

(ENDORSED)  
FILED

FEB 22 '05

MINOR COUNTY CLERK  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA  
BY **R. Burciaga** DEPUTY

1 Timothy E. Herr, Esq. Bar # 126798  
2 Herr & Zapala, lp  
3 152 N. 3<sup>rd</sup> Street, Suite 500  
4 San Jose, CA 95112  
5 Telephone: 408-287-7788  
6 Facsimile: 408-287-7263

Attorneys for Shannon Zamani

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9  
10 COUNTY OF SANTA CLARA UNLIMITED JURISDICTION  
11

12 SHANNON ZAMANI,

Case Number: 1-02-CV806141

13 Plaintiff,

14 NOTICE OF ENTRY OF ORDER DENYING  
15 MOTION FOR SUMMARY ADJUDICATION

16 vs.

17 PETER N. MALAE; RANDALL  
18 HOWARD ZIMMER AND RUTH ANN  
19 ZIMMER, both individually and dba  
20 ADVANTAGE DRIVING SCHOOL;  
21 ADVANTAGE DRIVING SCHOOL, INC.  
22 A CALIFORNIA CORPORATION, and  
23 Does 1 to 10, inclusive

24 Defendants.

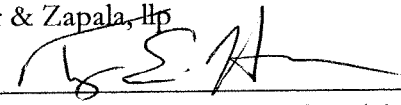
25 TO PARTIES AND THEIR ATTORNEYS OF RECORD:

26 NOTICE IS HEREBY GIVEN that on February 22, 2005 the above-entitled court entered the order  
27 attached hereto as Exhibit A..

28 Respectfully Submitted

Herr & Zapala, lp

Dated: 2/22/05

By:   
Timothy E. Herr, Attorneys for Plaintiff,  
Shannon Zamani

Herr & Zapala, lp  
152 North 3<sup>rd</sup> Street, Suite 500  
San Jose, CA 95112  
408-287-7788

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CHIEF EXECUTIVE OFFICER/CLERK  
SUPERIOR COURT OF CA  
COUNTY OF SANTA CLARA  
BY \_\_\_\_\_ DEPUTY

*Rose Hoins*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA**

SHANNON ZAMANI,

Plaintiff,

v.

PETER N. MALAE; RANDALL HOWARD  
ZIMMER AND RUTH ZIMMER, individually  
and dba ADVANTAGE DRIVING SCHOOL;  
ADVANTAGE DRIVING SCHOOL, INC.; and  
DOES 1-10,

Defendants.

Case No. 1-02-CV-806141

ORDER RE: SUMMARY  
ADJUDICATION OF ISSUES

The Motion for Summary Adjudication to Plaintiff Shannon Zamani's ("Plaintiff" or "Zamani") First Amended Complaint ("FAC") brought by Defendants Advantage Driving School, Inc., Randall Zimmer, and Ruth Ann Zimmer (collectively "Defendants") came on for hearing before the Honorable Kevin E. McKenney on February 22, 2005 at 9:00 a.m. in Department 16. The matter having been submitted, the Court orders as follows:

Exhibit "A"


1 Defendants' Motion for Summary Adjudication of the 5<sup>th</sup> cause of action for B&P Code  
2 §17200 violation is DENIED because Defendants have not met their burden of showing that  
3 Plaintiff cannot establish her unfair business practices claim. Contrary to Defendants'  
4 contention, *Baugh v. CBS, Inc.* (1993) 828 F.Supp. 745 does not hold that personal injury claims  
5 can never be a proper subject for a §17200 violation cause of action. *Baugh* is also inapplicable  
6 in the instant case because Plaintiff does not seek compensation for her embarrassment and  
7 emotional distress as restitutionary damages. As for the claim of restitutionary damages,  
8 Defendants have not met their burden of showing that they received no ill-gotten gains and hence  
9 should not be liable for restitution. Statement of Undisputed Material Fact (UMF) #8. On the  
10 issue of injunctive relief, Plaintiff has presented evidence that there still exists a threat that the  
11 allegedly wrongful conduct will continue (e.g., Defendants do not conduct an independent  
12 background check separate from the DMV check). UMF #14. Therefore, there is a triable issue  
13 of material fact as to each claim.

14 Defendants' Motion for Summary Adjudication of Plaintiff's claim for attorney's fees is  
15 DENIED. The issue of attorney's fees, which constitute costs, not damages, is not a proper  
16 subject for summary adjudication in accordance with Code of Civil Procedure §437c(f)(1).  
17 Hence, Defendants have not met their burden of showing that there is no triable issue of material  
18 fact.

19 Defendants' Motion for Summary Adjudication of Plaintiff's claim for punitive damages  
20 is DENIED. Plaintiff has presented evidence to create a triable issue of material fact as to  
21 Defendants' advance knowledge of Defendant Peter Malae's unfitness for the position of driving  
22 instructor, including the DMV's cancellation notice, conflicting testimony as to Defendants'  
23 knowledge of Malae's whereabouts when he was in lock-down, and information from the  
24 principal of Pioneer High School regarding student complaints. UMF #32.

25  
26  
27 Date:

*February 22, 2005*

  
Kevin E. McKenney  
Judge of the Superior Court

PROOF OF SERVICE

(ENDORSED)

I am employed in the County of Santa Clara, State of California. I am over the age of eighteen years and am not a party to the within action. My business address is 152 N. 3<sup>rd</sup> Street, Suite 500, San Jose, CA 95112. On the date set forth below, I served the following documents:

NOTICE OF ENTRY OF ORDER DENYING MOTION FOR SUMMARY JUDGMENT

SUPERIOR COURT COUNTY OF SANTA CLARA  
R. Burciaga

[ ] (BY MAIL) By placing a true copy thereof, enclosed in a sealed envelope to the address(es) listed below with first class postage thereon fully prepaid, for collection and mailing on that date following ordinary business practices, in the United States mail at the offices of Herr & Zapala, LLP, in San Jose, California.

[X] (BY HAND DELIVERY) By causing a true copy thereof, enclosed in a sealed envelope, to be delivered by hand to the address(es) shown below.

[ ] (BY OVERNIGHT DELIVERY) By placing a true copy thereof, enclosed in a sealed envelope, with delivery charges to be paid by sender, to be delivered by overnight express mail to the address(es) shown below.

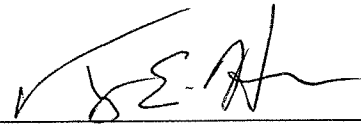
[ ] (BY FACSIMILE TRANSMISSION) By transmitting a true copy thereof by facsimile transmission from facsimile number (408)287-7263, to the below listed interested parties at the facsimile number(s) shown below.

These documents were served by the above indicated means on the following persons:

<p>Anthony Pagkas <i>Christina Najoo</i> Law Offices of Anthony Pakgas 1570 The Alameda, Suite 215 San Jose, CA 95126</p>	<p>BENJAMIN EMMERT Ericksen, Arbuthnot, Kilduff, Day &amp; Lindstrom 152 N. 3<sup>rd</sup> Street, Suite 700 San Jose, CA 95112</p>
<p>By deliver at the Santa Clara Superior Court 191 North First Street San Jose, CA 95113</p>	<p>By delivery at the Santa Clara Superior Court 191 North First Street San Jose, CA 95113</p>

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 22, 2005 at San Jose, California

  
\_\_\_\_\_  
Timothy E. Herr

PROOF OF SERVICE

Case Name: Zamani v. Malae  
Court: Santa Clara Superior Court  
Case No. CV 806141

Herr & Zapala, llp  
152 N. 3<sup>rd</sup> Street, #500  
San Jose, CA 95112  
408-287-7788