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November 15, 1999

Carlotta Tillman
Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Re: J.C.C.P. No. 4095

Dear Ms. Tillman:

Pursuant to your instructions, please find enclosed an original and one copy of the Response to Petition of Coordination submitted by the plaintiffs in The People of the State of California by and through San Francisco City Attorney Louise H. Renne et al. v. Arcadia Machine & Tool, Inc., et al., S.F. Sup. Ct. No. 303753 in the above-referenced proceeding. Please contact me at (415) 554-3960 if you have any questions regarding this matter.

Sincerely,

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Encls.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA, et al., Plaintiffs, vs. ARCADIA MACHINE & TOOL, INC., et al., Defendants.	J.C.C.P. No. 4095; S.F. Sup. Ct. No. 303753 RESPONSE OF NORTHERN CALIFORNIA PLAINTIFFS TO DEFENDANTS' PETITION FOR COORDINATION Date Action Filed: May 25, 1999

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INTRODUCTION

The Northern California plaintiffs[1] respectfully submit this memorandum in response to Defendants' Petition for Coordination. Plaintiffs do not dispute that the underlying cases are appropriate for coordination pursuant to Code of Civil Procedure ("C.C.P.") section 404 *et seq.* However, plaintiffs do dispute Defendants' suggestion that pursuant to C.C.P. section 394(a) these cases, once coordinated, should be venued outside either of their two current venues, San Francisco Superior Court and Los Angeles County Superior Court. To the contrary, as explained further below, under the analysis set out in C.C.P. section 404.1, the coordinated cases should be heard in San Francisco or, failing that, Los Angeles.

The analysis of where to venue the coordinated case must begin with the Courts in which the actions to be coordinated are currently pending. By selecting among the relevant two venues here, San Francisco Superior Court and Los Angeles County Superior Court, the analysis proceeds from the well-established principle that plaintiffs, not defendants, are entitled to their choice of forum subject to limited exceptions not applicable here. In the present circumstances, application of the considerations mandated by C.C.P. section 404.1 compels the conclusion that the three included actions should be coordinated in the Superior Court of San Francisco. In particular, the convenience of parties, witnesses and counsel, the efficient utilization of judicial facilities and manpower, and the calendars of the respective courts will be best served by a San Francisco venue.

Defendants' Petition fails to demonstrate any justification for departure from section 404.1's standards. Their attempt to invoke C.C.P. section 394(a) fundamentally misapprehends

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[1] In People of the State of California, et al. v. Arcadia Machine & Tool, Inc., et al., No. 303753, the People of the State of California assert causes of action for public nuisance and violations of Business and Professions Code sections 17200 and 17500 by and through San Francisco City Attorney Louise H. Renne, Berkeley City Attorney Manuela Albuquerque, Sacramento City Attorney Samuel L. Jackson, San Mateo County Counsel Thomas F. Casey, III, Oakland City Attorney Jayne W. Williams, and East Palo Alto City Attorney Michael S. Lawson. The People were joined in the First Amended Complaint by the Cities of Berkeley, Oakland and East Palo Alto, Alameda County, and the late Joe Serna, Jr., Mayor of Sacramento, all of which sued on behalf of the California General Public under Business and Professions Code section 17204. These plaintiffs are referred to as the "Northern California Plaintiffs."

the preemptive effect of C.C.P. section 404 and the other coordination provisions with respect to management of coordinated cases, including venue issues. Simply stated, the coordination provisions expressly *preempt* all other venue statutes, including section 394(a). Keenan v. Superior Court (Piper Aircraft) (1980) 111 Cal. App. 3d 336, 41-42.

Moreover, even if Defendants had not filed a coordination petition, section 394(a) would not apply to the included actions. Transfer of an action under section 394(a) is mandatory only where a local government agency sues for *damages* in the courts of its own county, and where jurors, as taxpayers of that county, might be prejudiced in favor of their county. There is no such plaintiff in the San Francisco action and, thus, by its terms section 394(a) is inapplicable. Moreover, none of the cases involves a jury claim. In a court trial of claims brought on behalf of all Californians involving equitable relief, there is no possibility of juror prejudice in favor of local governmental entities, the principal focus of section 394(a). Accordingly, no basis exists for a mandatory transfer of any of the included actions.

For these reasons, as addressed further below, the Northern California plaintiffs respectfully request that the three included actions be coordinated in the San Francisco Superior Court as the first option, or alternatively, in the Los Angeles County Superior Court as the second option.

I. COORDINATION OF THE THREE INCLUDED ACTIONS IS APPROPRIATE

The Northern California Plaintiffs agree that this action, as well as People ex rel County of Los Angeles, et al. v. Arcadia Machine & Tool, Inc., et al., No. BC 214794 (Los Angeles Superior Court), and People by and through James K. Hahn, et al. v. Arcadia Machine & Tool, Inc., et al., No. BC 210894 (Los Angeles Superior Court), are "complex" as defined by the Judicial Council in section 19 of the Standards of Judicial Administration, and that coordination of these actions is appropriate under the standards in C.C.P. section 404.1. Accordingly, the Northern California Plaintiffs do not oppose coordination.

II. SAN FRANCISCO IS THE MOST APPROPRIATE VENUE FOR THE COORDINATED CASES

C.C.P. section 404.1 sets forth the factors to be considered in determining whether coordination is appropriate, and if so, the court and appellate district to which the coordinated actions should be assigned. Several of the listed factors are relevant primarily in determining whether coordination is appropriate. The remaining factors — "the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; [and] the calendar of the courts" — guide the determination of *where* the actions should be coordinated. The application of these factors compels the conclusion that these actions should be coordinated in San Francisco Superior Court.

Several of these factors favor venue in San Francisco, principally the "calendar of the courts" and the efficient use of judicial facilities and manpower. These cases are likely to consume substantial judicial resources, both in pretrial and trial proceedings. The San Francisco Superior Court has a relatively uncrowded docket. Among the 17 Superior Courts with more than 10 judges, San Francisco reports having the *fewest filings per judge* — less than 60 percent of both the group and statewide averages. *Judicial Council's 1999 Court Statistics Report,* Figure 1-D at 36 [hereinafter "*1999 Court Statistics Report*"], Baker Declaration, Exhibit A. San Francisco is also equipped with a new state-of-the-art courthouse. In addition, the consolidation of the San Francisco Superior and Municipal courts has reduced caseloads even further, making San Francisco the venue best able to bear the added burden of managing and trying these coordinated actions.

With respect to the other factors, they are essentially neutral. Plaintiffs' counsel and Defendants' counsel are fairly evenly divided between Northern California and Southern California. Although there are more prosecuting entities from Northern California, there may be more industry witnesses from Southern California. In light of the neutrality of these remaining factors, the disparities in available judicial resources indicate that the San Francisco Superior Court is the most logical venue for coordination of the three included actions.

III. THE FIRST APPELLATE DISTRICT SHOULD BE SELECTED AS THE REVIEWING COURT.

C.C.P. section 404.2 and Rule 1505 of the California Rules of Court require that where, as here, the coordinated actions are within the jurisdiction of more than one district of the Court of Appeal, a single district must be designated to hear and determine appeals from judgments or orders in the coordinated actions. The First District Court of Appeal should be designated as the reviewing court for the coordinated actions, as it compares favorably with other appellate districts.

As of June 30, 1998 the First District Court of Appeal had the lowest number of filings, dispositions, and pending appeals per Justice in the state — approximately two-thirds as many as the statewide average. *1999 Court Statistics Report,* Figure 5 at 21. By comparison, the Second District had the highest number of filings, dispositions and pending appeals per Justice, approximately 20% more than the statewide average. Id.

On average, it takes the First District substantially less time than the Second District to dispose of a civil appeal from the time of filing the Notice of Appeal to issuance of a written opinion. *1999 Court Statistics Report*, Figure 4-A at 19. During fiscal year 1997-98, in the First District, 90 percent of civil appeals were disposed of within 640 days, the shortest time-to-disposition ranking in California. *Id.* By contrast, the Second District reported 816 days, the second longest 90th percentile time from notice of appeal to filing of opinion for civil appeals disposed of in 1997-98 in California. *Id.* Accordingly, the First District Court of Appeal should be designated as the reviewing court for the coordinated cases. This consideration also weighs in favor of coordination in the San Francisco Superior Court, the decisions of which are ordinarily subject to review by the First District Court of Appeal.

IV. IF SAN FRANCISCO IS NOT THE VENUE FOR THE COORDINATED CASES, LOS ANGELES COUNTY IS THE ONLY OTHER LOGICAL VENUE

For the foregoing reasons, San Francisco Superior Court should be selected as the venue of the coordinated cases. However, if this forum is not selected, the Los Angeles County Superior Court should be selected as the venue. Los Angeles, like San Francisco, is one of the

venues chosen by the plaintiffs and is therefore entitled to a presumption of merit absent a contrary showing by the Defendants. In addition, Los Angeles and San Francisco are two of only three counties that are participating in the Judicial Council's pilot project to create separate complex case dockets, a project which could enhance the efficient management of the coordinated cases.

The factors cited in C.C.P. section 404.1, including the convenience of counsel and of witnesses, also support venue in one of the two locations in which the included actions were filed. All of the plaintiffs are represented by counsel who have offices in either San Francisco or Los Angeles. Twenty-two of the twenty-six defendants who have appeared in the Northern California action are represented by counsel from either San Francisco or Los Angeles. Moreover, San Francisco and Los Angeles offer the convenience of ready accessibility through their airports, a significant point given that a fair number of counsel and many witnesses are located outside of this state. No third venue would be as convenient for counsel or for witnesses.

V. THE JUDICIAL COUNCIL SHOULD REJECT PETITIONERS' REQUEST TO REMOVE THESE CASES FROM SAN FRANCISCO AND LOS ANGELES

Petitioners contend that because of "fairness" considerations predicated upon C.C.P. section 394(a), the coordinated cases should be assigned to a county other than San Francisco or Los Angeles, the two Courts in which the included actions are presently pending. Section 394(a) is not applicable to these cases for several reasons. First, as petitioners acknowledge, the coordination rules govern venue of these cases, not section 394(a). Second, by its terms section 394(a) applies only to cases in which a local governmental entity from the same county in which the court sits is a party to the action. Section 394(a) does **not** apply to actions, such as the present case, brought in the name of the People of the State of California since the People by definition reside in all counties. Third, all of the claims asserted in the included actions are equitable claims to be tried to a judge, rather than a jury. None of the cases pose any risk of juror prejudice against Defendants, the principal danger that section 394(a) seeks to address. Finally, Petitioners' claim of unfairness is unpersuasive because in truth, they invoke section

394(a) not to seek a neutral forum, but as a guise for transferring these cases to a forum more to their liking. The coordinated cases should be heard where they were filed, in either San Francisco or Los Angeles Superior Court.

A. Section 394 Does Not Apply to Coordination Proceedings

When the Legislature enacted the coordination statute, C.C.P. section 404 *et seq.*, it determined that the statute and the related rules promulgated by the Judicial Council would preempt all other statutes with respect to governance of coordinated cases. Section 404.7 expressly provides that the coordination statute and rules apply "[n]otwithstanding any other provision of law." C.C.P. § 404.7. Assuming coordination is granted, the coordination statute and rules accordingly will preempt section 394(a). Petitioners concede as much. Petition at 11, citing Keenan v. Superior Court (Piper Aircraft) (1980) 111 Cal. App. 3d 336, 41-42.

The Keenan opinion arose out of a crash in El Dorado County of an airplane bound for Los Angeles County. Several related personal injury actions were filed in both counties. Plaintiffs in certain of the actions filed a coordination petition, which the Judicial Council assigned to a coordination motion judge in Los Angeles County. While the petition was pending, the defendants in the Los Angeles actions moved to transfer venue of those cases to El Dorado County, based on convenience of witnesses under C.C.P. § 397. The Los Angeles County Law and Motion Judge granted those motions. Id. at 343 & n.3. However, the Second District Court of Appeal set aside the transfer order, finding that the application of section 397 was inconsistent with the coordination rules, which vested discretion to determine the appropriate place for future proceedings with the coordination trial judge. The court held:

> Rules 1520-1525, adopted by the Judicial Council, give the coordination judge broad discretion to adopt procedures which will serve the convenience of parties, witnesses and counsel, and utilize judicial personnel and facilities efficiently.
>
> The statute and rules clearly establish that the coordination judge is not to be constrained by the preexisting law relating to the place of trials. The venue statutes (§§ 392-401) require that the place of trial be determined by such matters as the nature of the action, the county in which certain events occurred, the legal form or capacity of a party and the residence of a party. Once the proper

> place of trial is determined under these statutory standards, all trial court proceedings are conducted in that place.
>
> The coordination law, on the other hand, enjoins the trial judge to "assume an active role in managing all steps of the pretrial, discovery, and trial proceedings . . . " (Rule 1541(b)) and gives the court new flexibility in selecting the place or places where judicial activities may be conducted. Under Rule 1541(b) the court may "(1) order any coordinated action transferred to another court pursuant to Rule 1543; (2) schedule and conduct hearings, conferences and a trial or trials at any site within this state he deems appropriate with due consideration to the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and manpower; and the calendar of the Court; . . . "

Id. at 341-42. The Keenan Court went on to hold that "once a case has come under the coordination procedure, the place of trial must be determined by the coordination judge unfettered by the narrow perspective of the venue statutes." Id., citing Pesses v. Superior Court (1980) 107 Cal. App. 3d 117, 125.

In their letter brief dated November 3, 1999, Petitioners now suggest that Keenan is a narrow decision applicable only where the statute at issue authorizes discretionary, rather than mandatory, transfer. See November 3, 1999 letter brief, at 1. Putting aside their prior concession that Keenan is controlling, see Petition at 11, there is nothing in Keenan or subsequent case law to suggest that Keenan should be so limited. Keenan broadly states that the coordination statutes trump "the narrow perspective of the *venue statutes*." Keenan at 342 (citation omitted) (emphasis added). Moreover, Keenan is in accord with the coordination statutes and rules, which by their terms apply "[n]otwithstanding any other provision of law." C.C.P. § 404.7. Petitioners cannot plausibly assert that a statute authorizing mandatory transfer of venue, such as section 394(a), is not within the scope of the phrase "any other provision of law." The statute therefore does not apply to coordination proceedings.

Finally, Petitioners erroneously suggest that section 394(a) authorizes the Judicial Council to "resolv[e] venue issues under the section." November 3, 1999 letter brief, at 1. This position is flatly contradicted by the language of the section, which provides that the Judicial

Council shall be involved only in limited circumstances, i.e. at the invitation of the relevant Superior Court judge. C.C.P. section 394(a) ("the court in the original county may request the chairman of the Judicial Council to assign a disinterested judge from a neutral county ... .").

For these reasons, the Judicial Council is not constrained by section 394(a) to select a coordination motion or trial judge from counties other than San Francisco or Los Angeles. To the contrary, as discussed above, San Francisco and Los Angeles are the only two counties in which coordination proceedings should be venued.

B. Section 394(a) Is Inapplicable To Cases Brought in the Name of the People

Even in the absence of coordination, Defendants would have no right under section 394(a) to transfer the San Francisco action to another county or to seek assignment of a judge from a "neutral" county. Section 394(a) contains several provisions relating to where actions or proceedings involving municipal entities are to be venued. In certain limited circumstances, this statute authorizes damages actions against out-of-county defendants brought by local government entities in the courts of their own counties to be transferred to a neutral county.[2] However, no San Francisco local government entity is a plaintiff in the San Francisco action, which has been brought in the name of the People of the State of California.[3] Section 394(a) is therefore inapplicable by its terms.

The San Francisco action is brought in the name of the People of the State of California, by and through the various city attorneys, including Louise H. Renne, the San Francisco City Attorney.[4] The Legislature has expressly authorized Ms. Renne (as well as other city attorneys

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[2] The relevant provision of section 394(a) states: "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 defendants resides, or is doing business, or is situated." Cal. Code Civ. Proc. § 394(a).

[3] It is irrelevant if the City of Berkeley or the County of Alameda are named plaintiffs because they are not located in the same county as the San Francisco Superior Court.

[4] The same is true of the Los Angeles City action, which is prosecuted in the name of the People by Los Angeles City Attorney James K. Hahn and others. Similarly, in the Los Angeles (continued on next page)

and county counsel) to bring these claims in the name of the People. See, e.g., C.C.P. § 731 (authorizing city attorneys to bring public nuisance claims on behalf of the People); Cal. Bus. & Prof. Code § 17204 (authorizing city attorney of a city with a population over 750,000 to bring a section 17200 claim on behalf of the People); Cal. Bus. & Prof. Code § 17535 (authorizing city attorney and county counsel to bring a section 17500 claim on behalf of the People).

Petitioners nonetheless seem to contend that suits brought by local prosecutors in the name of the People trigger section 394(a). However, the California Court of Appeal has rejected this argument. In Nguyen v. Superior Court (1996) 49 Cal. App. 4th 1781, the Court of Appeal determined that section 394(a) did not apply where a local public attorney brought a case on behalf of the People.[5] In that case, the San Mateo district attorney brought a red light abatement action in the name of the People in San Mateo County Superior Court. The defendants sought to transfer under section 394(a), and the trial judge denied the motion. On appeal, a unanimous Court of Appeal affirmed the lower court's ruling: "the District Attorney . . . represents the People of the State of California ... exempting this action from the mandatory transfer provision of section 394, subdivision (a)." 49 Cal. App. 4th at 1784. In doing so, the Court relied on a prior federal decision, People of the State of California v. Steelcase Inc. (C.D. Cal. 1992) 792 F. Supp. 84, which concluded that in a section 17200 action brought by the Los Angeles District Attorney, the real party in interest was the state, and not the county, when the claim was brought in the name of the People.

(footnote continued from previous page)
County action, the County of Los Angeles is named solely for the limited purpose of prosecuting Business and Professions Code claims on behalf of the people and the California general public.

[5] In their motions to transfer venue filed below, the only legal authority petitioners offered in support of their position was Marin Community College Dist. v. Superior Court (1977) 72 Cal.App.3d 319, a case on its face inapposite since there the named plaintiff was a municipal entity within the county of the Court. Compare Nguyen at 1790 n.7 (distinguishing between cases brought by the District Attorney on behalf of the People versus brought on behalf of the county); *see* 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, at 6-9, Exhibit B to the Declaration Of D. Cameron Baker In Support Of Response Of Northern California Plaintiffs To Defendants' Petition For Coordination ("Baker Declaration").

Petitioners seek to distinguish Nguyen on the grounds that Plaintiffs here seek monetary relief in the form of civil penalties and restitution as well as injunctive relief. This argument also is unavailing. Section 394(a) is limited to those cases where a plaintiff is a municipal entity (county, city or local agency) within the county in which the court is located. If there is no such plaintiff, and there is not in the San Francisco case, the statute does not apply. See San Francisco Foundation v. Superior Court (1984) 37 Cal.3d 285, 294 ("Section 394 applies in this case . . . only to proceedings 'brought by' the county").

In addition, the civil penalties and the other monetary relief authorized under section 17200 and section 17500 of the Business and Professions Code should not as a matter of policy trigger the application of section 394(a). First, these forms of relief are really in the nature of criminal fines and thus, merely ancillary to the main focus of these sections, the provision of injunctive relief to halt wrongful business practices. As the U.S. District Court stated in Steelcase, *supra*, "Civil penalties are not damages recovered for the benefit of private parties; they are akin to a criminal enforcement action and brought in the public interest." Steelcase, 792 F.Supp. at 86. Moreover, many cities and counties use these sections to enjoin a variety of unlawful, unfair and/or deceptive business practices and false advertisements, many of which are committed by corporations not present in the county of the prosecuting entity. If henceforth such cases were to be treated as subject to section 394(a), it would result in innumerable transfers or reassignments of these garden variety section 17200 and section 17500 cases, causing substantial turmoil in the judicial system, all to address a situation that, as noted above, is not within the statutory language of section 394(a).[6]

San Francisco Superior Court Judge David A. Garcia recently denied a neutral county transfer motion in nearly identical circumstances in a case brought under section 17200 and the

[6] Moreover, the allocation of any monetary payments in this case will be determined by the judge pursuant to Government Code section 26506. This section provides that "the proceeds of civil penalties or other monetary awards recovered in any civil action brought jointly in the name of the people of the State of California . . . by one or more city attorneys . . . shall be paid as approved by the court." Moreover, this section, like C.C.P. section 404.7, applies "[n]otwithstanding any other provision of law," including Business and Professions Code section 17206(c) and section 17536(c), cited by Petitioners.

False Claims Act. See Order Denying Motion to Transfer and Joinder, State of California ex rel. Hallinan and Renne v. Old Republic Title Company et al., S.F. Superior Court No. 993-507 (September 11, 1998) (attached to the Baker Declaration as Exhibit C). As Judge Garcia stated at the oral argument in that case: "It's the people that are suing. Not the City and County of San Francisco. Therefore the code section, C.C.P. section 394 simply isn't applicable." Reporter's Transcript of Proceedings at 3 (September 8, 1998) (attached to the Baker Declaration as Exhibit D). Before Defendants filed their petition for coordination, they noticed their section 394(a) transfer motion to be heard by Judge Garcia on November 4, 1999. Baker Decl., Exhibit B. Defendants would accomplish a remarkable feat of forum shopping if they were allowed to invoke coordination proceedings to obtain a result in this case that was different from Judge Garcia's ruling denying the transfer motion in the Old Republic Title Company case.

In sum, section 394(a) does not apply to the San Francisco action. *A fortiori*, section 394(a) cannot justify not assigning the coordinated cases to San Francisco.

C. None of the Three Pending Cases Poses Any Threat of Juror Prejudice

While Petitioners vaguely speak of "prejudice," section 394(a) principally focuses on a specific potential prejudice — i.e., that local jurors may harbor prejudice against a foreign defendant when the outcome of the case will impact the jurors' interests as taxpayers. As the Nguyen court stated, section 394(a) is intended to prevent "the prejudice an 'outsider' might suffer because [] taxpayers may fear their monetary interests are linked to the [plaintiff] city, county, or city agency." Nguyen, 49 Cal. App. 4th at 1789; see also Transamerica Homefirst, Inc. v. Superior Court (1999) 69 Cal. App. 4th 577, 581 ("The local bias against which the statute protects is 'prejudice resulting from citizens in the county perceiving the trial outcome as tied to their economic interests.'" (quoting Nguyen at 1790) (italics omitted)); Garrett v. Superior Court (1974) 11 Cal.3d 245, 248 (referencing potential prejudice where Riverside County juror is also a taxpayer with an interest in the outcome of the proceeding).

Significantly, all claims in the three pending cases to be coordinated will be tried to the Court rather than to a jury. Wolford v. Thomas (1987) 190 Cal. App. 3d 347, 353 (no right to

jury for public nuisance action); People v. Witzerman (1972) 29 Cal. App. 3d 169 (no right to jury trial in a Bus. & Prof. Code section 17500 case). Thus, these cases do not present the thrust of section 394(a), prevention of juror prejudice against foreign defendants.

Even if section 394(a) did apply to an action prosecuted by the People, it nonetheless would not authorize transfer of any of the included actions, precisely because of the absence of any jury questions. Section 394(a) provides that: "when the action or proceeding is one in which a jury is not 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." C.C.P. 394(a). There is no reason to grant such a request in these cases; Petitioners have made no showing that a trial judge from either San Francisco or Los Angeles would be incapable of ruling impartially in these cases. Nguyen, supra, 49 Cal. App. 4th at 1791.

D. Petitioners' Request Interjects Unfairness Instead of Alleviating It

Petitioners claim that in the interests of fairness, "it is proper to change venue in these cases." Memorandum at 11. However, the contrary is true. As a general rule, the plaintiff is entitled to the forum of its choice absent a strong showing by the defendant that the plaintiff's choice of forum should not be honored. Strangvik v. Shiley Inc. (1991) 54 Cal.3d 744, 754-55 & n.7 (ruling concerning application of the doctrine of *forum non conveniens*); *see also* Chong v. Superior Court of Los Angeles County (1997) 58 Cal.App.4th 1032, 1038 (same).

Petitioners have failed to make any concrete showing of prejudice here. Rather, their request appears to be based on a calculation that their arguments will find a more receptive audience in judges from counties likely to be more rural and/or conservative than San Francisco or Los Angeles. However, such calculations are not legitimate arguments concerning proper venue. Instead, they constitute forum shopping. In these circumstances, granting Petitioners' request to transfer these cases to a county more to their liking would work grave unfairness upon the prosecuting entities. To prevent such unfairness, these cases should be assigned to one of the Courts in which they were originally filed.

CONCLUSION

For the reasons stated above, plaintiffs in the San Francisco action respectfully submit that the included actions should be coordinated in San Francisco, and that the First Appellate District should be selected as the reviewing court.

Dated: November ___, 1999

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CONCLUSION

For the reasons stated above, plaintiffs in the San Francisco action respectfully submit that the included actions should be coordinated in San Francisco, and that the First Appellate District should be selected as the reviewing court.

Dated: November 10, 1999

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CONCLUSION

For the reasons stated above, plaintiffs in the San Francisco action respectfully submit that the included actions should be coordinated in San Francisco, and that the First Appellate District should be selected as the reviewing court.

Dated: November ___, 1999

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CONCLUSION

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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:

RESPONSE OF NORTHERN CALIFORNIA PLAINTIFFS TO DEFENDANTS' PETITION FOR COORDINATION

on the interested parties in said action, by placing a true copy thereof in sealed envelope(s) addressed as follows:

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☐ **BY PERSONAL SERVICE**: I caused true and correct copies of the above documents to be placed and sealed in envelope(s) addressed to the addressee(s) and I caused such envelope(s) to be delivered by hand on the office(s) of the addressee(s).

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☐ **BY FACSIMILE**: I caused a copy(ies) of such document(s) to be transmitted via facsimile machine. The fax number of the machine from which the document was transmitted was 554-3837. The fax number(s) of the machine(s) to which the document(s) were transmitted are listed above. The fax transmission was reported as complete and without error. I caused the transmitting facsimile machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed November 15, 1999, at San Francisco, California.

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