

Tentative Rulings – April 21, 2005

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

JENSEN v. DONNELLY – 05CV3655 – Demurrer of Defendant, Fleetwood Retail Corp. of California dba Fleetwood Home Center to the Fifth Cause of Action in Plaintiffs' Complaint

The demurrer to the fifth cause of action is sustained with 20 days leave to amend. A cause of action for intentional misrepresentation against a corporate employer must allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written. (Tarmann v. State Farm Mutual Auto. Ins. Co. (1991) 2 Cal.App.4th 153, 157.)

It is true that the requirement of specificity is relaxed when the allegations indicate that the defendant must necessarily possess full information concerning the facts of the controversy or when the facts lie more in the knowledge of the opposite party. However, the complaint does not allege facts to establish that the defendant possessed full information regarding the controversy.

Unless a hearing is requested, this minute order is effective immediately. Moving party to provide notice of this ruling and submit an order to the court pursuant to Code of Civil Procedure Section 437c(g) and California Rules of Court, Rule 391.

CITICORP CREDIT SERVICES v. RANDY SPARKS – 05CV3642 – Demurrer of Defendant Randy Sparks to Plaintiff's Complaint.

The defendant's demurrer to the plaintiff's complaint is sustained with 20 days leave to amend. The court has taken judicial notice of the related probate matter Estate of Alabona Amador Superior Court Case No. 03PR0488.

The plaintiff's complaint is barred by the statute of limitations applicable to actions against a decedent or the decedent's estate, which requires the action to be filed within one-year of the date of death. (Code of Civil Procedure Section 366.2) The date of death was October 25, 2003. This action was not filed until January 25, 2005. Because the creditors claim was not timely, it did not serve to toll the statute of limitations. (Probate Code Section 9100.)

Unless a hearing is requested, this minute order is effective immediately. Moving party to provide notice of this ruling and submit an order to the court pursuant to Code of Civil Procedure Section 437c(g) and California Rules of Court, Rule 391.

**JACKSON INDIAN RANCHERIA v. PREFERRED PROPERTIES –
04CV3536 – Plaintiff’s Motion for Sanctions and Defendant’s Motion for
Leave to File a Cross Complaint**

Due to the disqualification of Judge Susan C. Harlan, this hearing is continued to April 28, 2005 at 3:15 p.m., in Department 2, of this court. The motion will be subject to the court’s tentative ruling procedures. (Local Rule 4.03.)