

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

GENE MORAN,

Plaintiff and Appellant,

v.

MURTAUGH, MILLER, MEYER &
NELSON, LLP, et al.,

Defendants and Respondents.

G033102

(Super. Ct. No. 03CC07389)

ORDER MODIFYING OPINION
AND DENYING REHEARING;
NO CHANGE IN JUDGMENT

Appellant's petition for rehearing is DENIED. The opinion filed January 31, 2005, is ordered MODIFIED as follows:

On page 15, at the end of the first new paragraph, following the sentence ending "and hence require him to post security," insert a new and final footnote (labeled in sequence as footnote number "9"), as follows:

⁹ In a petition for rehearing, Moran argues the \$10,000 penalty must be imposed because Murtaugh failed to comply with Civil Code section 1786.53, subdivision (b)(2), which states: "Any person shall provide on any job application form, or any other written form, a box that, if checked by the consumer, *permits the consumer to waive his or her right to receive a copy of any public record obtained pursuant to this section.*" (Italics added.) But the trial court could conclude there was no reasonable probability Moran would prevail on this claim, even assuming Murtaugh failed to provide a waiver form. Simply put, Moran's suit alleging a failure to disclose public records uncovered by a background check amply demonstrated he was not interested in gaining an opportunity to waive

receipt of a copy of any such public records — hence, the subdivision does not apply to him.

The foregoing modification effects no change in the judgment.

ARONSON, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.