Gupta / Beck *Issues & Appeals*

February 12, 2015

Molly C. Dwyer, Clerk
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

Re: Rule 28(j) Letter in *Moran v. The Screening Pros*, No. 12-57246
(Argued on February 2, 2015 before Pregerson, Kleinfeld, and Nguyen, JJ.)

Dear Ms. Dwyer:

I write to provide authority for two points discussed at argument. *First*, on open state-law questions, "the panel must predict how the California Supreme Court would decide the issue, using intermediate appellate court decisions, statutes, and decisions from other jurisdictions as interpretive aids." *Kairy v. SuperShuttle Int'l*, 660 F.3d 1146, 1150 (9th Cir. 2011). Thus, because California's Legislature deserves this Court's respect, the *statute itself* is a critical "interpretive aid." Here, nothing in ICRAA's text commands mutual exclusivity with CCRAA. To the contrary, both statutes govern reports issued for tenant screening purposes (Cal. Civ. Code §§ 1786.2(b), 1785.3(c)(3)); and many public records, including criminal records, have always been recognized as "character" information under ICRAA and information bearing on "creditworthiness" under CCRAA (*id.* §§ 1786.18(a)(7), 1785.13(a)(6)).

Second, the attached legislative history confirms that the Legislature always intended these statutes to cover overlapping *types* of information. The sponsor of the 1998 ICRAA amendments, Senator Leslie, pointed out that sections 1786.18, 1786.28, and 1786.30, as originally enacted, "expressly recognize[d]" that investigative reports "can and do contain information that is a matter of public record." (Ex. A at 2). The same is true of CCRAA sections 1785.13 and 1785.18. But originally, ICRAA was limited to information "obtained through personal interviews." This narrow definition based on the *source* of information seemed arcane because of the increasingly "broad use of database information," including "criminal records." (Ex. B at 3-4).

The 1998 amendments thus removed the "personal interviews" limitation to reflect these data-industry changes. As Leslie explained: "I strongly believe—and [the amendment's] language reflects this belief—that it should not matter *from where* information on a person is obtained," and that reports for employment, rental, and insurance purposes "should be subject to greater disclosure and accountability standards." (Ex. A at 3.) (Reports for credit purposes remained governed solely by CCRAA.) Writing to the Governor in response to data-industry objections, he rejected the suggestion that this overlapping coverage of public records was unintended. There was no "confusion on [his] part—or on the part of the Legislature, which overwhelmingly passed this measure." (*Id.* at 1).

Sincerely,

/s/ Deepak Gupta
Counsel for Plaintiff-Appellant

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