be resurrected against  
20 the Defendant by a new lawsuit pursued by persons with actual injury, the potential liabilities in  
21 such a new lawsuit would not be identical to those in this case due to the potential effects of the  
22 statute of limitations. As such, Proposition 64 cannot be seen to be either "remedial" or  
23 "procedural" for the purposes of rules stated and the cases cited by Defendant.

24 Therefore, after full consideration of the moving and opposition papers, argument of  
25 counsel, and such other papers, submissions and arguments as represented at or before the hearing  
26 in this matter, and with good cause appearing therefore:

27 IT IS HEREBY ORDERED THAT: Proposition 64 does not apply to cases already on the  
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1 file as of the time of its enactment. Accordingly, Defendant's motion for a demurrer to the second  
2 amended complaint is DENIED.

3 CERTIFICATION UNDER CODE OF CIVIL PROCEDURES § 166.1.

4 The Court believes that the question presented herein is a controlling question of law as to  
5 which there is substantial grounds for difference of opinion, appellate resolution of which may  
6 materially advance the conclusion of the litigation.

7  
8 IT IS ORDERED:

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10 Dated: 2/8/05

  
11 HONORABLE RONALD E. QUIDACHAY  
12 JUDGE OF THE SUPERIOR COURT

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