

1
2
3 SUPERIOR COURT OF THE STATE OF CALIFORNIA

4 IN AND FOR THE COUNTY OF ALAMEDA

5
6 FOUNDATION AIDING THE ELDERLY, on
7 behalf of the general public,

8 Plaintiff,

9 v.

10 COVENANT CARE CALIFORNIA, INC. et al,

11 Defendants.
12

No. RG03-087211

ORDER REGARDING (1) BRIEFING
SCHEDULE, (2) ISSUES OF CONCERN
REGARDING PROPOSITION 64, AND (3)
SCHEDULING OF SIMILAR MOTIONS IN
CASES RAISING ISSUES UNDER
PROPOSITION 64.

13
14 BACKGROUND.

15 Proposition 64, entitled “Limits on Private Enforcement of Unfair Business Competition
16 Laws” may have a significant effect on the many cases in Alameda County Department 22 where
17 a plaintiff is asserting a claim in the interest of the general public under Business and Professions
18 Code 17204 and 17535.

19 The defendants in *Foundation Aiding the Elderly v. Covenant Care*, Alameda County
20 Case # RG03-87211, *Foundation Aiding the Elderly v. GranCare*, Alameda County Case
21 #RG03-103363, and *Foundation Aiding the Elderly v. EmberCare*, Alameda County Case
22 #RG03-087224, (the “FATE cases”) have set motions for judgment on the pleadings for February
23 11, 2005, at 9:00 am, concerning the effect of Proposition 64 on the UCL claims in those cases.

24 The Court issues this order to address matters on the FATE cases and to advise counsel
25 that similar Proposition 64 motions in other cases can be set at the same time as the Proposition
26 64 motions in the FATE cases.

1 BRIEFING SCHEDULE.

2 The Court sets the following briefing schedule on the motions to strike in the FATE
3 cases:

4 Defendants' moving papers (20 pages)	December 22, 2004
5 Plaintiff's opposition papers (30 pages)	January 14, 2005
6 Defendants' reply papers (25 pages)	January 28, 2005
7 Plaintiff's sur-reply papers (15 pages)	February 4, 2005
8 Hearing	February 10, 2005, 9:00 am

9 The Court provides for a sur-reply and extended page limits because it anticipates that the
10 briefing will unfold as (1) Defendants opening argument that Proposition 64 is an absolute bar on
11 the continued prosecution of UCL claims in the interest of the general public by private persons,
12 (2) Plaintiff's opposition argument that Proposition 64 is not an absolute bar, and opening
13 argument that Plaintiff should be granted leave to amend and add a new plaintiff and/or class
14 allegations, (3) Defendants' reply argument that Proposition 64 is an absolute bar and opposition
15 argument that Plaintiff cannot be granted leave to amend, and (4) Plaintiff' reply argument
16 regarding the potential for leave to amend. Regarding the potential for granting leave to amend,
17 Plaintiff may request leave to amend to add a new named plaintiff and/or class allegations
18 without providing a proposed amended complaint and otherwise complying with C.R.C. 327.

19
20 ISSUES OF CONCERN REGARDING PROPOSTION 64.

21 The parties may raise any arguments they wish in their briefing. To the extent it may be
22 useful, the Court can preliminarily identify the following issues:

23 Does Proposition 64 require the dismissal of claims in the interest of the general public
24 under Business and Professions Code 17204 that were filed before November 2, 2004? What is
25 the language of the proposition and how has similar language been interpreted in other statutes?
26 What is the language in the voter information guide and how has similar language been

1 interpreted in other situations? *Hayward Area Planning Assn. v. Alameda County*
2 *Transportation* (1999) 72 Cal. App. 4th 95, 104-105. Does Proposition 64 affect standing to
3 pursue a claim in the interest of the general public, the elements of a claim in the interest of the
4 general public, and/or the nature of any injunctive and monetary relief that can be recovered on
5 behalf of the general public? Is Proposition 64 substantive or procedural in nature and does that
6 effect how it is applied to cases that were filed before November 2, 2004? Is a cause of action
7 under Proposition 64 a right that is vested as of the time of filing? If so, is the right vested in the
8 named plaintiff, the named plaintiff's counsel, or in the general public?

9 Assuming Proposition 64 requires the dismissal of general public claims that were filed
10 before November 2, 2004, can a plaintiff that can no longer pursue a general public claim
11 substitute in a new plaintiff that can pursue an individual or class claim? If so, what criteria
12 should the Court consider?

13 Similarly, but slightly different, can a plaintiff that has an individual claim but can no
14 longer pursue a general public claim amend the complaint and add class allegations? If so, what
15 criteria should the Court consider?

16 Assuming a plaintiff can amend a complaint to add class allegations, can the claims by
17 the absent class members relate back to the filing of the claim by the individual on his or her own
18 behalf or in the interest of the general public? If so, what criteria should the Court consider?
19 Does the filing of a claim by one person concerning an incident toll the statute of limitations for
20 the claims of other persons (or putative class members) concerning the same incident? Does the
21 filing of a claim by a government entity charged with the enforcement of a statute (Attorney
22 General, D.F.E.H., E.E.O.C., E.P.A., etc) concerning an incident toll the statute of limitations for
23 the claims of private individuals (or a class of private individuals) concerning the same incident?

24 All of the above issues may not be relevant in the FATE cases, and the Court does not
25 intend to issue advisory opinions on matters that are not presented to it. The Court does,
26 however, intend to consider how the Proposition 64 will apply in various circumstances so the

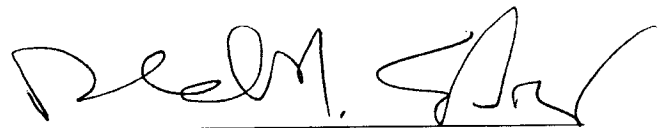
1 Court can take a consistent approach to Proposition 64 in the FATE cases and other cases that
2 may be affected by Proposition 64.

3
4 MOTIONS IN OTHER CASES CONCERNING PROPOSITION 64.

5 The Court's initial orders concerning Proposition 64 will likely form a template that will
6 be followed in subsequent cases. Therefore, the Court encourages counsel in other cases to file
7 Proposition 64 motions to be heard at the same time as the similar motions in the FATE cases
8 and hopes to consider most Proposition 64 issues at that time. By placing several Proposition 64
9 motions on the same day, the Court hopes to provide all affected parties an opportunity to present
10 their arguments to the Court before the Court forms a template, to ensure that the Court receives
11 a thorough briefing of all relevant issues, and to assist the Court in issuing consistent orders
12 relating to the effect of Proposition 64.

13 Counsel for Plaintiff FATE and Defendants may circulate this order among their
14 colleagues who have cases pending in Alameda County Superior Court that may be affected by
15 Proposition 64. The Court will inform counsel in other cases currently pending in Department 22
16 that the Court will be hearing issues related to Proposition 64 on February 10, 2005, at 9:00 am,
17 and will advise counsel that they may file similar motions to be heard at the same time.

18
19 Dated: November 10, 2004



20
21 Judge Ronald M. Sabraw