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20		
.	SUPERIOR COURT OF TH	E STATE OF CALIFORNIA
21		
22	COUNTY OF SA	AN FRANCISCO
22	THE READ E OF THE STATE OF	LC C D No. 4005.
23	THE PEOPLE OF THE STATE OF	J.C.C.P. No. 4095; S.F. Sup. Ct. No. 303753
23	CALIFORNIA, et al.,	S.r. Sup. Ct. No. 303733
24	Plaintiffs,	DECLARATION OF D. CAMERON
	VS.	BAKER IN SUPPORT OF RESPONSE OF
25		NORTHERN CALIFORNIA PLAINTIFFS
	ARCADIA MACHINE & TOOL, INC., et	TO DEFENDANTS' PETITION FOR
26	al.,	COORDINATION
27	m 6 .	
27	Defendants.	Data Assissa Ellada - May 25, 1000
28		Date Action Filed: May 25, 1999
20		

- I, D. Cameron Baker, declare as follows:
- 1. I am a Deputy City Attorney for the City and County of San Francisco and one of the counsel of record for plaintiff the People of the State of California in the above-referenced action. Except as otherwise stated, I have personal knowledge of the facts stated below and, if called to testify, could testify as to them competently.
- 2. I have attached hereto as Exhibit A a true and correct copies of excerpts from the Judicial Council's 1999 Court Statistics Report.
- 3. I have attached hereto as Exhibit B a true and correct copy of Defendants' Memorandum of Points and Authorities in Support of Motion for Transfer of Venue filed in People of the State of California, et al. v. Arcadia Tool & Machine, Inc. et al., San Francisco Superior Court No. 303753.
- 4. I have attached hereto as Exhibit C a true and correct copy of Judge David Garcia's September 8, 1998 Order Denying Motion to Transfer and Joinder in State of California ex rel. Hallinan and Renne v. Old Republic Title Company et al., San Francisco Superior Court No. 993-507.
- 5. I have attached hereto as Exhibit D a true and correct copy of the Reporter's Transcript of the September 8, 1998 hearing in State of California ex rel. Hallinan and Renne v. Old Republic Title Company et al., San Francisco Superior Court No. 993-507.
- 5. I declare the foregoing to be true and correct under penalty of perjury under the laws of the State of California. Executed this the day of November, 1999 in San Francisco, California.

D. Cameron-Baker

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I, MICHAEL K. LUCERO, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the within entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Sixth Floor, San Francisco, CA 94102.

On November 15, 1999, I served the attached:

#### DECLARATION OF D. CAMERON BAKER IN SUPPORT OF NORTHERN CALIFORNIA PLAINTIFFS TO DEFENDANTS' PETITION FOR COORDINATION

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4		94102, for collection and mailing with the United States Postal Service, and in the ordinary course of business, correspondence placed for collection on a particular day is deposited with the United States Postal
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13	forego	I declare under penalty of perjury under the laws of the State of California that the ing is true and correct.
14	101080	Executed November 15, 1999, at San Francisco, California.
15		Executed November 13, 1777, at ban Francisco, Cambrida.
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# Court Statistics REPORT

LIEFF, CABRASER, HEIMANN & BERMSTEIN

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Statewide Caseload Trends 1988–1989 through 1997–1998 and

Caseload Data for Individual Courts
1996–1997 and 1997–1998

Judicial Council of California Administrative Office of the Courts 455 Golden Gate Avenue San Francisco, CA 94102-3660

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<sup>\*</sup> On June 2, 1998, California voters approved Proposition 220, a constitutional amendment that permits the judges in each county to decide whether to merge their superior and municipal courts into a single unified superior court. As of December 31, 1998, unification was in effect in 50 of the state's 58 counties. Because a limited number of counties were unified for a portion of one month (June 1998), data in this publication are reported according to the superior and municipal court structure that existed prior to unification. Data in subsequent versions of this publication will be reported in a manner that reflects court unification.

# INDEX OF TABLES AND FIGURES (continued)

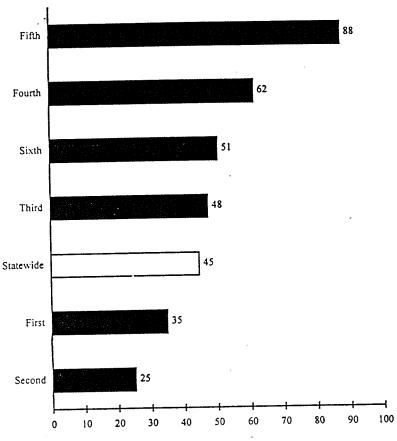
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# COURTS OF APPEAL

#### FIGURE 1-Ratio of Pending Fully Briefed Appeals Per 100 Appeals Disposed of by Written Opinion For Appeals Pending as of June 30, 1998 And Disposed of in 1997–98



SOURCE: TABLE 1 100 × [(C)/(E)]

### Figure 1

- The ratio of pending fully briefed appeals to appeals disposed of by written opinion is a measure of pending workload as well as judicial productivity. The ratio is an estimate of time a court needs to dispose of pending fully briefed appeals. A ratio of 100 is equivalent to one year, 50 is equivalent to six months, and so forth. The estimate is based on the assumption that the court will decide the same number of appeals in 1998–99 as in 1997–98.
- The Second District had 25 fully briefed appeals per 100 appeals disposed of by opinions in 1997–98, the lowest ratio among the six appellate districts. Given the assumption noted above, it would take three months for the court to dispose of its pending fully briefed appeals.
- The Fifth District had 88 pending fully briefed appeals per 100 appeals disposed of by opinion, the highest among the six appellate districts.
- The statewide average decreased from 48 to 45 pending fully briefed appeals per 100 appeals disposed of by opinion.
- The Fifth District had the largest ratio increase, from 68 to 88.
- The Fourth District had the largest ratio decrease, from 81 to 62.

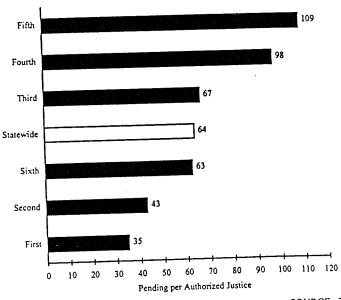
### Figure 2

- The Fifth District had the highest number, with 109 pending fully briefed appeals per authorized justice.
- The First District reported the lowest number, with 35 pending fully briefed appeals per authorized justice.

### Figure 3

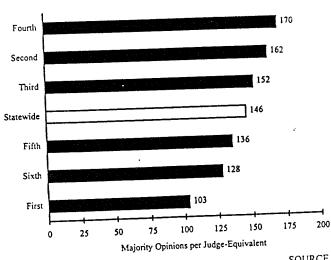
- "Judge-equivalent" refers to the number of authorized justices, adjusted for judicial vacancies, assistance given to other courts, and judicial assistance received.
- The statewide average of opinions per judge-equivalent was 146 in 1997–98, compared to 148 in 1996–97.
- The Fourth District reported the highest rate, 170 opinions per judge-equivalent 16 percent higher than the statewide average.
- The First District reported the lowest opinion rate, with 103 per judge-equivalent. However, the First District had the lowest number of pending fully briefed appeals per authorized justice. The lower disposition rate may reflect that fewer cases are available for the justices.
- Beyond an optimum number of opinions (not yet identified), high rates of disposition indicate overload and a need for additional judgeships.

FIGURE 2-Pending Fully Briefed Appeals
Per Authorized Justice
As of June 30, 1998



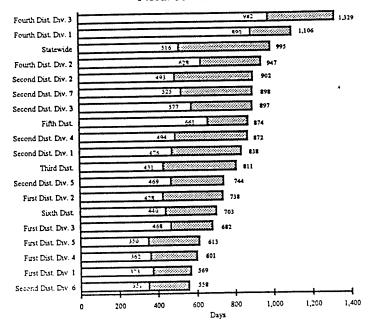
SOURCE: TABLE 1 (C)/(A)

FIGURE 3-Majority Opinions per Judge-Equivalent Appeals and Original Proceedings Fiscal Year 1997–98



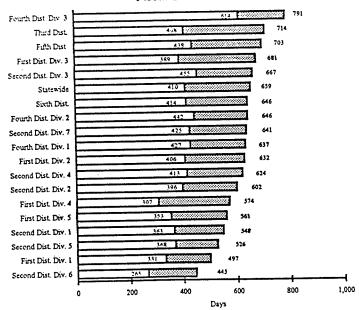
SOURCE. TABLE 1 [(F) + (G)]/(B)

# FIGURE 4-A-Time (in Days) from Notice of Appeal to Filing of Opinion for Civil Appeals Median and 90th Percentile Fiscal Year 1997–98



SOURCES: TABLES 7, 8 column (A)

#### FIGURE 4-B-Time (in Days) from Notice of Appeal to Filing of Opinion for Criminal Appeals Median and 90th Percentile Fiscal Year 1997–98



SOURCES: TABLES 7, 8 column (B)

### Figure 4-A

- White portions of the bars represent the medians. The entire length of the bar (white plus dark portions) represents the 90th percentile. Median time refers to the value at which half of the cases fall above and half below. The 90th percentile time is the value at which 10 percent of the cases fall above and 90 percent fall below.
- Statewide median time from appeal to filing of opinion for civil appeals was 516 days in 1997–98, compared to 528 days in 1996–97; 90th percentile time was 995 days in 1997–98, compared to 968 days in 1996–97.
- Division Three of the Fourth District reported 1,329 days, the longest 90th percentile time from notice of appeal to filing of opinion for civil appeals disposed of in 1997–98.
- Division Six of the Second District reported 558 days, the shortest 90th percentile time from notice of appeal to opinion for civil appeals.

#### Figure 4-B

- Statewide median time from appeal to filing of opinions for criminal appeals was 410 days in 1997–98, the same as in 1996–97; 90th percentile time was 659 days in 1997–98, compared to 637 days in 1996–97.
- Division Three of the Fourth District had the longest 90th percentile time from notice of appeal to filing of opinion for criminal appeals disposed of in 1997–98, with 791 days.
- Division Six of the Second District had the shortest 90th percentile time for criminal appeals, with 445 days.

# **Performance Indicator Data** Fiscal Year 1997–98

	Number of	Full-time	Pending	Appeals becoming	Appeal <b>s</b>	Majorit	y opinions
District	authorized justices (A)	judge equivalents (B)	fully briefed appeals (C)	fully briefed in FY 1997–98 (D)	disposed of by written opinion (E)	Appeals (F)	Original proceedings (G)
Statewide	93	93.8	5,936	12,794	13,257	12,919	789
First	19	18.8	662	1,879	1,896	1,850	88
Second	28	30.4	1,201	4,515	4,783	4,650	278
Third	10	9.5	666	1,360	1,400	1,366	75
Fourth	21	20.2	2,048	2,945	3,319	3,219	207
Fifth	9	8.9	983	1,304	1,117	1,109	98
Sixth	6	6.0	376	791	742	725	43

Appeals argued, calendared, or ready June 30, 1998.

<sup>(</sup>A) (B) Authorized justices as of June 30, 1998. Does not include assistance received through assignments or through the Senior Justice Program. "Full-time judge-equivalents" includes a court's regular number of judges plus 60 percent of the time reported for judges assigned to the

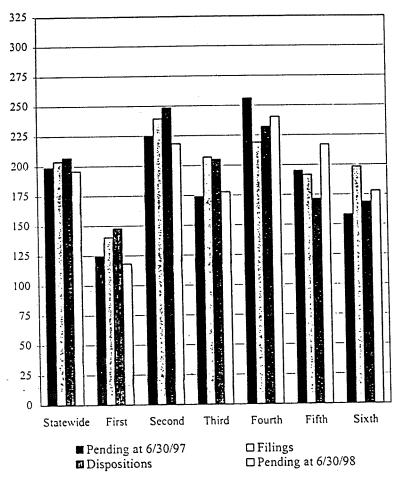
court, minus the time reported for the assignments of the court's regular members to another court and for unfilled vacancies.

The total number of appeals that became fully briefed during fiscal year 1997-98.

Appeals disposed of by opinion during fiscal year 1997–98. Includes appeals filed prior to fiscal year 1997–98. The number of written opinions that decide appeals. One opinion may decide more than one appeal.

<sup>(</sup>C) (D) (E) (F) (G) The number of written opinions that decide original proceedings. One opinion may decide more than one case.

# FIGURE 5-Caseload Comparison Per Authorized Justice Fiscal Year 1997-98



SOURCE: TABLE 2

### Figure 5

- This figure measures the courts' inventory of appeals per authorized justice by showing pending cases as of June 30, 1997, and new filings, dispositions, and pending cases as of June 30, 1998.
- This figure shows comparisons of filings, dispositions, and pending cases among courts and the relationship of pending cases to filings and dispositions within individual courts.
- The Fourth District had the highest level of pending appeals per justice as of June 30, 1998, 23 percent higher than the statewide average. The Second District had the highest level of filings and dispositions per justice in 1997–98. Compared to the statewide average, Second District filings per justice increased by 17 percent, dispositions per justice by 20 percent.
- The First District had the lowest level of filings, dispositions, and pending appeals per justice.
- The statewide average of pending appeals per justice was 199 as of June 30, 1997, and 196 as of June 30, 1998, a decrease of 2 percent.

# Caseload Comparisons Fiscal Year 1997–98

District	Pending appeals as of 6/30/97 (A)	Notices filed in FY 1997–98 (B)	Total appeals disposed of in FY 1997-98 (C)	Pending appeals as of 6/30/98 (D)	Number of authorized justices (E)
Statewide	18,505	18,972	19,254	18,226	93
First	2,371	2,671	2,811	2,250	19
Second	6,306	6,709	6,958	6,120	28
Third	1,741	2,072	2,051	1,779	10
Fourth	5,380	4,604	4,878	5,053	21
Fifth	1,757	1,726	1,543	1,955	9
Sixth	950	1,190	1,013	1,069	6

Includes appeals for which the record has not been filed. Includes appeals for which the record has not been filed. (A) (B)

Includes appeals for which the record has not been filed. Column (D) should equal (A) + (B) - (C). Discrepancies may be caused by data entry (D) problems in any of the four data elements.

Authorized justices as of June 30, 1998. (E)

FIGURE 6-Record of Appeal Filings
In All Districts
Fiscal Years 1988–89 through 1997–98

Criminal Appeals

8,000

6,000

Civil and Juvenile Appeals

4,000

2,000

68.88

88.800

69.50

69.50

69.50

69.50

69.50

69.50

FIGURE 7-Original Proceeding Filings In All Districts

Fiscal Years 1988-89 through 1997-98

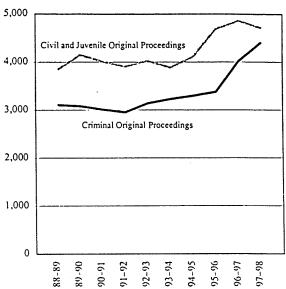


FIGURE 8-Record of Appeal Filings
In the First District
Fiscal Years 1988–89 through 1997–98

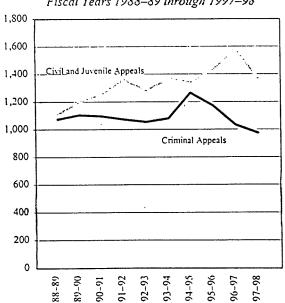


FIGURE 9-Record of Appeal Filings
In the Second District
Fiscal Years 1988–89 through 1997–98

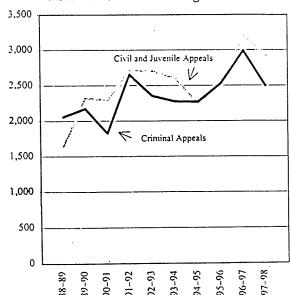


FIGURE 10-Record of Appeal Filings In the Third District Fiscal Years 1988–89 through 1997–98

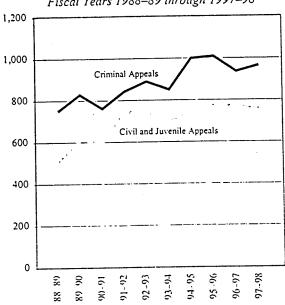


FIGURE 11-Record of Appeal Filings In the Fourth District Fiscal Years 1988–89 through 1997–98

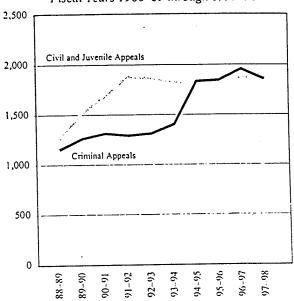


FIGURE 12-Record of Appeal Filings In the Fifth District

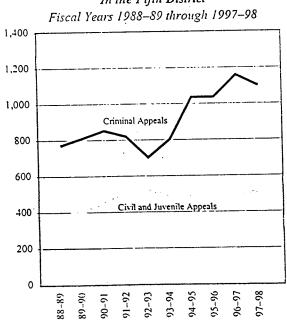
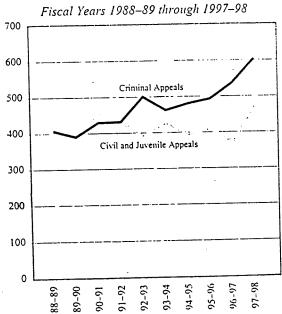


FIGURE 13-Record of Appeal Filings In the Sixth District



# Filings per Authorized Justice Fiscal Years 1988–89 through 1997–98

		Contest	ed matters	Records o	of appeal	Original p	proceedings
	And areas d		Per		Per		Per
F: ,	Authorized	<i></i>	authorized		authorized		authorized
Fiscal year	justices	Total	justice	Total	justice	Total	justice
	(A)	(B)	(C).	(D)	(E)	(F)	(G)
1988–89	88	18,508	210	11,542	131	6,966	79
1989-90	88	20,248	230	13,012	148	7,236	82
1990–91	88	20,049	228	13,024	148	7,025	80
1991–92	88	21,628	246	14,763	168	6,865	78
1992–93	88	21,471	244	14,308	163	7,163	81
1993–94	88	21,386	243	14,267	162	7,119	81
1994-95	88	22,336	254	14,923	170	7,413	84
1995–96	88	23,710	269	15,641	178	8,069	92
1996–97	93	25,760	277	16,881	182	8,879	95
1997–98	93	25,047	269	15,931	171	9,116	98

<sup>(</sup>D) + (F). "Total contested matters" means all appeals and original proceedings; it excludes motions to dismiss on clerk's certificate, rehearings, and miscellaneous orders, which do not significantly add to the court's workload.

(B) / (A).

(D) / (A). (B)

<sup>(</sup>C) (E) (G)

<sup>(</sup>F)/(A).

# Summary of Filings Fiscal Years 1988–89 through 1997–98

	Total contested		Records of	appeal filed			Original proceedings			
Fiscal year	matters	Total	Civil	Criminal	Juvenile	Total	Civil	Criminal	Juvenile	
1 13041 7041	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	
1988–89	18,508	11,542	5,332	6,210		6,966	3,857	3,109		
1989–90	20,248	13,012	5,264	6,569	1,179	7,236	4,089	3,082	65	
1990–91	20,049	13,024	5,374	6,275	1,375	7,025	3,909	3,014	102	
1991–92	21,628	14,763	5,962	7,114	1,687	6,865	3,705	2,955	205	
1992–93	21,471	14,308	5,934	6,812	1,562	7,163	3,820	3,139	204	
1993–94	21.386	14,267	5,786	6,873	1,608	7,119	3,717	3,231	171	
1994–95	22,336	14,923	5,367	7,884	1,672	7,413	3,748	3,301	364	
1995–96	23,710	15,641	5,628	8,087	1,926	8,069	4,012	3,379	678	
1996–97	25,760	16,881	6,387	8,610	1,884	8,879	4,236	4,020	623	
1997–98	25,047	15,931	5,858	7,993	2,080	9,116	4,006	4,399	711	

		Notices of	appeal filed	
Fiscal year	Total	Civil	Criminal	Juvenile
•	<b>(</b> J)	(K)	(L)	(M)
1988–89	14,293	8,129	6,164	
1989-90	15,337	7,590	6,552	1,195
1990-91	15,900	7,782	6,665	1,453
1991–92	17,457	8,454	7,250	1,753
1992–93	17,032	8,271	7,195	1,566
1993–94	17,575	8,550	7,317	1,708
1994-95	18,362	8,097	8,519	1,746
1995–96	18,843	8,071	8,733	2,039
1996–97	18,802	7,963	8,818	2,021
1997–98	18,972	8,256	8,513	2,203

<sup>(</sup>B) + (F). "Total contested matters" means all appeals and original proceedings; it excludes motions to dismiss on clerk's certificate, rehearings, and miscellameous orders, which do not significantly add to the court's workload. (A)

Sum of (C) through (E).
Includes juvenile appeals for 1988–89.
Sum of (G) through (I).

Includes juvenile original proceedings for 1988-89.

Sum of (K) through (M).

<sup>(</sup>B) (C) (F) (G) (J) (K) Includes juvenile appeals for 1988-89.

# Summary of Dispositions Fiscal Years 1988–89 through 1997–98

				Appeals		Original pr	oceedings
Fiscal year	Total dispositions (A)  20,956 21,957 22,576 22,415 24,237  24,106 24,534 25,584 28,087 28,750	spositions opinion	By written opinion (C)	Without opinion, record filed (D)	Without opinion, no record filed (E)	By written opinion (F)	Without opinion (G)
1988-89	20,956	9,483	8,806	2,389	2,691	677	6,393
1989-90	21,957	10,349	9,621	2,673	2,248	728	6,687
1990-91	22,576	10,716	9,982	2,898	2,430	734	6,532
1991-92	22,415	11,718	11,003	3,032	2,653	715	5,012
1992–93	24,237	12,075	11,453	3,121	2,447	622	6,594
1993–94	24,106	12,090	11,519	2,962	2,335	571	6,719
1994-95	24,534	12,204	11,521	3,003	2,469	683	6,858
1995–96	25,584	12,675	11,824	3,200	2,414	851	7,295
1996–97	28,087	13,928	13,079	3,395	2,453	849	8,311
1997-98	28,750	14,238	13,257	3,356	2,641	981	8,515

<sup>(</sup>A) Sum of (C) through (G).

<sup>(</sup>B) (C) + (F).

# Appeals Terminated by Written Opinion Fiscal Years 1995–96 through 1997–98

	Total	cases			Affir	mance			Reve	ersed	Dism	issed
Fiscal year			To	tal	F	ull	With mo	dification				
	Number	Percent	Number	Percent	Number	Percent	Number		Number	Percent	Number	Parcent
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)
	(71)	(5)	(0)	(5)	(2)	(,)	(0)	(11)	(1)	(3)	(14)	(L)
Total appeals												
1995–96	11,420	100 %	10,031	88 9	% 8,307	73 9	% 1,724	15 %	6 1,213	11 4	% 176	2 %
1996–97	12,600	100	11,063	88	8,767		2,296		1,311	10	226	2
1997–98	12,840	100	11,311	88	9,356		1,955		1,336	10	193	2
1777 70	12,010	100	11,011		,,,,,,,,	,,,	1,,,,,		1,000	•	1,0	-
Criminal appea	ls						;					
by defendants												
1995–96	6,255	100	6,001	96	4,850	78	1,151	18	215	3	.39	1
1996–97	7,070	100	6,750	95	5,025		1,725		268		52	i
1997–98	7,203	100	6,931	96	5,642		1,289		224		48	i
1,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	.,		-,,	, ,	-,		-,			-		•
Criminal appea	ıls											
by prosecution					•							
1995–96	179	100	73	41	42	23	31	17	97	54	9	5
1996–97	171	100	83	49	53		30		78	• .	10	
1997–98	118	100	56	47	33		23		60		2	
1777-70	110	100	20	• •				• • •	•		-	-
Civil appeals												
1995–96	3,957	100	2,999	76	2,571	65	428	11	850	21	108	3
1996–97	4,197	100	3,177	76	2,755		422		898		122	
1997–98	4,398	100	3,305	75	2,802		503		975		118	
1777-70	7,570	100	5,505	,,,	2,002	04	505	••	,,,		110	•
Juvenile appeal	le <sup>1</sup>						•					
(criminal violat												
1995–96	626	100	600	96	504	81	96	15	24	4	2	0
1995–90	704	100	667	95	570		97		36		1	
1990–97	664	100	617	93	511		106		46		1	
1997-98	004	100	017	93	511	11	100	10	40	, ,	1	U
0.1												
Other juvenile		•										
appeals b	403	100	358	89	340	84	18	3 4	27	7.	18	4
1995–96			338		364		22		31		41	
1996–97	458 <b>457</b>		402		368		34		31		24	
1997–98	457	100	402	00	300	o i	34	,	ر د.	. ,	24	. 3

<sup>(</sup>A) (B) (C) - (I) + (K). Total does not match Table 1 due to missing data. Percentages are calculated based on totals shown in column (A). (D) - (J) + (L). Components may not add to total due to rounding.

Juvenile appeals filed under Welf. & Inst. Code, § 602 alleging violation of a criminal statute.

Juvenile appeals filed under Welf. & Inst. Code, § 300 or § 601. These cases do not involve violations of criminal statutes.

### Time to Filing of Opinion Median Time (50th Percentile) in Days Fiscal Year 1997–98

,		otice of appe				Fully briefed	
	Civil	filing of opin Criminal	Juvenile	Civ		filing of opin Criminal	Juvenile
Courts of Appeal	(A)	(B)	(C)	_	" D)	(E)	(F)
Statewide	516	410	272	15	57	125	82
First District	402	359	297	1:	55	109	84
Division One	373	331	284	13	24	· 66	60
Division Two	428	406	291	19	95	147	85
Division Three	468	389	358	20	)3	133	105
Division Four	362	307	289	13	27	91	76
Division Five	350	353	294	13	27	115	93
Second District	481	389	260		98	74	65
Division One	476	363	233		70	48	51
Division Two	493	396	273		87	70	76
Division Three	577	455	271	1	39	126	93
Division Four	494	413	281	1	04	79	69
Division Five	469	368	275	1	05	. 59	63
Division Six	351	265	220		84	56	55
Division Seven	525	425	256	I	03	88	69
Third District	131	408	242	1	90	154	58
Fourth District	823	483	256	5	28	159	101
Division One	890	427	244	. 6	15	126	105
Division Two	628	442	286	2	14	133	84
Division Three	982	614	268	. 7	16	357	104
Fifth District	661	438	283	4	22	209	85
Sixth District	440	414	341	·	87	160	118

### Time to Filing of Opinion 90th Percentile Time in Days Fiscal Year 1997–98

Statewid <b>e</b>		Notice of appear			ully briefed ling of opin	
Courts of Appeal	Civil	Criminal	Juvenile	Civil	Criminal	Juvenile
	(A)	(B)	(C)	(D)	(E)	(F)
Statewide	995	659	432	637	324	161
First District	653	609	494	298	224	183
Division One	569	497	364	200	136	126
Division Two	738	632	539	361	262	224
Division Three	682	681	771	373	254	227
Division Four	501	574	441	237	199	135
Division Five	613	561	386	184	160	125
Second District	846	589	388	188	153	127
Division One	838	548	327	144	87	71
Division Two	902	602	513	161	136	140
Division Three	897	667	428	244	197	175
Division Four	872	624	377	157	142	111
Division Five	744	526	388	186	156	167
Division Six	558	445	298	144	126	99
Division Seven	898	641	390	216	162	125
Third District	811	714	405	509	395	138
Fourth District	1,217	700	427	861	3,83	179
Division One	1,106	637	389	714	245	181
Division Two	947	646	443	449	199	157
Division Three	1,329	791	476	960	475	- 215
Fifth District	874	703	390	534	400	141
Sixth District	703	646	462	269	260	169

Courts of Appeal Table 9

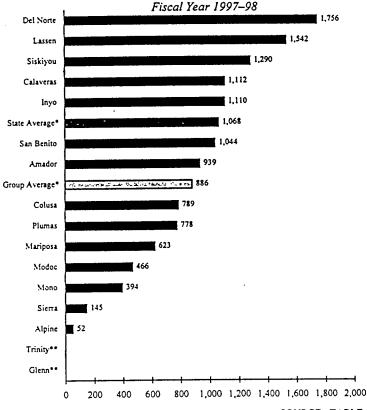
### Percentage of Majority Opinions Published Fiscal Year 1997–98

Courts of Appeal	Total (A)	Civil appeals (B)	Criminal appeals (C)	Juvenile appeals (D)	Original proceedings (E)
Statewide	7 %	13 %	4 %	2 %	16 %
First District	9	15	5	2	9
Division One	6	10	2	0	4
Division Two	14	27	6	2	13
Division Three	8	9	7	2	10
Division Four	7	14	4	2	0
Division Five	7	14	3	3	10
Second District	8	12	4	3	23
Division One	6	10	2	2	25
Division Two	7	11	3	. 2	18
Division Three	5	8	2	1	20
Division Four	11	21	3	2	29
Division Five	7	11	4	·3	24
Division Six	9	13	7	4	21
Division Seven	10	13	8	6	16
Third District	6	14	3	1	20
Fourth District	. 6	11	3	2	12
Division One	6	13	3	3	11
Division Two	4	7	3	0	0
Division Three	8	12	3	4	. 17
Fifth District	4	13	3	3	2
Sixth District	7	14	4	2	23

### SUPERIOR COURTS

On June 2, 1998, California voters approved Proposition 220, a constitutional amendment that permits the judges in each county to decide whether to merge their superior and municipal courts into a single unified superior court. As of December 31, 1998, unification was in effect in 50 of the state's 58 counties. Because a limited number of counties were unified for a portion of one month (June 1998), data in this publication are reported according to the superior and municipal court structure that existed prior to unification. Data in subsequent versions of this publication will be reported in a manner that reflects court unification.

# FIGURE 1-A-Total Filings Per Authorized Judicial Position Superior Courts with Fewer Than Two Judicial Positions

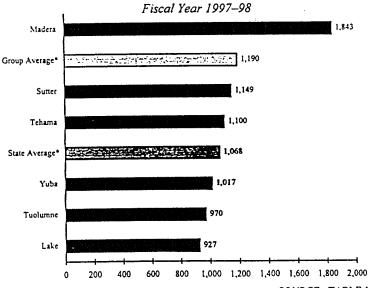


. Excludes courts with incomplete data.

SOURCE: TABLE 1

\*\* Incomplete.

# Figure 1-B-Total Filings Per Authorized Judicial Position Superior Courts with Two to Three Judicial Positions Fiscal Year 1997–98



· Excludes courts with incomplete data.

SOURCE: TABLE 1

#### Figure 1-A

■ The group average of 886 was the lowest among the four groups because the five lowest number of filings per authorized judicial position are in this group.

### Figure 1-B

- Madera reported the highest filings per authorized judicial position of all superior courts in fiscal year 1997-98, with 1,843.
- This group's average number of 1,190 filings per authorized judicial position is the highest among the four groups.

#### FIGURE 1-C-Total Filings Per Authorized Judicial Position Superior Courts with Four to Ten Judicial Positions Fiscal Year 1997-98

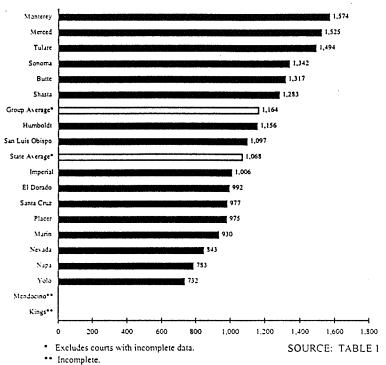
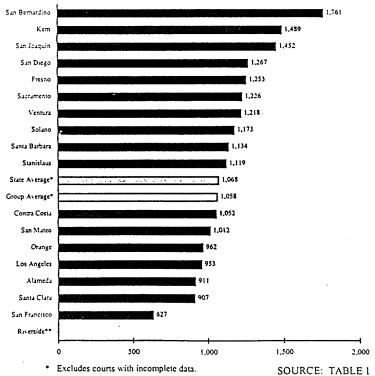


Figure 1-D-Total Filings Per Authorized Judicial Position Superior Courts with Eleven or More Judicial Positions Fiscal Year 1997-98



•• Incomplete.

### Figure 1-C

Four of the 10 courts with the highest averages and two of the 10 courts with the lowest average filings per authorized judicial position are in this group.

#### Figure 1-D

■ This group average of 1,058 filings per authorized judicial position was the closest to the statewide average.

# Superior Courts Table 1

### Total Filings and Cases Set for Trial Per Judicial Position Fiscal Year 1997–98

			Filings		Case	s set for trial	
Court	Judicial positions as of 6/30/98 (A)	Total (B)	Per judicial position	Rank *	Total as of 6/30/98 (C)	Per judicial position	Rank b
Statewide	1,012.1	1,096,222	1,068 *	•	39,996	43 b	_
Alameda Alameda Municipal c Berkeley Municipal c Fremont Municipal c Livermore Municipal c Oakland Municipal c San Leandro Municipal c Alpine Amador Butte Calaveras Colusa Contra Costa Contra Costa Municipal c Del Norte	40.0 	36,428 167 224 1,321 0 0 52 1,221 9,221 1,445 789 25,247 0 1,932	911 ———————————————————————————————————	41 ————————————————————————————————————	1,657 — — — — — — — — — — — — — — — — — — —	41 ————————————————————————————————————	17 ————————————————————————————————————
El Dorado Fresno Glenn	5.0 24.0 1.0	4,958 30,075 932	992 1,253 —	32 15 —	341 1,105 8	68 46 8	4 10 46
Humboldt Imperial Inyo Kern Bakersfield Municipal  East Kern Municipal  North Kern Municipal  South Kern Municipal  Kings	4.0 4.6 1.0 18.0 — — — 4.0	4,622 4,628 1,110 26,805 210 430 29 12 2,703	1,156 1,006 1,110 1,489 ————————————————————————————————————	19 31 24 8 — — —	73 i 39 451 — — —	39 25 — — —	19 38 — —
Lake Lassen Los Angeles Madera Marin Mariposa Mendocino Merced Modoc	2.3 1.0 317.2 3.0 8.0 1.1 3.3 4.6 1.0	2,131 1,542 302,324 5,528 7,438 685 1,831 7,014 466	927 1,542 953 1,843 930 623 	40 5 37 1 39 49  6 50	62 28 13,012 263 282 19 159	27 28 41 88 35 17 —	36 34 18 2 24 44 — 25
Mono Monterey Monterey Municipal  Napa Nevada Orange	1.0 8.5 — 5.0 3.6 79.0	394 13,377 64 3,915 3,033 76,002	394 1,574 — 783 843 962	51 4 	23 646 — 186 150 4,063	23 76 — 37 42 51	41 3 — 21 15 9
South Orange Municipal <sup>e</sup> Placer Plumas	8.0 1.3	1,069 7,801 1,012	975 778	34 46	186 25	23 19	40 43

### Superior Courts Table 1

# Total Filings and Cases Set for Trial Per Judicial Position Fiscal Year 1997–98

			Filings		Case	es set for trial	
	Judicia <b>l</b>		Per		Total	Per	
	positions		judicial		as of	judicial	
Court	as of 6/30/98	Total	position	Rank *	6/30/98	position	Rank b
	(A)	(B)	•		(C)	•	
Statewide	1,012.1	1,096,222	1,068 *	_	39,996	43 <sup>b</sup>	_
Riverside	36.0	49,533 1	_	-	_ '		
Sacramento	39.0	47,812	1,226	16	1,718	44	14
San Benito	1.3	1,357	1,044	28	16	12	45
San Bernardino	36.0	63,391	1,761	2	1,315	37	23
San Diego	0.08	101,326	1,267	14	2,703	34	27
El Cajon Municipal °		4,357		-			
North Municipal <sup>c</sup>		1					
San Francisco	40.0	25,073	627	48	2,630	<b>6</b> 6	5
San Joaquin	14.0	20,326	1,452	9	458	33	29
San Luis Obispo	6.3	6,910	1,097	26	193	31	31
San Mateo	19.0	19,225	1,012	30	838	44	13
Santa Barbara	12.0	13,609	1,134	21	408	34	26
Santa Clara	49.0	44,449	907	42	1,524	31	30
Santa Cruz	6.5	6,352	977	33	270	42	16
Shasta	6.0	7,699	1,283	13	318	53	8
Sierra	1.0	145	145	52			
Siskiyou	1.5	1,935	1,290	12	41	27	35
Solano	12.0	14,075	1,173	18	270	23	42
Sonoma	10.0	13,416	1,342	10	555	56	7
Stanislaus	12.4	13,871	1,119	22	1,240	100	1
Stanislaus Municipal *	_	157			_		_
Sutter	3.0	3,446	1,149	20	100	33	28
Tehama	2.3	2,529	1,100	25	54	23	39
Trinity	1.0	0 1			i		
Tulare	10.0	14,936	1,494	7	258	26	37
Tulare Municipal 6		240		_			_
Tuolumne	2.3	2,232	970	35	103	45	12
Ventura	17.0	20,703	1,218	17	376 '		
Yolo	5.3	3,879	732	47	155	29	33
Yuba	3.0	3,051	1,017	29	90	30	32

Judicial positions include court commissioners and referees in addition to the number of judges authorized for the court.

<sup>(</sup>A) (C) Civil and criminal cases for which trial dates have been assigned. Municipal courts do not report superior court cases set for trial.

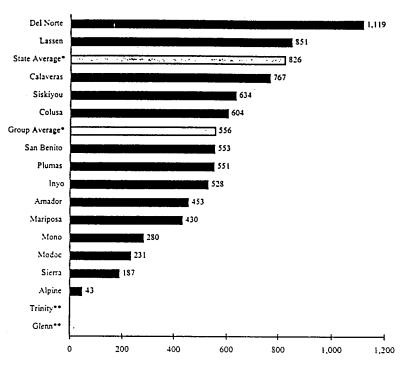
Excludes courts missing data; also excludes municipal court coordination data.

Excludes courts missing data on cases set for trial.

Municipal court that handles superior court filings through trial court coordination.

Incomplete.

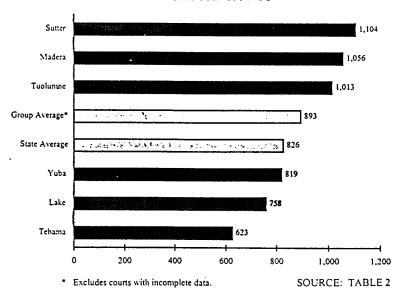
FIGURE 2-A-Dispositions (Excluding Dismissals for Delay in Prosecution) per Judicial Position Equivalent Superior Courts with Fewer Than Two Judicial Positions Fiscal Year 1997–98



- · Excludes courts with incomplete data.
- Incomplete.

SOURCE: TABLE 2

FIGURE 2-B-Dispositions (Excluding Dismissals for Delay in Prosecution) per Judicial Position Equivalent Superior Courts with Two to Three Judicial Positions
Fiscal Year 1997-98



- Figure 2-A
- This group had the lowest average of all four groups. Many of these courts are located in rural counties and had fewer filings.
- Nine of the 10 courts with the lowest average number of dispositions per judicial position equivalent are in this group.
- Among all four groups, this group had the largest range between the superior courts with the highest and lowest number of dispositions per judicial position equivalent.

### Figure 2-B

■ Of the four groups, this group had the smallest range between the superior courts with the highest and lowest number of dispositions per judicial position equivalent.

FIGURE 2-C-Dispositions (Excluding Dismissals for Delay in Prosecution) per Judicial Position Equivalent Superior Courts with Four to Ten Judicial Positions
Fiscal Year 1997–98

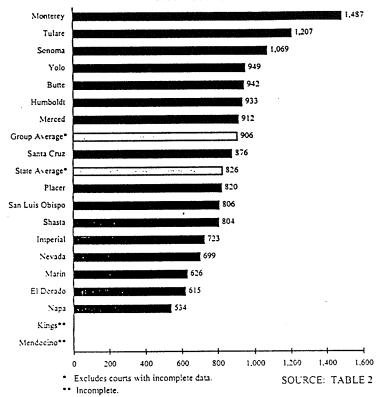
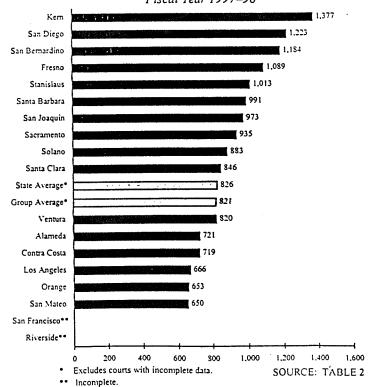


FIGURE 2-D-Dispositions (Excluding Dismissals for Delay in Prosecution) per Judicial Position Equivalent Superior Courts with Eleven or More Judicial Positions
Fiscal Year 1997-98



# Figure 2-C

- Monterey, with 1,487, reported the highest number of dispositions per judicial position equivalent among all superior courts.
- This group had the highest average of all four groups, with 906.

### Figure 2-D

This group's average of 821 dispositions per judicial position equivalent is the closest to the statewide average.

# Total Dispositions, Contested Trials, and Jury Trials per Judicial Position Equivalent Fiscal Year 1997–98

		D	ispositions		Co	ntested trials			Jury trials	
	Judicial		Per			Per			Per	
	position		judicial			judicial			judicial	
	equivalents		position			position			position	
*	TY 1997–98		equivalent	Rank *	Total	equivalent	Rank *	Total	equivalent	Rank *
Court	(A)	(B)			(C)			(D)		
Statewide	1,126.9	924,048	826 *	<del>-</del>	76,173	66 '	<b>.</b>	8,540	7 *	-
Alameda	45.0	32,445	721	32	2,874	64	20	299	7	29
Alameda Municipal b		110	_		25			0		
Berkeley Municipal b		48		-	9		-	0		-
Fremont Municipal b		1,050			0	_	_	0	<del></del>	_
Livermore Municipal b	***************************************	237			0	-		0	-	_
Oakland Municipal *		1,486			0			0		
San Leandro Municipal b		57			0	<del></del>		0		
Alpine	1.0	43	43	52	3	3	53	0	0	52
Amador	2.4	1,088	453	47	43	18	49	11	5	40
Butte	8.0	7,533	942	16	346	43	30	69	9	15
Calaveras	1.7	1,304	767	29	133	78	12	4	2	48
Colusa	1.1	664	604	42	32	29	41	11	10	11
Contra Costa	27.7	19,923	719	33	1,792	65	19	203	7	23
Contra Costa Municipal b					0	<del></del>		0		_
Del Norte	1.6	1,791	1,119	6	19	12	52	14	9	14
El Dorado	6.2	3,813	615	41	165	27	43	47	. 8	21
Fresno	24.1	26,256	1,089	8	2,088	87	7	163	7	26
Glenn	0.9	748 <sup>i</sup>			41 <sup>i</sup>			1 '		
Humboldt	4.5	4,198	933	18	267	59	23	60	13	3
Imperial	5.5	3,977	723	31	151	27	42	19	3	43
lnyo	1.5	792	528	46	29	19	47	5	3	44
Kern	19.0	26,172	1,377	2	1,640	86	8	369	19	1
Bakersfield Municipal b		134			23			16		
East Kern Municipal		693			405		<del></del> ,	0	_	_
North Kern Municipal		54			ļ		-	0	-	_
South Kern Municipal b	4.0	2,232			1 79 i	-		0	<del></del>	_
Kings	4.0							30 '		
Lake	2.8	2,121	758	30	183	65	18	29	10	9
Lassen	1.7	1,446	851	22	153	90	.5	25	15	2
Los Angeles	356.1	237,071	666	35	27,952	78	11	2,238	6	31
Madera	3.3	3,484	1,056	10	106	32	40	20	6	33
Marin	8.5	5,320	626	39	622	73	14	43	5	37
Mariposa	1.1	473	430	48	19	17	50	3	3	46
Mendocino Merced	3.6 5.2	1,656 <sup>1</sup> 4,742	912	19	165 1	35	35	20 '	3	<del></del>
Modoc	1.6	369	231	50	181	14	51	13 5	3	45
Mono	1.1	308	280	49	44	40	34	0	0	52
Monterey	8.3	12,339	1,487	i	879	106	4	84	10	10
Monterey Municipal b	5.6	2.002		4.5	38			0	_	2.4
Napa	5.6	2,993	534	45	180	32	39	33	6	34
Nevada	3.7	2,585	699	34	124	34	37	20	5	35 25
Orange	<b>b</b> 90.9	59,393	653	36	5,547	61	21	644	7	25
South Orange Municipal	70	1,053	930	24	10		24	16		49
Placer	7.9 1.3	6,481	820	24	417	53	24 45	17	2	49 51
Plumas	1.3	716	551	44	31	24	45	.2	2	21

# Superior Courts Table 2

### Total Dispositions, Contested Trials, and Jury Trials per Judicial Position Equivalent Fiscal Year 1997–98

		D	isposition <b>s</b>		Co.	ntested trials			Jury trials	
	Judicial		Per			Per	-		Per	
	position		judicial			judicial			judicial	
	equivalents		position			position			position	
	FY 1997-98	Total	equivalent	Rank *	Total	equivalent	Rank *	Total	equivalent	Rank *
Court	(A)	(B)	•		(C)	•		(D)	-4	
Statewide	1,126.9	924,048	826 *		76,173	66 *		8,540	7 *	
Riverside	38.1	37,094			3,438 i			298 i		-
Sacramento	45.6	42,642	935	17	2,042	45	29	281	6	32
San Benito	1.8	995	553	43	127	71	15	8	4 .	42
San Bernardino	40.7	48,198	1,184	5	1,708	42	31	322	8	18
San Diego	86.6	105,922	1,223	3	5,163	60	22	1,053	12	4
El Cajon Municipal b		5,990			663			42		
North Municipal <sup>b</sup>		5 .			5			5		_
San Francisco	44.1	16,092			1,821	41	32	280	6	30
San Joaquin	15.6	15,184	973	14	1,688	108	3	119	8	20
San Luis Obispo	7.8	6,289	806	27	546	70	16	37	5	39
San Mateo	19.9	12,932	650	37	522	26	44	91	5	41
Santa Barbara	12.5	12,387	991	13	405	32	38	62	5	38
Santa Clara	54.2	45,877	846	23	4,638	86	9	455	8	17
Santa Cruz	6.3	5,521	876	21	477	76	13	67	11	7
Shasta	7.6	6,108	804	28	368	48	28	51	7	27
Sierra	0.6	112	187	51	14	23	46	1	2	50
Siskiyou	2.3	1,458	634	38	113	49	26	18	8	19
Solano	11.7	10,333	883	20	1,037	89	6	124	11	8
Sonoma	10.6	11,330	1,069	9	434	41	33	80	8	22
Stanislaus	13.1	13,265	1,013	12	1,054	80	10	145	11	6
Stanislaus Municipal b		165			5			0	-	_
Sutter	3.3	3,644	1,104	7	434	132	2	22	7	28
Tehama	3.3	2,056	623	40	62	19	48	24	7	24
Trinity	1.0	0 '			0 '	_		0 '		_
Tulare	10.6	12,791	1,207	4	359	34	36	104	10	12
Tulare Municipal b		220	1 010	<del></del>	18	70	1.7	24		
Tuolumne	2.4	2,431	1,013	11	167	70	17	29	12	5
Ventura	21.3	17,459	820	25	1,066	50	25	199	9	13
Yolo	5.6	5,314	949	15	795	142	1	48	9	16
Yuba	3.4	2,785	819	26	165	. 49	27	18	5	36

<sup>(</sup>A) Reflects authorized judicial positions adjusted for vacancies, assistance rendered by the court, and assistance received by the court from assigned judges, temporary judges, commissioners, and referees.

<sup>(</sup>B) Excludes civil dismissals for delay in prosecution.

Excludes courts missing data on dispositions; also excludes municipal court coordination data.

b Municipal court that handles superior court dispositions through trial court coordination.

i Incomplete.

#### Superior Courts

### FIGURE 3-Total Filings per Judicial Position and Dispositions per Judicial Position Equivalent Fiscal Years 1988-89 through 1997-98

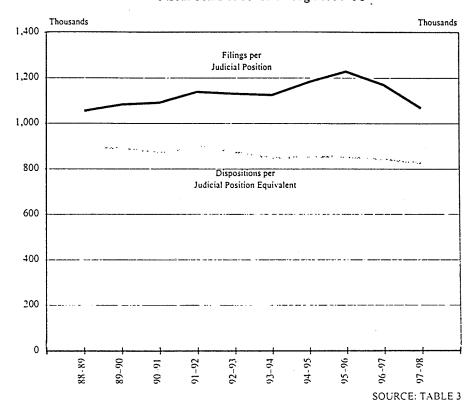
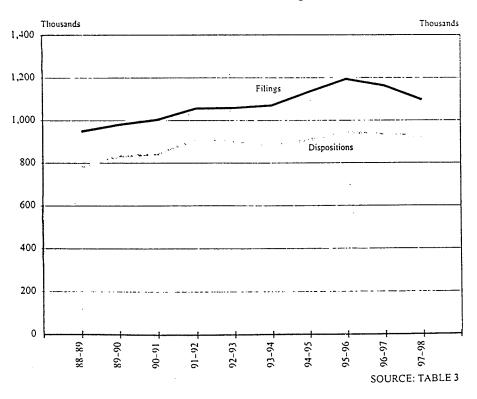


FIGURE 4-Total Filings and Dispositions
Fiscal Years 1988–89 through 1997–98



# COPY

1 2 3 4 5 6	Lawrence J. Kouns, State Bar No. 095417 Christopher J. Healey, State Bar No. 105798 LUCE, FORWARD, HAMILTON & SCRIPPS LLP 600 West Broadway, Suite 2600 San Diego, California 92101-3391 Telephone No.: (619) 236-1414 Fax No.: (619) 232-8311 Attorneys for Defendants SMITH AND WESSON CORP., and STURM, RUGER & COMPANY, INC. SEE SIGNATURE PAGES FOR ADDITIONAL CO	UNSEL
7	AND PARTIES JOINING MOTION	
8	SUPERIOR COURT OF THE ST	TATE OF CALIFORNIA
9	FOR THE COUNTY OF S	SAN FRANCISCO
10		
11	THE PEOPLE OF THE STATE OF  A series of City  On the People of The State Of City  On the People of The	Case No. 303753
12	CALIFORNIA, by and through San Francisco City ) Attorney Louise H. Renne, Berkeley City Attorney ) Manuela Albuquerque, Sacramento City Attorney )	DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN
13	Samuel L. Jackson, and San Mateo County Counsel) Thomas F. Casey, III, Oakland City Attorney Jayne)	SUPPORT OF MOTION FOR TRANSFER OF VENUE
14	W. Williams, and East Palo Alto City Attorney Michael S. Lawson; JOE SERNA, JR., Mayor of )	[C.C.P. § 394(a)]
15	Sacramento, the CITY OF BERKELEY, the CITY ) OF OAKLAND, the CITY OF EAST PALO ALTO)	Date: November 4, 1999
16	and the COUNTY OF ALAMEDA, on behalf of the) general public,	Time: 9:30 Dept.: Room 301
17	Plaintiffs,	Judge: Honorable David Garcia
18	v. )	Complaint Filed: May 25, 1999
19	ARCADIA MACHINE & TOOL, INC., BRYCO	Amended Complaint Filed: July 16, 1999
20	ARMS, INC., DAVIS INDUSTRIES, INC., FXCFL INDUSTRIES, INC., LORCIN	) Trial Date: None Set
21	ENGINEERING CO., INC., CHINA NORTH INDUSTRIES PHOENIX ARMS, SUNDANCE	
22	INDUSTRIES, INC., BERETTA U.S.A. CORP., PIETRO BERETTA Sp. A., BROWNING ARMS	
23	CO., CARL WALTHER, GmbH, CHARTER ARMS, INC., COLT'S MANUFACTURING CO.,	) )
24		). )
25	11	) )
26	II	) )
27	INC SIGARMS INC., SMITH AND WESSON	Ś
28	CORP., S.W. DANIELS, INC., STURM, RUGER & COMPANY, INC., AMERICAN SHOOTING	
	SPORTS COUNCIL, INC., NATIONAL	,

SHOOTING SPORTS FOUNDATION, INC., SPORTING ARMS AND AMMUNITION MANUFACTURERS' INSTITUTE, INC., B.L. JENNINGS, INC., ELLETT BROTHERS INC., INTERNATIONAL ARMAMENT CORP., RSR WHOLESALE GUNS, INC., SOUTHERN OHIC GUN DISTRIBUTORS, TRADERS SPORTS, INC., and DOES 1-200,

Defendants.

Pursuant to California Code of Civil Procedure Section 394(a), defendants respectfully request a change of venue to a neutral county or a reassignment by the Chairman of the Judicial Council to a judge from a neutral county.

I.

### FACTUAL BACKGROUND

Five cities and two counties in Northen California contend that various gun manufacturers and related trade associations have created public nuisances within their cities and counties. The cities of San Francisco, Sacramento, Berkeley, Oakland and East Palo Alto and the counties of San Mateo and Alameda all seek restitutionary benefits and civil penalties from defendants for the defendants allegedly wrongful promotion and distribution of firearms. These funds are presumably sought to defray the public cost allegedly incurred by these municipal entities as a result of defendants' purported violations of law.

None of the moving defendants are incorporated in the State of California. Nor do any of these defendants have their principal place of business in the State of California. None have a branch office in San Francisco. Likewise, none of the moving defendants manufacture the products at issue in San Francisco. See the two Declarations of James C. Sabalos, Esq. (one for Bryco Arms and one for B.L. Jennings, Inc.), George Colclough (for Smith & Wesson Corp.), Terry McSweeney (for Colt's Manufacturing Co.), and Phyllis S. Garber (for Sturm, Ruger & Co.).

Plaintiffs do not contend to the contrary. The operative complaint concedes that of the 37 defendants, 23 are domiciled in and with their principal places of business in other states. (First Amended Complaint ("FAC"  $\P \P 7, 9, 11$ ).) Plaintiffs further allege that five defendants are

domiciled in and have their principal places of business in other countries. (FAC ¶ 7.)

Given these circumstances, defendants move to transfer venue under Section 394(a) of the Code of Civil Procedure. Alternatively, if it is determined that plaintiffs have no right to jury trial, defendants request that a judge from a neutral county be appointed, as is provided for under Section 394(a).

II.

# THIS CASE SHOULD BE TRANSFERRED TO A NEUTRAL VENUE OR ASSIGNED TO A JUDGE FROM A NEUTRAL COUNTY

Where, as here, an action is initiated by a city or county against foreign corporations, the action must, upon motion from either party, be either transferred to a neutral county. Civ. Proc. Code § 394(a). As stated in Section 394(a), the transfer requirements are mandatory:

... [A]ny 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, ... or 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 ...

Civ. Proc. Code § 394(a). (Emphasis added.)

Section 394(a) also provides that, in cases where there is no right to jury, the case may be reassigned by the Chairman of the Judicial Council to a judge from a neutral county.

When the action or proceeding is one in which a jury is not a matter of right, or in case a jury be waived, then in lieu of transferring the cause the court in the original county may request the chairman of the Judicial Council to assign a disinterested judge from a neutral county to hear said cause and all proceedings in connection therewith.

Civ. Proc. Code § 394(a).

## A. Defendants are Entitled to Relief Under Section 394

Where, as here, the foreign defendants are not closely connected with the forum community, the defendants are entitled to the transfer protections under this statute. The protections under Section 394(a) apply even if defendants do substantial business within the City and County of San Francisco. San Francisco Foundation v. Superior Court, 37 Cal.3d 285, 300 (1984) (defendant entitled to Section 394 reassignment by Judicial Council as to equitable claims

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even with two branch offices in the county, annual payments of between \$100,000 and \$300,000 each year to projects in the county, and with 60 percent of its total expenditures in county, "[T]he standard of 'doing business' for purposes of Section 394 turns on the extent to which the corporation is viewed as an outsider."); Westinghouse Electric Corp. v. Superior Court, 17 Cal.3d 259, 271 (1976) (defendants entitled to Section 394 transfer even with a \$100 million construction contract within county, "A corporation is doing business in a county for 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." (emphasis added.)) Where, as here, a foreign defendant maintains neither its "main place of business" nor "a

major branch office" in the forum county, no further showing by the defendant is necessary. Id. at 271; San Francisco Foundation, supra, 37 Cal.3d at 299. None of the moving defendants are incorporated in the State of California. Nor do any of these defendants have their principal place of business in the State of California. None have a branch office in San Francisco. Likewise, none of these defendants manufacture any of the products at issue in San Francisco. See the two Declarations of James C. Sabalos, Esq. (one for Bryco Arms and one for B.L. Jennings, Inc.), George Colclough (for Smith & Wesson Corp.), Terry McSweeney (for Colt's Manufacturing Co.), and Phyllis S. Garber (for Sturm, Ruger & Co.).

Moreover, plaintiffs concede that of the 37 defendants, 23 are domiciled in and with their principal places of business in other states. (FAC  $\P$   $\P$  7, 9, 11). Plaintiffs further concede that five are domiciled in and have their principal places of business in other countries. (FAC ¶ 7.)

Plaintiffs contend that defendants have "aided and abetted" multiple, highly publicized homicides and other public nuisances within the subject cities and counties. (FAC ¶¶ 2:14-4:9.) There is little doubt that defendants are "likely to be viewed as outsiders." San Francisco Foundation, supra, 37 Cal.3d at 300. Moreover, few, if any of the 37 defendants can be properly characterized as "intimately identified" with the City and County of San Francisco. Westinghouse Electric Corp., supra, 17 Cal.3d at 271. Defendants are entitled to relief under Section 394(a).

Likewise, the Plaintiff municipal entities need not reside entirely within the same county

for the protections of Section 394 to apply. Id. at 268 (multi-county municipal plaintiff covered under statute). The protections of Section 394 also apply where, as here, a municipality appears through its city and/or county counsel. 4 Accordingly, defendants are entitled to Section 394 relief, even though this action is filed through plaintiffs' city and/or county counsel and even though it includes plaintiff municipalities located outside the City and County of San Francisco.

#### No Showing of Prejudice is Required B.

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Defendants need not demonstrate prejudice to be entitled to relief under Section 394. Prejudice is presumed under the statute. Ohio Casualty Ins. Group v. Superior Court, 30 Cal.App.4th 444, 452 (1994) ("Under section 394, by contrast, prejudice is presumed . . . ." (emphasis added); County of San Bernardino v. Superior Court, 30 Cal. App. 4th 378, 386 (1994) ("There is no need for a party to demonstrate an actual danger of prejudice; the statute 'is designed to obviate the appearance of prejudice as well as actual prejudice or bias." (emphasis added) quoting City of Alameda v. Superior Court, 42 Cal.App.3d 312, 317 (1974)); San Francisco Foundation, supra, 37 Cal.3d at 296 ("[A]s we have long held, the purpose underlying the mandatory change of venue provision in Section 394 'is to guard against local prejudices which sometimes exist in favor of litigants within a county as against those from without and secure to both parties to a suit a trial upon neutral grounds." (Citation omitted)); Westinghouse Electric Corp., supra, 17 Cal.3d at 266 (Section 394 designed to guard against local prejudices); Garrett v. Superior Court, 11 Cal.3d 245, 248 (1974) (The Water "District is the type of 'local agency within a certain county' which has a potential prejudicial advantage in a condemnation suit against a nonresident defendant . . . it is still possible that a Riverside County juror will also be a District taxpayer with an interest in keeping the condemnation award unreasonably low. This situation would be precisely one which the Legislature must have intended to avoid by enacting

The plaintiff cities and counties have each presumably voted to authorize their city and/or county counsel to appear in a representative capacity. (Code Civ. Proc. § 731.) (FAC ¶ 4.) By authorizing their city and/or county counsel to appear in a representative capacity, if successful, all civil penalties awarded will be paid to the City and County of San Francisco, not the State of California. (Bus. Prof. Code § 17536(c).) Outside their representative capacity, these city and/or county counsel have no standing to seek civil penalties. Chern v. Bank of America, 15 Cal.3d 866, 875 (1976). Plaintiffs do not specify in their First Amended Complaint which city and/or county services would be funded if plaintiffs are successful in this case.

Section 394"); City of Stockton v. Wilson, 79 Cal.App. 422, 424 (1926) (statute designed to prevent local prejudices).

Simply put, the fact that the foreign defendants are being sued by several municipal entities is <u>alone</u> sufficient to trigger the protections of Section 394.

### C. The Statute Must Be Liberally Construed

Any doubts as to whether the Section 394 transfer or reassignment provisions apply must be interpreted in favor of the moving party. Courts routinely require that Section 394 be liberally interpreted to allow for transfer wherever possible. San Francisco Foundation, supra, 37 Cal.3d at 296 ("Furthermore, as a remedial legislation the section is to be liberally construed.");

Westinghouse Electric Corp., supra, 17 Cal.3d at 266 ("[A]s the statute is remedial in its purpose, it should receive a liberal construction which will promote rather than frustrate the policy behind the law."); County of San Bernardino, supra, 30 Cal.App.4th at 386-387 (statute is to be liberally construed to promote the policy behind the law); Ohio Casualty Ins. Group, supra, 30 Cal.App.4th at 449 (Section 394 is to be liberally construed); Finance & Construction Co. v. Sacramento, 204 Cal. 491, 493 (1928) (statute subject to liberal construction).

The statute requires no showing of prejudice to justify transfer or reassignment.

Nevertheless, even if prejudice were a requirement, it is present here. The Plaintiff counties and cities seek to shift responsibility for criminal activity within their borders. Under any standard, this case should be transferred to a neutral county or reassigned by the Chairman of the Judicial Council to a judge from a neutral county.

#### III.

### THE FACT THAT PLAINTIFFS PURPORT TO REPRESENT THE STATE OF CALIFORNIA DOES NOT DEFEAT THIS MOTION

Although the real plaintiffs here are several Bay Area municipalities and public officials, the city attorney plaintiffs purport to assert certain claims on behalf of the "People of the State of California." (FAC, ¶ 4). In so doing, plaintiffs apparently hope to avoid the mandatory transfer rule of Section 394(a), under a narrow exception for the "State of California" under Code of Civil

Procedure § 394(c). For several reasons, the attempt fails.

A. The Legislative Intent Behind Section 394 Controls over Plaintiffs' Claims to Represent the People of the State of California.

Courts have held that the legislative purpose underlying Section 394 -- eliminating even the appearance of local prejudice -- controls in determining whether a plaintiff truly represents the "State of California" for purposes of the Section 394(c) exception. Thus, in Marin Community College Dist. v. Superior Court, 72 Cal.App.3d 719, 722 (1977), a plaintiff school district sued several foreign contractors seeking monies for an alleged breach of contract. Seeking to invoke Section 394(c), plaintiff relied on substantial authority that construed school districts as state agencies. Id. at 722. Despite this, the Marin court held that for purposes of Section 394 the school district should be treated as a "local agency." The court reasoned that such a construction was mandated by the legislative intent to eliminate the potential for local prejudice.

... [S]ection 394 is to be interpreted to avoid 'absurd consequences'; (citation omitted) petitioner is a 'local agency within a certain county' for the purposes of section 394.

Id. Accord, Almar Limited v. County of Ventura, 56 Cal.App. 4th 105, 110 (1997) ("A court should not adopt a statutory construction that will lead to results contrary to the Legislature's apparent purpose."); City of L.A. v. Pac. Tel. & Tel. Co., 164 Cal.App.2d 253, 256 (1958) (interpreting Section 394) ("It is a cardinal rule of construction that words must be given such interpretation as will promote rather than defeat the general purposes and policy of the law.").

The Marin decision is consistent with the well-recognized legislative intent underlying Section 394 to require transfer whenever there are actual or potential <u>local</u> prejudices against foreign defendants. <u>Transamerica</u>, <u>supra</u>, 69 Cal.App.4th at 581 ("Section 394 is intended to guard against possible *local* bias against out-of-county defendants.") (emphasis added); <u>County of San Bernardino</u>, <u>supra</u>, 30 Cal.App.4th at 386 (The primary purpose of Section 394 is to guard against *local* prejudices when a municipal entity sues a foreign resident or corporation); <u>San Francisco</u>

Section 394(c) provides that the "State of California, or any of its agencies, departments, commissions, or boards" are not "local agencies" for purposes of Section 394.

Foundation, supra, 37 Cal.3d at 296 ("[A]s we have long held, the purpose underlying the mandatory change of venue provision in Section 394 'is to guard against local prejudices . . . '") (emphasis added).

# B. Plaintiff Cities and Counties Stand to Gain Substantial Economic Benefits If Successful

Here, to permit <u>local</u> municipal entities and their city attorneys to avoid the mandatory transfer rule of Section 394(a), based on the happenstance that other statutes permit local prosecutors to seek relief in the name of the "People of the State of California" would clearly be an "absurd" result. This is particularly true, given that the instant plaintiffs seek substantial monetary relief on behalf of their respective municipalities. <u>Transamerica Homefirst, Inc. v. Superior Court,</u> 69 Cal.App. 4th 577, 581 (1999) (plaintiff's potential economic interest relevant to determination of whether public entity is entitled to invoke the Section 394c) exception to mandatory transfer).

Here, plaintiffs seek civil penalties pursuant to the claims asserted under Business and Professions Code §§ 17200 and 17500. (FAC at ¶ 36:8-9.) As to the Section 17200 claim, any penalties collected are to be paid to the county in which the judgment is entered. (Bus.&Prof. Code § 17206(c)). With respect to the Section 17500 claim, the penalties are spilt between the county and the city. (Bus.&Prof. Code § 17536(c). Plaintiffs also seek restitution and disgorgement of monies pursuant to Business and Professions Code §§ 17203 and 17535. (FAC at ¶ 36:10-11.). Thus, while purporting to sue on behalf of the "People of the State of California," plaintiffs seek substantial economic benefits for their local municipalities. This fact underscores the very real potential for local prejudice. <sup>3</sup>/

(continued...)

It also distinguishes this case from Nguyen v. Superior Court, 49 Cal.App.4th 1781(1996), where a plaintiff district attorney, asserting nuisance claims on behalf of the "People of the State of California" was permitted to invoke the Section 394(c) exception. In Nyguyen, however, plaintiff did not seek monetary relief on behalf of the municipal entity. For this reason, the court concluded that the purpose behind the statute in eradicating local prejudices would not be violated in denying transfer under Section 394(a). Nguyen, 49 Cal.App.4th at 1790. Further, the Nguyen holding reflects an erroneous premise, namely, that the defendant must demonstrate prejudice to obtain the Section 394(a) transfer. Given the substantial body of authority to the contrary, at least one court has questioned the validity of Nyguyen. Transamerica Homefirst, Inc. v. Superior Court, 69 Cal.App.4th 577, 581 (1999) (suggesting that the Nguyen court had misinterpreted the statute, "[W]e agree that the statute does not require that a public entity have an economic interest in the

# C. Plaintiffs Represent the Local Interests of San Francisco and the Surrounding Cities and Counties

Plaintiffs' assertion that they represent the People of the State of California is further undermined by the fact that, on the same day this lawsuit was filed, the City of Los Angeles and other Southern California municipal plaintiffs filed a virtually identical complaint in the Los Angeles County Superior Court. (See Request For Judicial Notice, Ex. "A".) Subsequently, a third, virtually identical suit was filed by the County of Los Angeles and other plaintiffs. (See Request For Judicial Notice, Ex. "B".) As with the instant case, the plaintiffs in these other actions purport to represent the "People of the State of California." Obviously, if any one of these groups of plaintiffs was truly suing on behalf of the State of California, only one complaint would have been necessary. The fact that, at last count, three such lawsuits have been filed, makes clear that these complaints seek to advance local interests in challenging the marketing and sale of defendants' products within the particular geographic regions at issue. As such, plaintiffs should not be permitted to avoid the mandatory transfer requirements under Section 394.

That result is also compelled under the well-settled rule that Section 394, as remedial legislation, must be liberally interpreted in favor of transfer. San Francisco Foundation, supra, 37 Cal.3d at 296 ("Furthermore, as a remedial legislation the section is to be liberally construed."); Westinghouse Electric Corp., supra, 17 Cal.3d at 266 ("[A]s the statute is remedial in its purpose, it should receive a liberal construction which will promote rather than frustrate the policy behind the law."); County of San Bernardino, supra, 30 Cal.App.4th at 386-387 (statute is to be liberally construed to promote the policy behind the law); Ohio Casualty Ins. Group, supra, 30 Cal.App.4th at 449 (Section 394 is to be liberally construed); Finance & Construction Co. v. Sacramento, 204 Cal. 491, 493 (1928) (statute subject to liberal construction).

<sup>(...</sup>continued) outcome of a lawsuit before a nonresident defendant may seek a transfer of venue, ...").

IV.

### CONCLUSION

For the reasons stated herein, pursuant to Section 394(a), defendants respectfully request that the case be transferred to another county or reassigned by the Chairman of the Judicial Council to a judge from a neutral county.

DATED: September 29, 1999

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By:

Lawrence J. Kourls, State Bar No. 095417 Christopher J. Healey, State Bar No. 105798

Attorneys for Defendants

SMITH AND WESSON CORP., and STURM, RUGER & COMPANY, INC.

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1 TERENCE HALLINAN, State Bar # 39953 District Attorney JUNE CRAVETT, State Bar # 105094 2 ENDORSED DAVID C. MOON, State Bar # 43851 FILED
San Francisco County Superior Court 3 Assistant District Attorneys 732 Brannan Street 4 San Francisco, California 94103 SFP 1 1 1998 Telephone: (415) 551-9571 5 Facsimile: (415) 551-9504 ALAN CARLSON, Clerk BY: CYNTHIA S. HERBERT LOUISE H. RENNE, State Bar #36508 6 Deputy Clerk City Attorney PATRICK J. MAHONEY, State Bar #46264 7 Chief Trial Attorney DONALD P. MARGOLIS, State Bar #116588 8 MATTHEW D. DAVIS, State Bar #141986 Deputy City Attorneys Fox Plaza 1390 Market Street, 6th Floor 10 San Francisco, California 94102-5408 Telephone: (415) 554-3948 11 Facsimile: (415) 554-3837 Email: MATTHEW\_DAVIS@CI.SF.CA.US 12 Attorneys for Plaintiffs 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA 14 CITY AND COUNTY OF SAN FRANCISCO 15 THE STATE OF CALIFORNIA, ex rel. Case No. 993-507 16 TERENCE HALLINAN, District Attorney of the City and County of San Francisco and 17 [PROPOSED] ORDER DENYING LOUISE H. RENNE, City Attorney of the City MOTION TO TRANSFER AND and County of San Francisco, in their official 18 JOINDER capacities as representatives of the qui tam plaintiff CITY AND COUNTY OF SAN 19 FRANCISCO; and the PEOPLE OF THE STATE OF CALIFORNIA, 20 Plaintiffs. 21 vs. 22 OLD REPUBLIC TITLE COMPANY, a 23 California corporation; et al 24 Defendants. 25 Defendants John Collopy, John Dosa and Michael Trudeau's motion to transfer this 26 action to Napa County pursuant to CCP § 394 came on for its regularly scheduled hearing on 27

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September 8, 1998. Also heard was the joinder in that motion by defendants Old Republic Title

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Company, Old Republic Title Holding Company, Old Republic Title Information Concepts and Old Republic National Title Insurance Company. Jon S. Tigar of Keker & Van Nest appeared for the moving and joining parties and Deputy City Attorney Matthew D. Davis appeared for plaintiffs. All other appearances were noted in the record. Upon considering the papers, pleadings, arguments and evidence presented, and for good cause appearing, the motion and joinder are

DENIED.

Dated: September 0, 1998

Hon David A. Garcia Superior Court Judge

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO BEFORE THE HONORABLE DAVID A. GARCIA, JUDGE 3 LAW & MOTION DEPARTMENT 5 --000--6 THE STATE OF CALIFORNIA, ex ) rel. TERENCE HALLINAN, District Attorney of The City and County of San ε Francisco and LOUISE RENNE, City Attorney of the City ) and County of San Francisco, ) = in their official capacities) as representatives of the qui tam plaintiff CITY AND COUNTY OF SAN FRANCISCO. PLAINTIFFS. 13 VS. NO. 993507 14 OLD REPUBLIC TITLE COMPANY. a California corporation, 15 et al., 16 DEFENDANTS. 18 19 20 REPORTER'S TRANSCRIPT OF PROCEEDINGS 21 TUESDAY, SEPTEMBER 8, 1998 22 23 24 25 26 27 REPORTED BY: JOSEPH HAYDEN VICKSTEIN, CSR #4780 28

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TUESDAY, SEPTEMBER 3, 1998 Morning Session 1 --000--2 Line 21, State of California versus 3 THE CLERK: Old Republic Title. 4 MR. TIGAR: Good morning, Your Honor. John Tigar 5 6 for Moving Defendants. MR. DAVIS: Good morning, Your Honor. Matt Davis 7 8 and David Moon on behalf of Plaintiffs. MR. MOON: Good morning, Your Honor. Ġ MR. TIGAR: Your Honor, I have the tentative in 10 -this case obviously, but I don't have a reason. So let me attempt to identify what I think the two most salient points 12 of the People's --13 THE COURT: Why don't I just tell he what my 14 reasons were. And that is that the People of the State of 15 California are the ones that are suing, as qui tam 16 plaintiffs. It's the people that are suing. Not the City 17 18 and County of San Francisco. Therefore the code section, CCP Section 394 simply isn't applicable. 19 MR. TIGAR: Your Honor, I think that going to the 20 authorities that the City and County relies on in its papers 21. to make exactly that argument, the Court has to ask itself 22 two questions. 23 First, does the City and County of San Francisco 24 have a separate identity in this lawsuit, apart from the 25 State of California. And secondly, do the citizens of the 26 27 City and County of San Francisco have a financial stake in

this lawsuit?

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Because if the answer to either of those questions is yes, then this case distinguishes itself from Nguyen and distinguishes itself in the 17200 authority.

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THE COURT: That's if, in fact, what we think is that the People, that the citizens of the City and County of San Francisco are distinguishable from the People of the State of California, which to this Court's thinking they are not.

Ultimately the reason for the statute is to preclude local bias. Isn't It? That's the purpose of it. And the idea being that the citizens of San Francisco would favor the City and County of San Francisco.

But of course I have found that that's not always the case. When the City is a litigant they frequently lose before the citizens of the City of San Francisco. But be that as it may, we won't indulge ourselves in such discussions.

The real problem is here, this isn't really a jury question. The issue ultimately of what extent it is that the citizens benefit from the litigation should, in fact, the People of the State of California prevail, and should it ultimately be determined what amount of money is owed to the City, is a judge question. And we know judges can't be biased in favor of localities as a matter of law.

MR. TIGAR: Your Honor, even as to non-jury questions, Moving Defendants might still have the right to a judge from a different county, if that's where we wound up.

But I also think that -- I also think that the

City's personal stake in the outcome of this case. distinguishes it from Nguyen, even relying on the authorities cited by the City & County.

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Kelly versus Boeing, which is a Federal Ninth Circuit case, False Claims Acts standing that the People rely on, says at Page 79:

"Qui tam plaintiffs have the requisite personal stake in the outcome of the case." And they talk about what that stake is. Relying on their need to fund the litigation, their sizeable bounty they receive if they prevail, and the fact that they will be liable for costs if the suit is frivolous.

We are not arguing that the City & County is not the State of California. But it's clear based on <u>Kelly</u>

<u>versus Boeing</u> and several other factors that the City & County of San Francisco has a dual identity here.

This is not a quasi-criminal action. This is not like Nguyen. In fact if the City & County of San Francisco wanted to bring a criminal action, the authority in their papers, Penal Code Section 72, would be where they proceed. That fact by itself distinguishes this case completely from Nguyen.

And let me also say, this is a case of first impression in California. I agree that it would be up to the Court to determine exactly the amount of the recovery that the City & County receives. But the fact is that under Government Code Section 12652, there is a range of recovery for the citizens of the California.

And what the Court will determine is not whether they will entitled to receive that range. But my understanding of the statute is the Court will set where within that range their recovery falls. So they do claim the right to a jury. The citizens of the City & County of San Francisco do stand to benefit financially. That's why they brought this case. I don't think there's going to be any dispute about that. And we know this can't be a quasi-criminal statute, because there is a separate criminal statute.

I just think that on every salient point, this is completely different from the cases cited by the City & County, Your Honor.

THE COURT: Very good.

MR. DAVIS: I don't have too much to add, Your

Honor, except what is stated in the briefs. If you want -
THE COURT: Do you want to respond to his

comments?

MR. DAVIS: Well, we do cite authority that says under the Business & Professions Code, it is a quasi-criminal statute.

Both the D.A. and the City Attorney have authority to bring actions under that statute on behalf of the People of the State of California. San Francisco has no claim in this lawsuit. Rather, just prosecuting the claims on behalf of either the State or the People.

THE COURT: Does San Francisco have a stake in the outcome of the litigation? And is that an important

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      consideration?
                MR. DAVIS: A financial stake? At the conclusion
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      of the Falls Claims proceedings, if there's a recovery, San
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      Francisco has a right to ask for a share of any recovery
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      that Old Republic has already been ordered to pay. That's a
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      determination that's made by the judge and not the jury.
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                THE COURT: Do you want to add anything?
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                MR. MOON: Nothing further.
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                THE COURT: I will take it under submission.
      think it's very likely I will stand on my tentative ruling,
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      but I want to think about the things you have said.
                MR. DAVIS: Your Honor, I have a proposed order.
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                THE COURT: Please.
                MR. TIGAR: Your Honor?
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                THE COURT: Please.
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                MR. TIGAR:
                            If the Court, after consideration,
      changes its mind, would the Court like to be heard briefly
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      on the selection of the venue, if the 394 motion is granted?
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                THE COURT: Did the City want to speak to that at
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      all?
                MR. DAVIS: If you change your tentative, maybe we
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      should come back to talk about that.
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                THE COURT: All right.
                MR. TIGAR: Thank you, Your Honor.
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                MR. DAVIS: How many copies would you like, Your
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     Honor?
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                THE COURT:
                           One.
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               (Whereupon, the proceedings were adjourned.)
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#### REPORTER'S CERTIFICATE

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I, Joseph Hayden Vickstein, an official reporter of the Superior Court of the State of California, in and for the City and County of San Francisco, do hereby certify:

That the foregoing transcript, as reduced to transcript by computer under my direction and control to the best of my ability, is a full, true and correct computer transcription of the shorthand notes taken as such reporter of the proceedings in the above-entitled matter.

Joseph Hayden Vickstein, CSR #4780