

Below is the text of Judge Cannon's ruling of 1/6/05 as e-mailed to H&L by counsel for American Express and forwarded to The UCL Practitioner, <http://www.17200blog.com>

Wilens v. American Express
Orange County Superior Court (Complex)
Case No. 03-CC-00244
Judge Jonathan H. Cannon

Motion for Judgment on the Pleadings

Moving Party: Defendant, American Express
Responding Party: Plaintiffs

ANALYSIS:

The Demurrer will be sustained with leave to amend.

Generally, unless the Legislature has indicated intention otherwise, new statutes operate prospectively, not retrospectively. *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188. Both parties agree there is no such expressed intent contained in Prop. 64. However, if a newly enacted statute merely changes the procedures to be used in the conduct of existing litigation, its application is not considered retrospective. "[W]hat is determinative is the effect that application of the statute would have on substantive rights and liabilities." *Moore v. State Bd. of Control* (2003) 112 Cal.App.4th 371.

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

It is fairly clear the intent of Prop. 64 was to curb overly zealous attorneys from generating attorney fees through prosecution of §17200 actions. The purpose of the change in the law would be furthered by applying the changes to all pending litigation, whether or not it was filed prior to, or after the passage of Pro. 64.

Leave to amend will be given to allow Plaintiff either to allege she personally suffered damage as a result of the alleged unfair practices, or to find a person with standing under Prop. 64 to prosecute the action.

RULING:

The motion for judgment on the pleadings is granted with leave to amend.

Discovery Motions

Plaintiff has two (2) motions to compel set for this date. In light of the above ruling, discovery is stayed until the pleading issue[s] are resolved.