

# SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CALENDAR NO.

NUMBER GIC837068	COMPLAINT DATE 10-13-04	HEARING DATE 01-07-05	HEARING TIME	DEPT 63	F COURT USE ONLY D Clerk of the Superior Court  JAN - 7 2005 By: <u>Terry Abas</u> Deputy
JUDGE/ <del>COMMISSIONER</del> Luis R. Vargas, Judge			CLERK T. Abas		CSR #
REPORTER Not Reported					
PLAINTIFF/PETITIONER ADAM RANKIN			DEFENDANT/RESPONDENT LONGS DRUG STORES CORPORATION		
ATTORNEY FOR PLAINTIFF/PETITIONER Terry Chapko			ATTORNEY FOR DEFENDANT/RESPONDENT Timothy Long Michael D. Weil		
The above matter came on for hearing with the below appearances, for: <u>Demurrah (Long Drug Store)</u> Final Ruling on Defendants'					

THIS MATTER HAVING COME BEFORE THE COURT THIS DATE, THE COURT ORDERS:

- PRIOR TO CALENDAR CALL     OFF-CALENDAR     GRANTED     BONDS \_\_\_\_\_
- DENIED     WITH/WITHOUT PREJUDICE
- PRIOR TO CALENDAR CALL     CONT. TO \_\_\_\_\_ IN DEPT \_\_\_\_\_ AT \_\_\_\_\_
- TRO     CONTINUED     VACATED
- ALL PREVIOUS ORDERS REMAIN IN FULL FORCE AND EFFECT.
- ORAL ARGUMENT    TENTATIVE DATED \_\_\_\_\_     CONFIRMED     MODIFIED
- DISPOSES OF ENTIRE ACTION     DOES NOT DISPOSE OF ENTIRE ACTION
- PREVAILING PARTY TO PREPARE AND FILE FORMAL ORDER PURSUANT TO CRC 391.
- OTHER

Having taken Defendants Longs Drug Stores Corporation and Longs Drug Stores California, Inc.'s demurrer to the Complaint under submission, the Court rules as follows:

Defendants Longs Drug Stores Corporation and Longs Drug Stores California, Inc.'s demurrer to the Complaint are overruled in part and sustained in part.

The demurrer to the first and second cause of action is overruled.

There are three types of preemption: (1) express, (2) implied and (3) conflict. (*Maryland v. Louisiana* (1981) 451 U.S. 725, 746.) Conflict preemption occurs "where it is impossible for a private party to comply with both state and federal requirements" or "where state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress." (*Dowhal v. SmithKline Beecham Consumer Healthcare* (2004) 32 Cal.4th 910, 929.)

Defendants argue Labor Code §432.8 conflicts with 21 C.F.R. §1301.76(a) and makes it impossible for Longs to comply with both regulations. However, the plain language of the

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE/COMMISSIONER OF THE SUPERIOR COURT

federal statute makes no reference to misdemeanor convictions and only applies to felony convictions. Furthermore, it is not clear from 56 Fed. Reg.26727 the DEA intended the statute to apply to misdemeanors. Therefore, there is no conflict in the application of both statutes.

The demurrer to the third cause of action is sustained with leave to amend.

Proposition 64 went into effect immediately. California Constitution Article II, section 10 provides that an initiative or referendum approved by a majority of votes take effect the day after the election unless the measure provides otherwise. In addition, Proposition 64 also applies to all pending action because it is procedural in nature. "A statute is procedural when it neither creates a new cause of action nor deprives defendant of any defense on the merits. (Citation.) An amendment of a procedural statute applies to cases pending at the time of its enactment, providing vested rights are not affected. (Citations.) (*Kuykendall v. State Board of Equalization* (1994) 22 Cal.App.4th 1194, 1211, fn. 20, citing *Strauch v. Superior Court* (1980) 107 Cal.App.3d 45, 49.) Where a statute is procedural in nature, the general rule a statute should not be construed as applying retroactively does not apply. (*Id.*) Standing is a procedural issue since it does not reflect on the merits of the action but goes to whether or not the cause of action can be maintained. (*Killian v. Millard* (1991) 228 Cal.App.3d 1601, 1605.) Based upon the amendment of the statutes which repealed the standing of private persons to bring representative actions, the statute is procedural and applies to all pending actions.

Plaintiff has not met the standing requirements of the newly amended B&PC §17200 et seq. Plaintiff has not alleged actual injury or lost money or property as a result of the actions by Defendants. Therefore, Plaintiff has no standing to assert the third cause of action.

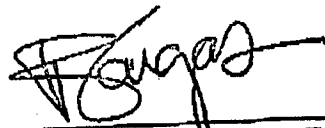
Plaintiff has ten days to file an amended complaint.

Defendants' requests for judicial notice are granted.

Plaintiff's requests for judicial notice are denied.

**IT IS SO ORDERED**

Dated: 1/7/2005



Hon. LUIS R. VARGAS