

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS  
ACTION AGENDA SUMMARY

DEPT: District Attorney *OS BS*

BOARD AGENDA # B-13

Urgent  Routine

AGENDA DATE July 1, 2008

CEO Concurs with Recommendation YES  NO   
(Information Attached)

4/5 Vote Required YES  NO

SUBJECT:

Approval of the Consumer Fraud Report for the District Attorney's Office

STAFF RECOMMENDATIONS:

1. Accept Consumer Fraud Report for the District Attorney's Office.

FISCAL IMPACT:

Funding for this program from the General Fund in the amount of \$185,607 was initially allocated in the 2006-2007 Proposed Budget and is now included in the department's base budget. This funding supports the cost of an Attorney V and Criminal Investigator position. There has been no revenue received in 07-08. While no revenues have been received this year, the benefit to the community justifies the continued funding support and, as cases are prosecuted/settled, it is anticipated that revenue will be received.

BOARD ACTION AS FOLLOWS:

No. 2008-516

On motion of Supervisor Monteith, Seconded by Supervisor O'Brien  
and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, DeMartini and Chairman Mayfield

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) \_\_\_\_\_ Denied

3) \_\_\_\_\_ Approved as amended

4) \_\_\_\_\_ Other:

MOTION:

*Christine Ferraro*

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

**DISCUSSION:**

**I. CONSUMER FRAUD TEAM STATUS**

The Consumer Fraud Unit consists of Senior Deputy District Attorney John Goulart, Paralegal Donna Robinson, and Investigator Mike Hermosa. (Circuit Prosecutors Matthew Maclear and Ann Carroll from the California District Attorney's Association also prosecute criminal and civil environmental cases for our county, many of which have consumer related issues as well.) Since its inception in 2006, the unit has established working relationships with state and county regulatory agencies including Stanislaus County Weights and Measures, Department of Environmental Resources (DRE), Contractors State License Board (CSLB), Department of Motor Vehicles (DMV), Department of Consumer Affairs - Bureau of Automotive Repair (BAR), Department of Insurance, and Cal-OSHA.

Cases of note which are currently open include two Cal-OSHA criminal cases, one against the Hershey Chocolate and Confectionary Corporation and one against Seneca Foods Corporation. In the Hershey case, violation of Cal-OSHA rules led to a worker losing her left arm when a machine was activated while she was cleaning it. In the Seneca case, a Cal-OSHA violation led to the death of a 64 year old forklift driver who was within a year of retirement; he died when a large pallet of cardboard fell on top of him, crushing him.

We also have two open criminal cases against used car dealers, both investigated by DMV. In each case, dozens of consumers and/or wholesalers were defrauded. The losses are approximately \$150,000 in one case and \$500,000 in the other.

We just concluded one BAR case involving auto repair fraud. The defendant did unnecessary "repairs" or didn't do the work for which he billed. We have just filed another BAR case against employees at a smog check shop who allegedly committed "clean pipe" violations. "Clean piping" is the illicit practice of running a smog test on a clean, i.e., non-polluting, vehicle and then attributing the results to the customer's dirty vehicle; the customer pays a fee of \$250.00 or more for this service in order to receive a smog certificate so he or she can get their polluting vehicle registered.

**II. PROSECUTION OF CIVIL CASES**

The following civil cases have been or are being pursued. With one exception, Stanislaus County is teamed up with prosecutors from one or more other counties in each case against large corporations which have retail outlets nationwide. These multi-party cases have traditionally progressed more slowly than normal due to the complexity and number of lawyers involved. A brief description of each case follows. Except for one case, all are in pre-filing negotiations so the identities of the target companies cannot be listed.

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A. Electronics Case. This case was initiated by Stanislaus County Weights and Measures in 2006 and involves short measure products being manufactured and marketed by several major electronics companies. Prosecutors from Alameda, Los Angeles, Merced, San Joaquin, and Monterey Counties have joined with us in the prosecution of this case. The Weights and Measures departments of these respective counties also participated in the investigative phase of this case. We have met with five major corporations and are working to achieve an agreed disposition which would consist of a stipulated judgment with injunctive relief, penalties, costs and restitution. After our initial meetings with counsel from these companies, each of the companies altered its advertising practices to ensure that consumers are now advised of the exact size of the items they are purchasing. At the urging of one of these companies, at least one major retailer has altered its advertising to now include actual size information.

B. Housewares Specialty Retailer. This "scanner" case (So called because price scanned at the register exceeds the advertised or posted price.) was initiated in 2006 by the Los Angeles County District Attorney's Office. Weights and Measures departments from several counties, including ours, made purchases from this company's stores and found an average overcharge of 11%. We have met in Los Angeles with corporate counsel to present our case and to try to achieve a resolution which would include injunctive relief, penalties, costs, and restitution. Following our initial meeting with corporate counsel, the company re-engineered their central computer system to try to achieve accurate store pricing nationwide. More recently, the company filed in Delaware, the state in which they are incorporated, for a Chapter 11 reorganization in bankruptcy.

C. Auto Repair & Parts Retailer. This "scanner" case was initiated by the San Bernardino County District Attorney's Office in 2006. We have joined in the case along with Fresno County. We have evidence of overcharges from several counties, however. We are in continued negotiations with counsel for the corporation to try to achieve a stipulated judgment which would include injunctive relief, penalties, costs, and restitution.

D. Home Improvement Retailers. This case involves the sale of short measure products by two major home improvement retailers. Part of this case was initiated by our Weights and Measures department in 2004. We have joined with prosecutors from Marin, Monterey, San Joaquin and Los Angeles Counties. Negotiations are ongoing to try to achieve a resolution which would include a stipulated judgment as described above.

E. Beauty Salon Retailer. Our Weights and Measures department initiated this "scanner" case in 2007. Weights and Measures investigators from 13 other counties have made purchases from this company's stores located in their jurisdictions and in almost all instances discovered an unacceptably high degree of price inaccuracy. We will make contact with this company soon to present them with our findings. At this point, given the protracted nature of the multi-party cases

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discussed above, our current plan is to pursue this case without partnering with other counties.

F. People v. Jolit Gewargis, dba, UR Travel (Civil #615168). This case began as a criminal filing against Ms. Gewargis for defrauding numerous customers in her travel business. In July, 2007, we dropped the criminal case and entered into a stipulated civil judgment with Ms. Gewargis which included the following terms: \$25,000 penalty plus another \$25,000 penalty stayed, restitution to each victim, and costs. She is also now precluded from engaging in the travel business.

**III. PROSECUTION OF CRIMINAL CASES**

The following is a list of criminal cases that have been prosecuted by the Consumer Fraud Unit during this past year. In addition, there are on-going investigations and/or cases which are not listed to maintain necessary confidentiality. (Criminal charges are only allegations and defendants are presumed innocent unless/until proven guilty beyond a reasonable doubt.)

**A. Unlicensed Contractors**

<u>Case No.</u>	<u>Defendant</u>	<u>Result</u>
1224267	Rudy Acosta	Pled to felony diversion of construction funds; paid restitution to the victim in full prior to sentencing; ordered to serve 180 days in jail.
1104567	Rudy Acosta	Pled to felony second degree burglary; paid restitution to the victim in full prior to sentencing; ordered to serve 180 days jail consecutive to his other case.
1224301	Steven Justice	Pled to misdemeanor contracting without a license; 30 days jail concurrent with his prison term in other case.
1001109	Steven Justice	Admitted a violation of probation and was sentenced to four years in state prison on this transportation of a controlled substance case.
1233200	Pedro Garcia	Pled to misdemeanor fraudulent advertising; fined \$2,380.00.
1233210	Rosendo Guzman	Pled to misdemeanor fraudulent advertising; fined \$2,380.00.

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1233213	Francisco Contreras	Pled to misdemeanor fraudulent advertising; fined \$2,380.00.
1233218	Jose Anaya	Pled to misdemeanor fraudulent advertising; fined \$2,380.00.
1233226	Enrique Zamora	Pled to misdemeanor fraudulent advertising; fined \$2,380.00.
	Letisia Zamora	Pled to misdemeanor contracting without a license; fined \$200.00.
1233255	Curtis Arlt	Pled to misdemeanor fraudulent advertising; fined \$2,380.00.
1233256	Eduardo Salas	Pled to misdemeanor fraudulent advertising; fined \$2,380.00.
1234040	Sione Fisiiahi	Open. Next court date is 06/26/08.
1235001	Ronald Coin	Open. Next court date is 07/16/08.
1236367	Mark Stalder	Pled to felony fraudulent use of a contractor's license and misdemeanor contracting without a license; 210 days in jail.
1236372	James Newell	Open. Next court date is 06/24/08.
1237357	Sione Langi	Open. Next court date is 06/24/08.
1100820	Paul Ramirez	Pled to felony diversion of construction funds; 180 days jail.
1233228	Joseph Ungerbuhler	Pled to misdemeanor contracting without a license; fined \$700, five days jail.
1056232	Joseph Elliott	Pled to felony diversion of construction funds and misdemeanor contracting without a license; eight months state prison consecutive to other cases.

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1077223	Joseph Elliott	Pled to felony financial elder abuse; 3 years state prison consecutive to other cases.
1108029	Joseph Elliott	Pled to two counts of felony diversion of construction funds; 16 months state prison consecutive to other cases.
1092668	Tim Smith	Pled to seven counts of misdemeanor diversion of construction funds; 180 days jail.
1108407	Gary Scott	Open. Next court date is 06/26/08.
1220050	Reggie Serrano	Pled to felony diversion of construction funds; 120 days jail.
1228974	Roberto Plasencia	Pled to misdemeanor contracting without a license; \$500 fine, 15 days jail.
1216343	Albert Lacondeguy	Open. Trial started 06/17/08.
1228137	Braulio Bello	Pled to misdemeanor contracting without a license; \$500 fine, five days jail.
1224071	Cirilo Rodriguez	Open. Failed to appear. Warrant issued for his arrest.

**B. Identity Theft Fraud**

<u>Case No.</u>	<u>Defendant</u>	<u>Result</u>
1108448	Randy West	Pled to two counts of felony grand theft; paid restitution (\$20,511.26) in full to victim prior to sentencing; 120 days jail.
1081013	Brian Stretch	Pled to felony second degree burglary; 90 days jail.

**C. Industrial Injury/Death**

<u>Case No.</u>	<u>Defendant</u>	<u>Result</u>
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1240888	Seneca Foods Corp.	Open. Seneca is charged with one felony count of willfully violating the Cal-OSHA rules concerning hazardous conditions. Forklift driver Paul Seay was killed when a pallet of cardboard fell on top of him. Next court date is 06/25/08.
1244373	Hershey Chocolate	Open. Hershey is charged with one felony count of willfully violating the Cal-OSHA rules concerning "Lock Out, Tag Out" of dangerous machinery. Employee Erica Domen had her left arm amputated by a machine which was not locked out and tagged out and so, when another employee turned the machine on while she was working on it, she suffered her catastrophic injury.

**D. Unlicensed Veterinary Practice**

1211541	Mahmoud Kalil	Pled to two misdemeanor counts of practicing veterinary medicine without a license; fined \$4,000.00.
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**E. Auto Repair and Sales**

<u>Case No.</u>	<u>Defendant</u>	<u>Result</u>
1232140	Sarla Sharma	Open. Next court date is 07/28/08. Akash Sharma (dba, Rocky's Auto Sales)
1233602	Nayel Shama	Pled to misdemeanor false advertising; \$1,000 fine.
	Sabah Shama	Pled to misdemeanor false advertising; \$1,000 fine.
	Monadle Shama	Pled to felony two counts of grand theft; 270 days jail.

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1240889	Monadle Shama	Pled to felony auto theft; 90 days jail consecutive to other cases.
	David Adams	Pled to felony forgery; 120 days jail.
1241610	Monadle Shama	Pled to felony identity theft; 90 days jail concurrent to other cases.
1244355	Norris Poulsen	Open. Next court date is 06/27/08.
1245919	Victor Zambrano	Open. Next court date is 06/23/08.
	Khalid Khan	Open. No date set yet.
1224151	Ramin Digaleh	Open. Next court date is 07/29/08.
	Ramita Odishoo	Open. Next court date is 07/29/08.
1223523	Ramita Odishoo	Open. Next court date is 07/29/08.

**F. Insurance Fraud**

1238158	George Jacob	Open. Next court date is 08/19/08.
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**IV. CONCLUSION**

The District Attorney's Consumer Fraud Unit continues to build alliances with regulatory agencies to assist them in taking their investigations from the administrative enforcement arena into the civil or criminal arena, where a wider range of remedies is available.

**POLICY ISSUE:**

The efforts of the personnel in this unit support the Board's priorities of Promoting a Safe Community and Efficient Delivery of Public Services.

**STAFFING IMPACT:**

There is no staffing impact associated with this request.