SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
MINUTE ORDER

Department: C16

COURT CONVENED AT:	9:00 AM	**ON:**	NOVEMBER 29, 2004
JUDGE / COMM:	DAVID T. McEACHEN	**CLERK:**	J. YVONNE HYATT
BAILIFF:	NONE	**REPORTER:**	NONE

AND THE FOLLOWING PROCEEDINGS WERE HAD:

03CC01256 AMERICARE VS MEDICAL CAPITAL CORP., ET. AL.

No appearances. The Court took this matter under submission on 11/23/04 to do additional research and now rules as follows: Deny Defendant's Motion in Limine to preclude evidence of Plaintiff's "Representative" Claim under the Sixth Cause of Action. Proposition 64 should not apply to Plaintiff's UCL claims because application would alter Plaintiff's substantive rights, as well as those of other potential plaintiff's, and as such would arguably be "manifestly unjust." There is no evidence that the authors of Proposition 64 ever intended it to apply retrospectively; absent evidence of author's intent, legislation is programmed only to apply prospectively. New "procedural" laws may apply to pending cases, but new "substantive" laws affecting parties' rights do not. New statutes of limitation are not applied to pending cases unless the Legislature specifically so requires. The Ninth Circuit in Chenault vs United Postal Service (1994)37 F.3d 535, 539 (citing Gonzalez vs Aloha Airlines, Inc.(1991) 940 F.2d 1312, 1316) has held that a new statute cannot be applied to a pending proceeding if it would prejudice the rights of a party or otherwise result in "manifest injustice". Similarly, the Ninth Circuit has repeatedly held that regardless of whether a new statute is "substantive" or "procedural", it cannot rightly be applied to a pending case if the new statute would prejudice the rights of one of the parties. Applying Proposition 64 to the case at hand would prejudice Plaintiff's substantive rights to

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bring the UCL claim on its own behalf and on behalf of others. Using Proposition 64 to retrospectively subject Plaintiff's UCL claim to the class requirements of CCP Sec. 382 could be similarly unjust. When Plaintiff filed his First Amended Complaint in March 2004, the class requirements did not apply to his suit. If the class requirements were applied to the UCL claim ex post facto, this could prevent Plaintiff from bringing this claim on behalf of others similarly situated. If, as the Chenault court felt, using a new, shorter statute of limitations to dismiss a party's pending suit would be manifestly unjust, using a new class requirement to effectively dismiss Plaintiff's representative UCL claim could likewise be manifestly unjust. Defendants fail to explain their concern that Plaintiff's UCL claim is "unmanageable". The motion does not demonstrate that each individual contract will in fact require a "mini-trial" . Defendants also fail to explain their concern that Plaintiff's UCL claim was not brought on behalf of members of the general public. Defendant cite the case Rosenbluth International v Superior Court (2002) 101 C.A.4th 1073 in support of it's argument. Rosenbluth held that an individual plaintiff who had not suffered any harm could not bring a UCL claim on behalf of numerous very large corporate entities. However, Defendants offer no evidence that their clients were large, sophisticated corporations outside the realm of the "general" public. Other cases considered by the court:

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Brenton v. Metabolife International, Inc. (2004) 116 Cal.App. 4th 679

Krusesky v. Baugh (1982) 138 Cal.App. 3d 562

Kraus v. Trinity Management Services, Inc. (2000) 23 Cal. 4th 116

Robertson v. Rodriguez (1995) 36 Cal. App. 4th 347

Tapia v. Superior Court (1991) 53 Cal. 3d 282

Yoshioka v. Superior Court (1997) 58 Cal. App. 4th 972

The cases of Younger v. Superior Court (1978) 21 Cal 3d 102 and Department of Social Services v. Wingo (1946) 77 Cal.App.2nd 316 were not persuasive to the Court. In considering Defendant's Request to Invoke CCP 166.1, the Court suggest that the "Representative Claim" within in the Sixth Cause of Action be bifurcated from the December 6, 2004 trial. It is understood that the 4th District Court of Appeal, Division 3, in a case entitled Consumer Advocates v. Daimler Chrysler Corp., G029811 has asked for briefs by Dec. 3, 2004 addressing whether Proposition 64 should apply to pending cases. This present case is not your average B & P 17200 case in that the representative groups allegedly encompassed only 10 to 20 businesses similar to Plaintiff. The only real difference between the individual form contracts is the deferred purchase price that each customer

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has lost due to the allegeedly illegal penalties. Thus, the motion in limine is denied with the strong recommendation that the Sixth Cause of Action be bifurcated. Clerk to give notice. Entered: 11/29/04

CLERK'S CERTIFICATE OF MAILING (CCP SECTION 1013A) - I certify that I am not a party to this cause, over 18, and a copy of this document was mailed first class postage fully prepaid, in a sealed envelope addressed as show. Mailing and execution of this certificate occurred on 11/29/04 in Santa Ana, California

ALAN SLATER, EXECUTIVE OFFICER/CLERK
by _____, Deputy, J. Yvonne Hyatt

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