

## Superior Court of the State of California

## County of Orange

## NOTICE OF LAW &amp; 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: 01-13-05**

#	Case	Tentative Ruling
1	Antrim vs Tuesday Morning Corp.  04CC00674	<u>Application to appear Pro Hac Vice</u>  Moving Party: Defendant, Tuesday Morning Inc.  Responding Party: None  RULING:  The application of R. Kobdish, D. Clarkson, S. Lemons and A. Cailide to Appear Pro Hac Vice are granted.
2	California Alliance vs Ensign Group Inc.  04CC00678	<u>Demurrer to Complaint</u>  Moving Party: Defendant  Responding Party: Plaintiffs  ANALYSIS:

The Demurrer to the 1<sup>st</sup> and 3<sup>rd</sup> causes of action will be sustained with leave to amend.

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 damages from the alleged practice. The action may still be prosecuted, but the Plaintiff must have proper standing.

The Demurrer to the 2<sup>nd</sup> cause of action will be overruled. Moving Party contends Responding Party should be required to allege facts stating whether or not the state department has taken any action against each Defendant for the alleged conduct or that the violations have not been corrected. There is no such pleading requirement in the statute. H&S Code §1430 states in part: "(a) Except where the state department has taken action and the violations have been corrected to its satisfaction ...[a]n action for injunction or civil damages, or both, may be prosecuted...by a person acting for the interests of itself, its members, or the general public." If Moving Party has facts indicating the state department *has* taken action or the violations *have* been corrected, it can assert them as an affirmative defense or as basis for summary adjudication.

There are sufficient facts in the allegations incorporated into this cause of action for Moving Party to be on notice as to whether Responding Party is alleging either a Class A or Class B violation of the *Health & Safety Code*.

**RULING:**

The Demurrer to the 2<sup>nd</sup> cause of action is overruled. The Demurrer to the 1<sup>st</sup> and 3<sup>rd</sup> causes of action are sustained with leave to amend.

3

Carmichael vs  
Hall Dev.

01CC06691

Motion for Leave to Withdraw as Counsel of Record.

Moving Party: Counsel Kristine L. Adams

Responding Party: Defendants, Hall Development, Inc., Burton and Keister