

California LEGAL BRIEFING

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*A report from the
California Apartment
Association on the legal
issues affecting the
California rental
housing industry.*



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Victory for CAA Legal Fund, Property Owners and Screening Companies Unlawful Detainer Reports Likened to a Platypus

On December 3, 2007, the Fourth District Appellate Court held in the cases of *Ortiz v. Lyon Management Group* and *Trujillo v. First American Registry* that California's law - the Investigative Consumer Reporting Agencies Act (ICRAA) - is unconstitutionally vague. Stephen Pahl and Karen McCay of Pahl & McCay filed an amicus brief in this matter on behalf of CAA. As a result, the plaintiffs (tenants) who brought this case against property owners and tenant screening companies were told by the court that their claims were without merit. A number of CAA members had been brought into this litigation. The case was about whether unlawful detainer reports are "investigative consumer reports" governed by the state's investigative consumer reporting law (ICRAA) or whether they were regular "consumer reports" governed by the state's consumer reporting law (CCRAA). Both laws have different disclosure requirements and different penalties for a property owner's failure to follow the law.

Before agreeing to rent to a prospective tenant, a property owner generally pulls a credit report that shows the prospective tenant's payment history and any eviction proceedings. Industry practice has been to treat unlawful detainer records as consumer reports, defined under CCRAA. Plaintiffs argued, however, that unlawful detainer records fall under the broad definition of "investigative consumer reports" under ICRAA, and, as a result, landlords were required to give prospective tenants additional notices. Violation of the ICRAA law translated into thousands of dollars in fines for property owners if the court ruled in favor of the Plaintiffs.

In the end, however, the court disagreed with the Plaintiffs. The court reasoned that, like the platypus, which lays eggs like a reptile, but nurses its young like a mammal, unlawful detainer reports do not fit cleanly into one of the two existing classifications. The CCRAA governs reports containing information on a person's creditworthiness, while the ICRAA governs reports containing information on a person's character. The court found that unlawful detainer information speaks both to creditworthiness and character. Unlike the zoologists who were able to create a new category for the platypus, the court could not write a new statute. Accordingly, the court ruled that the definition of "investigative consumer reports" was unconstitutionally vague as applied to unlawful detainer reports.

For rental property owners and credit reporting companies, this means they can continue to follow the procedures under CCRAA, which has been the historical practice. No penalties will apply. As a result of this ruling, CAA will discontinue its Form 3.6 - Notice of Requested Reports and Certification to Consumer Reporting Agency - which CAA created to help members comply with the more stringent ICRAA requirements during the pendency of the litigation.