

## **TENTATIVE RULINGS-DECEMBER 14, 2007**

To request a hearing on any matter on this calendar, you must call the Court at (209) 257-2692 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.

**Berry v. City of Jackson: 07CV5038**

### ***Demurrer to Petition for Writ of Mandate***

The demurrer to the petition for writ of mandate is sustained.

1. Count III: RICO Claim:

"Government entities are incapable of forming the malicious intent necessary to support a RICO action." (Pedrina v. Chun (1996) 97 F.3d 1296.) Respondent is a governmental entity. Therefore, the demurrer is sustained. As there is no possibility of the petitioner amending to state a cause of action under RICO against the respondent, leave to amend is denied.

2. Count III: Business & Professions Code §17200:

Government entities are not persons within the meaning of the Unfair Competition Law. (People for the Ethical Treatment of Animals, Inc. v. California Milk Producers Advisory Board (2005) 125 Cal.App.4th 871.) As respondent is a governmental entity, the demurrer is sustained. As there is no possibility of the petitioner amending to state such claim, leave to amend is denied.

3. Friends of Jackson:

Petitioner Ken Berry is attempting to represent the interests of the unincorporated association, Friends of Jackson. Mr. Berry is not an attorney. An individual, who is not licensed to practice law, may not represent the interests of an unincorporated association. (Clean Air Transport Systems v. San Mateo County Transit District (1988) 198 Cal.App.3d 576.) Therefore, the demurrer is sustained with leave to amend. Petitioner Friends of Jackson must obtain legal representation prior to filing an amended complaint.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**County of Amador v. McClure: 07CV4652**

### ***Motion for Change of Venue***

Defendant's motion for change of venue is hereby granted.

C.C.P. §394 provides, in pertinent part:

(a)... any action or proceeding brought by a county, city and county, city, or local agency within a certain county, or city and county, against a resident of another county, city and county, or city, or a corporation doing business in the latter, shall be, on motion of either party, transferred for trial to a county, or city and county, other than the plaintiff, if the plaintiff is a county, or city and county, and other than that in which the plaintiff is situated, if the plaintiff is a city, or a local agency, and other than that in which the defendant resides, or is doing business, or is situated.

The purpose behind §394 is to guard against local prejudices in favor of litigants within a county as against those from outside the county and to ensure both parties have a trial upon neutral ground. (The City of Los Angeles v. Pacific Telephone and Telegraph Company (1958) 164 Cal.App.2d 253, 257.)

Not all corporations with principle places of business outside of the forum county are entitled to relief under §394. (San Francisco Foundation v. Superior Court (1984) 37 Cal.3d 285, 297.) A defendant corporation's rights under §394 may be barred if the corporation is "doing business" within the county. (*id.* at 297-298 (adding that the existence, extent, and nature of activities in the forum county bear upon whether §394 relief is available).) "Doing business" for the purpose of §394 is not equivalent to "doing business" for the purpose of minimum contacts. (Westinghouse Electric Co. v. Superior Court (1976) 17 Cal.3d 259, 270 (noting that each meaning is in furtherance of a different objective).)

[A] corporation is doing business in a county for the purposes of section 394 only if its activities in the county are substantial enough that the corporation can reasonably be viewed as being intimately identified with the affairs or closely associated with the people of the community. (*id.* at 271.)

Moreover,

[t]he question in each case is whether the corporation's activities are such that the corporation is reasonably likely to be viewed as an outsider, not whether it is actually so viewed. (San Francisco Foundation, supra, at 299.)

A corporation with a principle place of business elsewhere and with limited contacts in a county may obtain a change of venue under §394. (Westinghouse, supra, at 271.) Of note, services related to the particular litigation at issue typically are not the types of activities that constitute "doing business" within a county. (*id.* at 272 (noting that to hold otherwise would preclude a business from obtaining a change of venue in any contract action brought by the county against it).)

In this instance, only 2.5% of the defendant's business between 2004 and 2007 (excluding the instant project) came from within the County. The defendant resides outside of the county and his principle place of business is outside of the county. The information presented in support of the motion demonstrates the defendant is not "doing business" within the County for the purposes of §394.

Therefore, the motion to change venue is granted. Venue is hereby transferred to Sacramento County.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**Soares v. Amador Automotive: 06CV4554**

***Defendant's Motion to Compel Further Responses to Request for Admissions, Request for Production of Documents, and Special Interrogatories and Request for Sanctions***

Defendant's motions to compel further responses are hereby granted. The plaintiff is to provide further verified responses to special interrogatories, request for production of documents, and request for admissions within 10 days of the date of this order.

Defendant is awarded sanctions in the amount of \$1,440.00.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**Travis v. Kaiser: 07CV4957**

***Petition to Compel Arbitration and Mediation***

The petition to compel arbitration is hereby granted. The petitioners are excused from mediating this matter. However, said excuse shall not preclude the parties from mediation if they can reach an agreement regarding the same.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 3.1312 is needed, nor is further notice of this ruling required.

**The Alberta Hale Land Trust v. Bonneau: 05CV3880**

***Defendant's Motion for Monetary Sanctions***

This matter is continued, on the court's own motion to January 11, 2008 at 10:00 a.m. in Department 2 before Judge Harlan. The parties may appear via Courtcall at the hearing.