2015

Semi-Annual Case Law Update

By Kori Macksoud, Law Clerk

Stone | Dean LLP

Fall/Winter 2015

SUMMARY OF 2015 CALIFORNIA LAW
TABLE OF CONTENTS

STONE | DEAN LLP
ATTORNEYS AT LAW

SUMMARY OF 2015 CALIFORNIA LAW

TABLE OF AUTHORITIES

Labor and Employment Law

Anti- Strategic Lawsuit Against Public Participation (Anti-SLAPP)

Anderson v. Geist
(2015) 236 Cal.App.4th 79
April 22, 2015

Connie Anderson filed a tort suit against two San Bernardino Sheriff's Department deputies, Steve Geist and Daniel Shelton. According to Anderson, Geist and Shelton were among deputy sheriffs who entered her home to execute a warrant for the arrest of her daughter. Anderson and her daughter were away at the time, but several of Anderson's tenants were present. Anderson alleged that Deputy Geist made statements to neighbors indicating that the people who live in Anderson's home were liars and criminals. The deputies returned again five days later and arrested Anderson's daughter. Anderson claimed that the warrant for her daughter's arrest was recalled two days before the deputies first attempted to execute it. Geist and Shelton moved to strike Anderson's complaint pursuant to *Code Civil Procedure* § 425.16, the anti-SLAPP statute. The trial court denied the anti-SLAPP motion, concluding in pertinent part that Geist and Shelton failed to meet their initial burden under the statute to show that Anderson's claims arose from an act in furtherance of their right of petition or free speech.

The Court of Appeal affirmed the trial court's denial of a special motion to strike a complaint. The Court held that peace officers' execution of a warrant was not protected activity under the anti-SLAPP statute where the misdemeanor warrant pertained to a criminal prosecution that generated no public interest or discussion.

Baral v. Schnitt
(2015) 233 Cal.App.4th 1423
February 5, 2015

Robert Baral and David Schnitt were two of the owners of IQ BackOffice LLC. Baral sued Schnitt, alleging that Schnitt wrongfully seized control of the company after secret negotiations for its sale. Baral's causes of action for slander and libel claimed that Schnitt retained Moss Adams to examine IQ regarding purportedly misappropriated corporate assets prior to the sale. According to Baral, Schnitt controlled Moss Adams' examination and fed Moss Adams false information to discredit Baral while simultaneously directing Moss Adams not to interview Baral. Thus Moss Adams incorrectly deemed Baral responsible for certain unauthorized transactions and Schnitt refused to correct the subsequent examination report's false information. The trial court struck the fifth and sixth causes of action under *Code of Civil Procedure* § 425.16, the anti-SLAPP statute, as based on protected activity, namely communications made in a pre-litigation fraud investigation that were protected under the absolute litigation privilege.

After additional proceedings, Baral filed an amended complaint that alleged claims for breach of fiduciary duty, constructive fraud, negligent misrepresentation, and declaratory relief. Baral alleged that he, Schnitt, and another individual agreed to act as co-managing members of IQ, which they did for several years. Unbeknownst to Baral, however, Schnitt filed papers with the California Secretary of State indicating that he was IQ's sole managing member, and he later began unilateral negotiations to sell the company. Schnitt then discovered that Baral's son, who was a bookkeeper for IQ, misappropriated funds. Schnitt excluded Baral, who indemnified IQ for any losses caused by his son, from providing information to Moss Adams, leading to inaccurate conclusions in the Moss Adams examination report that was distributed to various third parties. Schnitt filed another anti-SLAPP motion to strike all references to the Moss Adams audit in the causes of action for breach of fiduciary duty, constructive fraud, and declaratory relief, even though those causes of action were not within the scope of the anti-SLAPP statute. The court denied the motion.

The Second Appellate District affirmed the order denying the special motion to strike. The Court held that the anti-SLAPP statute does not authorize excision of allegations within the statute's scope where they are contained in a mixed cause of action that also contains worthy allegations falling outside the statute's scope.

Bergstein v. Stroock & Strook & Lavan LLP
(2015) 236 Cal.App.4th 793
May 1, 2015

David Bergstein and other related business entities ("Bergstein") were involved in the film industry. David Molner and certain of his entities ("Molner") participated in financial transactions relating to Bergstein's film production and distribution business, making a series of loans to Bergstein from 2007 to 2009. The business relationship went south and ended up in litigation. Molner hired the law firms Stroock and Stroock and Lavan LLP ("Stroock"), and Levene Neale Bender Yoo & Brill LLP ("Levene"), to represent him. By the end of 2009, Bergstein had a fee disagreement with his longtime attorney, Susan Tregub. Tregub later began representing Molner, allegedly in coordinating and organizing the filing of involuntary bankruptcy proceedings against Bergstein and in litigation arising out of the loans. Bergstein sued Tregub for breach of fiduciary duty and professional negligence, obtaining a substantial judgment and punitive damages in August 2012. Bergstein sued Stroock and Levene for aiding and abetting Tregub's breach of fiduciary duty; interference with contractual relations and prospective economic advantage; and unjust enrichment. According to Bergstein, Stroock and Levene knowingly used his confidential information, obtained from Tregub as his former attorney, to their benefit in their litigation against him. Stroock and Levene filed a special motion to strike under the anti-SLAPP statute, contending that all of Bergstein's claims stemmed from their protected activity of filing litigation. The trial court ultimately granted the motion and awarded attorney's fees in favor of the defendant law firms

The Court of Appeal affirmed the trial court's orders. The Court held that the trial court did not err in granting an anti-SLAPP special motion to strike where the plaintiff sued lawyers who represented his adversaries for allegedly engaging in illegal conduct by receiving and acting on confidential information obtained from his own former counsel.

DeCambre v. Rady Children's Hospital-San Diego
(2015) 235 Cal.App.4th 438a
March 11, 2015

Pediatric urologist Marvalyn DeCambre was hired in 2006 by Children's Specialist San Diego ("CSSD") and the Regents of the University of California to provide pediatric urology services for Rady Children's Hospital-San Diego ("RCHSD"). DeCambre was terminated in 2011. DeCambre sued RCHSD, CSSD, and the Regents, asserting causes of action for harassment, retaliation, race and gender discrimination, wrongful termination in violation of public policy, intentional infliction of emotional distress ("IIED"), defamation, among others. DeCambre alleged that she was discriminated against from the beginning of her employment. A promised housing allowance of $100,000 was reduced to $75,000 only after she relocated to San Diego. Promised office space and support staff was similarly not provided, although all of these benefits were provided to DeCambre's male colleagues. DeCambre was subjected to racially discriminatory comments by hospital staff, and hospital staff failed to provide services to DeCambre's patients that were routinely provided for other physicians' patients. DeCambre's defamation claim was based on the hospital's alleged communications to prospective employers following DeCambre's termination. According to the hospital, DeCambre was the problem. Her angry and intimidating behavior made it impossible for staff to work with her rendering her peer-reviews unfavorable which, according to the hospital, resulted in her termination. RCHSD, CSSD, and the Regents filed special motions to strike the entirety of DeCambre's complaint as a SLAPP suit. The trial court granted the special motion to strike and also sustained the defendants' demurrers to DeCambre's causes of action for IIED and defamation.

The Fourth Appellate District reversed in part. The Court held that a physician's allegations of harassment by hospital staff were unrelated to the hospital's peer review process and thus could not be deemed to have arisen from protected activity.

Greene v. Bank of America
(2015) 236 Cal.App.4th 922
May 12, 2015

Gary Greene went to a Bank of America branch and attempted to cash two checks issued to him by State Farm. The checks were drawn on an account at Bank of America, and the insurer instructed Greene to go to this branch to cash the checks. The teller consulted with her supervisor, who refused either to cash the checks or to return them to Greene. He became upset. According to branch manager Jenny Casasola, he threatened to blow up the bank. Casasola called the police and reported the threat. She then sat down with Greene and told him she would try to resolve the issue with the checks. He calmed down immediately, thanked her for her help, and went outside to smoke a cigarette while he waited. The police arrived while Greene was outside smoking a cigarette. He was arrested and charged with making a criminal threat. Upon posting bail, Greene went to a different Bank of America branch and cashed both checks without incident. At his preliminary hearing, Greene admitted having raised his voice, but denied having made any threats. The magistrate found probable cause to bind Greene over for trial. At Greene's trial, Casasola testified that Greene's threat frightened her. She did not, however, evacuate the bank, warn customers or employees, look for security guards who might help, or lock the doors after Greene went outside. Greene was acquitted.

Thereafter, Greene sued the bank and Casasola for malicious prosecution. The bank moved for summary judgment, relying on the collateral estoppel effect of the magistrate's finding of probable cause. The trial court granted the motion and entered judgment in favor of the defendants.

The Court of Appeal affirmed the judgment. The Court held that a magistrate's determination of probable cause at a preliminary hearing defeated Greene's later claim of malicious prosecution, even though he was acquitted at trial.

Grenier v. Taylor
(2015) Cal.App.4th 471
February 18, 2015

Bob Grenier was the long-time pastor of the Calvary Chapel Church in Visalia. In addition to serving as a pastor, Bob's undertakings also included writing a book about his religious conversion, running a website devoted to biblical teaching, and hosting a religious radio show which is broadcasted in several states. Bob and his wife, Gayle, had four children. Among the children, Alex was one of Bob's two stepchildren. After Alex left Bob and Gayle's home, he accused Bob of emotional and physical abuse of all of the children. About the same time, Tim Taylor began attending Bob's Church, and he started a discussion about Bob on an Internet forum. Some years later Alex saw the discussion and contributed his own comments. Thereafter, Alex started his own website/blog where he wrote about his experiences with Bob and the church. Tim added comments there, too. Both Tim and Alex characterized Bob as abusive and of bad character. Bob and Gayle filed suit against Alex and Tim, alleging defamation and intentional infliction of emotional distress ("IIED"). According to Bob and Gayle, Alex had engaged in a "cyber-bully" hate campaign that included false allegations of corruption and child molestation. Alex and Tim moved to strike the complaint as a strategic lawsuit against public participation ("SLAPP") under *Code of Civil Procedure* § 425.16. The trial court concluded that the statements at issue concerned matters of public interest and thus, warranted protection under the anti-SLAPP statute, and that Bob was a limited purpose public figure, so that Bob and Gayle had to prove that Alex and Tim acted with malice in order to prevail on their defamation claims. According to the court, they had done so and thus, demonstrated a probability of prevailing on their claim. The court therefore denied the motion to strike, and the parties cross-appealed. The Fifth Appellate District affirmed the trial court order denying the special motion to strike. The Court held that allegedly defamatory Internet postings accusing a church pastor of child molestation and corruption were entitled to protection under the anti-SLAPP statute as statements made in a public forum in connection with an issue of public interest. The Court further held that the pastor was not a limited purpose public figure in the context of such defamation where he had never thrust himself into a public controversy on issues such as child abuse or corruption. Finally, the Court held that the pastor and his wife established a probability of prevailing on their defamation and IIED claims where the defendants' statements related facts and purported criminal conduct in an extreme and outrageous manner.

Loanvest I, LLC v. Utrecht
(2015) 235 Cal.App.4th 496
March 26, 2015

James Madow sued Loanvest I, LLC who retained attorney Paul Utrecht to represent it. Utrecht successfully opposed Madow's motion for a preliminary injunction. Pursuant to a subsequent settlement agreement, Madow assumed control of Loanvest. Loanvest, as controlled Madow, thereafter sued Utrecht for malpractice, alleging that Utrecht had breached his fiduciary duty to Loanvest as the result of a conflict of interest. The trial court granted Utrecht's special motion to strike the complaint as a SLAPP suit, finding that Loanvest's claim was based on Utrecht's actions in furtherance of the right of petition and that Loanvest had failed to make a prima facie showing of its ability to prevail.

The First Appellate District reversed the judgment. The Court held that the trial court erred in finding that an attorney's alleged breach of the fiduciary duty owed to his client constituted protected activity for purposes of the anti-SLAPP statute.

Trilogy at Glenn Ivy Maintenance Association v. Shea Homes, Inc.
(2015) 235 Cal.App.4th 361
March 4, 2015

Shea Homes, Inc. developed and built a community known as Trilogy at Ivy Glenn. In August 2001, prior to construction, Shea entered into a contract with AT&T Broadband to provide broadband communication services to all homes and businesses within the community. In exchange for AT&T being granted this and other rights, AT&T agreed to make periodic payments to Shea. At the time this contract was executed, Shea and its representatives served on and controlled the project's board of directors, and thereby had the authority to enter into an exclusive telecommunications contract with AT&T. Shea remained in control of the board until mid-2006. The homeowners' association, known as Trilogy at Glenn Ivy Maintenance Association, first discovered the contract in 2010, when one of the payments due under the contract, in the amount of $175,000, was inadvertently delivered to the association instead of directly to Shea. After two additional checks were delivered, the association contacted Shea and asserted its entitlement to the payments. Shea did not respond. The association sued Shea, arguing that because it was the successor in interest to Shea's interest in the property, it was entitled to the amounts received and to be received under the AT&T contract. Shea moved for judgment on the pleadings, contending that because the association was not a party to the contract, it had no enforceable rights in the contract.

The trial court granted judgment on the pleadings, but also granted the association leave to amend the complaint. The association amended its complaint to add a claim for breach of fiduciary duty and related causes of action. The association alleged that Shea breached its fiduciary duty to the association by, among other things, not disclosing the existence of the contract, not disclosing its self-interest in the contract, and repudiating the automatic transfer of the contract to the association, as required under the recorded covenants, conditions and restrictions ("CC&R's") governing the project. Shea filed a special motion to strike the complaint under *Code of Civil Procedure* § 425.16. Shea argued that a core component of the association's cause of action for breach of fiduciary duty was Shea's claim, in its motion for judgment on the pleadings, that the CC&R's entitled it permanently to control and profit from telecommunications services. Shea contended it was this claim that necessarily formed the basis for the association's allegation that Shea had repudiated its obligations to plaintiffs. Because the alleged repudiation occurred in the course of litigation, it was necessarily protected conduct. The trial court disagreed and denied the motion to strike.

The Fourth Appellate District affirmed the trial court's order denying the special motion to strike a complaint as a SLAPP suit. The Court held that a defendant's reiteration, during litigation, of its unwillingness to adhere to the plaintiff's requests did not transform its alleged pre-litigation

Arbitration

Ashbey v. Archstone Property Management, Inc.
(2015) 785 F.3d 1320
May 12, 2015

Michael Ashbey worked for Archstone Property Management, Inc. Archstone terminated his employment in November 2010. Ashbey sued Archstone for unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964 and related causes of action. Archstone moved to compel arbitration, relying on a dispute resolution policy set forth in the Archstone Company Policy Manual for 2009. Archstone provided evidence of Ashbey's 2009 execution of a document entitled "Acknowledgment of Receipt of Archstone Company Policy Manual 2009." That acknowledgement stated, among other things, "I acknowledge that I have received directions as to how I may access the Archstone Company Policy Manual, including the dispute resolution policy. The manual for 2009, as well as the manual for 2010, stated the following with regard to the company's dispute resolution policy: "This Policy is governed by the Federal Arbitration Act … this Policy requires all such disputes between Employee and the Company to be resolved only by an arbitrator through final and binding arbitration and not by way of court or jury trial ... This Policy also applies, without limitation, to disputes arising out of the employment relationship or the termination thereof including, without limitation, disputes over... harassment and claims arising under the ... Civil Rights Act of 1964 ... and all other state statutory and common law claims." The district court denied Archstone's motion, finding Ashbey did not knowingly waive his Title VII right to a jury trial.

The Court of Appeal reversed the district court order. The Court held that Ashbey knowingly waived his right to a jury trial on his claim of unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964 when he signed an acknowledgment that he had been notified of his employer's company policy.

Ashburn v. AIG Financial Advisors, Inc.
(2015) 234 Cal.App.4th 79
February 6, 2015

Philip Ashburn and four other previous employees of Pacific Bell ("Ashburn") retired prematurely and elected the option of receiving a lump sum benefits payment. Ashburn allowed Sharon Kearney, who had made presentations at Pacific Bell, to manage the resulting funds. Kearney worked with SunAmerica Securities, Inc. ("SAS"), with whom Ashburn signed a client agreement. SAS was later attained by AIG Financial Advisors, Inc. ("AIGFA"). Ashburn was dissatisfied with Kearney's investment choices and sued her and AIGFA for damages. AIGFA petitioned to compel arbitration, offering a declaration from Kearney which described her practice when working with a client to fill out new account forms. Kearney's declaration also maintained that Ashburn's client agreement had an arbitration provision. Ashburn opposed arbitration and contended that the alleged arbitration agreement was void for fraud in the execution and as such did not become part of his client contract. Ashburn's argument was reinforced by extensive testimony about his dealings with Kearney. Among other things, Kearney declared that he did not receive from Kearney a customer agreement with language describing arbitration, and that relevant factual elements of Kearney's declaration were deliberately incorrect. Ashburn expressly requested an evidentiary hearing if the trial court perceived the existence of factual disputes that could influence its ruling on the petition. The court issued an order finding that AIGFA made a prima facie showing that Ashburn signed a contract containing an arbitration provision, and that Ashburn failed to provide any facts which would render the agreement void or otherwise unenforceable. The court granted the petition. The arbitration panel denied all of Ashburn's claims. Ashburn appealed.

The First Appellate District reversed the judgment and remanded the action for further proceedings. The Court held that the trial court erred in granting a petition to compel arbitration without an evidentiary hearing when both parties tendered highly conflicting factual evidence regarding the existence as well as the validity of the alleged arbitration agreements.

Association for Los Angeles Deputy Sheriffs v. County of Los Angeles
(2015) 234 Cal.App.4th 459
February 17, 2015

The Association for Los Angeles Deputy Sheriffs and the Los Angeles County Professional Peace Officers Association filed class grievances with the County of Los Angeles on behalf of their members. They sought overtime pay for the putting on, taking off, and maintaining of uniforms and equipment. The county denied the grievances. The unions filed requests with the Los Angeles County Employee Relations Commission for class arbitration of the grievances. The commission granted the requests.

The county filed a complaint for injunctive and declaratory relief. The county argued that the memorandums of understanding ("MOU's") entered into with the unions provided for the individual arbitration of employee grievances; the MOU's contained no provision for the consolidated arbitration of claims. The county moved to compel individual arbitration. The unions subsequently filed a cross-complaint seeking recovery of unpaid overtime compensation allegedly owed to "thousands" of union employees under the applicable MOU's. The trial court initially granted the county's motion to set aside the commission's decision to compel class arbitration, but later also granted the unions' motion to stay individual arbitration. Relying on *Code of Civil Procedure* § 1281.2(c), the court found there were other issues between the parties that were not subject to arbitration and that were the subject of a pending action or special proceeding between the parties. The court found that because determination of those issues might make the arbitration unnecessary, it had the authority to stay arbitration pending resolution of those other issues. Balancing the possibility of thousands of individual arbitrations versus one action, the court concluded that judicial economy would be best served by staying arbitration.

The Second Appellate District reversed the trial court order. The Court held that the trial court erred in finding "other issues" justifying the stay or delay of arbitration of an employment dispute.

Cobb v. Ironwood Country Club
(2015) 233 Cal.App.4th 960
January 28, 2015

William Cobb and Elizabeth Richards were former members of Ironwood Country Club. Patrick Keeley and Helen Riedstra were members of the club. In 1999, Ironwood made an agreement with each of its members under which each member lent the club a specified amount to fund its purchase of additional land. Members could lend that amount in a lump sum or make monthly payments into a segregated account. Ironwood represented that if a member sold their membership before the loan was repaid, the club would pay that selling member the entire amount that the member had lent the club. Further, any new member would have to pay, in addition to regular club fees, an amount equal to the hypothetical balance in a segregated account and the remaining unamortized portion of the club's land purchase assessment ("LPA") on members. In 2012, however, Ironwood announced that the practice of repaying the LPA to forfeiting members would immediately cease. Subsequently, Ironwood made various statements and unilaterally imposed new rules that justified writing off its previously acknowledged liability to members.

Cobb, Richards, Keeley and Riedstra (collectively, "Cobb") filed a complaint for declaratory relief as to Ironwood's obligation to repay the LPA to each of them. Ironwood moved to compel arbitration based on a provision that Ironwood incorporated into its bylaws four months after Cobb's complaint was filed. Ironwood argued that its new arbitration provision was fully applicable to Cobb's previously filed lawsuit because Cobb's action alleged that it concerned an "ongoing" dispute between the parties. Ironwood also argued that its right to amend its bylaws meant that any such amendment would be binding on both current and former members.
The trial court denied Ironwood's motion, finding among other things that Ironwood's subsequent amendment of its bylaws did not show that Cobb agreed to arbitrate the alleged dispute. Ironwood appealed, contending among other things that Cobb agreed to be bound by club bylaws when he joined and thus necessarily agreed to the bylaw amendment that required arbitration of disputes.

The Fourth Appellate District affirmed the order. The Court held that a country club could not amend its bylaws to require arbitration after club members had already filed an action against the club.

Cruise v. Kroger Co.
(2015) 233 Cal.App.4th 390
January 20, 2015

In 2007, Stephanie Cruise applied for a job at Kroger Co. Cruise completed and signed an employment application that contained an arbitration clause requiring arbitration of employment-related disputes. The application also incorporated by reference, but did not attach, Kroger's mediation and binding arbitration policy. Cruise was hired and subsequently terminated several years later. Cruise filed an employment discrimination suit against Kroger, Kroger Manufacturing, Compton Creamery & Deli Kitchen, and several individuals (collectively, "Kroger") under the Fair Employment and Housing Act ("FEHA") and at common law. Kroger moved to compel arbitration of all Cruise's claims pursuant to both the arbitration clause in Cruise's employment application and Kroger's arbitration policy. Cruise opposed, arguing, that she never signed an arbitration agreement with Kroger. The trial court denied the motion, finding that Kroger did not establish an arbitration agreement. Kroger appealed.

The Second Appellate District reversed the order with directions. The Court held that an arbitration clause in an employment application was sufficient to establish that an employee and employer agreed to arbitrate their employment-related disputes.

Franco v. Arakelian Enterprises, Inc.
(2015) 234 Cal.App.4th 947
February 26, 2015

Edixon Franco brought suit against former employer Athens Disposal Company, Inc. for *Labor Code* violations. Franco sought both individual and class action relief, as well as representative relief under the Private Attorneys General Act of 2004 ("PAGA"). Athens responded with a petition to compel arbitration based on Franco's employment agreement. The agreement contained a provision waiving class arbitrations. It also prohibited an employee from acting in "a private attorney general capacity," so as to ban Franco's application of the *Labor Code* on behalf of other employees. The trial court granted the petition to compel arbitration, restricting arbitration to Franco's individual claims only.

The Second Appellate District reversed the trial court order. The Court held that a where an employer was engaged in interstate commerce, the Federal Arbitration Act compelled enforcement of an arbitration agreement entered into with an employee, even though that agreement contained a class action waiver that would otherwise be unenforceable under California law.

Garcia v. Superior Court (Southern Counties Express, Inc.)
(2015) 236 Cal.App.4th 1138
May 15, 2015

Eduardo Garcia and Luis Torres-Garzon (collectively, "Garcia") were owner-operator truck drivers. Garcia was engaged by Southern Counties Express, Inc. ("SCE"), to haul shipping containers from coastal seaports to other facilities in the state. When first engaged by SCE and then quarterly, Garcia signed an independent-contractor agreement ("ICA"). Less frequently, Garcia signed a vehicle-lease agreement ("VLA"). The ICA provided that Garcia would use a specified truck to provide hauling services at SCE's direction. The VLA provided that Garcia would lease that truck from SCE for that purpose. SCE was an interstate carrier. Thus, under federal regulations, the ICA and VLA also provided that SCE would have exclusive possession, use, and control of the equipment, as well as responsibility for its operation, as required by such regulations. The ICA and VLA further provided that any disputes that arose under them would be arbitrated.

Garcia sought administrative relief from the state based on his allegation that SCE should have classified him as an employee. SCE petitioned the trial court to compel arbitration. The court ordered arbitration, finding only that the ICA and VLA were not procedurally unconscionable. Garcia petitioned the appellate court for writ of mandate to compel denial of arbitration and continued administrative proceedings.

The Court of Appeal granted in part Garcia's petition for writ of mandate and remanded with directions. The Court held that the trial court erred by failing to find whether an arbitration agreement was exempt from preemptive application of the Federal Arbitration Act.

In re Sussex
(2015) 781 F.3d 1065
January 27, 2015

Mary Ann Sussex purchased a unit in a condominium complex. Sussex and a number of other purchasers (collectively, "Sussex") brought civil actions against the developer and seller of the complex, Turnberry/MGM Grand Towers, LLC, and several of its affiliates (collectively, "Turnberry"). Sussex alleged fraud and other claims and sought rescission of her purchase and sale agreement or monetary damages. Sussex and Turnberry submitted the dispute to arbitration under the arbitration clause in Sussex's purchase and sale agreement, which also provided that any arbitration would be conducted under the rules of the American Arbitration Association ("AAA"). The AAA appointed Brendan Hare to serve as arbitrator. Around the same time, Hare founded a firm to finance litigation for investment purposes. After Turnberry learned of Hare's litigation-funding activity, it moved the district court in Sussex's pending action to disqualify Hare as arbitrator. The district court disqualified Hare, finding that under *Aerojet-General Corp. v. Am. Arb. Ass'n*, (9^{th} Cir. 1973) 478 F.2d 248., it had authority to intervene in Sussex's ongoing arbitration because it was an "extreme case." The court found that at the end of the arbitration, Turnberry would likely prevail on a motion to vacate any award that Hare issued based on his "evident partiality" under 9 *United States Code* § 10(a)(2) of the FAA. Sussex filed a petition for writ of mandate.

The Court of Appeal granted the petition for writ of mandate. The Court held that it was an error for a district court to intervene in a pending arbitration based on its prediction that any award would likely be vacated because of the arbitrator's "evident partiality" under the Federal Arbitration Act.

Marenco v. DirecTV
(2015) 233 Cal.App.4th 1409
February 5, 2015

Francisco Marenco worked for 180 Connect, Inc. As a condition of his employment, Marenco executed an arbitration agreement requiring both parties to submit all claims arising from and related to the employment relationship to binding arbitration. DirecTV LLC later acquired 180 Connect. It assumed all of 180 Connect's assets, debts, rights, responsibilities, liabilities and obligations, and took over as Marenco's employer. Sometime thereafter, Marenco sued DirecTV for violation of state wage and unfair competition laws. DirecTV moved to compel arbitration as the successor to an arbitration agreement between Marenco and 180 Connect. Marenco opposed, arguing that DirecTV lacked standing to enforce the arbitration agreement because it was not a signatory to that agreement. The trial court granted DirecTV's motion to compel arbitration.

The Second Appellate District affirmed the trial court order. The Court held that where an employee and employer executed a binding arbitration agreement, the employer's successor-in-interest had standing to enforce that agreement.

Montano v. The Wet Seal Retail, Inc.
(2015) 232 Cal.App.4th 1214
January 7, 2015

Elizabeth Montano filed a putative class action lawsuit against employer The Wet Seal Retail, Inc., alleging numerous wage and hour violations. Montano propounded various discovery requests to Wet Seal, which responded with objections but no substantive information. Montano filed a motion to compel discovery responses. Prior to hearing on that motion, Wet Seal moved to compel arbitration, relying on an arbitration agreement executed by Montano. Montano opposed, arguing that agreement was procedurally and substantively unconscionable, due in part to its inclusion of a waiver of Montano's right to bring class actions and representative Private Attorneys General Act ("PAGA") actions. The trial court denied Wet Seal's motion to compel arbitration, finding the PAGA waiver was both invalid and non-severable, thereby rendering the entire agreement unenforceable. The court also granted Montano's motion to compel discovery. Wet Seal appealed both rulings.

The Second Appellate District affirmed one of the trial court orders and dismissed the challenge as to a second. The court held that an employee's purported waiver of her right to bring a representative action under PAGA rendered an arbitration agreement unenforceable.

Securitas Security Services USA, Inc. v. Superior Court (Edwards)
(2015) 234 Cal.App.4th 1109
February 27, 2015

Denise Edwards signed a dispute resolution agreement with her employer, Securitas Security Services USA, Inc. She did not opt out of the agreement by giving notice of her intent to do so within 30 days after signing, as was expressly permitted under the agreement. The dispute resolution agreement provided in relevant part that all disputes arising out of or related to Edwards' employment had to be resolved via binding arbitration. The agreement also included a provision that there would be no arbitration of class actions ("Class Action Waiver"). The Class Action Waiver clause also stated that it was not severable from the dispute resolution agreement. In a separate clause, the agreement stated that if any portion of the agreement were deemed unenforceable, the remainder would be enforceable, and that if the Class Action Waiver were deemed unenforceable, then the agreement should be deemed otherwise silent as to any party's ability to proceed in a class-arbitration. Edwards later sued Securitas in state court on wage and hour claims. In her class action complaint she sought restitution and injunctive relief under the unfair competition law, and she asserted a claim for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"). Securitas moved to compel arbitration, arguing that Edwards had to arbitrate her individual claims and that her class claims and/or her PAGA claim should be dismissed or severed. Among other things, Securitas argued that because Edwards voluntarily agreed to the dispute resolution agreement by not opting out, her case was not governed by *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348, which held that prospective, pre-dispute PAGA waivers are unenforceable. The trial court granted Securitas' motion after finding that the parties entered into a valid and binding arbitration agreement. The court determined Edwards' PAGA claim to be unwaivable, however, so that the Class Action Waiver provision was invalid for attempting to eliminate or abridge Edwards's right to litigate that claim. The court determined that the dispute resolution agreement's general severability clause thus applied, so the parties had to proceed to arbitration on Edwards' entire complaint, including her PAGA claims, which Edwards elected to resolve in arbitration along with her class claims. Securitas petitioned for a writ of mandate, contending that the court rewrote the parties' written dispute resolution agreement and further erred by refusing to enforce the lawful class action waiver, as well as the PAGA waiver, where *Iskanian* did not apply. Securitas sought enforcement of the dispute resolution agreement in its entirety as to Edwards' individual claims.

The Fourth Appellate District granted the petition for writ of mandate in part with directions. The Court held that the trial court erred in sending an employee's entire complaint against her employer, including class action and PAGA claims, to arbitration where the invalid PAGA waiver in the parties' dispute resolution agreement was not severable and thereby rendered the entire agreement unenforceable.

Trabert v. Consumer Portfolio Services, Inc.
(2015) 234 Cal.App.4th 1154
March 3, 2015

Shaun Trabert bought a pre-owned vehicle from a dealership under a preprinted industry-drafted installment sales contract. The dealer assigned the sales contract to Consumer Portfolio Services, Inc. Portfolio later repossessed Trabert's vehicle. Trabert filed a class action complaint that alleged that under consumer statutes, Portfolio's repossession/default notices were defective. Portfolio moved to compel arbitration under the sales contract's arbitration agreement. Trabert opposed based on the arbitration agreement's allegedly unconscionable provisions which were related only to exceptions to the finality of the arbitration award. The trial court agreed with Trabert and denied Portfolio's motion. Portfolio appealed. The appellate court agreed with the trial court's finding of unconscionability, but remanded as to whether the challenged provisions could be severed. On remand, the trial court declined to sever the provisions and again denied Portfolio's motion. Portfolio appealed once more.

The Fourth Appellate District reversed the order and remanded. The Court held that unconscionable arbitration provisions in an auto purchase contract could be severed without affecting the core purpose and intent of the agreement.

Universal Protection Service, L.P. v. Superior Court (Franco)
(2015) 234 Cal.App.4th 1128
February 27, 2015

Floridalma Franco was employed by Universal Protection Service, L.P. Under the terms of an agreement that Franco signed after he was hired, he and Universal agreed to arbitrate dispute relating to their employment relationship and its termination, including wage and hour violations. The arbitration agreement stated that arbitrations would be conducted under the American Arbitration Association ("AAA") rules for employment disputes. Franco filed a class claim for arbitration of Universal's alleged violations of the *Labor Code* and wage orders. Franco alleged that Universal did not pay wages for regular and overtime hours, did not provide required meal and rest breaks, did not reimburse employees for employment-related expenses, and did not provide itemized wage statements. Franco sought to recover civil penalties under the Private Attorneys General Act. Universal filed a civil action for declaratory relief. Universal argued that the trial court, rather than the arbitrator, had to decide whether class, collective, or other representative arbitration was available under the arbitration agreement. Franco subsequently moved to compel arbitration. The court granted the motion, finding that it was the arbitrator's task to decide whether Franco's class claims were subject to arbitration. Universal petitioned for writ of mandate to stay the proceedings and to deny Franco's motion.

The Fourth Appellate District denied the petition for writ of mandate. The Court held that the consent of parties to use AAA rules indicated their clear and unequivocal agreement that the arbitrator would decide the arbitrability of class claims in accordance with those rules.

Business and Corporate Law

Agam v. Gavra
(2015) 236 Cal.App.4th 91
April 23, 2015

Isaac Agam, and Eliyahu and Yifah Gavra, and others formed a partnership to purchase and develop a parcel of land in Los Altos Hills. The partners planned to subdivide the property and build two or three houses for resale. They purchased and subdivided the property into three lots, but financial issues and personality conflicts derailed their development plans. Between 2009 and 2011, they sold the vacant lots, losing approximately $1.3M on the project. Agam sued the Gavras for breach of the partnership agreement and breach of their fiduciary duties to the partnership.

Following a bench trial, the trial court rendered judgment in favor of Agam, awarding him more than $700,000 in reliance damages. On appeal, the Gavras argued that the trial court improperly allocated to them the burden of proving that Agam would not have incurred the same damages even in the absence of their breach. The burden of proof, they argued, should have been on Agam to prove that he would not have incurred these damages but for their breach.

The Court of Appeal affirmed the judgment. The Court held that the trial court did not improperly allocate the burden of proof in this breach of contract case by requiring the Gavra to prove that Agam would have incurred his claimed reliance damages even in the absence of their breach.

Bank of Manhattan, N.A. v. Federal Deposit Insurance Corporation
(2015) 778 F.3d 1133
March 4, 2015

Professional Business Bank ("PBB") sold to First Heritage Bank, N.A. ("Heritage") a participation interest in a loan that PBB made to Al's Garden Art, Inc. Under the participation agreement, Heritage could not transfer its interest in the loan without PBB's prior written consent and PBB could repurchase Heritage's interest if the latter received a bona fide third-party offer. Subsequently, regulators closed Heritage and appointed the FDIC as receiver for its assets. As a result, the FDIC became successor in interest to all of Heritage's assets and liabilities under 12 *United States Code* § 1821(d)(2)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"). The FDIC sold Heritage's interest in PBB's loan to Al's to Commerce First Financial, Inc. ("CFF"), without either seeking PBB's consent or giving PBB the chance to buy back Heritage's interest. Al's defaulted on its PBB loan. CFF filed a complaint against PBB. PBB counterclaimed against CFF. PBB also filed a third-party complaint against the FDIC. PBB alleged that the FDIC was liable for breaching the PBB-Heritage participation agreement. PBB's FDIC action was removed to federal court. The FDIC moved to dismiss under § 1821(d)(2)(G)(i)(II) of the FIRREA. The FDIC argued that the FIRREA preempted PBB's claims and that it thus, did not have to comply with any pre-receivership contract provisions related to the transfer of a failed bank's assets. The district court denied the motion, finding that the FIRREA did not immunize the FDIC from claims for breach of contract. The FDIC conceded breach of contract in the absence of its statutory defense. Accordingly, the court granted summary judgment to PBB. The FDIC appealed. While the appeal was pending, Bank of Manhattan, N.A., acquired PBB and was substituted for it.

The Court of Appeals affirmed the judgment of the district court. The Court held that the FDIC, as receiver for a closed bank, was not statutorily immunized from liability for its breach of the asset-based contract obligations of that bank to another bank.

Eminence Investors, LLLP v. Bank of New York Mellon
(2015) 782 F.3d 504
April 2, 2015

Eminence Investors, LLLP. sued The Bank of New York Mellon in California trial court. The Bank was successor to the indenture trustee regarding administration of revenue bonds on a publicly-financed project. Two years later, Eminence amended its complaint to add class allegations and a request for compensatory damages in excess of $10M for each of four causes of action. The complaint alleged that Eminence and other class members had a common interest as holders of the bonds against the Bank as their fiduciary. The Bank removed the action to federal court pursuant to the Class Action Fairness Act's ("CAFA") removal provision in 28 *United States Code* § 1453(b). Eminence moved to remand, contending in pertinent part that subject matter jurisdiction was absent under the CAFA securities exception of § 1453(d)(3).

The Court of Appeal dismissed the appeal for lack of subject matter jurisdiction. The Court held that CAFA removal did not apply pursuant to the Act's securities exception where Eminence asserted class securities claims against the Bank of New York Mellon that served as successor to the indenture trustee on public-project revenue bonds.

Golden v. California Emergency Physicians Medical Group
(2015) 782 F.3d 1083
April 9, 2015

Donald Golden was a physician who worked for the California Emergency Physicians Medical Group ("CEP"). The CEP was an association of physicians that managed or staffed emergency rooms, inpatient clinics, and other medical facilities in California as well as in other states. Golden sued the CEP in California state court over the loss of his staff membership at a specific hospital. Golden alleged various state and federal claims that included race discrimination. The CEP removed Golden's action to federal court, where the parties agreed to settle.

The settlement agreement provided that in exchange for a particular sum of money, Golden waived any and all rights to employment with the CEP at any facility that the CEP might own or with which it might contract in the future. Nevertheless, Golden refused to sign the agreement and moved the district court to set it aside. Golden argued that the no-employment provision violated California *Business & Professions Code* § 16600 because it restrained him from the lawful practice of his profession.

The court denied Golden's motion based solely on its finding that § 16600 did not apply because the no-employment provision was not a covenant not to compete. Instead, the court struck various provisions of the agreement and granted the motion of Golden's former counsel to intervene and enforce the amended agreement with the no-employment provision. The court then dismissed the action. Golden appealed.

The Court of Appeal reversed the judgment of the district court and remanded. The Court held that a no-employment provision in a settlement agreement between Golden and CEP violated California law as a contract restraining the lawful practice of a profession.

Kennedy v. Kennedy
(2015) 235 Cal.App.4th 1474
April 20, 2015

Drake and Brian Kennedy co-owned several outdoor advertising corporations. They also held various interests in several limited liability companies along with David Seyde. In September 2013, Drake sued Brian and Seyde for breach of fiduciary duty and other causes of action. Drake's complaint sought the involuntary dissolution of all the companies. In January 2014, Brian and Seyde moved under California *Corporations Code* §§ 2000, as to the corporations, and 17707.03, as to the limited liability companies, to stay dissolution and appoint appraisers. Drake responded by dismissing the involuntary dissolution action with prejudice. The trial court subsequently denied Brian and Seyde's motion to stay dissolution and appoint appraisers, finding that the dismissal of Drake's cause of action for dissolution barred Brian and Seyde from invoking their buyout rights under either §§ 2000 or 17707.03.

The Court of Appeal affirmed the judgment. The Court held that the dismissal with prejudice of an action for dissolution of various corporations barred the shareholders from invoking their statutory buyout rights.

Kim v. True Church Members of the Holy Hill Community Church
(2015) 236 Cal.App.4th 1435
May 21, 2015

The Holy Hill Community Church ("Church") belonged to the Western California Presbytery ("WCP"), one of several presbyteries in the Korean American Presbytery Church ("KAPC"). As such, the Church was subject to the WCP bylaws and the KACP's Book of Church Order ("BOCO"). In late 2010 and early 2011, Church pastor Reverend Dong Sub Bang excommunicated 42 Church members who comprised the "Cho/Shin faction." Shortly thereafter, the Cho/Shin faction petitioned the WCP for reinstatement, the Bang faction purported to withdraw the Church from the WCP, and the WCP determined that the withdrawal was ineffective and removed Bang as the Church's pastor. The WCP further removed the existing Church elders and reinstated the members of the Cho/Shin faction. A short time later, the Bang faction and another congregation took control of the Church's property, but it was retaken by the Cho/Shin faction after about two weeks.

Members of the Cho/Shin faction, together with the WCP, sued for declaratory relief and related claims, prompting a cross-complaint from the Bang faction. The trial court later denied preliminary injunctions sought by Bang and related parties seeking authority over the Property. In the meantime, uncertainty remained regarding Church leadership. Some two years after filing suit, the Cho/Shin faction parties purportedly held a congregational vote to separate from the WCP. For its part, the WCP deemed the meeting illegal, excommunicated the Cho/Shin faction from the Church, and reinstated the Bang faction into the WCP and gave them authority to protect Church property. The WCP withdrew as a plaintiff before trial. Shortly before trial was to begin, the Bang faction dismissed their complaint. A bench trial went forward limited to the declaratory relief cause of action in the cross-complaint, and only against the Cho/Shin faction. The court entered a decision in favor of the Bang faction.

The Court of Appeal affirmed the judgment. The Court held that a trial court properly applied the ecclesiastical rule when it deferred to the decision of a hierarchical church's highest tribunal regarding an internal dispute over church factions' authority to control their local church's governance. Moreover, the Court held that the same rule required that it defer to the church tribunal's decision that a particular faction's vote to separate did not comply with the church's governing rules, and that church's regional arm did have authority to intervene in the dispute.

Northstar Financial Advisors, Inc. v. Schwab Investments
(2015) 779 F.3d 1036
March 9, 2015

Schwab Investments ("Schwab Trust") was a "Massachusetts trust" meaning an unincorporated business organization established by an instrument of trust to hold property for management by trustees for the benefit of holders of the beneficial interests in the trust estate. Such arrangements serve as the preferred form of organization for mutual funds today. The Schwab Trust chose Charles Schwab Investment Management, Inc. ("Schwab Advisor") as its investment advisor. Among the mutual funds operated by the Schwab Trust was the Schwab Total Bond Market Fund ("The Fund"). As reflected in a 1997 proxy statement proposed by the Schwab Trust, and as adopted by the shareholders, the prospectuses issued by the Fund stated that it was designed to offer high income by tracking the performance of a particular bond index, and it was intended to provide a fixed income component of investors' asset allocation plans. In its core regulatory documents, such as registration statements, the Fund stated that its policy of tracking the index was "fundamental," which meant that it could not be changed without approval of a majority of shareholders. Northstar Financial Advisors, Inc. was a registered investment advisory and financial planning firm with over 200,000 shares of the Fund under its management for investors.

In 2008, Northstar filed a shareholder class action against the Schwab Trust and various individuals. The crux of the complaint was that the Schwab Trust deviated from the Fund's fundamental investment policies and exposed the shareholders to substantial losses. After lengthy intermediate proceedings, Northstar filed a third amended complaint that alleged five causes of action on behalf of two classes. The claims included breach of fiduciary duty and breach of the Investment Advisory and Administration Agreement ("IAA") between Schwab Trust and Schwab Advisor. The latter claim was based on the investors occupying the role of third-party beneficiaries of the IAA. In addition, the complaint included a breach of contract claim against Schwab Trust that had been dismissed with prejudice earlier in the proceedings, in order to preserve the claim on appeal. The district court granted a motion to dismiss the third amended complaint. Northstar appealed.

The Court of Appeals reversed in part and vacated in part. The Court held that an investment firm had standing to challenge a mutual fund's alleged deviation from its stated investment objectives where the firm filed an amended complaint after obtaining an assignment of claim from an investor in the fund. The Court held further that the mutual fund created a contract between its trustees and investors where it adopted investment objectives that added a structural restriction on the power conferred on the trustees that could only be changed by a vote of the investor-shareholders. The Court also held that the investment firm stated a claim for breach of fiduciary duties premised on the theory that the fund's trustees failed to ensure the fund was managed in keeping with its fundamental investment objectives, absent a change in those objectives approved by shareholder authorization.

Phillips v. Bank of America
(2015) 236 Cal.App.4th 217
April 27, 2015

Alex Gonzales and Jadon Monroe, both minors, had earnings for performing artistic services. Their parents, Jasmine Phillips and Anesha Colemen, respectively, opened trust accounts for them in accordance with the Coogan Law, codified at *Family Code* §§ 6750 *et seq.* They opened those accounts at Bank of America and, in accordance with the mandate of § 6752, deposited 15% of the minors' earnings into those accounts. The bank debited both accounts for service fees.

Phillips and Coleman, acting as trustees on behalf of the minors, sued the bank on behalf of the minors as well on behalf of others similarly situated, arguing that the debit charges violated § 6753(b)'s ban on withdrawals from Coogan accounts without court approval. The trial court dismissed the complaint, finding that the term "withdrawal" as used in the Coogan Law did not include the debiting of an account by a financial institution for service charges.

The Court of Appeal reversed the judgment. The Court held that bank of America's debits of service fees from minor performing artists' trust accounts violated California's Coogan Law.

Civil Procedure

Allen v. The Boeing Company
(2015) 784 F.3d 625
April 27, 2015

Jocelyn Allen and others ("Allen") sued The Boeing Company ("Boeing") and Landau Associates ("Landau") in Washington state court. Allen alleged that for several decades Boeing released toxins into the groundwater surrounding its parts manufacturing plant in Auburn. Allen alleged that she incurred property damage due to the groundwater contamination, and that Boeing and its environmental remediation contractor, Landau, were liable for negligently investigating and remediating the contamination, and for failing to warn of the contamination. Boeing removed the action to federal district court. In relevant part, Boeing characterized the suit as a "mass action" and asserted the existence of federal jurisdiction pursuant to the Class Action Fairness Act ("CAFA"). The district court concluded that the action fell within the local single event exception to federal jurisdiction under CAFA and remanded the case to the state court.

The Court of Appeal vacated the district court's remand order and remanded the action for further proceedings. The Court held that CAFA's local single event exception to federal jurisdiction encompasses only claims based on a singular happening. The Court held further that even if the local single event exception could be more broadly construed, Allen's groundwater contamination suit against fell outside the exception where it alleged at least two distinct activities namely Boeing's long-term leeching of hazardous chemicals and Landau's long-term failure to properly remediate the pollution.

Animal Protection and Rescue League v. City of San Diego
(2015) 237 Cal.App.4th 99
May 27, 2015

Animal Protection and Rescue League ("APRL") and others filed a mandate action against the City of San Diego and its planning commission, coupled with a request for injunctive and declaratory relief. The litigation was related to a long-running dispute concerning whether the City should maintain a year-round guideline rope at the La Jolla Children's Pool for the purpose of protecting the harbor seals from humans. APRL sought an order requiring the City to vacate and set aside the planning commission's denial of a permit for the guideline rope and to reinstate the findings of a hearing officer in support of the permit. The City filed an answer in which it confessed error and conceded that its planning commission erred when it denied the permit for a rope barrier. The City stated that it did not oppose lawful writ relief, including a court order directing that the commission's prior denial of a permit be set aside. The trial court granted APRL's petition for writ of mandate and issued a corresponding peremptory writ of mandate. APRL filed a motion requesting an award of private attorney general fees against the city under *Code of Civil Procedure* § 1021.5, which provides that "a court may award attorney's fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest," under certain circumstances.

The City opposed the motion for attorney's fees on the ground that the City was "never an opposing party" because it "confessed error at the inception of [the] case." The trial court granted APRL's motion and awarded it $82,162.50 in attorney's fees and $555 in costs.

The Court of Appeal affirmed the judgment. In the published portion of its opinion, the Court held that a defendant's prompt concession of error, upon being sued, did not alter its status as "opposing party" for purposes of an award of attorney's fees to the prevailing plaintiff under *Code of Civil Procedure* § 1021.5.

Cholakian & Associates v. Superior Court (McDonold)
(2015) 236 Cal.App.4th 361
April 29, 2014

Silva Trucking, Inc. and driver Elaine McDonold sued various insurers asserting causes for bad faith and breach of contract. They also sued various attorneys for legal malpractice, arising from the insurers' and attorneys' defense of Silva and McDonold in a prior lawsuit.

The insurers responded with demurrers. The law firm Lewis, Brisbois, Bisgaard & Smith, LLP answered with a general denial and asserted 22 affirmative defenses. The law firm Cholakian & Associates and individual attorneys Kevin Cholakian and Jennifer Kung, without filing an answer, moved to transfer venue to San Mateo County. They contended Sacramento County was not a proper venue because no individual defendant resided there and no corporate defendant had its principal place of business there. San Mateo County was the residence of Kevin Cholakian and the principal place of business of Cholakian & Associates. Silva and McDonold opposed. The trial court denied the motion. Cholakian petitioned the Court of Appeal for a writ of mandate directing the trial court to vacate its order denying the motion to transfer venue and to enter a new order granting the motion.

The Court of Appeal granted Cholakian's petition for writ of mandate. The Court held that the trial court erred in considering the plaintiffs' opposition to a defendant's motion to transfer venue before all of the defendants in the action filed their answers.

Centex Homes v. St. Paul Fire and Marine Insurance Company
(2015) 237 Cal.App.4th 23
May 22, 2015

Centex Homes developed single-family homes in Corona. The homeowners sued Centex for construction defects based on work performed by Centex's subcontractors, including Oak Leaf Landscape, Inc. Oak Leaf was insured by St. Paul Fire & Marine Insurance Company and St. Paul Mercury Insurance Company. Centex was named as an additional insured on the St. Paul's policy.

Centex tendered defense of the Corona litigation to St. Paul, which accepted the defense subject to a reservation of rights, including the right to choose defense counsel. The Corona litigation was stayed pending the homeowners' compliance with the pre-litigation procedures of the Right to Repair Act. In April 2013, the Corona plaintiffs served Centex with a notice of violations. In June 2013, Centex sued subcontractors Oak Leaf and others, alleging causes of action for breach of contract to indemnify, defend, and obtain insurance, for equitable indemnity, and for contribution and repayment. The complaint specifically alleges that Centex incurred, was incurring, and would incur defense fees and costs to defend the Corona homeowners' claims. Centex alleged those fees and costs were recoverable through defense and indemnity provisions in its agreements with its subcontractors and through various insurers who named Centex as an additional insured under general liability policies issued to the subcontractors. Centex also asserted two causes of action for declaratory relief against St. Paul, challenging the insurer' reservation of rights. In the first, Centex sought an allocation of the fees and costs that might properly be attributed to Centex under the reservation of rights, including (1) whether St. Paul had the right to be reimbursed by Centex for all defense fees that relate to the work of subcontractors it did not insure; (2) whether St. Paul had the right to be reimbursed for defense fees in proportion to the ultimate amount it pays for indemnity for the subcontractors it insures; and (3) whether St. Paul had the right to reimbursement for all defense fees not related to property damage arising from the work of its named insured subcontractor, Oak Leaf. In the second, Centex alleged that St. Paul breached its duty to provide Centex "with a full, complete, immediate, and conflict free defense" by defending Centex under a reservation of rights and by appointing its own panel defense counsel. Centex argued that, to the extent St. Paul controlled the defense of both the subcontractors and Centex, St. Paul could manipulate the litigation against Centex's interests, creating an ethical conflict entitling it to independent counsel. The trial court sustained St. Paul's demurrer without leave to amend, finding the first cause of action was not yet ripe and the second failed to assert an actual present conflict of interest requiring independent counsel.

The Court of Appeal affirmed the judgment. The Court held that the potential for a conflict of interest between insured and insurer was insufficient to support the insured's cause of action for declaratory relief.

Diaz-Barba v. Superior Court (Hahn)
(2015) 236 Cal.App.4th 1470
April 27, 2015

German citizen Wolfgang Hahn and his Luxembourgian company owned a Mexican company with real property in Mexico. Hahn intended to develop the property into a resort. A Hahn associate negotiated with a bankruptcy trustee to purchase the assets of a bankruptcy estate, including a fraudulent conveyance action initiated by the trustee.

The action involved a parcel of property in Mexico that the debtors purportedly conveyed to an intermediary who then sold it to Mexican citizens Alejandro Diaz-Barba ("Diaz") and Martha Barba De La Torre ("Barba"), who resided in San Diego County. Diaz and Barba were among the defendants named in the action. The trustee alleged that Diaz and Barba did not purchase the property in good faith because they had knowledge of the bankruptcy proceeding. The bankruptcy court eventually ordered Diaz and Barba to return the property to the bankruptcy estate. Diaz and Barba asked Hahn to dismiss them from the fraudulent conveyance action. When he refused, and while that action was still pending, Diaz and Barba, allegedly along with brothers Michael, Nicholas and Alexander Kocherga, began a systematic campaign of harassment to interfere with Hahn's development of the resort. The brothers resided in San Diego County and were citizens of Mexico.

Hahn sued Diaz, Barba, and the Kocherga brothers in California for tortious interference with a contract, and intentional and negligent interference with prospective economic advantage. The defendants moved for dismissal or stay of Hahn's action on the ground of forum non conveniens. They stipulated to submit to the jurisdiction of the Mexican courts, and to waive the applicable statute of limitations under Mexican law. The trial court granted the stay. Hahn subsequently filed suit in Mexico. The lawsuit was classified as an "ordinary commercial action." The Mexican court dismissed the complaint, finding that it sought merely monetary damages and thus should have been filed as an ordinary civil action. Hahn thereafter filed an ordinary civil action in Mexico.

The Mexican court dismissed that complaint also, finding that it lacked jurisdiction over the defendants because they resided outside the country. The court stated that Hahn's claims should be decided where the defendants were domiciled. Hahn thereafter moved the California trial court to lift the stay.

The trial court appointed legal expert Dr. Jose Favela to review the pertinent Mexican law and submit an opinion. In his subsequent report to the court, Favela explained that each of the defendants would need to be domiciled in Mexico in order for the complaint to be adjudicated in Mexico. The defendants' unilateral stipulation to submit an existing dispute to the courts of Mexico was insufficient to confer territorial jurisdiction. The trial court then granted Hahn's motion to lift the stay on the ground Mexico was not an available alternative forum. The defendants petitioned for relief in mandate and requested a stay, arguing, that Hahn intentionally drafted the Mexican complaints to defeat that country's jurisdiction.

The Court of Appeal denied the petition for writ of mandate. The Court held that the record, including the expert legal testimony of Dr. Jose Favela regarding jurisdictional issues in Mexico, supported the trial court's finding that Mexico was not an available alternative forum for a case involving Mexican defendants who resided in California.

DisputeSuite.com, LLC v. Scoreinc.com
(2015) 235 Cal.App.4th 1261
April 14, 2015

DisputeSuite.com, LLC, provided credit-repair software to credit-repair organizations ("CROs"). Scoreinc.com worked directly for CROs to handle their daily administrative tasks. DisputeSuite allegedly agreed to provide Scoreinc with its confidential list of CROs and other proprietary information that included DisputeSuite's secret marketing method. DisputeSuite and Scoreinc entered into a master reseller agreement ("MRA") in 2010 that enabled Scoreinc to act as a licensed reseller of DisputeSuite's software. The MRA contained a forum-selection clause under which all disputes were subject to the exclusive jurisdiction of state and federal courts in Florida. In 2012, DisputeSuite and Scoreinc made a cross-marketing agreement ("CMA") that also contained a Florida forum-selection clause. The CMA further provided that the prevailing party in any legal action between the parties was entitled to reasonable attorney's fees.

Later in 2012, DisputeSuite sued Scoreinc in California. DisputeSuite alleged numerous claims that included breach of and interference with contract, as well as fraud and misappropriation of trade secrets. DisputeSuite obtained an *ex parte* temporary restraining order that barred Scoreinc both from transferring any customers referred to it by DisputeSuite to any entity that did not use DisputeSuite's software and from making commercial use of DisputeSuite's software. The trial court later granted a preliminary injunction on the same two bases. Scoreinc moved to dismiss under the Florida forum-selection clauses in the MRA and CMA. The court granted the motion, stayed the action, and extended the effective date of the preliminary injunction to allow DisputeSuite to file suit in Florida. After DisputeSuite did so, the court dismissed the California action.

Thereafter, Scoreinc moved for attorney's fees as the prevailing party. The court denied the motion. Scoreinc appealed, contending that it prevailed on the forum-selection clauses, which were the only disputed contract claim, and thus conclusively ended the litigation in California, which constituted a final resolution of the dispute as far as that state was concerned.

The Court of Appeal affirmed the order. The Court held that Scoreinc who obtained dismissal of a case in California under a Florida forum-selection clause without final resolution of the plaintiff's contract claims was not entitled to contractual attorney's fees.

Ellis v. Ellis
(2015) 235 Cal.App.4th 837
March 4, 2015

Robert Ellis petitioned to dissolve his marriage to Isabel Ellis. Following a court trial, the family court entered judgment of dissolution on March 11, 2013. On March 18, the court entered a second judgment, notice of entry of which the court clerk filed and served the same day. Although not labeled as modified or amended, the second judgment was identical to the first with the exception of handwritten changes to a single paragraph. Prior to amendment, that paragraph provided for all property to be divided "at trial or by further stipulation," and for Robert to make an equalizing payment to Isabel "in an amount yet to be determined." As revised, the paragraph provided for the property division to occur "forthwith," and for Robert to make the equalizing payment to Isabel "within thirty (30) days after entry of judgment." Isabel filed a notice of appeal on May 17.

The Court of Appeal dismissed the appeal as untimely. The Court held that a second judgment filed in this marital dissolution case did not substantially modify the original so as to postpone the deadline for the filing of a notice of appeal.

Greene v. Bank of America
(2015) 236 Cal.App.4th 922
May 12, 2015

Gary Greene went to a Bank of America branch and attempted to cash two checks issued to him by State Farm. The checks were drawn on an account at Bank of America, and the insurer instructed Greene to go to this branch to cash the checks. The teller consulted with her supervisor, who refused either to cash the checks or to return them to Greene. He became upset. According to branch manager Jenny Casasola, he threatened to blow up the bank. Casasola called the police and reported the threat. She then sat down with Greene and told him she would try to resolve the issue with the checks. He calmed down immediately, thanked her for her help, and went outside to smoke a cigarette while he waited. The police arrived while Greene was outside smoking a cigarette. He was arrested and charged with making a criminal threat. Upon posting bail, Greene went to a different Bank of America branch and cashed both checks without incident. At his preliminary hearing, Greene admitted having raised his voice, but denied having made any threats. The magistrate found probable cause to bind Greene over for trial. At Greene's trial, Casasola testified that Greene's threat frightened her. She did not, however, evacuate the bank, warn customers or employees, look for security guards who might help, or lock the doors after Greene went outside. Greene was acquitted.

Thereafter, Greene sued the bank and Casasola for malicious prosecution. The bank moved for summary judgment, relying on the collateral estoppel effect of the magistrate's finding of probable cause. The trial court granted the motion and entered judgment in favor of the defendants.

The Court of Appeal affirmed the judgment. The Court held that a magistrate's determination of probable cause at a preliminary hearing defeated Greene's later claim of malicious prosecution, even though he was acquitted at trial.

Granadino v. Wells Fargo Bank, N.A.
(2015) 236 Cal.App.4th 411
April 14, 2015

On May 24, 2010, a notice of default was recorded against residential property owned by Robert Granadino and his wife Gloria Legaspi. In August 2011, a notice of trustee sale was recorded. The homeowners retained the law firm of Rex Law, LLP to negotiate a loan modification with Wells Fargo Bank, N.A. Wells Fargo agreed to postpone the trustee sale.

On October 17, 2011, a paralegal from the Rex Law firm spoke with Wells Fargo representative Maylene Munoz, who stated that the homeowners were "under active review for a modification" and, for that reason, there was no longer a trustee sale date scheduled." In fact, a sale date of December 16, 2011 was scheduled, and the homeowners' home was sold at that sale. Just prior to the sale, on December 10, 2011, the same paralegal spoke with Munoz and told her that the homeowners' tax returns were available. Munoz instructed him to submit the returns, but said nothing about the upcoming sale. The homeowners sued Wells Fargo for promissory estoppel, alleging that, had they known about the scheduled sale date, they would have fully reinstated the loan. The trial court granted summary judgment in favor of Wells Fargo, finding the homeowners' claim was barred by the statute of frauds and the homeowners failed to establish the elements of promissory estoppel.

The Court of Appeal affirmed the judgment. The Court held that that a Wells Fargo employee's statement to homeowners that no foreclosure sale was currently scheduled did not constitute a promise that the bank would refrain indefinitely from scheduling a foreclosure sale.

In re County of Orange
(2015) 784 F.3d 520
Apr. 16, 2015

Orange County, California, hired Tata America International Corporation and its international affiliate ("Tata America") to develop a property tax management system. Contained in the parties' professional services contract was an unambiguous jury trial waiver. In addition, the contract contained a California choice of law provision. The County later sued Tata America in federal district court for breach of contract under California law. The County included a jury trial demand in its complaint. Tata America moved to strike the County's jury demand pursuant to the jury trial waiver in the parties' agreement. The court invoked the *Erie* doctrine and granted the motion, concluding that the right to a jury trial was a federal procedural issue controlled in federal court by federal law. Applying federal law, the court reasoned that the County — which drafted the jury waiver — knowingly and voluntarily waived its right to a jury trial. The County petitioned for a writ of mandamus.

The Court of Appeal granted the petition and held that where state law is more protective of the jury trial right than federal law, a district court must apply state law in determining the enforceability of a contractual pre-dispute waiver of the right to a jury trial. The Court further held that the district court erred in granting Tata America's motion to strike a jury trial demand under the governing federal standard where more-protective California law rendered the contractual jury trial waiver unenforceable.

Jordan v. Nationstar Mortgage, LLC
(2015) 781 F.3d 1178
April 1, 2015

Laura Jordan obtained a loan to purchase a home. Jordan's loan was secured by a deed of trust of which Nationstar Mortgage LLC was the beneficiary. Under the terms of the deed of trust, Nationstar could enter Jordan's house and change the locks if she either failed to perform or abandoned the property. Jordan defaulted on the loan. Nationstar entered Jordan's home without notice, removed the existing locks, and installed a lockbox. Jordan was later permitted to re-enter the house to gather her personal belongings.

Jordan filed a putative class-action against Nationstar in state court. She alleged claims that included violations of the federal Fair Debt Collection Practices Act ("FDCPA"). The state court later certified the proposed class. On June 3, 2014, Jordan specified the amount in controversy in her responses to Nationstar interrogatories. On June 5, Nationstar noticed removal of Jordan's action to federal court under the Class Action Fairness Act ("CAFA"). Jordan moved to remand the case to state court. Jordan argued that Nationstar's removal notice was untimely because it was filed more than two years after Jordan's initial complaint triggered federal jurisdiction under 28 *United States Code* § 1331 of the FDCPA. The district court granted the motion, finding that the relevant removal date was the date on which the case itself became removable and not the date on which the case first became removable under the CAFA. Nationstar appealed, contending that the logic of *Durham v. Lockheed Martin Corp.*, (9th Cir. 2006) 445 F.3d 1247, had to be extended to the CAFA context.

The Court of Appeals reversed the judgment of the district court and remanded. The court held that Nationstar timely removed a class action under the CAFA, where it acted within 30 days of establishing removability, notwithstanding its failure to timely remove on federal-question grounds.

Kabran v. Sharp Memorial Hospital
(2015) 236 Cal.App.4th 1294
May 20, 2015

Eke Wokocha was rendered quadriplegic while in the care of Sharp Memorial Hospital. Wokocha sued Sharp and others for negligence. Following his death, Berthe Kabran prosecuted the action as Wokocha's successor in interest. Following trial, the jury rendered a special verdict finding Sharp was negligent in Wokocha's care and treatment, but the negligence was not a substantial factor in causing harm.

On March 1, 2013, Kabran timely filed and served notice of intention to move for a new trial on grounds of newly discovered evidence. The trial court granted Kabran an extension of time until Monday, April 1, 2013, which turned out to be a court holiday, to file and serve her motion and supporting affidavits. On April 2, 2013, Kabran personally served her notice of motion and motion for new trial, along with two supporting declarations. She attempted to file the papers in the superior court that day, but ultimately, because the requisite filing fee was not paid, the court clerk cancelled the file stamp and did not process the motion.

On April 3, 2013, Kabran successfully applied *ex parte* for an order setting the new trial motion for hearing on April 12, 2013. Kabran's new trial motion was eventually filed with the court on April 5, 2013, and her supporting declarations were filed on April 9, 2013. Kabran's new trial motion asserted newly discovered evidence, namely, the results of an autopsy which stated that Wokocha's quadriplegia was not the result of a preexisting condition. After hearing arguments on the matter, the trial court granted the motion. Sharp appealed, arguing that Kabran's belated filing of her motion deprived the trial court of jurisdiction to grant her motion.

The Court of Appeal affirmed the trial court order granting the motion for new trial. The Court held that Kabran's failure to timely to pay the filing fee for the motion did not deprive the trial court of jurisdiction.

Leeman v. Adams Extract & Spice, LLC
(2015) 236 Cal.App.4th 1367
April 28, 2015

Whitney Leeman filed a private enforcement action against Adams Extract & Spice, LLC, under Proposition 65. Leeman alleged that several Adams products contained a chemical, 4-MEI, that is a known carcinogen. Leeman also alleged that 4-MEI was identified on the governor's list "of those chemicals known by the state to cause cancer or reproductive toxicity" under *Health & Safety Code* § 25249.8(a). Leeman further alleged that Adams' failure to adequately warn of the presence of 4-MEI in its products violated that provision of Prop 65.

Leeman and Adams eventually settled. Leeman moved under § 25249.7(f)(4) for approval of the settlement agreement and for entry of the stipulated consent judgment. Pursuant to Prop 65, the agreement provided that under *Code Civil Procedure* § 1021.5, Adams would pay Leeman a specified amount for her attorney's fees. The trial court approved the settlement and entered the consent judgment, but reduced the amount of the attorney's fees by more than half.

Leeman moved to modify the judgment by, reinstatement of the full amount of attorney's fees to which she and Adams agreed. Adams joined in the motion. The court granted the motion to correct and modify the judgment as requested, but refused to modify the reduced attorney's fees. Leeman appealed.

The Court of Appeal reversed the judgment and remanded. The Court held that the trial court committed a reversible error when it unilaterally modified the attorney's fees provision in a settlement agreement and stipulated judgment following Proposition 65 litigation.

Leonard v. Superior Court (Retailers' Credit Association of Grass Valley, Inc.)
(2015) 237 Cal.App.4th 34
May 22, 2015

Retailers' Credit Association of Grass Valley, Inc. ("RCA"), provided collections services for a hospital owned by Dignity Health. RCA sued Kathleen Leonard, alleging breach of contract for failing to pay for medical services. RCA demanded Leonard's payment of an amount less than \$25,000, the statutory minimum for an unlimited civil case under *Code of Civil Procedure* § 85(a). Leonard cross-complained in pro per against RCA under the Health Insurance Portability and Accountability Act ("HIPAA"). Leonard alleged the negligent disclosure of private medical information, namely her medical record number (collectively, "MRN"), in the un-redacted documents attached to RCA's complaint. Leonard later acquired counsel and successfully moved for leave to file a verified first amended cross-complaint ("FACC"). Leonard's FACC added Dignity as a cross-defendant. Leonard added a HIPAA claim against Dignity, as well as a claim for unfair and unlawful business practices against both Dignity and RCA in their respective provision of and collection for medical services. The FACC further added a claim that RCA and Dignity conspired to violate Leonard's right to privacy and a contract claim against Dignity for its use of her MRN.

RCA moved to strike under the anti-SLAPP statute. The court granted the motion, finding that Leonard's allegations arose from RCA's collection lawsuit and thus was barred by the litigation privilege because Leonard could not show a probability that she would prevail. Judgment was entered on that basis. Leonard filed a notice of appeal from an "unlimited civil case." The court set aside Leonard's notice, finding that it was an untimely appeal of a limited civil case. The court denied Leonard's motion to reclassify the action, finding there was no evidence to support Leonard's alleged damages in excess of the *Code of Civil Procedure* § 85(a) minimum. Leonard petitioned for writ of mandate to compel reclassification.

The Court of Appeal granted the petition for writ of mandate. The Court held that Leonard was entitled to reclassification of that limited civil case after she filed a cross-complaint that added a cross-defendant and increased the amount in controversy to more than $25,000.

Reyes v. Dollar Tree Stores, Inc.
(2015) 781 F.3d 118
April 1, 2015

Richard Reyes sued Dollar Tree Stores, Inc. in California state court. Reyes asserted *Labor Code* violations and unlawful business conduct arising from Dollar Tree's alleged denial of proper rest breaks to its employees. Reyes sought certification of a class and alleged that the amount in controversy was less than $5M in aggregate. Invoking federal jurisdiction pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Dollar Tree removed the action to federal district court. In pertinent part, CAFA vests district courts with jurisdiction over civil actions in which the matter in controversy exceeds the sum or value of $5M.

Dollar Tree maintained that some $5.5M was in controversy based upon its estimate of the number of missed breaks that were implicated by Reyes's complaint. The district court disagreed, reasoning instead that the complaint restricted the scope of putative class members in a manner that kept the action below CAFA's $5M jurisdictional threshold. The Court thus remanded the action. Back in state court, the trial court tentatively ruled that the class framed by Reyes, namely assistant managers who worked alone, would not be ascertainable. The court instead certified a class comprised of all Dollar Tree assistant managers who did not receive proper breaks.

Dollar Tree removed the action once more, citing the expanded class certified by the state trial court. The district court granted Reyes's motion to remand on the ground that the second removal was untimely because it was based on the same class definition that had been the subject of the first removal. Dollar Tree appealed.

The Court of Appeal reversed the district court's remand order and remanded the action with instructions. The Court held that the district court had CAFA subject-matter jurisdiction where Dollar Tree filed a timely successive removal petition after a state trial court entered a class certification order that expanded Reyes' proposed class so as to place at least $5M in controversy.

United States v. Aguilar
(2015) 782 F.3d 1101
April 10, 2015

Angela Maria Gomez Aguilar and her husband, Enrique Faustino Aguilar Noriega, were stockholders and controlling parties in a Panamanian corporation called Grupo. In 2008, the federal government seized funds held in Grupo's name in a brokerage account as part of an ongoing Foreign Corrupt Practices Act investigation. The parties agreed to delay the government's filing of a civil forfeiture complaint against the funds pending the outcome of a criminal investigation.

In 2010, Angela was charged with money laundering. Also charged were other defendants, all concerning alleged bribes to Mexican officials. Upon trial, Angela was found guilty. In exchange for agreeing not to contest any civil or criminal forfeiture proceedings, the government agreed to recommend time served and supervised release. The district court accepted the agreement, and Angela returned to Mexico. In the meantime, a motion alleging prosecutorial misconduct that had been filed by Angela's co-defendants was heard. The district court concluded that the government engaged in significant misconduct and vacated the co-defendant's convictions, as well as Angela's.

The government filed suit seeking forfeiture of the Grupo funds in the brokerage account. Some five months later, the clerk entered a default judgment. The court granted the government's ensuing motion for entry of default judgment, and it denied Angela's motion to set the default judgment aside under *Federal Rules of Civil Procedure* § 60(b)(1). Regarding the motion to set aside, the court concluded the defendants could not allege a meritorious defense.

The Court of Appeals affirmed the district court order denying Aguilar's motion to set aside a default judgment for forfeiture. The Court held that the district court was not required to articulate particular "extreme circumstances" when denying a motion to set aside a default judgment.

United States v. Real Property Located at 17 Coon Creek Road, Hawkins Bar California, Trinity County
(2015) 787 F.3d 968
May 19, 2015

The federal government brought an *in rem* action for forfeiture of real property located at 17 Coon Creek Road in Hawkins Bar, California. The forfeiture action stemmed from a criminal investigation by the California Bureau of Narcotics Enforcement which revealed a marijuana-growing operation on the property. Brothers James and Thomas Pickle were charged with state drug offenses as a result of the criminal investigation, but the District Attorney declined to file charges against their father and the property's owner, Byron Pickle. Pickle purportedly lived on the property, while one of his sons occupied a travel trailer also located there. Pickle filed a verified claim stating that he was the recorded owner of the property. He claimed an innocent ownership interest in the real estate. After expiration of a stipulated stay in light of the ongoing criminal proceedings, the government filed discovery requests, including special interrogatories that asked Pickle for his identifying information and the nature of his interest in the real property. Under the *Federal Rules for Civil Procedure's Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions Rule G(6)*, he had 21 days to respond. He did not timely respond, but later moved to suppress evidence and sought a stay because all of the government's discovery requests implicated his Fifth Amendment rights against self-incrimination. The government opposed the stay and moved to strike his claim, contending that his failure to respond to the *Rule G(6*) special interrogatories meant he lacked statutory standing to seek a stay or to contest the property's forfeiture. The district court granted his motion to strike and entered a judgment of default and final judgment of forfeiture.

The Court of Appeal reversed the district court judgment of default and final judgment of forfeiture and remanded the action for further proceedings. The Court held that Pickle's failure to respond to the government's special interrogatories under Rule G(6) did not require that the claim be struck.

Discovery

Burdick v. Superior Court (Sanderson)
(2015) 233 Cal.App.4th 8
January 14, 2015

California residents John Sanderson and George Taylor sued Illinois residents Douglas Burdick and others for defamation. The complaint alleged Burdick had posted defamatory statements about Sanderson and Taylor on his personal Facebook page. It was undisputed that Burdick resided in Illinois, had never lived or worked in California, and had no financial holdings in California. He posted the alleged defamatory comments on his Facebook page while in Illinois. Burdick moved to quash service of summons based on lack of personal jurisdiction. Relying on the "effects" test set forth in *Calder v. Jones* (1984) 465 U.S. 783, and *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262., the trial court denied the motion. Burdick petitioned for a writ of mandate/prohibition.

The Fourth Appellate District granted in part the petition for writ of mandate/prohibition. The court held that using Facebook to post defamatory statements about a California resident was insufficient to support specific personal jurisdiction absent a showing that the defendant expressly aimed or specifically directed his intentional conduct at California, rather than merely at the California resident.

City of Glendale v. Marcus Cable Associates, LLC
(2015) 235 Cal.App.4th 344
March 18, 2015

Charter Communications, Inc. operated a cable television service in the City of Glendale under a local franchise agreement that expired in 2005. Charter and Glendale could not agree on franchise renewal terms and conditions, so Charter obtained a state franchise under the State Cable Act, effective in 2008. Glendale then adopted a new cable ordinance requiring that video franchise holders pay a franchisee fee and a public, educational, and government-affairs ("PEG") programming fee. The fees totaled 7% of Charter's gross annual revenues. To avoid a federal limitation on its use of PEG fees, Glendale affected a plan involving a lease agreement with the Glendale Financing Authority ("GFA"). Under the plan, Glendale assigned all future PEG fees to the GFA, which then paid the same fees back to Glendale as lease payments for the city's government access channel facilities and equipment used to produce city government programming. Charter's PEG fees were placed into a capital account, assigned to the GFA, transferred to the city's general fund as lease payments, and then were available to be used for any purpose. There was no purpose for the GFA and the lease agreement other than to allow Glendale to assess a 2% PEG fee and relieve itself of the federal obligation to consider it as part of the allowable maximum 5% franchise fee. In 2009, Charter notified Glendale that it intended to alter the location of Glendale's free PEG channels. Glendale disagreed with the proposed change and filed suit to bar the channel realignment. Charter cross-complained, contending that Glendale improperly used franchise fees it had collected from Charter for PEG operating costs, so that Charter had overpaid the fees and was entitled to deduct the overpayment from future franchise fee payments. Charter sought declaratory relief as to the allocation of the PEG fees, as well as declarations that it was not required to provide Glendale with free video programming and free cable modem services, or with free government Internet communications network ("I-Net") services. Under the parties' prior local franchise agreement and related agreements, Charter provided such services to the city. The trial court granted Glendale's motion for summary judgment on Charter's claim that the city had breached an implied covenant of reasonableness by refusing to approve the channel realignment. The court ruled that state law gave Glendale absolute discretion whether or not to agree to such a request. The court also granted Glendale's motion for summary adjudication on Charter's assertion that it had a right to offset its PEG fee overpayments against future franchise fee payments. Upon trial, the court concluded among other things that Glendale had improperly used PEG fees for purposes other than capital costs associated with PEG channel facilities, all in contravention of the State Cable Act and the Federal Cable Act. The parties cross-appealed.

The Second Appellate District affirmed the judgment. The Court held that federal law prohibited a cable television provider from obtaining a declaration of a right of offset against future franchise payments to a city to account for past overpayments that the city unlawfully collected as a public, educational, and government-affairs programming fee. The Court held further that the city did not violate any obligation when it refused to consent to the cable provider's request to realign channel numbers for such programming.

Guillory v. Hill
(2015) 233 Cal.App.4th 969
January 16, 2015

In 2007, LeRoy Guillory and twelve others (collectively, "Guillory") were among hundreds who attended an annual Halloween party in a mansion. Michelle Hill was an officer with the Orange County Sheriff's Department ("OCSD") who obtained a warrant to search for evidence of illegal gaming at the mansion. The warrant was based in part on a flyer that advertised a "casino room" at the party. The OCSD raided the party. Guillory was detained while officers conducted a search and found two slot machines, as well as some marijuana in a guest's purse. Hill then questioned Guillory before she decided that he was free to go. Guillory filed a complaint against Hill under

42 *United States Code* § 1983. Guillory alleged among other things that Hill violated his right to be free from unlawful seizure by prolonging his detention beyond the end of the search. At the close of evidence at trial, Hill moved for a directed verdict. The trial court granted the motion, finding that Hill's questioning could be construed as part of the search. Guillory appealed, contending that the search ended before Hill's questioning began.

The Fourth Appellate District reversed in part and affirmed in part the judgment and remanded. In the published portion of its opinion, the Court held that Halloween party-goers who were detained beyond the end of a warranted search for contraband were denied their right to be free from unlawful seizure.

Rodriguez v. Brill
(2015) 234 Cal.App.4th 715
February 20, 2015

Marta Rodriguez and Thomas Brill lived together as husband and wife. When the couple separated, Rodriguez filed a support action. Rodriguez alleged that Brill promised to support her for life and in exchange, she gave up many opportunities to obtain the education and training she would need to support herself. The matter proceeded to trial, but resulted in mistrial. Trial was rescheduled, before which the trial court barred additional discovery. However, when the second trial started, the court allowed the parties to choose whether to proceed with trial or to continue trial and conduct additional discovery. Rodriguez elected to continue trial.
Brill served her with both special interrogatories and a request to produce documents that supported his contentions. Subsequently, Brill twice granted Rodriguez extensions to respond. However, Rodriguez did not respond and Brill moved to compel responses and production. Rodriquez did not oppose Brill's motion and did not appear at hearing. The court granted the motion and ordered Rodriguez to respond without objection within a stated time.
But Rodriguez did not respond. Brill moved among other things for dismissal of the action as a sanction for Rodriguez's failures to respond. For her part, Rodriguez moved for relief under *Code of Civil Procedure* § 473(b), which apparently was treated by all parties as opposition to Brill's motion. Before hearing, Rodriguez served Brill by e-mail with a proposed response to the interrogatories, but did not respond to the production request. Counsel for both parties attended the hearing, at which the court granted the motion, struck the complaint, and entered judgment against Rodriguez.

Subsequently, Rodriguez moved again under § 473(b) for relief from the judgment. Rodriguez alleged that her failures to respond to discovery and to the dismissal were the result of her counsel's neglect. Rodriguez attached her counsel's declaration that acknowledged his negligence. Brill opposed. Rodriguez filed an untimely reply and on the day before hearing, served Brill with verified answers to his interrogatories and a verified response to his request for production.

Following hearing, the court took the matter under submission. Before a decision, Rodriguez filed a notice of appeal that was ostensibly from the dismissal as a discovery sanction and from the constructive denial of her earlier "motion to vacate." Subsequently, the court denied Rodriguez's § 473(b) motion.

Initially, the Court of Appeal affirmed the judgment of dismissal as a sanction. However, the appellate court concluded that the trial court lacked subject matter jurisdiction to deny Rodriguez's § 473(b) motion because the denial occurred after Rodriguez filed her appeal. The court thus, remanded for consideration of Rodriguez's motion. Subsequently, the trial court signed an order prepared by Brill that stated only that Rodriguez's motion was denied.

Insurance

Albert v. Mid-Century Insurance Company
(2015) 236 Cal.App.4th 1281
April 28, 2015

Shelly Albert and Henri Baccouche owned neighboring parcels of property. Barrouche's property contained a grove of mature olive trees. Albert built a fence along the property line and pruned those trees that overhung the fence. Baccouche sued Albert for trespass to real property and trees, abatement of private nuisance, declaratory relief, and for quiet title. Baccouche alleged that the pruning was excessive and severely damaged the trees, greatly reducing their aesthetic and monetary value. The trees, he contended, were reduced from their former grandeur to a pitiful state. Albert tendered defense of the lawsuit to her insurer, Mid-Century Insurance Company. Mid-Century denied Albert's claim. Albert sued Mid-Century, alleging causes of action for declaratory relief, breach of contract, and breach of the implied covenant of good faith and fair dealing. The trial court granted Mid-Century's motion for summary judgment.

The Court of Appeal affirmed the judgment. The Court held that where a property owner intended to trim her neighbor's trees, the resultant damage to the trees could not be deemed accidental, even if no such damage was intended.

Alterra Excess and Surplus Insurance Company v. Snyder
(2015) Cal.App.4th 1390
March 9, 2015

In 2012, the Estate of Buckminster Fuller sued Maxfield & Overton Holdings, LLC for unfair competition under both California's Unfair Competition Law and the federal Lanham Act, invasion of privacy (appropriation of name and likeness), and unauthorized use of name and likeness based on Maxfield's manufacture and distribution of products under various trademarks that capitalized on Fuller's name and works, including the trademark "Buckyball." Maxfield tendered defense of the action to its insurer, Alterra Excess and Surplus Insurance Company. Alterra thereafter filed suit against both Maxfield and the estate, seeking a declaration that its policy did not provide coverage for the underlying claims. The trial court eventually rendered judgment in favor of Alterra, finding it had no obligation to defend or indemnify Maxfield in the underlying action. The estate appealed.

The First Appellate District affirmed the judgment. The Court held that an intellectual property insurance policy exclusion applied broadly to include unfair competition claims arising from the alleged unauthorized use of a name or likeness.

Association of California Insurance Companies v. Jones
(2015) 235 Cal.App.4th 1009
April 8, 2015

Following wildfires in 2003, 2007, and 2008, many Southern California homeowners discovered that they did not have enough insurance to cover the full cost of repairing or rebuilding their homes because when they bought their coverage, the estimates of replacement value were too low. In response to their complaints, the Insurance Commissioner promulgated a regulation requiring insurance companies to take several enumerated steps to verify the replacement cost of a property prior to communicating an estimated replacement cost to an insured or prospective insured. The regulation stated further that if an insurer failed to take these steps prior to communicating an estimate to an insured, that communication would be deemed "misleading," in violation of *Insurance Code* § 790.03.

The Association of California Insurance Companies and the Personal Insurance Federation of California sued, seeking a declaration that the regulation was invalid. The trial court rendered judgment in favor of the insurers, finding that the Commissioner lacked the authority to promulgate the challenged regulation. The court reasoned that estimates of replacement costs, although inaccurate are not misleading. The court concluded that § 790.03(b) did not give the Commissioner authority "to penalize acts not known or cannot be determined through reasonable care to be misleading."

The Court of Appeal affirmed the judgment. The Court held that the Insurance Commissioner lacked authority to promulgate a regulation requiring insurers to comply with various steps prior to communicating a home replacement cost estimate to a prospective insured, or face being deemed to have misled the insured.

Blevins v. Coastal Surgical Institute
(2015) 232 Cal.App.4th 1321
January 12, 2015

On September 1, 2010, Charles Blevins had knee surgery performed at Coastal Surgical Institute. After the surgery, Blevins' knee became infected. The infection was caused by pseudomonas aeruginosa bacteria. The same bacteria were subsequently found on a sponge that had been used to clean the equipment used in Blevins' surgery. On October 12, 2010, Coastal paid Blevins $4,118.23 for the medical expenses he had incurred in treating the knee infection. Blevins did not sign an agreement releasing Coastal from liability. At the time of payment, Blevins was not represented by counsel. Coastal did not give Blevins written notice of the applicable statute of limitations for a medical malpractice action. On January 24, 2012, more than 15 months after receipt of Coastal's payment, Blevins sued Costal for medical malpractice. The trial court, relying on *Insurance Code* § 11583, ruled that the one-year limitations period of *Code of Civil Procedure* § 340.5 was tolled by Coastal's payment of Blevins' medical expenses. It denied

Coastal's motion to conduct a bifurcated jury trial on the statute of limitations issue. Following a jury trial, Blevins was awarded damages to $285,114.

The Second Appellate District affirmed the judgment. The Court held that the statute of limitations on a medical malpractice action was tolled after Coastal made a partial payment to the Blevins, but failed to provide him written notice of the application limitations period.

Crown Capital Securities, L.P. v. Endurance American Specialty Insurance Company
(2015) 235 Cal.App.4th 1122
April 10, 2015

DBSI, Inc., and several of its subsidiaries filed for bankruptcy. DBSI had an interest in and operated the real estate investments that the broker-dealers of securities firm Crown Capital Securities, L.P. Some of those investments became debtors in DBSI's bankruptcy proceeding. The court-appointed bankruptcy examiner concluded that DBSI was engaged in a Ponzi scheme. Crown customers made claims against Crown based on the real estate investments that Crown's broker-dealers recommended. When Crown applied to Endurance American Specialty Insurance Company for professional liability insurance for work performed by its broker-dealers and investment advisors, it disclosed one of those customer claims against it. However, Crown did not disclose the facts that were involved in that disclosed claim, facts that would have supported other potential customer claims that arose out of the DBSI real estate investments. As a result, Endurance refused to defend Crown against undisclosed claims based on an exclusion in Crown's application for nondisclosure of facts that might lead to a claim.

Crown filed a complaint against Endurance for both reformation and breach of contract, as well as for bad faith. Endurance answered and cross-claimed for a declaration that the undisclosed claims that Crown tendered were excluded from coverage.
Endurance moved for summary judgment. The trial court granted summary adjudication as to three Endurance cross-claims, finding that they came within the application exclusion and that there was no potential for coverage. The court entered judgment in favor of Endurance as to those specific cross-claims. Crown appealed.

The Court of Appeal affirmed the judgment. The Court held that Crown's failure to disclose in an insurance policy application the Ponzi-scheme facts that underlay the one claim that the firm did disclose excluded from coverage other claims that the firm later tendered to the insurer.

Gonzalez v. Fire Insurance Exchange
(2015) Cal.App.4th 1220
February 5, 2015

Seventeen-year old Jessica Gonzalez alleged she was gang-raped at a party hosted by members of the De Anza College baseball team. According to Gonzalez, upon her arrival at the party, she was given multiple shots of hard liquor in a short amount of time. Later that night, she was assaulted by an unknown number of men as she lay unconscious in a room. Three women who witnessed the assault attempted to help her but were prevented by men inside the room. Gonzalez's complaint alleged that Stephen Rebagliati was one of the men inside the room. Eventually, the women broke through the doors and helped Gonzalez to a hospital where she received medical attention. Some of the men in the room took videos, photographs, and cheered while the assault took place. Gonzalez sued Rebagliati and nine other members of the team, asserting causes of action including false imprisonment, invasion of privacy, slander per se, battery, sexual battery, rape, conspiracy, and negligence.

Rebagliati sought insurance coverage for his defense against Gonzalez's claims through his parents' homeowner's and personal umbrella policies issued by Fire Insurance Exchange and Truck Insurance Exchange. Both companies denied coverage. Rebagliati eventually settled with Gonzalez and assigned her his rights against Fire and Truck. Gonzalez sued the insurers for breach of the duty of good faith and fair dealing and breach of contract. The trial court granted summary judgment for the insurers, finding no potential for coverage under either policy.
The Sixth Appellate District reversed in part the summary judgment. The Court held that an insurance policy that provided coverage for injuries caused both by accidental occurrences and by certain tortious acts could not be deemed to provide no potential of coverage for injuries alleged to have occurred as the result of such acts.

Stockton Mortgage, Inc. v. Tope
(2015) 233 Cal.App.4th 437
January 20, 2015

Stockton Management & Development, Inc. loaned $315,000 to Joshua Prinze to assist with the purchase and restoration of a single family home in Stockton. The purchase price of the property was $230,000. $72,575 in construction funds were to be held by Stockton Mortgage Real Estate Loan Servicing Corporation ("SMRELS") and disbursed based on work progress. SMRELS solicited the money used to fund the loan from various investors. The loan was secured by a deed of trust encumbering the property. The deed of trust was recorded November 4, 2005, listing Prinze as the borrower, Stockton Mortgage as the trustee, and Stockton Management as the lender/beneficiary. After the deed of trust was recorded, Stockton Management assigned all of its beneficial interest under the deed of trust to the investors from whom SMRELS had solicited the funds.

Prior to issuing title insurance, Alliance Title Company issued a preliminary title report, which noted an exception to coverage for a previously filed notice of abatement action. The report stated that Alliance would require that a full release be obtained prior to the close of escrow.

Alliance thereafter issued a title insurance policy that did not mention the pending abatement action. The policy was underwritten by First American Title Insurance Company.
The following year Prinze defaulted on the loan. At that time, all construction funds had been distributed, and none of the work on the property had been completed. The investors foreclosed on the property and purchased it at a trustee's sale. Stockton Mortgage, Inc. thereafter submitted a claim to First American on behalf of itself and the investors under the title insurance policy for the costs associated with obtaining a release of the notice of abatement action. First American denied the claim. The investors sued Stockton Management, Stockton Mortgage, SMRELS, and others for breach of contract and related causes of action. The claims were based on the Stockton companies' failure to obtain a release of the notice of abatement action prior to issuing the loan. The Stockton companies, in turn, cross-complained against First American, Alliance, and others, asserting causes of action for breach of the title insurance policy, breach of contract, negligence, and negligent misrepresentation, among others.

The trial court granted summary judgment in favor of First American, finding that the cause of action for breach of the title insurance policy had no merit because the Stockton companies were not insured under the title insurance policy. The Court found further that the notice of abatement action was not a defect in or lien or encumbrance on title, and thus was not covered under the policy. The Stockton companies appealed.

The Third Appellate District affirmed the judgment. The Court held that because a preliminary title report is not a contract, an action for breach of contract based on such a report could not survive.

Ong v. Fire Insurance Exchange
(2015) 235 Cal.App.4th 901
April 3, 2015

Hung Ong owned a house that remained vacant in an isolated location for almost two years. In the middle of the winter, there was a fire on the property. An investigation revealed a mattress in the kitchen, a pile of firewood, and a fire that had burned through the floor. There were also burn marks on the floor by the door. The investigator surmised that a transient had taken shelter in the house and used firewood to light a warming fire in the kitchen. The burn marks by the door suggested that, when the fire had gotten out of control, the occupant attempted to contain it by throwing some of the burning wood out the door. Ong's insurer, Fire Insurance Exchange, denied coverage, citing a policy exclusion for vandalism and malicious mischief to an unoccupied dwelling. The insurer noted that the fire had been set intentionally. Ong sued the insurer for breach of contract and bad faith.

The trial court used an English language dictionary to define "vandalism" as the "willful or malicious destruction or defacement of public or private property." Instead of then turning to the dictionary's definition of "malice," however, the trial court cited the definition of "malice in law" used in a recent criminal case, *In re V.V*. (2011) 51 Cal.4th 1020. The trial court granted summary adjudication in favor of the insurer, stating that "[t]he unauthorized person or persons who intentionally set the fire on the kitchen floor certainly created an obvious hazard to the dwelling without justification, excuse or mitigating circumstances." The act of setting the fire was thus "malicious," the court found, precluding coverage

The Court of Appeal reversed the judgment. The Court held that the language of the insurance policy had to be interpreted in accordance with the words' commonly understood meanings; "vandalism," so interpreted, did not include a vagrant's setting of a warming fire that got out of control.

Windsor Food Quality Company, Ltd. v. Underwriters of Lloyds of London
(2015) 234 Cal.App.4th 1178
February 6, 2015

Windsor Food Quality Company, Ltd. manufactured frozen food products using ground beef supplied by Westland/Hallmark Meat Company. In 2008, the U.S. Department of Agriculture ("USDA") issued a voluntary recall of Westland beef. Westland submitted a claim under a Contamination Products Insurance policy issued to it by The Underwriters of Lloyds of London. Lloyds denied the claim. Windsor sued for breach of contract and bad faith. The trial court granted Lloyds's motion for summary judgment, finding no triable issues of material fact and no coverage.

The Fourth Appellate District affirmed the judgment. The Court held that a food manufacturer's insurance policy covering the contamination of the manufacturer's products did not provide coverage for losses resulting from the recall of ingredients supplied to and used by the manufacturer in its products.

Labor and Employment

Aircraft Service International, Inc. v. International Broth. of Teamsters
(2015) 779 F.3d 1069
March 10, 2015

Air Craft Service International, Inc., doing business as Air Craft Service International Group ("ASIG"), provided various aircraft services at Seattle-Tacoma International Airport, including refueling for some 75% of the planes. In September 2012, ASIG suspended employee Alex Popescu. Popescu's fellow employees protested his suspension. When their protests fell on deaf ears, they aligned themselves with labor organizer Jonathan Rosenblum of Working Washington, who announced the employees' plan to strike. ASIG immediately responded by filing a complaint against International Brotherhood of Teamsters AFL CIO Local 117, Rosenblum, Working Washington, Popescu, and other ASIG employees. ASIG requested a temporary restraining order, a preliminary injunction, and a declaratory judgment for a permanent injunction to enjoin the strike as unlawful under the Railway Labor Act ("RLA"). After a hearing, the district court granted a preliminary injunction barring the defendants from "directing, calling, causing, authorizing, inducing, instigating, conducting, continuing, encouraging, or engaging in any strike, work stoppage, sick-out, slow-down, work-to-rule campaign, or other concerted action in violation of the RLA which is intended to interfere with [ASIG's] normal operations."

The Court of Appeal affirmed the district court judgment. The Court held that the RLA barred the employees of an airport refueling service from striking without previously attempting to resolve their dispute with their employer.

Ashbey v. Archstone Property Management, Inc.
(2015) 785 F.3d 1320
May 12, 2015

Michael Ashbey worked for Archstone Property Management, Inc. Archstone terminated his employment in November 2010. Ashbey sued Archstone for unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964 and related causes of action. Archstone moved to compel arbitration, relying on a dispute resolution policy set forth in the Archstone Company Policy Manual for 2009. Archstone provided evidence of Ashbey's 2009 execution of a document entitled "Acknowledgment of Receipt of Archstone Company Policy Manual 2009." That acknowledgement stated, among other things, "I acknowledge that I have received directions as to how I may access the Archstone Company Policy Manual, including the dispute resolution policy. The manual for 2009, as well as the manual for 2010, stated the following with regard to the company's dispute resolution policy: "This Policy is governed by the Federal Arbitration Act … this Policy requires all such disputes between Employee and the Company to be resolved only by an arbitrator through final and binding arbitration and not by way of court or jury trial ... This Policy also applies, without limitation, to disputes arising out of the employment relationship or the termination thereof including, without limitation, disputes over... harassment and claims arising under the ... Civil Rights Act of 1964 ... and all other state statutory and common law claims." The district court denied Archstone's motion, finding Ashbey did not knowingly waive his Title VII right to a jury trial.

The Court of Appeal reversed the district court order. The Court held that Ashbey knowingly waived his right to a jury trial on his claim of unlawful retaliation in violation of Title VII of the Civil Rights Act of 1964 when he signed an acknowledgment that he had been notified of his employer's company policy.

Association for Los Angeles Deputy Sheriffs v. County of Los Angeles
(2015) 234 Cal.App.4th 459
February 17, 2015

The Association for Los Angeles Deputy Sheriffs and the Los Angeles County Professional Peace Officers Association filed class grievances with the County of Los Angeles on behalf of their members. They sought overtime pay for "donning and doffing" and related activities — the putting on, taking off, and maintaining of uniforms and equipment. The county denied the grievances. The unions filed requests with the Los Angeles County Employee Relations Commission for class arbitration of the grievances. The commission granted the requests.

The county filed a complaint for injunctive and declaratory relief. The county argued that the memorandums of understanding ("MOU's") entered into with the unions provided for the individual arbitration of employee grievances; the MOU's contained no provision for the consolidated arbitration of claims. The county moved to compel individual arbitration. The unions filed a cross-complaint seeking recovery of unpaid overtime compensation allegedly owed to "thousands" of union employees under the applicable MOU's.

The trial court initially granted the county's motion to set aside the commission's decision to compel class arbitration, but later also granted the unions' motion to stay individual arbitration. Relying on *Code of Civil Procedure* § 1281.2(c), the court found there were other issues between the parties that were not subject to arbitration and that were the subject of a pending action or special proceeding between the parties. The court found that because determination of those issues might make the arbitration unnecessary, it had the authority to stay arbitration pending resolution of those other issues. Balancing "the theoretical possibility of 10,000 individual arbitrations" versus one action, the court concluded that judicial economy would be best served by staying arbitration.

The Second Appellate District reversed the trial court order. The Court held that the trial court's reliance on § 1281.2(c) was error. *Code of Civil Procedure* § 1281.2(c) provides that where a trial court determines "that there are other issues between the petitioner and the respondent which are not subject to arbitration and which are the subject of a pending action or special proceeding between the petitioner and the respondent and that a determination of such issues may make the arbitration unnecessary, the court may delay its order to arbitrate until the determination of such other issues or until such earlier time as the court specifies." Here, however, there were no "other issues." The unions' cross-complaint did not allege any claims that were not subject to the grievance procedures set forth in the MOU's, which procedures mandated individual arbitration.

Audio Visual Services Group, Inc. v. Superior Court (Solares)
(2015) 233 Cal.App.4th 481
January 21, 2015

In 2006, the City of Los Angeles enacted the Hotel Service Charge Reform Ordinance to increase the compensation of service workers at Los Angeles International Airport ("LAX") area hotels. The ordinance addressed mandatory service charges or gratuities charged to customers by the hotels, which charges the customers might reasonably believe were intended for the hotel workers who actually performed the services for which the charges were collected. The ordinance required hotels within the business district immediately adjacent to LAX with 50 or more guest rooms and no collective bargaining agreement to pass along such mandatory service charges to the workers. In enacting the ordinance, the city council recognized that the LAX-area hotels generally failed to pay their workers a living wage. Because of the low hourly wages paid, service workers relied on gratuities. When those hotels then began charging customers 15 to 20% service charges, the workers' gratuities dropped significantly, apparently because hotel customers erroneously assumed that the mandatory service charges they were paying to the hotels were being turned over to the workers; the customers accordingly reduced or eliminated the gratuities paid directly to the workers. The stated purpose of the ordinance was to "improve the welfare of service workers at the LAX-area hotels by ensuring that they receive decent compensation for the work they perform."

Juan Solares worked for Audio Visual Services Group, Inc., which provided audio-visual services to hotels in the business district adjacent to the airport. He filed a class action lawsuit against Audio Visual, alleging the company violated the unfair competition law by failing to comply with the ordinance. According to Solares, the company collected service charges from customers, but failed to turn them over to the company employees. Audio Visual demurred to the complaint, arguing that its employees were not among the class of workers intended to be protected by the ordinance. The trial court overruled the demurrer and Audio Visual subsequently petitioned for writ of mandate.

The Court of Appeal granted Audio Visual's petition for writ of mandate and affirmed the trial court's judgment holding that Los Angeles' Hotel Service Charge Reform Ordinance, which ensured that mandatory service charges collected from hotel customers were turned over to hotel workers, was intended to protect those types of hotel workers who traditionally relied on gratuities to earn a living wage; it did not apply to other persons who worked at hotels. The Court went on to state that because Solares and the class of audio-visual workers he sought to represent were not among the class of hotel workers the city council intended to protect when enacting the ordinance, his claim necessarily failed.

Barboza v. California Association of Professional Firefighters
(2015) 600 Fed.Appx. 509
April 7, 2015

Retired firefighter David Barboza sued the California Association of Professional Firefighters ("CAPF"), California Administration Insurance Services, Inc. ("CAISI"), and individual members of both entities' boards of directors ("Plan Defendants") for alleged breaches of their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA").

According to Barboza, the Plan Defendants failed to hold in trust assets of his long-term disability plan ("Plan"), which was established under the CAPF Long Term Disability Plan ("Plan Instrument"). Barboza also challenged the Plan Defendants' practice of allowing CAISI to pay its own fees from the Wells Fargo Bank checking account where Plan participants' monthly contributions were held, and their failure to distribute a summary annual report to Plan participants. On cross-motions for summary judgment, the district court granted summary judgment in favor of the Plan Defendants on Barboza's breach of fiduciary duty and fee claims. The court granted summary judgment in favor of Barboza on his claim regarding failure to distribute a summary annual report. Both sides appealed.

The Court of Appeal affirmed in part and reversed in part the district court judgment and remanded the action with instructions. The Court held that the CAPF long-term disability plan satisfied ERISA's requirement that employee welfare benefit plans hold plan assets "in trust" where plan documents established a trust relationship for the benefit of participants without reliance upon formal "trust" language. The Court held further that the plan administrator violated ERISA's prohibition against a trustee's unlawful self-dealing by paying its own fees and expenses from the plan's assets. Finally, the court held that the plan did not breach its fiduciary duties by failing to distribute a summary annual report where the plan qualified as an exempted "totally unfunded welfare plan."

DeCambre v. Rady Children's Hospital-San Diego
(2015) 235 Cal.App.4th 438a
April 2, 2015

Pediatric urologist Marvalyn DeCambre was hired in 2006 by Children's Specialist San Diego ("CSSD") and the Regents of the University of California to provide pediatric urology services for Rady Children's Hospital-San Diego ("RCHSD"). DeCambre was terminated in 2011. DeCambre sued RCHSD, CSSD, and the Regents, asserting causes of action for harassment, retaliation, race and gender discrimination, wrongful termination in violation of public policy, intentional infliction of emotional distress ("IIED"), defamation, among others. DeCambre alleged that she was discriminated against from the beginning of her employment. A promised housing allowance of $100,000 was reduced to $75,000 only after she relocated to San Diego. Promised office space and support staff was similarly not provided, although all of these benefits were provided to DeCambre's male colleagues. DeCambre was subjected to racially discriminatory comments by hospital staff, and hospital staff failed to provide services to DeCambre's patients that were routinely provided for other physicians' patients. DeCambre's defamation claim was based on the hospital's alleged communications to prospective employers following DeCambre's termination. According to the hospital, DeCambre was the problem. Her angry and intimidating behavior made it impossible for staff to work with her rendering her peer-reviews unfavorable which, according to the hospital, resulted in her termination. RCHSD, CSSD, and the Regents filed special motions to strike the entirety of DeCambre's complaint as a SLAPP suit. The trial court granted the special motion to strike and also sustained the defendants' demurrers to DeCambre's causes of action for IIED and defamation.

The Fourth Appellate District reversed in part. The Court held that a physician's allegations of harassment by hospital staff were unrelated to the hospital's peer review process and thus could not be deemed to have arisen from protected activity.

Department of Homeland Security v. MacLean
(2015) 135 S.Ct. 913
January 21, 2015

In February 2011, the City of Emeryville and the Emeryville Redevelopment Agency entered into a contract under which the agency pledged funds to Emeryville for redeveloping 27 projects. The following summer, the Legislature passed Assembly Bill No. 26, which barred redevelopment agencies from engaging in new business and provided for their windup and dissolution. Assembly Bill No. 26 also provided, however, that according to *Health & Safety Code* § 34178(a), "a successor entity wishing to enter or reenter into agreements with the city, county, or city and county that formed the redevelopment agency that it is succeeding may do so upon obtaining the approval of its oversight board."

Each oversight board was to consist of members appointed as set forth under § 34179(a). Each board had a fiduciary duty to review specified actions by the successor agencies. Those actions included establishment of a "Recognized Obligation Payment Schedule" ("ROPS") setting forth "the minimum payment amounts and due dates of payments required by enforceable obligations for each six-month fiscal period," as set forth in § 34171(h).) The successor agency had a duty under § 34177(a) to continue to make all payments due for enforceable obligations. Thus, to help insure the orderly windup and dissolution of the redevelopment agencies, the ROPS was to list all outstanding enforceable obligations.

Emeryville and Successor Agency to the Emeryville Redevelopment Agency executed agreements restating the provisions as to five of the original projects. On June 26, 2012, the city's oversight board approved three of these agreements. The agreements were thereafter included in an amended ROPS submitted to the Department of Finance on June 28, 2012.The Department rejected the amended ROPS. Emeryville sued the Department, seeking to compel the Department to recognize the enforceability of the three agreements. The trial court rendered judgment in favor of Emeryville.

The Third Appellate District affirmed the judgment. The Court held that a city had the authority to reenter into prior redevelopment agency agreements with its successor agency after Assembly Bill 26 mandated the dissolution of the former redevelopment agency.

Deputy Sheriffs' Association of San Diego County v. County of San Diego
(2015) 233 Cal.App.4th 573
January 22, 2015

The County of San Diego and the Deputy Sheriffs' Association of San Diego County entered into collective bargaining agreements that bound both parties through June 26, 2014. The agreements provided covered employees with defined pension benefits and also set the level of employees' required retirement contributions. The California Public Employees' Pension Reform Act of 2013 took effect on January 1, 2013. It reduced the level of pension benefits below those set by the agreements. It also increased the amount of employees' required retirement contributions. The association sued the county to bar application of the formulas in the Act to employees hired after January 1, 2013, but prior to June 26, 2014. The trial court ruled in favor of the county.

The Fourth Appellate District affirmed in part and reversed in part the judgment. The Court held that California Public Employees' Pension Reform Act of 2013 expressly barred the application of a benefits provision that conflicted with a county's existing collective bargaining agreements.

Dickson v. Burke Williams, Inc.
(2015) 234 Cal.App.4th 1307
March 6, 2015

Domaniqueca Dickson worked for Burke Williams, Inc., as a massage therapist. Dickson filed a complaint against Burke under the Fair Employment and Housing Act. Among other claims, Dickson alleged that Burke failed to take reasonable steps necessary to prevent sexual harassment and racial discrimination. Dickson specifically alleged that she was subjected to sexual harassment and race discrimination by two Burke customers.

Dickson's case was tried before a jury. The trial court declined to use Burke's proposed special verdict form. However, in a special verdict, the jury found that Burke was not liable for sex discrimination, sexual harassment, racial harassment, retaliation, or for failure to take reasonable steps necessary to prevent racial harassment. As to those claims, the jury found that Dickson was "subjected to unwanted harassing conduct" because of her sex and race but that such conduct was not "severe or pervasive." Also, as to Dickson's sex discrimination claim, the jury found that she had not suffered an adverse employment action. However, the jury found Burke liable for failure to take reasonable steps necessary to prevent sexual harassment or sex discrimination, notwithstanding its finding that Burke was not liable for sexual harassment or sex discrimination. Thus, the jury awarded Dickson compensatory and punitive damages. The court denied Burke's motion for JNOV, concluding that the jury's finding of sexually harassing conduct supported Dickson's claim for failure to take reasonable steps regardless of that conduct not being severe or pervasive. Burke appealed, contending among other things that it could not be liable for failure to take steps because the jury found it not liable on Dickson's underlying sexual harassment claim.

The Second Appellate District reversed the judgment and remanded. The Court held that a massage therapist's claim that a spa failed to take steps to prevent sexual harassment was precluded by a jury's finding that the harassment that occurred was insufficient to impose liability.

Flethez v. San Bernardino County Employees Retirement Association
(2015) 236 Cal.App.4th 65
April 22, 2015

Frank Flethez underwent surgery for a work-related injury on February 1, 2000, immediately after his retirement as an employee of San Bernardino County. On June 12, 2008, he applied for work-related disability retirement benefits from the San Bernardino County Employees Retirement Association ("SBCERA"). SBCERA granted the application in 2010, effective as of the date of his 2008 application. Flethez had an administrative hearing on the issue of the appropriate starting date for his retirement benefits. SBCERA subsequently adopted the hearing officer's proposed decision, which was handed down on December 15, 2011. In keeping with the decision, SBCERA maintained the effective date of June 12, 2008, for the start of Flethez's disability retirement benefits. Flethez petitioned for a writ of mandamus. Flethez contended that he should receive retroactive service-connected disability retirement benefits, along with prejudgment interest, beginning July 15, 2000, which was the day after the last day he received regular compensation. The trial court agreed and entered judgment granting Flethez's petition.

SBCERA appealed on the issue of the court's award of prejudgment interest. SBCERA contended that Flethez was not entitled to prejudgment interest as awarded by the court because prejudgment interest could not apply to retroactive benefits before payments of those benefits were due and before Flethez's right to recover those payments became vested under *Civil Code* § 3287(a). Which, according to SBCERA, did not happen until December 15, 2011, the date of the administrative hearing at which disability benefits to Flethez were denied.

The Court of Appeal affirmed the judgment in part, reversed in part, and remanded the action for further proceedings. The Court held that a disabled retiree could not recover prejudgment interest on his retroactive disability benefits until the date his right to such payments became vested.

Franco v. Arakelian Enterprises, Inc.
(2015) 234 Cal.App.4th 947
February 26, 2015

Edixon Franco sued former employer Athens Disposal Company, Inc. for *Labor Code* violations. Franco sought individual and class action relief, as well as representative relief under the Private Attorneys General Act of 2004. Athens responded with a petition to compel arbitration based on Franco's written employment agreement. The agreement contained a provision waiving class arbitrations. It also precluded an employee from acting in "a private attorney general capacity," so as to prohibit Franco's enforcement of the *Labor Code* on behalf of other employees. The trial court granted the petition to compel arbitration, limiting arbitration to Franco's individual claims only.

The Second Appellate District reversed the trial court order. The Court held that a where an employer was engaged in interstate commerce, the Federal Arbitration Act compelled enforcement of an arbitration agreement entered into with an employee, even though that agreement contained a class action waiver that would otherwise be unenforceable under California law.

Gallup v. Superior Court
(2015) 235 Cal.App.4th 682
March 30, 2015

Emily Gallup was employed by the Superior Court of Nevada County ("SCNC") as a mediator in the family court services department ("FCS"). Gallup complained to her supervisor, to other SCNC management, and to the Administrative Office of the Courts that the FCS was not providing services in compliance with laws, rules, regulations, and policies. As a result, Gallup was apparently subjected to disparagement, ridicule and to accusations of unethical and unprofessional conduct, of ineffectiveness, and of taking too long on cases. Gallup was ultimately terminated. She sued the SCNC, alleging claims that included retaliation for whistleblowing under *Labor Code* § 1102.5(b). More specifically, Gallup contended that her complaints were activity that was protected by § 1102.5(b) and that those complaints were a contributing factor in the SCNC's decision to retaliate by terminating her. The SCNC demurred, arguing that Gallup's § 1102.5(b) claim was barred because she had not exhausted the administrative remedies available to her. The trial court overruled that part of the demurrer, finding that under *Lloyd v. County of Los Angeles* (2009) 172 Cal.App.4th 320, exhaustion of the administrative procedure was not a prerequisite to Gallup's civil action. The SCNC appealed.

The Third Appellate District reversed the judgment. The Court held that a terminated court employee who sued the court for alleged retaliation based on her whistleblowing was required to exhaust her administrative remedies. The Court noted that that *Campbell v. Regents of Univ. of California* (2005) 35 Cal.4th 311 controlled in this case. The Court mentioned that while *Lloyd* was correct that *Campbell* did not expressly require exhaustion of the procedure set forth in § 98.7, *Campbell* did repeat the rule that "where an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act."

Garcia v. Superior Court (Southern Counties Express, Inc.)
(2015) 236 Cal.App.4th 1138
May 15, 2015

Eduardo Garcia and Luis Torres-Garzon (collectively, "Garcia") were owner-operator truck drivers. Garcia was engaged by Southern Counties Express, Inc. ("SCE"), to haul shipping containers from coastal seaports to other facilities in the state. When first engaged by SCE and then quarterly, Garcia signed an independent-contractor agreement ("ICA"). Less frequently, Garcia signed a vehicle-lease agreement ("VLA"). The ICA provided that Garcia would use a specified truck to provide hauling services at SCE's direction. The VLA provided that Garcia would lease that truck from SCE for that purpose. SCE was an interstate carrier. Thus, under federal regulations, the ICA and VLA also provided that SCE would have exclusive possession, use, and control of the equipment, as well as responsibility for its operation, as required by such regulations. The ICA and VLA further provided that any disputes that arose under them would be arbitrated.

Garcia sought administrative relief from the state based on his allegation that SCE should have classified him as an employee. SCE petitioned the trial court to compel arbitration. The court ordered arbitration, finding only that the ICA and VLA were not procedurally unconscionable. Garcia petitioned the appellate court for writ of mandate to compel denial of arbitration and continued administrative proceedings.

The Court of Appeal granted in part Garcia's petition for writ of mandate and remanded with directions. The Court held that the trial court erred by failing to find whether an arbitration agreement was exempt from preemptive application of the Federal Arbitration Act.

Gerard v. Orange Coast Memorial Medical Center
(2015) 234 Cal.App.4th 285
February 10, 2015

Jazmina Gerard, Kristiane McElroy, and Jeffery Carl were employed as health care workers for Orange Coast Memorial Medical Center. In that capacity, they usually worked 12-hour shifts, but from time to time worked shifts longer than 12 hours. Hospital policy allowed health care employees who worked shifts longer than 10 hours caring for patients to voluntarily waive one of their two meal periods, even if their shifts lasted more than 12 hours. Gerard, McElroy, and Carl alleged that they all signed second meal period waivers, and occasionally worked shifts longer than 12 hours without being provided a second meal period. The three former employees sued Orange Coast for failing to provide them with a second meal period during shifts longer than 12 hours, as required under *Labor Code* §§ 226.7 and 512(a). Gerard alleged claims on her own behalf, and on behalf of others as an "aggrieved employee" under the Private Attorney General Act of 2004. McElroy and Carl alleged claims on their own behalf and on behalf of all other similarly situated persons, and sought class certification. Orange Coast moved for summary judgment as to Gerard, arguing, among other things, that Industrial Welfare Commission ("IWC") Wage Order No. 5, § 11(d), authorized employees in the health care industry to waive one of two required meal periods on shifts longer than 8 hours. The trial court granted summary judgment against Gerard. The court thereafter granted Orange Coast's motion to deny class certification as to McElroy and Carl's claims and to strike their class allegations.

The Fourth Appellate District reversed the trial court judgment and order and remanded. The court held that a wage order was partially invalid that authorized health care workers' waiver of meal breaks on shifts longer than 12 hours.

Gerawan Farming, Inc. v. Agricultural Labor Relations Board (United Farm Workers of America)
(2015) 236 Cal.App.4th 1024
May 14, 2015

Gerawan Farming, Inc. was an agricultural employer with farming operations in Fresno and Madera Counties. In 1992, United Farm Workers of America ("UFW") was certified as the exclusive bargaining representative for Gerawan's agricultural employees. UFW sent a letter to Gerawan requesting negotiations. Gerawan accepted the request and invited UFW to submit any proposals it wished to make. UFW did not send a proposal until late 1994. Thereafter, the parties held one introductory negotiating session in early 1995. UFW did not contact Gerawan again until late 2012, at which time it reasserted its status as the employees' certified bargaining representative and demanded that Gerawan engage in negotiations. Between January 17, 2013 and March 29, 2013, the parties held 10 or more bargaining sessions.

On March 29, 2013, UFW filed a declaration with the Agricultural Labor Relations Board requesting that the Board issue an order referring the parties to the mandatory mediation and conciliation ("MMC") process set forth in *Labor Code* § 1164 et seq. Gerawan objected to UFW's request on the grounds that the requirements of §§ 1164 and 1164.11 were not satisfied. Gerawan also asserted that UFW, by its lengthy absence, abandoned its status as the employees' bargaining representative. The Board rejected Gerawan's arguments and ordered the parties to begin the MMC process. Gerawan filed a petition for a writ of mandate in the trial court, asking the court to set aside the Board's order sending the parties to the MMC process. The trial court denied the petition. Gerawan appealed that ruling.

The Court of Appeal reversed the order of the ALRB and affirmed the trial court's denial of a petition for writ of mandate. The Court held that the ALRB abused its discretion in rejecting an employer's claim that a union's abandonment of its members barred the union's request for MMC. The Court held further that the MMC process, as codified in the *Labor Code,* both violated equal protection and invalidly delegated legislative authority in violation of the California Constitution.

Horne v. District Council 16 International Union of Painters and Allied Trades
(2015) 234 Cal.App.4th 524
February 18, 2015

Raymond Horne twice applied for a position as an organizer with his union, District Council 16 International Union of Painters and Allied Trades. On both occasions, Horne, who was African-American, was denied the position, and it was instead offered to a white applicant. Following the second instance, Horne sued the union for employment discrimination in violation of the California Fair Employment and Housing Act ("FEHA"), contending that the union did not hire him based on his race. During discovery, the union learned that Horne had a prior felony narcotics conviction. Under federal law, this conviction made him ineligible for the position of union organizer. The trial court granted the union's motion for summary judgment, finding that Horne's prior conviction precluded him from establishing, as an element of his prima facie case, that he was qualified for the position he sought.

The First Appellate District reversed the judgment. The Court held that a job applicant's failure to show he was qualified for an employment position, because of after-acquired information that he had a prior criminal conviction, did not bar his lawsuit alleging failure to hire on the basis of race.

Koval v. Pacific Bell Telephone Co.
(2014) 232 Cal.App.4th 1050
December 31, 2014

Employees Frank Koval and others sued Pacific Bell Telephone Co. for failing to relinquish control over their activities during meal and rest break periods. They moved for class certification. In support of their motion, the employees submitted copies of thirteen documents they referred to as "Job Performance Policies and Expectations" ("JPPE's"). The documents were regional field operations manuals that were in effect at various times. They contained hundreds of guidelines and practices regarding field technician job duties, seven of which the employees identified as restricting employee autonomy during meal or rest breaks. The six guidelines applicable to meal breaks prohibited employees from (1) gathering with their colleagues, (2) going to their personal residences, (3) leaving their trucks, (4) riding in other vehicles, (5) sleeping in trucks, or (6) driving their trucks outside normal work routes to get a meal, and taking rest breaks at coffee shops or restaurants. The employees also submitted the declarations of 76 class members. Each described how they became aware of the JPPE's and how the policies affected their meal and rest breaks. Pacific Bell opposed class certification, arguing that the employees' allegations rested entirely on the oral instructions given them by their individual supervisors. For example, some technicians stated they were never told to stay with company vehicles during lunch, while others stated they were given such instructions. Also, some employees stated that their supervisors allowed them to go home at lunch, while other supervisors allegedly prohibited that practice; still others permitted employees to go home for lunch only if the employee's home was in route or if he or she had prior permission. Pacific Bell also offered the declaration of manager James Beck, who stated that supervisors had discretion over whether to make exceptions to the JPPE's. Pacific Bell argued that deciding the employees' claims would necessitate individualized inquires. The trial court agreed and denied the motion for class certification.

The First Appellate District affirmed the trial court order denying a motion for class certification. The Court held that even though a company had uniform written policies, the wide discretion exercised by supervisory personnel in the interpretation and application of those policies resulted in diverse practices that precluded class certification.

Lanquist v. Ventura County Employees' Retirement Association (County of Ventura)
(2015) 235 Cal.App.4th 186
March 16, 2015

Timothy Lanquist and Thomas Temple served as midshipmen at the United States Naval Academy for about four years before they became commissioned naval officers. Temple was enlisted before he attended the Academy; Lanquist was not. Both men later became employees of Ventura County. As county employees, they were members of the Ventura County Employees' Retirement Association ("VCERA"). Lanquist and Temple applied to VCERA to purchase retirement service credit for their military service. They supplemented their applications with military records and letters from the Department of the Navy certifying that their service of four years as midshipmen at the Academy was "continuous active duty." VCERA granted Lanquist's and Temple's requests to purchase retirement service credit for all military service other than their midshipmen service at the Academy. It denied their requests as to that service. Upon appeal by Lanquist and Temple, the VCERA retirement board upheld the denial.

Lanquist and Temple filed a petition for writ of mandamus and complaint for declaratory relief in the trial court. The trial court denied the petition, finding that VCERA's policy of denying retirement service credit for service at the Academy was "appropriate" in view of state and federal authorities interpreting the terms "public service" and "active duty."

The Second Appellate District reversed the judgment. The Court held that two Ventura County employees who previously spent four years in midshipman service at the United States Naval Academy should have been allowed to purchase retirement service credit for those years of public service.

Lozano v. Workers' Compensation Appeals Board
(2015) 236 Cal.App.4th 992
May 13, 2015

William Lozano ("William") worked as a firefighter for a Department of Defense ("DOD") from 1981 to 2007. William claimed injury arising out of and occurring in the course of his employment in the form of stomach cancer. William died from the cancer in 2007. At that time, William was married to Cynthia Lozano and had two minor children (collectively, "Lozano"). William sought payment of accrued and unpaid compensation and reimbursement for self-procured medical treatment. Lozano sought death benefits for herself and her children and reimbursement of burial expenses. Lozano filed both William's claim and her own on November 3, 2009.

Subsequently, agreed medical evaluator ("EME") Edward J. O'Neill made the determination that William's cancer could have been caused by exposure to carcinogens at his workplace. The cancer presumption under *Labor Code* § 3212.1 provides that a cancer that develops in a firefighter who was exposed to a "known carcinogen" in the workplace is presumed to "arise out of and in the course of the employment." § 3212.1 was amended effective January 1, 2009, to add § 3212.1(a)(2), which extends the evidentiary presumption to DOD firefighters.

In 2013, a workers' compensation judge ("WCJ") found that William was not entitled to the cancer presumption because he died before it applied to DOD firefighters. Based on Dr. O'Neill's opinion, the WCJ found that Lozano did not prove causation. However, the WCJ recommended that Lozano's petition for reconsideration be granted, finding that § 3212.1(a)(2) was intended to retroactively apply to DOD firefighters. Even so, the Workers' Compensation Appeal Board ("WCAB") denied reconsideration, finding that at the time that his cancer manifested, William was not a member of a qualifying fire department and that the amendment's legislative history did not indicate any intention that it apply retroactively.

The Court of Appeal rejected the decision of WCAB and remanded. The Court held that a statutory amendment that extended the cancer presumption to a firefighter who died before the law took effect was a procedural change, warranting application of the presumption to a post-enactment adjudication of a workers' compensation claim.

Marzec v. California Public Employees' Retirement System
(2015) 236 Cal.App.4th 889
May 8, 2015

Robert Marzec and others worked as police officers or firefighters for various local agencies. Their employers provided retirement benefits through the California Public Employees' Retirement System ("CalPERS"). In order to enhance their service retirement benefits, each of the employees purchased additional years of service credit through one of several optional programs offered by CalPERS. Subsequently, each of them was disabled on the job and took an industrial disability retirement before reaching service retirement age. CalPERS thereafter paid each employee a monthly disability retirement allowance of 50% of his or her final compensation. CalPERS did not pay the employees any additional allowance as a result of their purchase of additional years of service credit.

The employees sued CalPERS in two separate actions, alleging that that their purchase of additional service credit entitled them to enhanced retirement benefits under the Public Employees' Retirement Law ("PERL"). They alleged CalPERS's failure to pay such enhanced benefits gave rise to a variety of causes of action, including breach of statutory duty, breach of contract, rescission, breach of fiduciary duty, and constitutional claims. In the first action, the trial court sustained CalPERS's demurrer to all causes of action without leave to amend, concluding that employees had not properly pled an entitlement to the additional retirement benefits they claimed as a matter of statutory, constitutional, or contract law. As to the second action, the trial court granted judgment on the pleadings on the same bases.

The Court of Appeal affirmed in part and reversed in part the judgment. The Court held that police officers and firefighters who purchased additional service credits were not wrongfully denied those benefits when they subsequently took disability retirement.

Mays-Williams v. Williams
(2015) 777 F.3d 1035
January 28, 2015

Asa Williams ("Asa Senior") worked for Xerox Corporation. Asa Senior participated in the Xerox Retirement Income Guarantee Plan ("RIGP") and the Xerox Savings Plan (collectively, "Xerox plans"). The Xerox plans were subject to the Employee Retirement Income Security Act ("ERISA"). In 1993, Asa Senior married Carmen Mays-Williams ("Carmen"). In 2002, Asa Senior formally designated Carmen as his beneficiary under the Xerox plans. In 2004, Asa Senior retired. In 2006, Asa Senior and Carmen divorced. In 2007, over the telephone, Asa Senior un-designated Carmen and designated his son from a previous marriage, Asa Williams ("Asa Junior"), as his beneficiary under the RIGP. In 2008, Asa Senior gave similar telephonic instructions as to the RIGP. In 2011, Asa Senior did the same as to both the RIGP and the savings plan. However, in each instance, Asa Senior did not sign and return the beneficiary-designation forms that he received following his telephonic designations. Asa Senior died in 2011. Carmen and Asa Junior each claimed to be Asa Senior's beneficiary under the Xerox plans. Lawrence Becker, the fiduciary of the Xerox plans, interpleaded Carmen and Asa Junior for a judicial finding of the correct beneficiary. Carmen moved for summary judgment, contending that Asa Junior was never formally designated because Asa Senior did not return the beneficiary-designation forms. The district court granted the motion, finding that the forms were "plan documents" under 29 *United States Code* § 1104(a)(1)(D) of the ERISA and that Asa Senior had to sign and return those forms in order to change his designation. Asa Junior appealed.

The Court of Appeal reversed the judgment of the district court and remanded. The Court held that employee-benefit plans' beneficiary-designation forms were not "plan documents" governing award of plan benefits under ERISA.

McMillin Companies, LLC v. American Safety Indemnity Company
(2015) 233 Cal.App.4th 518
January 22, 2015

McMillin Companies, LLC served as general contractor for residential real estate development projects in California. B&B Framing, Inc. was the framing subcontractor. American Safety Indemnity Company ("ASIC") was the non-admitted insurer on commercial general liability policies issued to B&B. Homeowners sued McMillin and others on construction defect claims arising out of various development projects ("Baker" litigation). When ASIC rejected McMillin's tender of its defense in the Baker litigation, McMillin and related entities filed suit against ASIC and other insurers on claims for declaratory relief, breach of contract, and breach of the implied covenant of good faith and fair dealing. After ASIC's motion for summary judgment was denied and settlements were reached with all defendants except ASIC, McMillin filed an amended complaint against ASIC as the sole defendant. The parties proceeded with motions in limine in anticipation of trial.

McMillin moved to exclude testimony and argument disputing that ASIC had a duty to defend the Baker litigation. McMillin also sought to exclude evidence or argument about the settlement with defendants other than ASIC ("Settlement"), while ASIC sought to preclude McMillin from arguing that the Settlement proceeds were not offsets to McMillin's alleged damages on breach of contract, or that the proceeds were allocated to McMillin's tort claim for breach of the implied covenant of good faith and fair dealing. The court granted McMillin's motion in limine. The court reasoned that ASIC's failure to meet its initial burden in its motion for summary judgment demonstrated the existence of a disputed issue of material fact as to coverage, with the result that there was a duty to defend. The court also granted ASIC's motion in limine, ruling that McMillin could not present evidence or argument that the Settlement proceeds were not offsets to the Baker or that they were allocated to the tort damages for breach of the implied covenant of good faith and fair dealing. The parties agreed that the result of the motion in limine rulings was that McMillin could not prove contract damages and therefore could not maintain a claim for breach of the implied covenant of good faith and fair dealing. The parties consented to judgment in favor of ASIC and appealed.

The Fourth Appellate District dismissed the judgment in part, reversed in part, and remanded the action for further proceedings. The Court held in the published portion of its opinion that a trial court erred in granting an insured's motion in limine to preclude evidence regarding an insurer's duty to defend where the court's earlier ruling on summary judgment meant only that the insurer failed to meet its initial burden of production to make a prima facie showing of the absence of triable issues of material fact, not that there existed a dispute of material fact as to coverage.

Mendiola v. CPS Security Solutions, Inc.
(2015) 60 Cal.App.4th 833
January 8, 2015

CPS Security Solutions, Inc., and others (collectively, "CPS") provided security guards for construction sites. A number of the security guards employed by CPS were designated as "trailer guards." In addition to their regular patrols, the trailer guards were expected to spend the night at their assigned jobsites in CPS-provided trailers in order to be available to investigate alarms and other suspicious circumstances and to prevent vandalism and theft. During these nighttime periods, CPS considered the trailer guards "on call," and generally compensated them only for the time spent actively conducting investigations as the trailers were outfitted with sleeping quarters. Employees Tim Mendiola and others sued CPS, alleging violations of wage and overtime laws. The trial court granted a preliminary injunction requiring CPS to compensate trailer guards for all on-call time spent in the trailers.

The California Supreme Court affirmed the Court of Appeal's conclusion that plaintiffs' on-call time constituted hours worked within the meaning of Wage Order 4 and was subject to the wage order's minimum wage and overtime provisions but reversed the court's conclusion that state and federal regulations permitted CPS to exclude sleep time from plaintiffs' 24-hour shifts.

Mies v. Sephora U.S.A., Inc.
(2015) 234 Cal.App.4th 967
February 2, 2015

Sephora U.S.A., Inc., operates retail cosmetic stores. A Director is assigned to run each store, and one to four Specialists manage each store's sales associates and various other employees. Former employee Eva Mies sued Sephora for allegedly misclassifying Specialists as exempt and paying them lower wages than mandated by law. Mies also alleged, among other things, that Sephora failed to pay overtime wages and engaged in unfair competition in violation of California law. Mies sought to certify a class of California-based Specialists who worked for Sephora from February 2006 to the present. Mies maintained that the common issue within the class was whether Sephora improperly classified Specialists as exempt executives or administrators. Mies asserted that the Specialist position was standardized, and she declared generally that the trial court could rely on statistical evidence to determine liability on a class-wide basis. Sephora opposed class certification. The company offered declarations from upper-level managers, as well as many Specialists, indicating that individual Specialists performed a variety of duties depending upon the evolving needs of each store. Sephora also offered an expert declaration stating that Mies's proposed statistical approach would not offer useful evidence as to whether the class as a whole, or certain unobserved individuals within the class, spent half their time on exempt or non-exempt work. The trial court concluded that the central issue for trial would be how the Specialists spent their time, not whether a given task was exempt. After crediting evidence that all Specialists did not engage in the same tasks to the same extent, the court denied class certification, concluding that individualized issues, not common ones, would predominate the determination of liability.

The First Appellate District affirmed the trial court order denying class certification. The court held that a trial court did not err in denying class certification for lack of prevailing common liability issues in a wages and hours case where credible evidence indicated that employees in the proposed class did not engage in the same tasks to the same extent.

Montano v. The Wet Seal Retail, Inc.
(2015) 232 Cal.App.4th 1214
January 7, 2015

Elizabeth Montano filed a putative class action lawsuit against employer The Wet Seal Retail, Inc., charging numerous wage and hour violations. Montano propounded various discovery requests to Wet Seal, which responded with objections but no substantive information. Montano filed a motion to compel discovery responses. Prior to hearing on that motion, Wet Seal moved to compel arbitration, relying on an arbitration agreement executed by Montano. Montano opposed, arguing that agreement was procedurally and substantively unconscionable, due in part to its inclusion of a waiver of Montano's right to bring class actions and representative Private Attorneys General Act ("PAGA") actions. The trial court denied Wet Seal's motion to compel arbitration, finding the PAGA waiver was both invalid and non-severable, thereby rendering the entire agreement unenforceable. The court also granted Montano's motion to compel discovery. Wet Seal appealed both rulings.

The Second Appellate District affirmed one of the trial court orders and dismissed a challenge as to a second. The court held that an employee's purported waiver of her right to bring a representative action under PAGA rendered an arbitration agreement unenforceable.

Navarro v. Encino Motorcars, LLC
(2015) 780 F.3d 1267
March 24, 2015

Hector Navarro and others (collectively, "Navarro") were employed as "service advisors" by Encino Motorcars, LLC, which sold and serviced Mercedes-Benz vehicles. Navarro sued Encino, alleging that the company violated the Fair Labor Standards Act ("FLSA") by failing to pay overtime wages. According to Navarro, the tasks of Encino's service advisors included soliciting and suggesting additional work on owners' vehicles when the vehicles were brought in for repairs. Encino paid its service advisors solely on a commission basis. The District Court dismissed the overtime claim because the court determined that Navarro fell within the FLSA's exemption for "any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles."

The Court of Appeals affirmed in part and reversed in part a district court's order of dismissal and remanded the action for further proceedings. The Court found that § 213(b)(10)(A) of the FLSA provides that the Act's overtime wage requirement does not apply with respect to any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles in the employ of a nonmanufacturing establishment, such as a car dealership. Under the federal Department of Labor's 2011 regulatory definitions, specifically 29 *Code of Federal Regulations* § 779.372(c), the FLSA exemption is limited to salesmen who sell vehicles and partsmen and mechanics who service vehicles. Under the agency's approach, then, Navarro did not fit within any such definition, with the result that he was not exempt from the FLSA's overtime wage provisions. Thus, The Court held that "service advisors" at a car dealership were not exempt from the overtime pay requirements of the FLSA.

Nealy v. City of Santa Monica
(2015) 234 Cal.App.4th 359
January 21, 2015

Tony Nealy did recycling work for the City of Santa Monica as a solid-waste equipment operator ("SWEO"). In 2003, Nealy injured his right knee on the job. As a result, Nealy required surgery and was temporarily totally disabled ("TTD"). In 2005, Nealy was released to light duty work but restricted from pushing heavy trash bins. The city transferred Nealy to work as a groundskeeper after his physician agreed that Nealy could perform that job. However, Nealy continued to have problems with his knee. In 2006, Nealy developed related lower back pain that resulted a second period of TTD. Later that year, Nealy's physician cleared him for light duty consisting of semi-sedentary office work. However, no such job was available. Thus, Nealy remained on TTD and never returned to work for the city.

In 2010, the city found that Nealy's restrictions were so significant that it could not find a way to reasonably accommodate the SWEO position. Nealy applied for a position as a planning staff assistant that he could perform with his work restrictions. However, Nealy was found to lack the requisite recent paid experience in clerical support. Subsequently, Nealy filed a lawsuit against the city under the Fair Employment and Housing Act ("FEHA"). Nealy alleged claims for failure to provide reasonable accommodation, disability discrimination, failure to engage in the interactive process, and retaliation. The trial court granted the city's motion for summary judgment. Nealy appealed.

The Second Appellate District affirmed the judgment. The Court held that an injured city worker was not improperly denied the right to return to work where he was unable to perform essential functions of his job and lacked qualifications for others despite the city's efforts to accommodate him.

Nigro v. Sears, Roebuck and Company
(2015) 784 F.3d 495
February 25, 2015

Anthony Nigro filed suit against his former employer, Sears, Roebuck and Co., alleging three disability discrimination claims under the Fair Employment and Housing Act ("FEHA"). Nigro alleged that Sears discriminated against him because of his disability, declined to accommodate his disability, and did not engage in an interactive process to determine possible accommodation for his disability. Sears moved for summary judgment. To demonstrate termination on the basis of his disability, Nigro submitted a declaration stating that on a particular date he spoke by telephone with the general manager of the store where he worked. The manager told Nigro that being sick was not helping his situation, and that he would not be paid nor accommodated. Nigro also had testified in deposition that a Sears district facilities manager told him that a district general manager said Nigro was "not going to be here anymore." The district disregarded Nigro's proffered evidence because it was in the form of Nigro's own self-serving testimony. The court granted summary judgment in favor of Sears.

The Court of Appeal reversed the district court judgment. The Court held that the district court erred in disregarding an employment discrimination plaintiff's uncorroborated self-serving declaration and deposition testimony in granting his employer's motion for summary judgment. The Court further held that where an employment discrimination plaintiff offers self-serving testimony on summary judgment, such evidence is admissible, although it may have limited weight absent corroboration.

Protect Our Benefits v. City and County of San Francisco
(2015) 235 Cal.App.4th 619
March 27, 2015

On November 8, 2011, San Francisco voters passed Proposition C, an initiative measure that amended the city charter as it pertained to the payment of a supplemental cost of living allowance ("COLA") to retired city employees as part of their pension benefits. Under Prop C, payment of the supplemental COLA was conditional on the employees' retirement fund being "fully funded" based on the market value of the assets for the previous year. Beforehand, the retirees had been eligible to receive the supplemental COLA as part of their benefits whenever the retirement fund's earnings from the previous year exceeded projected earnings. Protect Our Benefits, a political action committee representing the interests of retired city employees, petitioned the trial court for a writ of mandate seeking to invalidate this amendment as an impairment of a vested contractual pension right under the contract clauses of the federal and state Constitutions. The trial court denied the petition.

The First Appellate District affirmed in part and reversed in part the judgment. The Court held that the amendment of City and County of San Francisco retirees' right to a supplemental cost of living increase illegally impaired the retirees' vested pension rights.

Richey v. AutoNation, Inc.
(2015) 60 Cal.App.4th 909
January 29, 2015

Avery Richey worked as a sales manager for Power Toyota of Cerritos. After injuring his back in an accident at home, Richey took medical leave under the Moore-Brown-Roberti Family Rights Act ("CFRA"). Power had a policy stating that outside work while on approved CFRA leave was prohibited. That policy was included in an employment manual that was provided to Richey when he was hired. There was also a general understanding at Power that outside employment of any kind, including self-employment while on approved leave, was against company policy and that others had been fired for violating this rule. While Richey was on leave, various Power employees observed Richey working at a restaurant that he owned. Power terminated Richey for engaging in outside employment while on medical leave. Richey sued Power's parent company, AutoNation, Inc., for violation of his rights under the CFRA. The trial court granted Power's motion to compel arbitration under the terms of Richey's employment contract.

The arbitrator ultimately rendered judgment in favor of AutoNation, finding Power was allowed to terminate Richey if it had an "honest belief" that he was abusing his medical leave or was not telling the company the truth about his outside employment, even if that belief was mistaken. The trial court denied Richey's motion to vacate the arbitrator's award and granted AutoNation's petition to confirm the award. The Court of Appeal reversed, holding that the arbitrator committed clear legal error in basing his decision solely on Power's honest belief Richey had abused his leave.

The California Supreme Court reversed the court of appeal decision. The Court held that an employee's violation of his employer's written leave policy justified an arbitration award in the employer's favor.

Robles v. Employment Development Department
(2015) 236 Cal.App.4th 530
May 4, 2015

Jose Robles was terminated from his job in January 2010. He applied to the Employment Development Department ("EDD") for unemployment benefits. His application was denied based on the EDD's finding that Robles was terminated for misconduct. The California Unemployment Insurance Appeals Board upheld that decision. The trial court denied Robles's petition for writ of administrative mandate.

The Court of Appeal, in *Robles v. Employment Development Dept.* (2012) 207 Cal.App.4th 1029 reversed the trial court judgment, finding that Robles' conduct was insufficient as a matter of law to support a finding of misconduct. On remand, the trial court issued a writ commanding both EDD and the Board to award to Robles "the unemployment insurance benefits that were withheld beginning January 5, 2010 and including extensions under state and federal law, plus interest on those benefits under *Civil Code* § 3287(a)" and to file a return before November 15, 2012, stating what they had done to comply with the writ. The writ issued in September 2012.

The EDD thereafter sent Robles a single payment of $12,240. The payment, like all other communications with Robles following issuance of the writ, was sent to a two-year old mailing address at which Robles no longer resided. None of these communications was copied to Robles's attorney Gary Garfinkle, despite his having been Robles's attorney of record throughout these proceedings. A relative of Robles forwarded the communications to Robles, who had since returned to the Philippines because he could not afford to remain in California without employment.

The EDD refused to send Robles any further payments based on his failure to timely certify his ability to work and ongoing efforts to find work during the period from 2010 through the present. According to the EDD, the certifications, which needed to be submitted at periodic intervals throughout that time period, had not been submitted. The EDD claimed it would accept the certifications now if Robles completed and returned the certification forms to the EDD by December 2012. The EDD did not, however, mail Robles with copies of the certification forms. In May 2013, Robles moved to enforce the writ on May 3, 2013. Robles claimed that not only had the EDD and the Board failed to comply with the mandate of the trial court to "award" the "benefits that were withheld beginning January 5, 2010," they had also violated his due process rights by refusing to cooperate with his attorney, sending complex and internally inconsistent notices to a former address at which he no longer resided, and paying him only a fraction of the benefits to which he was entitled. Robles requested an order from the trial court requiring the EDD and the Board to: (1) pay the withheld benefits, interest, and costs in accordance with Robles's calculations as set forth in the motion; (2) communicate directly with Garfinkle in all matters involving compliance with the writ or any enforcement order; (3) make all payments under the writ or any enforcement order to Garfinkle's attorney-client trust account; (4) revise their regulations and internal guidelines, or otherwise demonstrate efforts made to ensure future compliance with the standards articulated by *Robles* and (5) pay fines of $1,000 each pursuant to *Code of Civil Procedure* § 1097 based on their "extraordinary disobedience" with the terms of the writ. Garfinkle provided the court with a calculation of the benefits due Robles, which calculation he prepared himself, after consultation with unemployment insurance specialists, when both EDD and the Board refused to provide him the relevant calculations. Garfinkle calculated the amount due as $45,560.39.

The trial court ordered the EDD to pay withheld federal extension benefits, costs and interest in the amount of $45,560.39 within 30 days of service of the trial court's order. The court based the amount on the calculations supplied by Garfinkle after the "EDD failed to provide a calculation of benefits as requested." In doing so, the court noted that the EDD provided no evidence contesting those calculations. It found the EDD's assertion that it could not determine the amount owed without completion of the certification forms "not a convincing argument." The trial court further ordered that the EDD communicate directly with Garfinkle regarding all matters involving the writ and the enforcement order, and that any monies disbursed by the EDD pursuant to the writ or the enforcement order be paid into Garfinkle's attorney-client trust account. Finally, finding the EDD's failure to pay interest to Robles as commanded by the writ to be "without just excuse," the trial court ordered the EDD only to pay a $1,000 fine.

The Court of Appeal affirmed the trial court judgment. The Court held that a trial court order compelling the EDD to make immediate payment of unemployment insurance benefits wrongfully withheld from Robles was both lawful and appropriate given the department's steadfast failure to comply with a prior writ compelling such payment and obstruction of efforts by the claimant's counsel to obtain such payment.

Rodriguez v. Cho
(2015) 236 Cal.App.4th 742
May 7, 2015

Dulce Rodriguez sued former employers Nam Cho and Reliable Building Maintenance for wrongful termination in violation of public policy, retaliation, and violations of the *Labor Code*. The prayer for relief sought general, special, compensatory, and punitive damages in an amount to be proved at trial, a civil penalty in the amount of $10,000 under *Labor Code* § 1102.5(f), civil penalties under the Private Attorney General Act, and reasonable attorney's fees and costs. The statement of damages served with the complaint disclosed that Rodriguez was seeking $1M in general damages for emotional distress; $50,000 in special damages for lost earnings; $150,000 in special damages for loss of future earning capacity; and punitive damages in the amount of $2M. Neither Cho nor Reliable responded to the complaint. The trial court entered defaults as to both defendants.

The trial court later entered a default judgment against Cho and Reliable in the amount of $129,673.48. This total consisted of $123,680 in damages, $2,368 in prejudgment interest at the rate of 10%, $3,060.48 in attorney's fees, and $565 in costs. Over two years later, Cho moved to set aside the default judgment, arguing the default judgment was void because the amount of damages was excessive. The trial court denied the motion.

The Court of Appeal reversed the judgment. The Court held that a complaint for wrongful termination in violation of public policy could not be construed as a personal injury action, even if the Rodriguez sought, in addition to lost earnings, damages for emotional distress.

Securitas Security Services USA, Inc. v. Superior Court (Edwards)
(2015) 234 Cal.App.4th 1109
February 27, 2015

Denise Edwards signed a dispute resolution agreement with her employer, Securitas Security Services USA, Inc. She did not opt out of the agreement by giving notice of her intent to do so within 30 days after signing, as was expressly permitted under the agreement. The dispute resolution agreement provided in relevant part that all disputes arising out of or related to Edwards' employment had to be resolved via binding arbitration. The agreement also included a provision that there would be no arbitration of class actions ("Class Action Waiver"). The Class

Action Waiver clause also stated that it was not severable from the dispute resolution agreement. In a separate clause, the agreement stated that if any portion of the agreement were deemed unenforceable, the remainder would be enforceable, and that if the Class Action Waiver were deemed unenforceable, then the agreement should be deemed otherwise silent as to any party's ability to proceed in a class-arbitration. Edwards later sued Securitas in state court on wage and hour claims. In her class action complaint she sought restitution and injunctive relief under the unfair competition law, and she asserted a claim for civil penalties under the Private Attorneys General Act of 2004 ("PAGA"). Securitas moved to compel arbitration, arguing that Edwards had to arbitrate her individual claims and that her class claims and/or her PAGA claim should be dismissed or severed. Among other things, Securitas argued that because Edwards voluntarily agreed to the dispute resolution agreement by not opting out, her case was not governed by *Iskanian v. CLS Transportation* (2014) 59 Cal.4th 348, which held that prospective, pre-dispute PAGA waivers are unenforceable. The trial court granted Securitas' motion after finding that the parties entered into a valid and binding arbitration agreement. The court determined Edwards' PAGA claim to be unwaivable, however, so that the Class Action Waiver provision was invalid for attempting to eliminate or abridge Edwards's right to litigate that claim. The court determined that the dispute resolution agreement's general severability clause thus applied, so the parties had to proceed to arbitration on Edwards' entire complaint, including her PAGA claims, which Edwards elected to resolve in arbitration along with her class claims. Securitas petitioned for a writ of mandate, contending that the court rewrote the parties' written dispute resolution agreement and further erred by refusing to enforce the lawful class action waiver, as well as the PAGA waiver, where *Iskanian* did not apply. Securitas sought enforcement of the dispute resolution agreement in its entirety as to Edwards' individual claims.

The Fourth Appellate District granted the petition for writ of mandate in part with directions. The Court held that the trial court erred in sending an employee's entire complaint against her employer, including class action and PAGA claims, to arbitration where the invalid PAGA waiver in the parties' dispute resolution agreement was not severable and thereby rendered the entire agreement unenforceable.

Serafin v. Balco Properties Ltd., LLC
(2015) 235 Cal.App.4th 165
March 16, 2015

Madeline Serafin began working for Balco Properties Ltd., LLC, in June 2009. A few days after she began work, she was asked to sign a two-page document entitled "MANDATORY ARBITRATION POLICY." The agreement stated that any dispute arising from Serafin's employment with Balco would be subject to mandatory arbitration. The agreement concluded with the statement, "All employees will be required to sign an acknowledgment stating that they understand this policy and will comply with it." Serafin signed the document on June 29, 2009, under the statement, "I have read and understand this policy." Balco terminated Serafin's employment in May 2010. Balco thereafter submitted a demand to the American Arbitration Association to arbitrate a conversion claim against Serafin. Serafin responded by suing Balco for retaliation, harassment, wrongful termination, and other causes of action. The trial court granted Balco's motion to stay litigation of the case ending arbitration, in accordance with the arbitration agreement.

The arbitrator found in Balco's favor on Balco's claim as well as all of Serafin's employment-related claims. The trial court confirmed the arbitration award and entered judgment in favor of Balco. Serafin appealed, arguing that no valid agreement to arbitrate employment-related disputes was formed because she never consented to arbitration. She claimed she "promised nothing by her signature that she 'read and understood'" Balco's mandatory arbitration policy. Her "written acknowledgement of [Balco's] arbitration policy," she contended, carried no legal significance and did not create such a contract.

The First Appellate District affirmed the judgment. The Court held that an employee's written acknowledgment that she understood her employer's mandatory arbitration policy resulted in a binding arbitration agreement.

Telish v. California State Personnel Board (California Department of Justice)
(2015) 234 Cal.App.4th 1479
March 10, 2015

William Telish worked as Senior Special Agent in Charge at the Bureau of Narcotics Enforcement's LA Interagency Metropolitan Police Apprehension Crime Task Force. During that time, Telish had a sexual relationship with subordinate employee "L.D." who eventually accepted a position with the Placentia Police Department. She reported to her boss, Placentia Chief of Police James Anderson, that she had recently been assaulted by Telish, and that in the past he had threatened to release nude photos of her if she did not recant statements she had made about their affair. Chief Anderson reported the allegations to the California Department of Justice ("DOJ") who oversees the task force and the Orange County District Attorney. DOJ undertook a criminal investigation, which included having L.D. secretly record telephone conversations with Telish. The District Attorney ultimately declined to prosecute Telish, but the DOJ dismissed him for intimidating and threatening L.D. and physically assaulting her, as well as other misconduct.

Telish appealed his dismissal to the California State Personnel Board ("SPB"). An administrative law judge ("ALJ") deemed L.D.'s recordings of her telephone conversations with Telish admissible pursuant to *Penal Code* § 633 as performed at the direction of the DOJ and related to a criminal investigation of serious crimes. Upon hearing, the ALJ found that Telish's conduct constituted cause for discipline and that the appropriate penalty was dismissal. The SPB rejected the ALJ's decision and reheard the case. The SPB adopted the ALJ's findings of fact but reversed regarding the telephone recordings. The SPB deemed the recordings inadmissible outside criminal proceedings. Nonetheless, the SPB concluded that sufficient evidence remained to uphold Telish's dismissal.

Telish petitioned for writ of administrative mandate, and the DOJ filed a cross-petition. The trial court concluded that the SPB erred in excluding the recorded phone calls because they were duly recorded by L.D., at the direction of the DOJ, as part of a criminal investigation. The court entered judgment denying Telish's petition and granting the DOJ's cross-petition. Telish appealed, contending primarily that the phone recordings were inadmissible because they were obtained in a sham criminal investigation for use in administrative proceedings against him.

The Second Appellate District affirmed the judgment. The Court held that recorded telephone conversations between an employee and his former girlfriend were admissible in an administrative hearing on the employee's dismissal for misconduct where the recordings were made by the former girlfriend at the direction of a law enforcement officer in the course of a criminal investigation of the employee.

Weiland v. American Airlines, Inc.
(2015) 778 F.3d 1112
March 2, 2015

Henry Weiland was a pilot who worked for American Airlines, Inc. Under 14 *Code of Federal Regulations* § 121(a), Weiland was subject to the so-called "age-60 rule" in § 121.383(c), under which the Federal Aviation Administration required American to cease scheduling Weiland to operate aircraft after he turned 60 years of age. American complied with the regulations when Weiland turned 60 on December 7, 2007. On December 13, the age-60 rule was rescinded by 49 *United States Code* § 44729(a) and (d) of the Fair Treatment for Experienced Pilots Act ("FTEPA"). Weiland filed an action against American. Weiland alleged that he was exempt from the explicit non-retroactivity of the FTEPA because under § 44729(e)(1)(A), he was employed by American on the FTEPA's effective date "as a required flight deck crew member." American moved to dismiss. The district court granted the motion. Weiland appealed.

The Court of Appeals affirmed the judgment of the district court. The Court held that a pilot who turned 60 only a few days before the effective date of an agency rule that requires retirement at age 66, did not qualify for an exception to the explicit non-retroactivity under that legislation.

Williams v. Chino Valley Independent Fire District
(2015) 61 Cal.App.4th 97
May 4, 2015

Loring Williams sued the Chino Valley Independent Fire District for employment discrimination in violation of the Fair Employment and Housing Act ("FEHA"). The trial court granted the District's motion for summary judgment and awarded its.

Williams appealed, arguing that no costs should have been awarded because his discrimination claim was not frivolous, unreasonable, or groundless. The Court of Appeal affirmed, holding that the District did not have to show that Williams' FEHA claim was frivolous, unreasonable, or groundless. Further, the Court held that the trial court correctly awarded the District ordinary costs as a matter of right under *Code of Civil Procedure* § 1032(b). Under *Baker v. Mulholland Security and Patrol, Inc.* (2012) 204 Cal.App.4th 776, when attorney's fees or expert-witness fees are claimed by the prevailing defendant in FEHA litigation, they may be awarded as costs only if the standard in *Christiansburg Garment Co. v. E.E.O.C* (1978) 434 U.S. 412 is met because they can be more expensive and unpredictable than ordinary costs and could discourage plaintiffs from filing meritorious actions. However, these considerations are not applicable to the other ordinary costs listed in § 1033.5.

The California Supreme Court reversed the judgment and remanded. The Court held that a prevailing defendant in an action brought under the FEHA is not entitled to an award of costs absent a showing that the plaintiff's action was groundless.

Young v. United Parcel Service, Inc.
(2015) 135 S.Ct. 1338
March 25, 2015

Peggy Young was a part-time driver for respondent United Parcel Service ("UPS"). When she became pregnant, her doctor advised her that she should not lift more than 20 pounds. UPS, however, required drivers like Young to be able to lift up to 70 pounds. UPS told Young that she could not work while under a lifting restriction. Young subsequently filed a lawsuit, claiming that UPS acted unlawfully in refusing to accommodate her pregnancy-related lifting restriction. She brought only a disparate-treatment claim of discrimination, which a plaintiff can prove either by direct evidence that a workplace policy, practice, or decision relies expressly on a protected characteristic, or by using the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, (1974) 411 U. S. 792. Under that framework, the plaintiff has "the initial burden" of "establishing a prima facie case" of discrimination. If she carries her burden, the employer must have an opportunity "to articulate some legitimate, non-discriminatory reason[s] for" the difference in treatment. If the employer articulates such reasons, the plaintiff then has "an opportunity to prove by a preponderance of the evidence that the reasons … were a pretext for discrimination." *Texas Dept. of Community Affairs v. Burdine* (1981) 450 U. S. 248, 253.

After discovery, UPS sought summary judgment. In reply, Young presented several favorable facts that she believed she could prove. In particular, she pointed to UPS policies that accommodated workers who were injured on the job, had disabilities covered by the Americans with Disabilities Act of 1990 ("ADA"), or had lost Department of Transportation ("DOT") certifications. Pursuant to these policies, Young contended, UPS had accommodated several individuals whose disabilities created work restrictions similar to hers. She argued that these policies showed that UPS discriminated against its pregnant employees because it had a light-duty-for-injury policy for numerous "other persons," but not for pregnant workers. UPS responded that, since Young did not fall within the on-the-job injury, ADA, or DOT categories, it had not discriminated against Young on the basis of pregnancy, but had treated her just as it treated all "other" relevant "persons."

The District Court granted UPS summary judgment, concluding, among other things, that Young could not make out a prima facie case of discrimination under *McDonnell Douglas*. The court found that those with whom Young had compared herself — those falling within the on-the-job, DOT, or ADA categories — were too different to qualify as "similarly situated comparator[s]."

On appeal, the Fourth Circuit affirmed, holding that "UPS has crafted a pregnancy-blind policy" that is "at least facially a 'neutral and legitimate business practice,' and not evidence of UPS's discriminatory animus toward pregnant workers." It also agreed with the District Court that Young could not show that "similarly-situated employees outside the protected class received more favorable treatment than Young." Specifically, it believed that Young was different from those workers who were "disabled under the ADA" (which then protected only those with permanent disabilities) because Young was "not disabled"; her lifting limitation was only "temporary and not a significant restriction on her ability to perform major life activities." Young was also different from those workers who had lost their DOT certifications because "no legal obstacle stands between her and her work" and because many with lost DOT certifications retained physical (i.e., lifting) capacity that Young lacked. And Young was different from those "injured on the job because, quite simply, her inability to work [did] not arise from an on-the-job injury." Rather, Young more closely resembled "an employee who injured his back while picking up his infant child or . . . an employee whose lifting limitation arose from her off-the-job work as a volunteer firefighter," neither of whom would have been eligible for accommodation under UPS' policies.

Young filed a petition for writ of certiorari, and in light of lower-court uncertainty about the interpretation of the Act, the Court of Appeal granted the petition.

The Court of Appeal vacated the judgment and remanded for reconsideration in accordance with its opinion. The Court held that a party is entitled to summary judgment if there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Federal Rules of Civil Procedure* § 56(a). The Court further noted that the Fourth Circuit did not consider the combined effects of these policies, nor did it consider the strength of UPS' justifications for each when combined.

Law Practice

Aghaian v. Minassian
(2015) 234 Cal.App.4th 427
February 17, 2015

Gagik Galstian and Knarik Galstian fled their Iranian homeland in 1978, abandoning several properties they owned. Several years later, an Iranian attorney advised the Galstians they could recover their properties by executing powers of attorney naming the attorney and others as attorneys in fact over the properties in Iran. In 1996, the Iranian government issued an order allowing the Galstians to enter Iran, reclaim their properties, and freely engage in property transactions. The family began the process of reclaiming and selling their properties. By mid-2003, defendants Shahen Minassian and Nader Izadi held the powers of attorney for the remaining properties. They executed a general quitclaim deed transferring all of Gagik's remaining properties to themselves for little or no consideration in 2008. Minassian also deeded to himself at least one, and possibly more, of Knarik's properties. Gagik discovered the transfers in early 2010, and demanded that title be returned to him.

Following Gagik's and Knarik's deaths in 2012, their son, Andranik Galstian, and his sisters, Seda Aghaian and Aida Norhadian, filed suit against Minassian and Izadi in California court, asserting causes of action for breach of fiduciary duty, accounting, and conversion. Minassian moved to dismiss or, in the alternative, stay the action based on forum non conveniens. Minassian argued the Iranian civil court provided a suitable forum for an action brought by Iranian citizens against Iranian citizens, involving a dispute over real properties located in Iran.

Attorney Reza Athari, who was licensed to practice law in both California and Iran, submitted a declaration in support of Minassian's motion. Athari declared that almost all procedures followed in California civil suits were available and followed in Iranian civil courts. For this and other reasons, Athari opined, the Iranian civil court was a suitable alternative forum for adjudication of Galstian family's claims. In opposition, the Galstians submitted the declaration of human rights attorney Mehrangiz Kar, who opined that forcing the Galstians to bring their action in Iran would be unjust and inappropriate because the legal system in Iran did not afford the same rights and protections as the American legal system, was biased against women, required the application of Islamic law to non-Muslims, and was also biased against those who left Iran in or around the time of the Islamic revolution in 1979 but who were now seeking to establish their rights to property in Iran. The Galstians also submitted the declaration of Patrick Clawson, director of research for the Washington Institute for Near East Policy, who was qualified as an expert on issues relating to Iran. Crawson opined that the Iranian legal system was heavily influenced by the executive and religious authorities and therefore lacked independence. Crawson cited to numerous sources that showed Iranian courts discriminated on grounds of sex, religion, and political opinion. Further, Crawson opined that Iranian courts were corrupt and did not guarantee the right to representation by a qualified lawyer. Relying on Athari's declaration, the trial court found Iran to be a suitable alternative forum and granted a stay.

The Second Appellate District reversed the trial court order. The Court held that overwhelming evidence of bias in Iranian courts against both women and non-Muslims precluded a finding that Iran was a suitable alternative forum for a civil lawsuit filed by three non-Muslims, two of whom were women.

Aguirre v. Amscan Holdings, Inc.
(2015) 234 Cal.App.4th 1290
February 11, 2015

Dione Aguirre filed a putative class action against Amscan Holdings, Inc., and PA Acquisition, doing business as Party America (collectively, "Party America") for alleged violations of *Civil Code* § 1747.08 of the Song-Beverly Credit Card Act of 1971. According to Aguirre, Party America routinely requested and recorded personal identification (ZIP CODES) from customers who used credit cards in retail stores in California. Aguirre identified the proposed class as "[a]ll persons in California from whom Defendant requested and recorded a ZIP CODE in conjunction with a credit card purchase transaction" between specified dates. Party America moved to strike and dismiss the class allegations and for denial of class certification. Party America maintained that there was no ascertainable class and no means for identifying or locating potential class members so as to notify them of the action. Party America offered evidence that it requested ZIP Codes from all customers at the point of sale without regard to method of payment, and that "99999" was entered for customers who refused to provide the information. Party America did not retain names or addresses of persons who paid with credit cards or who provided ZIP Codes. The purposes of asking for the ZIP Codes were to determine new store locations and to focus advertising. The trial court agreed that Aguirre failed to establish the existence of an ascertainable class, and it granted Party America's motion to strike and dismiss the class allegations and to deny class certification. The Court noted in pertinent part that the absence of identifying information for specific class members from within Party America's records meant notice could not be provided directly to such class members. Aguirre appealed.

The Third Appellate District reversed the trial court's order denying class certification and remanded the action for further proceedings. The Court held that an ascertainable class existed where the plaintiff described common characteristics that would allow a potential class member to identify himself as having a right to recover, along with an objective means to identify class members when specific individual identification became necessary. The Court held further that the absence of means for identifying class members from a defendant's records did not preclude the finding of an ascertainable class.

Allen v. City of Sacramento
(2015) 234 Cal.App.4th 41
February 6, 2015

A private property owner agreed to allow 22 homeless individuals and two people providing services to the homeless to camp on a lot he owned in a light industrial area of Sacramento. The individuals were arrested for violating a city ordinance that, with limited exceptions, made it unlawful for any person to camp on any public or private property in the city. Arrestees Mathew Allen and others ("Allen") sued the City of Sacramento, arguing the ordinance was unconstitutional both on its face and as applied to them. They asserted causes of action for declaratory judgment, injunctive relief, and violation of *Civil Code* § 52.1. After the trial court sustained the city's demurrer with leave to amend Plaintiffs assert a number of arguments claiming the trial court erred in sustaining the demurrer on their first cause of action for declaratory judgment. Allen contends the trial court erred because (A) a demurrer to a declaratory relief cause of action must be overruled whenever an actual controversy is alleged, (B) plaintiffs adequately stated a facial void-for-vagueness challenge to the camping ordinance, and (C) plaintiffs adequately stated an as-applied constitutional challenge to the ordinance based on (1) the Eighth Amendment prohibition against cruel and unusual punishment, (2) the right to travel, (3) equal protection and class-based discrimination, (4) arbitrary and discriminatory enforcement of laws, (5) substantive due process, and (6) protections regarding vague laws. The parties agreed to entry of judgment against the plaintiffs for purposes of appeal.

The Third Appellate District affirmed in part and reversed in part. The Court held that homeless persons arrested for violating a city ordinance against camping in Sacramento stated a viable claim that the ordinance, as applied to them, violated their constitutional right to the equal protection of the laws.

Amis v. Greenberg Traurig, LLP
(2015) 235 Cal.App.4th 331
March 18, 2015

John Amis was a minority shareholder and officer of Pacific Marketing Works, Inc. Pacific sued Path Productions, LLC for breach of contract. Path filed a cross-complaint against Pacific, Amis, and the other Pacific shareholders for breach of contract, fraud, and alter ego liability. Amis retained the law firm of Greenberg Traurig, LLP to represent him. The litigation was settled at mediation. Under the settlement agreement, Amis and the other Pacific parties agreed, jointly and severally, to pay payments totaling $2.4M to Path in exchange for dismissals with prejudice of each side's claims and mutual releases. When Amis and the other Pacific parties found themselves without sufficient assets to make the agreed upon payments, they were forced to file for bankruptcy. Amis sued Greenberg Traurig for malpractice, contending that the law firm "caused" him to execute a settlement agreement that converted his company's corporate obligations into Amis's personal obligations without advising him that he had little to no risk of personal liability in the underlying litigation. The trial court granted summary judgment in favor of the law firm, noting Amis's admission that all advice he received from the firm regarding the settlement agreement was given during mediation. Based on this undisputed fact, the court found Amis could not obtain evidence to support his claims and the law firm could not produce evidence to defend itself because the disclosure of such evidence was barred by the mediation confidentiality statutes.

The Second Appellate District affirmed the judgment. The Court held that the mediation confidentiality statutes barred a client from suing his attorneys for malpractice based on their bad advice purportedly given him during the mediation.

Anten v. Superior Court (Weintraub Tobin Chediak Coleman Grodin, Law Corporation)
(2015) 233 Cal.App.4th 1254
January 30, 2015

Lewis Anten, Arnold Rubin, and Arnold's wife Lillian Rubin jointly retained Marvin Gelfand and Allan Kirios of Weintraub Tobin Chediak Coleman Grodin, Law Corporation (collectively, "Weintraub"), on a tax matter. Previously, tax lawyers retained by Anten and the Rubins had misadvised them, leading to a tax audit. Anten and the Rubins sought Weintraub's representation at the audit. Weintraub advised Anten and the Rubins that the tax lawyers' incurable error barred the favorable tax treatment that they had sought for the sale of their business. Based on Weintraub's advice, Anten and the Rubins settled with the government. Weintraub also advised Anten and the Rubins that the tax lawyers had committed malpractice and recommended that Anten and the Rubins sue them. At that time, Anten did not want to sue, but rather sought to settle with the tax lawyers. Subsequently, Weintraub withdrew its representation of Anten and represented the Rubins in an action against the tax lawyers. Later, Anten filed a malpractice action against Weintraub and the tax lawyers. Anten alleged that Weintraub breached a duty that arose out of the attorney-client relationship. In response to Anten's discovery requests, Weintraub objected that Anten sought communications between Weintraub and the Rubins that were protected by the attorney-client privilege, which the Rubins expressly declined to waive.

Anten moved to compel further responses. The trial court denied the motion based largely on the Rubins' assertion of the attorney-client privilege. Anten petitioned the appellate court for writ of mandate.

The Second Appellate District granted the petition for writ of mandate. The Court held that when joint clients do not sue each other but one of them sues their former attorney, the non-suing clients cannot prevent the parties to the lawsuit from discovering or introducing otherwise privileged attorney-client communications made in the course of the joint representation.

Baker v. Castaldi
(2015) 235 Cal.App.4th 218
February 18, 2015

Ken Baker sued Theresa Castaldi and Alphonse Castaldi for allegedly stealing antiques that Baker owned. Baker sought punitive damages. The trial court ordered bifurcation. Phase one of the trial began on March 25, 2013, and dealt with liability, compensatory damages, and whether Baker was entitled to punitive damages. At the end of phase one, the court found Theresa and Alfonse jointly and severally liable for conversion. Beginning on August 6, phase two resulted in a punitive-damages award for Baker in a particular amount. However, on May 20, 2013, before phase two began, the court filed a document entitled "judgment." The so-called judgment indicated that Theresa and Alphonse were jointly and severally liable for compensatory damages in a specified amount plus interest and costs. The purported judgment also stated that the court found by a preponderance of the evidence that Theresa and Alphonse had both acted with malice and oppression that warranted "punitive damages to be assessed at a separate trial." Alphonse filed a notice of appeal. Alphonse's notice identified only the May 20 "judgment."

The Fifth Appellate District dismissed the appeal. The Court held that a purported "judgment" filed by the trial court was actually an interlocutory decision and therefore could not be appealed.

Bean v. Pacific Coast Elevator Corporation
(2015) 234 Cal.App.4th 1423
March 10, 2015

Daniel Bean sued Pacific Coast Elevator Corporation for his injuries following a car accident involving a Pacific Coast employee. A jury found Pacific Coast negligent and awarded Bean $1,271,594.74 in damages. The trial court granted Bean's motion for prejudgment interest, and awarded him $34,830 in costs. The court entered judgment in the amount of $1,306,424.74 in Bean's favor and ordered prejudgment interest to be calculated on the entire judgment. Pacific Coast appealed contending that the trial court erred in awarding prejudgment interest on Bean's costs because, pursuant to *Civil Code* § 3291, prejudgment interest should have been awarded only on the damages that the jury awarded in its verdict.

The Fourth Appellate District reversed in part the judgment. In the published portion of its opinion, the Court held that *Civil Code* § 3291 does not provide for an award of prejudgment interest on costs.

BNSF Railway Company v. Superior Court (Kralovetz)
(2015) 235 Cal.App.4th 591
March 27, 2015

Vicki Kralovetz and others filed a wrongful death action against BNSF Railway Company's predecessor in interest. They alleged that decedent Peter Kralovetz developed and died from malignant pleural mesothelioma as a result of exposure to asbestos. The exposure allegedly occurred in Wichita, Kansas, where decedent once worked at a dismantling facility and roundhouse owned by BNSF's predecessor. BNSF moved to quash service of the summons for lack of personal jurisdiction. BNSF argued the trial court lacked specific personal jurisdiction over it because the conduct alleged against it did not arise from BNSF's in-state activities. BNSF also argued the trial court lacked general personal jurisdiction because it was a Delaware corporation with its principal place of business in Texas and accordingly was not "essentially at home" in California for purposes of *Daimler AG v. Bauman* (2014) 134 S. Ct. 746., and *Goodyear Dunlop Tires Operations, S.A. v. Brown* (2011) 131 S. Ct. 2846. BNSF conceded that it had "substantial, systematic, and continuous contacts with California." The trial court denied the motion to quash. BNSF petitioned the court of appeal for a writ of mandate challenging the trial court order.

The Second Appellate District granted the petition for writ of mandate. The Court held that a Delaware corporation with its principal place of business in Texas and no more than 8% of its operations in California was not subject to general personal jurisdiction in California.

Burdick v. Superior Court (Sanderson)
(2015) 233 Cal.App.4th 8
January 14, 2015

California residents John Sanderson and George Taylor sued Illinois residents Douglas Burdick and others for defamation. The complaint alleged Burdick had posted defamatory statements about Sanderson and Taylor on his personal Facebook page. It was undisputed that Burdick resided in Illinois, had never lived or worked in California, and had no financial holdings in California. He posted the alleged defamatory comments on his Facebook page while in Illinois. Burdick moved to quash service of summons based on lack of personal jurisdiction. Relying on the "effects" test set forth in *Calder v. Jones* (1984) 465 U.S. 783, and *Pavlovich v. Superior*

Court (2002) 29 Cal.4th 262., the trial court denied the motion. Burdick petitioned for a writ of mandate/prohibition.

The Fourth Appellate District granted in part the petition for writ of mandate/prohibition. The court held that using Facebook to post defamatory statements about a California resident was insufficient to support specific personal jurisdiction absent a showing that the defendant expressly aimed or specifically directed his intentional conduct at California, rather than merely at the California resident.

Calvo Fisher & Jacob LLP v. Lujan
(2015) 234 Cal.App.4th 608
February 19, 2015

A former client sued prominent Guam attorney David Lujan in California court. The complaint alleged causes of action for legal malpractice, breach of fiduciary duty and fraud, among others, and sought millions of dollars in damages. Lujan retained San Francisco firm Calvo Fisher & Jacob LLP to defend him. The firm's vigorous representation quickly generated significant fees. Lujan paid a portion of the amount due, but ultimately refused to pay the balance. The firm withdrew from the representation and sued Lujan for breach of contract. Prior to trial, the law firm made a *Code of Civil Procedure* § 998 offer to settle the case for $665,818. Lujan did not respond to the offer. Following a lengthy jury trial, the jury returned a verdict for the firm of $945,947.90, the full amount sought. That judgment was upheld on appeal.

The law firm thereafter filed a memorandum of costs and a motion for attorney's fees. As to the latter, the law firm cited the parties' engagement letter, which stated: "In the unlikely event that we are required to institute legal proceedings to collect fees and costs, the prevailing party would be entitled to a reasonable attorney's fees and other costs of collection." Following thousands of pages of briefing and extensive oral argument, the trial court awarded the law firm $1,532,674 in attorney's fees and $123,227 in expert witness fees.

The First Appellate District affirmed the trial court order awarding fees and costs. The Court held that a law firm's engagement letter supported an award of attorney's fees later incurred by the firm in collecting unpaid legal fees.

Dreamweaver Andalusians, LLC v. Prudential Insurance Company of America
(2015) 234 Cal.App.4th 1168
March 3, 2015

Property owners Michael and Lynn Shuler and tenant Dreamweaver Andalusians, LLC, sued neighboring property owner Sunshine Agriculture, Inc., its insurer and others after a hillside on Sunshine's property collapsed onto the Shulers' property, causing extensive damage. According to the plaintiffs, the collapse was triggered when Sierra Pacific Farms, Inc., which farmed Sunshine's land, expanded its agricultural operations onto the hillside. The respondents moved to dismiss, relying on the plaintiffs' failure to join an indispensable party as a defendant: Natural Resource Conservation Service ("NRCS"), a division of the U.S. Department of Agriculture. The respondents alleged that, before expanding agricultural operations to the hillside above appellants' property, Sierra was required to file a plan that satisfied the requirements of the Hillside Erosion Control Ordinance ("HECO"). According to the respondents, the NRCS prepared all the engineering drawings and calculations in support of Sierra's HECO plan, which was approved by the Ventura County Resource Conservation District ("VCRCD"). The respondents argued that although the plaintiffs argued at length regarding the engineering activities that allegedly caused their damage, they had refused to join the NRCS, "the entity that performed all the allegedly defective engineering services." The respondents' motion was supported by NCRS employee Haejin Lee's declaration that she was the sole engineer on the project.

The trial court granted the motion to dismiss without prejudice, finding that because NCRS employee Lee had prepared all of the engineering drawings and calculations in support of the HECO plan submitted by Sierra to the VCRCD, the NCRS was both a necessary and indispensable party. The court observed that the NRCS could not be joined by cross-complaint because it was a federal agency not amenable to suit in a state court. The Shulers and Dreamweaver appealed, arguing that the NCRS was a joint tortfeasor and thus not a necessary party as a matter of law.

The Second Appellate District affirmed the dismissal. The Court held that a federal agency that provided engineering services for a farming project that allegedly triggered a landslide onto a neighbor's property was both a necessary and an indispensable party in the neighbor's resulting lawsuit.

Ducoing Management, Inc. v. Superior Court (Winston & Associates Insurance Brokers, Inc.)
(2015) 234 Cal.App.4th 306
February 10, 2015

Ducoing Management, Inc. ("DMI") and Ducoing Enterprises, Inc. ("DEI") suffered substantial losses when a dishonest payroll manager embezzled more than $90,000. Upon discovering that their insurance coverage did not include employee dishonesty coverage, the two companies sued insurance broker Winston & Associates Insurance Brokers, Inc. and others (collectively, "Winston") for failing to procure for them the coverage they had been promised. At the close of their case-in-chief, the trial court granted nonsuit as to both plaintiffs. The trial court awarded Winston costs of $50,089. On appeal from that judgment, the court of appeal affirmed the judgment of nonsuit as to DMI, but reversed the judgment "in all other respects" and remanded to the trial court for further proceedings. The case was set for retrial of DEI's claims against Winston. Meanwhile, Winston began trying to execute against DMI alone on the full $50,089 cost award. The trial court denied DMI's motion to deem its prior judgment for costs against DMI to be unenforceable. The court construed the appellate disposition affirming the judgment against DMI to include the cost award of $50,089. DMI petitioned the court of appeal for a writ of mandate challenging the trial court's ruling.

The Fourth Appellate District granted the petition for writ of mandate. The Court held that its prior disposition in this case, in which it reversed the underlying judgment in "all" respects other than a grant of nonsuit, included reversal of an underlying award of costs.

Gonsalves v. Li
(2015) 232 Cal.App.4th 1406
January 13, 2015

Car salesman Kenneth Gonsalves was seriously injured when he accompanied customer Ran Li on a test drive of a new car and Li crashed the car. He sued Li for his injuries, alleging Li drove recklessly. The case was tried before a jury. Gonsalves called Li as an adverse witness during his case in chief. Gonsalves' counsel had Li confirm that he prepared responses to Gonsalves' pretrial requests for admission ("RFA's") regarding the crash and swore under penalty of perjury that his responses were true. Over defense counsel's objections, counsel then questioned Li about his negative responses to several of the RFA's, including his refusal to admit that he was driving too fast. At the conclusion of Li's testimony, the trial court admitted in evidence the full sets of the RFA's, special interrogatories that asked Li to explain any denials to the RFA's, and Li's responses to both. The court denied defense counsel's motion to strike and exclude all testimony regarding Li's responses to the RFA's and to admonish the jury to disregard the evidence. In closing argument, plaintiff's counsel urged the jury to consider Li's failure, in response to the

RFA's, to admit that his pressure on the accelerator was a substantial factor in causing the accident. Counsel urged that Li's refusal to admit "some very basic facts about this crash" was evidence of his unwillingness to take responsibility for Gonsalves' injuries. The jury found Li negligent and awarded Gonsalves more than $1.2 M in damages.

The First Appellate District vacated the judgment and remanded for new trial. In the published portion of its opinion, the Court held that the trial court erred in allowing plaintiff's counsel to examine the defendant at trial regarding the defendant's denials of the RFA's that were propounded during discovery.

Gray1 CPB, LLC v. SCC Acquisitions, Inc.
(2015) 233 Cal.App.4th 882
January 27, 2015

In 2009, Gray1 CPB, LLC obtained a judgment against SCC Acquisitions, Inc., and Bruce Elieff. Over the next two years, SCC and Elieff purportedly engaged in a scheme to insulate Elieff's properties from the judgment. Gray1 allegedly incurred more than $3M in attorney's fees in its attempts untangle the various fraudulent transactions that were part of that scheme. On June 8, 2012, counsel for SCC and Elieff hand-delivered to Gray1's attorneys a cashier's check that fully satisfied the outstanding judgment. Gray1's attorneys held the check and, two weeks later, Gray1 moved under *Code of Civil Procedure* § 685.040 for post-judgment costs that included the attorney's fees incurred in attempting to enforce the judgment. Gray1 deposited the cashier's check the following day. The trial court denied Gray1's motion as untimely under § 685.080(a), which requires a motion for costs, including attorney's fees permitted by § 685.040, to be filed before the underlying judgment is fully satisfied.
The Fourth Appellate District affirmed. The Court held that counsel's acceptance of a cashier's check in full payment of a judgment due his client barred the client from moving for the attorney's fees incurred in its collection efforts.

Greenwell v. Auto-Owners Insurance Company
(2015) 233 Cal.App.4th 783
January 27, 2015

Jacob Greenwell resided in California, where he did business as Greenwell Properties. In 2007, Greenwell acquired ownership of an apartment building in Arkansas. Through an Arkansas agency, Greenwell insured the Arkansas building with Auto-Owners Insurance Company. Greenwell's Auto-Owners policy included commercial property coverage for the Arkansas building and commercial general liability coverage for Greenwell Properties, which Greenwell operated from California. Auto-Owners did no business in California except for Greenwell's policy. However, both the commercial property coverage and the commercial general liability coverage in the policy covered some risks, losses, or damages that theoretically could have arisen in California. Auto-Owners annually renewed Greenwell's policy through 2011.

In 2010, Greenwell's Arkansas building was damaged by two fires on successive days. Auto-Owners agreed to treat the two fires as separate losses and Greenwell entered a repair contract. However, Auto-Owners later asserted that both incidents were subject to only a single policy-limit payment.

In 2013, Greenwell filed an action in California against Auto-Owners, alleging breach of contract and bad faith. Greenwell alleged among other things that he had to default on the repair contract and on the secured property loan and sell the building for a nominal amount. Auto-Owners moved to quash service of summons for lack of jurisdiction. The trial court granted the motion, finding that Greenwell did not show Auto-Owners' minimum California contacts necessary to justify personal jurisdiction. Greenwell appealed.

The Third Appellate District affirmed the order. The Court held that an insurer based outside of California, whose policy covered an Arkansas building that was owned by a California insured had insufficient California contacts to support personal jurisdiction over the insurer in the insured's California coverage action.

Hyundai Securities Co., Ltd. v. Lee
(2015) 232 Cal.App.4th 1379
January 13, 2015

Shareholders of Hyundai Securities Co., Ltd., brought a derivative action in Korea against Hyundai chief executive office Ik Chi Lee. The action accused Lee of securities fraud, among other wrongdoing, and resulted in a judgment against Lee for some $24M. The damage award included indemnification for a criminal fine owed by Hyundai based upon Lee's acts. The Korean judgment provided for pre-judgment interest at 5% per annum and post-judgment interest at the Korean statutory rate of 20% per annum. Lee exhausted appellate relief, rendering the Korean judgment final and enforceable.

Hyundai filed suit in California pursuant to the state's Uniform Foreign-Country Money Judgments Recognition Act, seeking recognition of the Korean judgment. The trial court granted summary judgment in favor of Hyundai, awarding it a fixed sum, plus prejudgment interest and post-judgment interest on the California judgment at the rate of 20% per annum. Lee appealed.

The Second Appellate District affirmed in part and reversed in part the judgment and remanded. The Court held that California's Uniform Foreign-Country Money Judgments Recognition Act permits a trial court to recognize a foreign judgment indemnifying a corporate plaintiff for criminal penalties paid by the plaintiff as a result of its officer's unlawful acts.

Ibarra v. Manheim Investments, Inc.
(2015) 733 F.3d 1193
January 8, 2015

Jose Ibarra filed a putative class action against former employer Manheim Investments, Inc., alleging violation of wage and hour laws. Ibarra explicitly alleged in his complaint that "the aggregate claims of the individual class members do not exceed the $5M jurisdictional threshold for federal court under the Class Action Fairness Act [CAFA]." Manheim removed the case to federal court. The district court remanded back to state court, finding that Manheim failed to prove to a legal certainty that the amount in controversy exceeded $5M. Manheim appealed.

The Court of Appeal vacated the district court judgment and remanded. The Court held that where parties disputed satisfaction of the amount-in-controversy requirement for removal of a case to federal court under the CAFA, the district court had to give both parties the opportunity to submit evidence and argument to that court regarding the amount in controversy.

In re Online DVD-Rental Antitrust Litigation
(2015) 779 F.3d 914
February 27, 2015

In 2003, Walmart, Inc. began offering online DVD-rentals in competition with the existing service offered by Netflix, Inc. Netflix maintained the monthly price of its own service and actually increased that price the following year. Netflix did adjust its price downward, however, after competitor Blockbuster entered the market, and in apparent response to rumors that Amazon planned to enter the market as well. Walmart's online DVD-rental business performed poorly during the same period, so that it had only a 1.4% market share, in contrast to Netflix's control of almost 78% of the market. Netflix reached out to Walmart in late 2004 in an attempt to strengthen its position before Amazon entered the market. Ultimately, Netflix later reached an agreement ("Promotion Agreement") with Walmart in which Walmart transferred its online DVD-rental subscribers to Netflix, and Netflix agreed to promote Walmart's DVD sales business. Certain individuals representing a class of Netflix subscribers ("Subscribers") filed several actions alleging that Netflix and Walmart had committed antitrust violations. In particular, the Subscribers alleged that the Promotion Agreement violated §§ 1 and 2 of the

Sherman Act by illegally allocating and monopolizing the online DVD-rental market. The Subscribers' theory of injury was that they paid prices above what could be sustained in a competitive market for one of Netflix's subscription plans because Netflix would have reduced the price of that plan but for its allegedly anticompetitive conduct. The district court granted the Subscribers' motion for certification of a litigation class and subsequently approved Walmart's settlement with the class. The district court granted Netflix's motion for summary judgment as to all claims asserted against it. The court found no per se antitrust violation and that the Subscribers failed to raise a triable issue as to injury-in-fact. The court then awarded Netflix over $710,000 in costs. Of that amount, some $317,000 was taxed as e-discovery and data management costs.

The Court of Appeal affirmed the district court's summary judgment and affirmed in part and reversed in part its award of costs. The Court held that class action plaintiffs failed to raise a triable issue of material fact on their antitrust injury-in-fact claim absent any evidence that Netflix would have reduced its prices if Walmart had remained in the online DVD-rental market rather than entering into a promotion agreement with Netflix. The Court held further that certain costs awarded by the district court for making copies in discovery were not taxable under a properly-narrowed interpretation of the scope of taxable costs.

In re Marriage of M.A.
(2015) 234 Cal.App.4th 894
February 24, 2015

M.A. and M.A. divorced in 2004. Father was ordered to pay child support for the couple's two minor children. In October 2011, the County of San Diego Department of Child Support Services, acting on behalf of the mother, filed a motion to modify father's support obligation. In July 2013, the family court issued a temporary support order and continued the case to November 22. In October 2013, the court heard and granted mother's request for attorney's fees. On the date of the continued hearing, the father filed a statement seeking the commissioner's disqualification under *Code of Civil Procedure* §§ 170.1 and 170.3. The commissioner stated she would not "entertain any…motion on disqualification" at that time. The commissioner then modified the prior temporary support order, in addition to making various other rulings
.
The Fourth Appellate District reversed in part the family court orders. The Court held that a family law commissioner lacked the power to rule on pending matters after she failed to address a statement of disqualification filed against her by one of the parties.

Investors Equity Life Holding Company v. Schmidt
(2015) 233 Cal.App.4th 1363
January 13, 2015

Investors Equity Life Holding Company ("Investors Holding") was a Delaware corporation authorized to transact business in California. In 1991, it became the sole shareholder of Investors Equity Life Insurance Company of Hawaii, Ltd ("IEL"). Investors Holding thereafter engaged in various transactions that, according to Hawaii's Insurance Commissioner, rendered IEL insolvent. The Hawaii Commissioner filed suit to seize and rehabilitate IEL and later obtained an order authorizing IEL's liquidation. Investors Holding challenged that order, and lengthy litigation ensued. In March 2008, Investors Holding allegedly discovered that former Insurance Commissioner Reifurth, his successor Jeffrey Schmidt, and others had siphoned or assisted others to siphon monies from IEL's estate. Investors Holding filed suit in California, alleging causes of action among others for unlawful taking, fraud, and breach of fiduciary duty. The defendants moved to stay or dismiss the California action for forum non conveniens. The trial court granted the motions and stayed the action, finding that Hawaii was a suitable alternative forum and that relevant public and private interests weighed heavily in favor of litigation in Hawaii.

Upon appeal by Investors Holding, the defendants stipulated that they would not contest personal jurisdiction in Hawaii and that any Hawaii limitation statute would be tolled from the date that Investors Holding filed its California action until its prompt re-filing in Hawaii. The court of appeal affirmed, holding that the California action was properly stayed on the ground of forum non conveniens. In upholding the trial court's decision, the court of appeal characterized the plaintiff's claim to California residency as, alternatively, "doubtful" and "erroneous."

On remand, the defendants renewed their motions to dismiss the California action, seizing upon the appellate court's rejection of the plaintiff's claim of residency. The defendants argued that the court's statements were law of the case and reflected a material change in circumstance that warranted an outright dismissal of the case. The trial court agreed and granted the motions to dismiss.

The Fourth Appellate District reversed, holding that the trial court's ruling was an abuse of discretion. The court held that the availability of a suitable alternative forum warranted the stay of a California lawsuit, but did not justify its dismissal.

Kilker v. Stillman
(2015) 233 Cal.App.4th 320
January 16, 2015

Terence and Paula Kilker secured a judgment against Frank Stillman. Specifically, the Kilkers hired a contractor to build a swimming pool on their property. The contractor hired Stillman to do soil testing in connection with that construction. Subsequently, the mastic seal of the pool separated. The Kilkers filed a complaint against the contractor and Stillman. Stillman settled the action by agreeing to pay the Kilkers a specified amount. However, Stillman failed to timely pay the settlement amount and the trial court entered judgment for the Kilkers in that amount. The court then ordered Stillman to produce documents to the Kilkers as to his assets. Stillman failed to comply with that order. The court thus found Stillman in contempt and ordered him, among other things, to pay the Kilkers their attorney's fees, costs, and interest. The Kilkers served a writ of execution on Preferred Bank to levy funds in Stillman's account to recover the fees award. Stillman submitted a claim of exemption, contending that the funds in the account were Social Security payments that were exempt from levy under 42 *United States Code* § 407. The Kilkers opposed Stillman's claim, arguing that under *Code of Civil Procedure* § 704.080, only Social Security funds that were directly deposited by the government into Stillman's account were protected by the § 407 exemption. The court found that Stillman's account contained only Social Security payments. However, the court denied Stillman's § 407 exemption claim, finding that the account funds were not directly deposited by the government. Stillman appealed but subsequently satisfied the judgment.

The Fourth Appellate District reversed the trial court's order. The Court held that Social Security funds in a judgment debtor's bank account were protected from levy by federal law even if the funds were not directly deposited by the government.

LaCross v. Knight Transportation, Inc.
(2015) 775 F.3d 1200
January 8, 2015

Patrick LaCross, Robert Lira, and Matthew Lofton (collectively, "LaCross") were owner-operator truck drivers who performed work for Knight Transportation, Inc., and Knight Truck and Trailer Sales, LLC (collectively, "Knight"). LaCross filed a putative class action against Knight in California state court. LaCross alleged that Knight misclassified him as an independent contractor and violated other provisions of state labor law. Knight removed the case to federal court. Under 28 *United States Code* § 1332(d) of the Class Action Fairness Act ("CAFA"), Knight estimated the amount in controversy for reimbursing LaCross' lease-related and fuel costs. Those costs were at issue because under California *Labor Code* § 2802, if LaCross showed that he was an employee, Knight would be liable for LaCross' expenditures related to the ownership and operation of LaCross' truck. LaCross moved to remand to state court. The district court granted the motion, finding that Knight did not meet its § 1332(d) burden to prove the amount in controversy because all of Knight's calculations relied on a flawed assumption that all drivers worked 50 weeks per year. Knight appealed.

The Court of Appeal reversed the judgment of the district court and remanded. The Court held that reasonable assumptions underlay a trucking company's estimate for removal purposes of the amount in controversy, amount that was not facially apparent in its drivers' complaint.

Linda Vista Village San Diego Home Owners Association, Inc. v. Tecolote Investors, LLC
(2015) 234 Cal.App.4th 166
January 27, 2015

In 1979, the City of San Diego entered into a 55-year master lease with Tecolote Investors, LLC and others, and their predecessors in interest, for property owned by the city. The lease provided for the property to be developed into a mobile home park. In 1983, the master lease was amended to permit annual rent increases for the lots within the park. The members of the Linda Vista Village San Diego Homeowners Association, Inc. were the sublessees of the lots in the mobile home park. Their subleases incorporated the 1983 amendments permitting annual rent increases. In 2012, following a dispute over rent increases, the association filed suit against the city and the landlords, including Tecolote, challenging the validity of the 1979 master lease. The association argued that the lease violated San Diego City Charter § 219, which restricted the leasing of certain Pueblo lands. § 219 required approval by city council ordinance and city voters for any sale or lease of these lands for more than 15 years. Since no voter approval was sought or obtained, the association alleges the city was without power to enter into the 1979 master lease of the park site. The association sought decrees to invalidate the master lease and its subleases, including the 1983 provisions allowing periodic rent increases.
The landlords demurred, arguing the parcel of property at issue did not fall within the ambit of § 219. They submitted evidence of the recorded ownership history of the park site and surrounding areas. That history showed that the United States came into ownership in 1847 of many parcels of "Pueblo lands," including the parcels where the park site was now located. By the 1850's and as confirmed by an 1874 patent deed, the United States recognized the claim of the city to all property rights in those historic Pueblo lands. Beginning in the 1850's, the city transferred its ownership of many of the Pueblo lands properties to various private landowners. In the 1940's, all existing private landowners of approximately 297 acres around and including the parcels became subject to judgments of eminent domain takings by the federal government. And, in 1959, the federal government recorded a quitclaim deed back to the city of all those holdings.

The trial court sustained the landlords' demurrer without leave to amend and dismissed the case, finding that § 219 did not apply.

The Fourth Appellate District affirmed the judgment. The Court held that a city ordinance restricting the transfer or lease of city-owned "Pueblo lands" applied only to parcels owned by the city at the time the ordinance first took effect.

Loanvest I, LLC v. Utrecht
(2015) 233 Cal.App.4th 496
March 26, 2015

James Madow sued Loanvest I, LLC and others. Loanvest retained attorney Paul Utrecht to represent it. Utrecht successfully opposed Madow's motion for a preliminary injunction. Pursuant to a subsequent settlement agreement, Madow assumed control of Loanvest. Loanvest, with Madow at the helm, thereafter sued Utrecht for malpractice, alleging that Utrecht had breached his fiduciary duty to Loanvest as the result of a conflict of interest. The trial court granted Utrecht's special motion to strike the complaint as a SLAPP suit, finding that Loanvest's claim was based on Utrecht's actions in furtherance of the right of petition and that Loanvest had failed to make a prima facie showing of its ability to prevail.

The First Appellate District reversed the judgment. The Court held that the trial court erred in finding that an attorney's alleged breach of the fiduciary duty owed to his client constituted protected activity for purposes of the anti-SLAPP statute.

Lydig Construction, Inc. v. Martinez Steel Corporation
(2015) 234 Cal.App.4th 937
February 26, 2015

Lydig Construction, Inc. was chosen to serve as general construction contractor on a public works project in San Bernardino County. After receiving the project, Lydig entered into a subcontract with Martinez Steel Corporation, which had bid to supply rebar. Martinez was unable to perform under the subcontract after its steel supplier refused to go forward on anything other than a cash basis. Lydig elected to buy steel from the supplier for shipment to Martinez for fabrication as rebar. Lydig later discovered that Martinez had diverted many tons of the steel to other projects. Lydig began obtaining rebar from another supplier, and it initiated a formal process to replace Martinez as rebar subcontractor on the public works project. The county approved termination of Martinez's subcontract after a hearing, and Lydig entered into a contract with another supplier.

Lydig sued Martinez for breach of its subcontract. The following month, Lydig applied for a right to attach order and writs of attachment. Lydig offered supporting declarations from its employees, as well as its pertinent accounting and other business records. Among the records was a verified copy of the county hearing officer's determination that Lydig could terminate Martinez's subcontract and obtain needed rebar from another supplier. Martinez opposed the application, offering an employee declaration contending that Lydig owed it for, among other items, steel Martinez had delivered to the project. In addition, shortly before the hearing on Lydig's motion, Martinez filed a cross-complaint in which it alleged claims that, if successful, would entirely offset Lydig's claims against it. Upon hearing, the trial court granted the application for attachment, after which Lydig obtained writs of attachment for several counties. Martinez appealed, contending principally that because the claims set out in its cross-complaint exceeded the amount Lydig said it was owed, the trial court lacked authority to grant Lydig's application for a right to attach order.

The Fourth Appellate District affirmed the trial court's right to attach order and writs of attachment. The Court held that a construction subcontractor's cross-complaint did not bar a trial court from granting the general contractor's application for a writ of attachment where the subcontractor failed to establish the probable validity of its purportedly offsetting claims.

Marenco v. DirecTV
(2015) 233 Cal.App.4th 1409
February 5, 2015

Francisco Marenco worked for 180 Connect, Inc. As a condition of his employment, Marenco executed an arbitration agreement requiring both parties to submit all claims arising from and related to the employment relationship to binding arbitration. DirecTV LLC later acquired 180 Connect. It assumed all of 180 Connect's assets, debts, rights, responsibilities, liabilities and obligations, and took over as Marenco's employer. Sometime thereafter, Marenco sued DirecTV for violation of state wage and unfair competition laws. DirecTV moved to compel arbitration as the successor to an arbitration agreement between Marenco and 180 Connect. Marenco opposed, arguing that DirecTV lacked standing to enforce the arbitration agreement because it was not a signatory to that agreement. The trial court granted DirecTV's motion to compel arbitration
.

The Second Appellate District affirmed the trial court order. The Court held that where an employee and employer executed a binding arbitration agreement, the employer's successor-in-interest had standing to enforce that agreement.

Murray & Murray v. Raissi Real Estate Development, LLC
(2015) 233 Cal.App.4th 379
January 20, 2015

Law firm Murray & Murray sued Raissi Real Estate Development, LLC for unpaid legal fees. Murray & Murray researched and found six different addresses for Raissi in the public records. After multiple unsuccessful attempts at personal service at those addresses, Murray & Murray obtained permission from the trial court to serve Raissi by publication. After the time for Raissi to respond expired, Murray & Murray obtained a default judgment in the amount of $372,403.81. Raissi first learned of the lawsuit and the default judgment when it received a lien notice from the County of Santa Clara with the abstract of judgment attached. Raissi moved to set aside default and default judgment on the grounds that Murray & Murray failed to comply with *Code of Civil Procedure* § 587, which requires the application for entry of default and default judgment be mailed to the defendant's last known address. Murray & Murray instead declared that Raissi's address was "unknown" to it because it had been unable to personally serve Raissi at any of the addresses it discovered. The trial court denied the motion.

The Sixth Appellate District reversed the judgment and remanded. The Court held that a mailing address is not necessarily "unknown" to a plaintiff merely because personal service cannot be executed at that address.

Picot v. Weston
(2015) 780 F.3d 1206
March 19, 2015

Bernard Picot, a California resident, met Michigan resident Dean Weston through the mutual business associate Paul Manos, a resident of Nevada. Weston was involved in automotive technology development through his corporation, which was incorporated and headquartered in Michigan. Manos asked Weston to help in developing hydrogen fuel cell technology in which he and Picot were interested. The effort led to an alleged oral agreement in which Weston would help develop, test, fund, and market a fuel cell electrolyte technology together with Picot and Manos. Weston spent the bulk of his time working on the project at his Michigan office. He twice traveled to California to help with demonstrations for potential clients. Picot and Manos later sold the technology without informing Weston, who claimed he was entitled to one-third of the sale proceeds pursuant to an oral agreement. Weston threatened litigation, causing the buyer to cease making payments to Manos and Picot. Picot and Manos sued Weston in California, seeking a declaration that there was no oral agreement. They also sought damages for intentional interference with their sales contract. Weston removed the action to federal district court and moved to dismiss for lack of personal jurisdiction. The district court granted dismissal.

The Court of Appeal affirmed the district court's dismissal for lack of personal jurisdiction. The Court held that no personal jurisdiction existed in California where a Michigan defendant accused of contract and tort claims neither purposefully availed himself of the privilege of conducting activities in California nor expressly aimed his allegedly tortious conduct at California.

Rodriguez v. Brill
(2015) 234 Cal.App.4th 715
February 20, 2015

Marta Rodriguez and Thomas Brill lived together as husband and wife. When the couple separated, Rodriguez filed a support action. Rodriguez alleged that Brill promised to support her for life and in exchange, she gave up many opportunities to obtain the education and training she would need to support herself. The matter proceeded to trial, but resulted in mistrial. Trial was rescheduled, before which the trial court barred additional discovery. However, when the second trial started, the court allowed the parties to choose whether to proceed with trial or to continue trial and conduct additional discovery. Rodriguez elected to continue trial.

Brill served her with both special interrogatories and a request to produce documents that supported his contentions. Subsequently, Brill twice granted Rodriguez extensions to respond. However, Rodriguez did not respond and Brill moved to compel responses and production. Rodriquez did not oppose Brill's motion and did not appear at hearing. The court granted the motion and ordered Rodriguez to respond without objection within a stated time.

But Rodriguez did not respond. Brill moved among other things for dismissal of the action as a sanction for Rodriguez's failures to respond. For her part, Rodriguez moved for relief under *Code of Civil Procedure* § 473(b), which apparently was treated by all parties as opposition to Brill's motion. Before hearing, Rodriguez served Brill by e-mail with a proposed response to the interrogatories, but did not respond to the production request. Counsel for both parties attended the hearing, at which the court granted the motion, struck the complaint, and entered judgment against Rodriguez.

Subsequently, Rodriguez moved again under § 473(b) for relief from the judgment. Rodriguez alleged that her failures to respond to discovery and to the dismissal were the result of her counsel's neglect. Rodriguez attached her counsel's declaration that acknowledged his negligence. Brill opposed. Rodriguez filed an untimely reply and on the day before hearing, served Brill with verified answers to his interrogatories and a verified response to his request for production.

Following hearing, the court took the matter under submission. Before a decision, Rodriguez filed a notice of appeal that was ostensibly from the dismissal as a discovery sanction and from the constructive denial of her earlier "motion to vacate." Subsequently, the court denied Rodriguez's § 473(b) motion.

Initially, the Court of Appeal affirmed the judgment of dismissal as a sanction. However, the appellate court concluded that the trial court lacked subject matter jurisdiction to deny Rodriguez's § 473(b) motion because the denial occurred after Rodriguez filed her appeal. The court thus, remanded for consideration of Rodriguez's motion. Subsequently, the trial court signed an order prepared by Brill that stated only that Rodriguez's motion was denied.

Sharkey v. O'Neal
(2015) 778 F.3d 767
February 10, 2015

Dennis Sharkey was a California state parolee who had disabilities that required him to use a wheelchair and two canes. In 2006, Sharkey lived in an accessible apartment. That year, Silva Foster, one of Sharkey's parole officers, informed Sharkey that new parole terms included a housing restriction under a California statute that required Sharkey to move. Parole officer Eral O'Neal was assigned to Sharkey's case. O'Neal gave Sharkey only short notice to move. As a result of pain and time-pressure, Sharkey left behind important medical supplies and personal possessions. O'Neal assigned Sharkey to a motel room that lacked the safety features necessary to accommodate his disability. Sharkey complained, but Foster made no attempt to locate a suitable residence. Sharkey sustained injuries in multiple "slip-and-falls" at the motel.

Sharkey also lost access to a federal program that had provided him with in-home medical services because the motel did not meet that program's residence requirements. As a result, Sharkey's medical care providers canceled several scheduled surgeries because Sharkey no longer had a suitable recovery environment. Thereafter, Sharkey was unable to participate in other medically necessary treatments. Sharkey informed Foster and O'Neal of the problems caused by his relocation to the motel and the need for an accessible residence. In 2007, O'Neal moved Sharkey to another motel. However, the second motel lacked access to public transit and thus did not accommodate Sharkey's disability-related needs.

In 2011, Sharkey filed a lawsuit against O'Neal, Foster, and others (collectively, "O'Neal"). Sharkey proceeded *pro se* and *in forma pauperis* and alleged violations of Title II of the Americans with Disabilities Act ("ADA"), Title VII of the Civil Rights Act, and 42 *United States Code* § 1983. The district court dismissed Sharkey's complaint with prejudice, finding that it was time-barred under the California limitation period that applied to personal injury claims. Sharkey appealed.

The Court of Appeals reversed the judgment of the district court and remanded. The Court held that a claim under the ADA that a plaintiff's parole officer moved him from his apartment to a motel that did not accommodate his disability was not time-barred under pertinent California law.

Simplon Ballpark, LLC v. Scull
(2015) 235 Cal.App.4th 660
March 30, 2015

Simplon Ballpark, LLC sued John Scull. After a bench trial, the court entered judgment in favor of Simplon. Scull filed various post-trial motions, including one for judgment notwithstanding the verdict ("JNOV"). Scull served the motions on Simplon by mail. Simplon objected to and moved to strike Scull's post-trial motions on the ground they were untimely filed and served. Simplon contended that, although the proof of service for the post-trial motions stated the motions were served by mail on July 6, the envelope containing the post-trial motions was postmarked July 9. Simplon argued that because the postmark date was more than one day after the date of deposit for mailing contained in the proof of service declaration, service had to be presumed invalid and the trial court lacked jurisdiction to rule on them. The trial court granted Scull's JNOV motion without expressly ruling on Simplon's objection. Simplon appealed.

The Fourth Appellate District affirmed the trial court judgment. The Court held that a party asserting a rebuttable presumption that the opposing party's service of documents by mail was invalid forfeited its claim by failing properly to raise it in the trial court.

Trabert v. Consumer Portfolio Services, Inc.
(2015) 234 Cal.App.4th 1154
March 3, 2015

Shaun Trabert purchased a used vehicle from an automobile dealer under a preprinted industry-drafted installment sales contract. The dealer assigned the sales contract to Consumer Portfolio Services, Inc. Portfolio later repossessed Trabert's vehicle. Trabert filed a class action complaint that alleged that under consumer statutes, Portfolio's repossession/default notices were defective. Portfolio moved to compel arbitration under the sales contract's arbitration agreement. Trabert opposed based on the arbitration agreement's allegedly unconscionable provisions. The trial court agreed with Trabert and denied Portfolio's motion. Portfolio appealed. The appellate court agreed with the trial court's finding of unconscionability, but remanded as to whether the challenged provisions could be severed. On remand, the trial court declined to sever the provisions and again denied Portfolio's motion. Portfolio again appealed.

The Fourth Appellate District reversed and remanded. The Court held that unconscionable arbitration provisions in an auto purchase contract could be severed without affecting the core purpose and intent of the agreement.

Universal Protection Service, L.P. v. Superior Court (Franco)
(2015) 234 Cal.App.4th 1128
February 27, 2015

Floridalma Franco was employed by Universal Protection Service, L.P. Under the terms of an agreement that Franco signed after he was hired, he and Universal agreed to arbitrate dispute relating to their employment relationship and its termination, including wage and hour violations. The arbitration agreement stated that arbitrations would be conducted under the American Arbitration Association ("AAA") rules for employment disputes. Franco filed a class claim for arbitration of Universal's alleged violations of the *Labor Code* and wage orders. Franco alleged that Universal did not pay wages for regular and overtime hours, did not provide required meal and rest breaks, did not reimburse employees for employment-related expenses, and did not provide itemized wage statements. Franco sought to recover civil penalties under the Private Attorneys General Act. Universal filed a civil action for declaratory relief. Universal argued that the trial court, rather than the arbitrator, had to decide whether class, collective, or other representative arbitration was available under the arbitration agreement. Franco subsequently moved to compel arbitration. The court granted the motion, finding that it was the arbitrator's task to decide whether Franco's class claims were subject to arbitration. Universal petitioned for writ of mandate to stay the proceedings and to deny Franco's motion.

The Fourth Appellate District denied the petition for writ of mandate. The Court held that the consent of parties to use AAA rules indicated their clear and unequivocal agreement that the arbitrator would decide the arbitrability of class claims in accordance with those rules.

Velasquez v. Centrome, Inc.
(2015) 233 Cal.App.4th 1191
January 30, 2015

Over a two-year period, Wilfredo Velasquez was exposed to the chemical compound diacetyl in his work for a food flavoring manufacturer. One year after leaving that job, he was diagnosed with a rare and deadly lung disease. He sued dacetyl distributor Centrome, Inc. for his injuries. Velasquez moved in limine to exclude any evidence of or reference to his undocumented immigrant status or his alleged use of falsified information and documents to obtain employment. Velasquez argued that evidence on such matters was irrelevant since he was not claiming loss of earnings or earnings capacity. Centrome opposed, arguing that evidence of Velasquez's immigration status was admissible for the limited purpose of allowing expert testimony on his ability to participate in a lung transplant, which his complaint alleged he would need in the future. At hearing on Velasquez's motion, physician David Ross testified to the likelihood that Velasquez would require a lung transplant. He also testified that his team at UCLA had never rejected a lung transplant candidate because of national origin or because the patient was an undocumented worker. He further indicated that the policies of the United Network for Organ Sharing ("UNOS") allowed up to 5% of the transplants performed in a year to be conducted on foreign nationals. Regarding the issue of a transplant candidate's illegal immigration status, Dr. Ross testified that this was an issue "that would have to be discussed" by the transplant committee. He stated further only that it "could" have an impact on a candidate's eligibility for transplant, along with myriad other factors. The trial court ultimately denied Velasquez's motion to exclude, finding "no question" but that Velasquez's immigration status would play a role at trial. The court thereafter instructed the jury that Velasquez was an undocumented immigrant. At trial, both party's experts eventually testified that UNOS policies precluded consideration of alienage status in a transplant decision. Velasquez's motions for mistrial were denied and the trial resulted in a jury verdict in favor of Centrome.

The Second Appellate District reversed the judgment. The Court agreed with Velasquez that when an undocumented immigrant plaintiff files a personal injury action, but does not claim damages for lost earnings or earnings capacity, evidence of his or her immigration status is irrelevant. The Court reasoned that Dr. Ross testified only that he would have to "look into the issue" of whether UNOS policy allowed his team to consider immigration status in granting a lung transplant and never testified he was certain it would or could be considered, and subsequent testimony made clear that that UNOS policies precluded consideration of alienage status in a transplant decision. As such, the Court determined that evidence of Velasquez's immigration status was simply irrelevant. When evidence of a plaintiff's immigration status is irrelevant to the issue of whether or not he will receive future medical treatment, it is inadmissible. Therefore, the Court held that the trial court erred in disclosing a personal injury plaintiff's undocumented immigration status to the jury.

York v. Strong
(2015) WL 1086240
March 10, 2015

Michael York and Kathleen Strong were attorneys who each represented the same client at different times in the litigation of a single matter. York sued Strong over their competing claims to share in a settlement that was paid to that client. Strong specially moved under *Code of Civil Procedure* § 425.16 to strike York's complaint as a SLAPP action. The trial court granted the motion. Under § 425.16(c)(1), the court also awarded Strong mandatory attorney's fees against York. Thereafter, Strong incurred additional fees in her efforts to collect the judgment against York that included the court's fee award. All those efforts were unsuccessful. Strong thus moved under *Code of Civil Procedure* § 685.040 for an additional award of post-judgment fees. The court denied the motion, based solely on its finding that § 685.040 did not allow recovery of fees incurred to enforce a mandatory fee award following a successful anti-SLAPP motion. Strong appealed.

The Fourth Appellate District reversed the order and remanded. The Court held that § 685.040 authorizes post-judgment attorney's fees incurred in enforcing a judgment for fees awarded for the successful defense of a SLAPP suit under § 425.16.

Torts

Belle Terre Ranch, Inc. v. Wilson
(2015) 232 Cal.App.4th 1458
January 13, 2015

Belle Terre Ranch, Inc. sued Kenneth Wilson to quiet title to the disputed strip of land and for trespass. Belle Terre also sought a permanent injunction barring Wilson from trespassing, as well as attorney's fees and costs. The complaint did not request damages. The trial court entered judgment quieting title in favor of Belle Terre. The court also permanently enjoined Wilson from trespassing on Belle Terre's property and awarded Belle Terre nominal damages of $1 on its claim of trespass. The court thereafter awarded Belle Terre attorney's fees of $116,920 under *Code of Civil Procedure* § 1021.9.

The First Appellate District reversed the trial court's order awarding attorney's fees. The Court held that an award of nominal damages was insufficient, in the absence of any showing of actual damage to real or personal property, to entitle the prevailing party in a trespass action to statutory attorney's fees.

Britton v. Girardi
(2015) 235 Cal.App.4th 721
April 1, 2015

Angela Britton and others were homeowners who suffered damages in the 1994 Northridge earthquake. They hired attorneys Thomas Girardi and others to represent them in litigation against their insurer, State Farm Insurance Company. Court-appointed retired judges presided over a 1997 collective settlement of the matter.

In 2012, one of the parties to the State Farm settlement conducted a random sampling of other plaintiffs' awards in the action. This sampling purportedly revealed that the law firms that represented them had not properly disbursed or accounted for the settlement funds and concealed this conduct from the homeowners. In September 2012 the homeowners sued the law firms. The homeowners alleged they had inadequate information to make an informed consent to the collective settlement because the law firms concealed information from them under the guise of confidentiality and privilege concerning the total amount of the settlement, how much each homeowner was getting, how much the attorneys would be paid, and the amount of deducted costs. The homeowners claimed this information could not be confidential because the amounts allocated to the various homeowners were determined by a retired judge appointed as a referee. Further, the homeowners contended the defendant law firms failed to account for and allegedly misappropriated funds from the settlement proceeds, either through the taking of an excessive share for themselves as fees and costs, or by failing to distribute all of the settlement proceeds. Hence, their "net" settlement proceeds either did not reflect their retainer agreement, or the amount the attorneys represented to them as their gross settlement was in fact less than the amount actually awarded to them. The trial court sustained the law firms' demurrers on the grounds that the homeowners' claims were based on speculation and were barred by the statutes of limitations set forth in *Code Civil Procedure* §§ 340.6 and 338(d).

The Court of Appeal affirmed the judgment. The Court held that the plaintiffs alleged facts that should have put them on inquiry notice of their fraud claim against their attorneys, thus starting the running of the fraud statute of limitations and rendering their complaint, filed more than a dozen years later, untimely.

Conti v. Watchtower Bible and Tract Society of New York, Inc.
(2015) 235 Cal.App.4th 1214
April 13, 2015

In 1994, Jonathan Kendrick was convicted of a misdemeanor after he admitted to touching his fourteen-year-old stepdaughter's breast. In the year leading up to Kendrick's conviction, he and his family discussed the molestation incident with elders in their church, the North Fremont Congregation of Jehovah's Witnesses. One of the Congregation's elders reported "a case of child abuse" to the Congregation and Watchtower Bible and Tract Society of New York, Inc. ("Watchtower"), the Jehovah's Witnesses' headquarters at the time. The Fremont Congregation removed Kendrick from his role as a ministerial servant, and, in keeping with Watchtower policy, information about the molestation was kept confidential. Kendrick was told that he could not work with children as part of his service with the Congregation, and he was further informed he would be watched closely by all of the Congregation's elders. The elders told Kendrick's wife that it was her decision whether to report the incident to police, which she did, ultimately leading to Kendrick's conviction.

Later, Kendrick found his way into the family of Candace Conti, who were fellow members of the Fremont Congregation. According to Conti, Kendrick began molesting her around the time she turned nine years old in late 1994. The molestations continued several times a month for some two years, generally occurring at Kendrick's home after Congregation meetings and during "field service," a church-sponsored activity where members went door-to-door preaching in the community. During field service, in particular, Kendrick had unsupervised access to Conti. Conti sued Watchtower, the Fremont Congregation, and Kendrick for damages for sexual abuse. Conti alleged willful acts by Kendrick and negligence in the defendants' failure to warn members of the Congregation that Kendrick was a child molester, and in failing to restrict and supervise his participation in church activities. Conti included a cause of action for "acts of malice" supporting punitive damages against Watchtower, based upon its "secrecy policy" in relation to child sexual abusers despite knowing of their likelihood of re-offending.

At trial, the trial court instructed the jury that the defendants had a duty to take reasonable protective measures to protect Conti from the risk of sexual abuse by Kendrick, and that the presence or absence of any warning was a factor that the jurors could consider. The jury found Kendrick, Watchtower, and the Congregation liable, and apportioned fault 60% to Kendrick, 27% to Watchtower, and 13% to the Congregation. Conti accepted a reduced punitive damages award, and the judgment was entered accordingly

The Court of Appeal affirmed the judgment in part, reversed in part, and remanded the action with directions. The Court held that the church had no duty to warn its congregation or a child molestation victim's parents that a church member molested another child in the past. The court held further that the church did have a duty to limit and supervise the child molester's "field service," which involved door-to-door preaching in the community, in light of his history of child molestation

Contra Costa County v. Pinole Point Properties, LLC
(2015) 235 Cal.App.4th 914
April 3, 2015

Contra Costa County owned a drainage system in the Montalvin Manor neighborhood. The drainage system connected to a drainage channel ("Drainage Channel") on adjacent property owned by Pinole Point Properties, LLC. After experiencing storm-related flooding, homeowners in the neighborhood sued the County. The County cross-complained against Pinole Point for nuisance and negligence. The County alleged that Pinole Point was responsible for the flooding by permitting the Drainage Channel to be blocked with debris and vegetation, requiring that the County incur costs for pumping away storm waters. Pinole Point filed a cross-complaint against the County, which included claims for negligence and inverse condemnation.

The County and Pinole Point settled with the homeowners and proceeded to a bench trial on their claims against each other. Evidence at trial indicated that railroad berms on and near the Pinole Point property trapped water on the property, and that construction of Montalvin Manor in the 1950s substantially increased the amount and flow of water discharged there. By 1957, the Drainage Channel had been constructed to directly convey water from a pipe in one berm to a culvert in another. The Drainage Channel had been kept clear of vegetation and debris by the former property owner, and was open and obvious, when Pinole Point bought the property in 1979. Evidence also showed that Pinole point had not maintained the Drainage Channel, so that over time it became obstructed with trees, bushes, debris, and sediment. The County had repeatedly warned Pinole Point that the area would flood if the situation were not addressed.

The trial court, applying the reasonableness test set forth in *Keys v. Romley* (1966) 64 Cal.2d 396 and *Locklin v. City of Lafayette* (1994) 7 Cal.4th 327, found in favor of the County and against Pinole Point. The Court determined that the drainage channel was a natural watercourse, that the County's conduct with respect to its property had been reasonable, and that Pinole Point's failure to maintain the drainage channel had been "entirely unreasonable" in light of its actual or constructive knowledge when purchasing the property of the existence of the drainage channel and the need to keep it clear of debris to prevent flooding to the adjacent homeowners. The court awarded damages to the County and ordered Pinole Point to clear and maintain the obstructed drainage channel. Pinole Point contended on appeal that it had no legal duty as the downstream property owner to maintain the drainage channel, especially since it did not create any diversion or obstruction to the flow of the water. Even if it had a duty, the County's conduct, according to Pinole Point, was unreasonable and therefore the County should be liable for all costs related to maintaining the drainage system.

The Court of Appeal affirmed the judgment. The Court held that a property owner's unreasonable failure to maintain a "natural watercourse" drainage channel rendered it liable for storm water flooding of adjacent property.

Eriksson v. Nunnink
(2015) 233 Cal.App.4th 708
January 27, 2015

Karan and Stan Eriksson's 17-year old daughter Mia was an equestrian event competitor. She trained with professional riding coach Kristi Nunnink. In May 2006, Mia and Nunnink entered into a release of liability agreement in which Mia, as "Rider," agreed to release Nunnink, as "Trainer," from all liability except for damages caused by Nunnink's "direct, willful and wanton negligence." Karan also signed the release as the "Rider's Parent." In November 2006, Mia was killed during a competition when her horse fell on her. Mia's parents were watching when she was died. The Erikssons sued Nunnink for wrongful death and negligent infliction of emotional distress. After the presentation of the Erikssons' case-in-chief, the court granted Nunnink's motion for entry of judgment under *Code of Civil Procedure* § 631.8, relying on the release executed by Mia.

The Fourth Appellate District affirmed the judgment. The Court held that a minor's release of liability was enforceable against her parents in their subsequent wrongful death action against her equestrian coach.

Fazio v. Fairbanks Ranch Country Club
(2015) 233 Cal.App.4th 1053
January 29, 2015

Robert Fazio was a professional musician. Fazio worked for a booking agency performing with other musicians at Fairbanks Ranch Country Club. Fairbanks owned a stage and its employees put that stage together on the day of the performance. That afternoon, Fazio set up his equipment on the stage. In doing so, Fazio stepped off the side of the stage, fell into a gap at the end of one of the stage risers, and was injured. Fazio sued Fairbanks alleging among other things that Fairbanks was negligent in constructing a defective and dangerous stage. Fairbanks moved for summary judgment, arguing that it owed no duty to Fazio because as a musician who regularly performed on stage, Fazio assumed the risk of falling. The trial court granted the motion, finding that Fazio assumed the risk and that there was no admissible evidence of a triable issue as to whether Fairbanks increased the inherent risk of performing on a stage. Fazio appealed.

The Fourth Appellate District reversed the judgment. The Court held that a triable issue of fact did exist as to whether a performance stage from which a musician fell was constructed so as to unreasonably increase the inherent risk of falling.

Grebing v. 24 Hour Fitness USA, Inc.
(2015) 234 Cal.App.4th 631
January 29, 2015

Timothy Grebing was injured while exercising at a facility operated by 24 Hour Fitness USA, Inc. Grebing was using a weight-lifting device known as a “low row machine.” A part of the low row machine failed causing, Grebing to be struck in the head by another part of the device. When Grebing joined 24 Hour, he signed a membership agreement which included a provision that released 24 Hour from liability for injury that resulted from its negligence. Grebing subsequently sued 24 Hour, claiming negligence, product liability, and breach of the implied warranty of merchantability. 24 Hour moved for summary judgment, contending that the release barred Grebing’s claims. Grebing argued in opposition that 24 Hour was grossly negligent, and therefore the release did not relieve it of liability. The trial court granted the motion, finding that the release relieved 24 Hour from liability for its negligence and that there was no evidence of gross negligence. Grebing appealed.

The Second Appellate District affirmed the judgment. The Court held that a health club’s release of liability that a new member signed effectively meant that the member assumed the risks that arose in his use of the club, including the risk of injury from an inadequately maintained exercise machine.

Harb v. City of Bakersfield
(2015) 233 Cal.App.4th 606
January 23, 2015

Mohamad Harb was driving home from work when he had a stroke and drove his car onto a sidewalk. Claudia Payne, the law enforcement officer who arrived at the scene, thought that Harb was intoxicated based on his vomiting, slurred speech, and disorientation. As a result, Payne did not immediately call an ambulance. Rather, following a struggle with Harb, Payne placed him in handcuffs. Eventually, Payne did call for an ambulance based on a wound on Harb’s forehead that seemingly occurred during their struggle. An ambulance from Hall Ambulance Service, Inc. arrived with paramedic Brian Dumont. There was conflicting testimony at trial as to what happened. Nonetheless, Dumont left the scene left without Harb. Later, Harb’s cell phone rang and an officer answered it. The call was from a nurse who called to report a patient’s condition to Harb. The answering officer asked the nurse if Harb could be drunk. The nurse replied that Harb was not drunk and that she believed that Harb had suffered a stroke a few years previously.

After the nurse’s call, the officers called for a second ambulance, which took Harb to the hospital. Harb was treated and survived, but sustained brain damage that left him unable to care for himself. Harb and his wife (collectively, “Harb”) sued the City of Bakersfield and Payne, as well as Hall and Dumont. Harb asserted that the delay in getting him medical treatment made the consequences of his stroke much worse. The case was tried before a jury. The trial court instructed on comparative negligence based on evidence that, prior to this incident, Harb had been prescribed medication for high blood pressure, but had failed to take it, which allegedly contributed to the stroke. The trial court also gave a police immunity instruction which stated that an officer is not liable if the officer is exercising due care. The jury returned a defense verdict. Harb appealed, contending that both instructions were erroneous.

The Fifth Appellate District reversed the judgment and remanded. The Court held that a Harb's failure to take his high blood pressure medication before his stroke was not comparative negligence where Harb sued the defendants for negligent aggravation of the effects of the stroke.

I-CA Enterprises, Inc. v. Palram Americas, Inc.
(2015) 235 Cal.App.4th 257
February 18, 2015

Israeli manufacturer Palram Americas, Inc. manufactured corrugated panels. California importer I-CA Enterprises, Inc. entered into a contract with Palram to import the panels to the United States. Palram's panels attached to structures with wooden closures. When a local wood supplier edged Palram out of that market, I-CA undertook to find a company that could manufacture plastic closure strips for Palram. I-CA entered into a contract with Israeli plastics manufacturer Plasgad Plastic Products Agricultural Cooperative Ltd. of Kibbutz Gadot to manufacture the plastic closure strips. I-CA, in turn, sold the strips to Palram. I-CA was the exclusive distributor for the plastic closure strips in North America, and Palram was the sole buyer. It was not long before Palram and Plasgad realized they could cut out the middleman and deal directly with each other. They both cancelled their contracts with I-CA, causing I-CA's business to collapse. I-CA sued both Palram and Plasgad for breach of contract, tortious interference with contractual relations, and accounting. I-CA sought punitive damages against both manufacturers. Plasgad filed a cross-complaint against I-CA for monies owed for prior deliveries of corrugated panels. The case was tried before a jury.

The jury found that contracts existed between I-CA and both Palram and Plasgad, that each company knew of the other company's contract with I-CA and intentionally disrupted that contract. The jury found that I-CA was harmed by the disruption and that each company's conduct was a substantial factor in causing that harm. The jury found that Palram and Plasgad were each separately liable to I-CA for $225,137.62. The jury also found that I-CA owed $327,396.96 to Plasgad for delivered goods.

The court granted Plasgad's motion for nonsuit as to punitive damages based on I-CA's inability to produce evidence regarding Plasgad's financial condition. The court found that because Plasgad was not a California resident, the court lacked the power, under *Code of Civil Procedure* § 1989, to compel Plasgad to produce documents. It was undisputed that Plasgad and its officers and other personnel were nonresidents. The court rejected I-CA's volunteer of expert testimony regarding Plasgad's financial condition as reported in Dun & Bradstreet (D&B) as inadmissible hearsay. The jury awarded punitive damages against Palram in the sum of $3M.

The trial court granted Palram's motion for judgment notwithstanding the verdict, finding no substantial evidence to support the jury's findings malice, oppression or fraud. I-CA and Palram appealed. I-CA argued, among other things, that it was entitled to a joint and several judgments against both defendants in the amount of $450,275.25.

The Second Appellate District affirmed the trial court's judgment. The Court held that joint and several liability did not apply to two defendants when each of which was found to have interfered with plaintiff's contract with the other.

Jackson v. AEG Live, LLC
(2015) 233 Cal.App.4th 1156
January 30, 2015

AEG Live, LLC hired Dr. Conrad Murray as Michael Jackson's personal physician for a concert tour. Michael died of acute propofol intoxication while under Dr. Murray's care. Michael's mother Katherine Jackson, acting on behalf of herself and as guardian ad litem for Michael's three children, sued AEG, asserting causes of action for negligence, negligent hiring, training and supervision, and respondeat superior. As to the cause of action for negligence, the Jacksons argued that AEG's duty of ordinary care in this case included a duty not to pressure Dr. Murray to protect AEG's interests over Michael's health and safety, particularly in light of the conflict of interest created by the hiring relationship and AEG's knowledge of Michael's deteriorating health. The trial court granted summary adjudication in favor of AEG on the causes of action for negligence and respondeat superior. The remaining cause of action for negligence hiring, retention, and supervision went to the jury, which found AEG did hire Dr. Murray, but that he was not unfit or incompetent to perform the work for which he was hired.

The Second Appellate District affirmed the judgment. The Court held that it was not reasonably foreseeable that pressuring Dr. Murray who was hired to care for Michael Jackson in order to keep him healthy for a concert tour would result in the physician providing Michael with unsupervised access to a dangerous and powerful sedative.

Keys v. Alta Bates Summit Medical Center
(2015) 235 Cal.App.4th 484
February 23, 2015

Madeline Knox underwent thyroid surgery at Alta Bates Summit Medical Center. Following the surgery, Knox had difficulty breathing. Medical personnel twice suctioned Knox's mouth and removed some secretions. Knox's surgeon was called. The surgeon also suctioned Knox's mouth and nose. As the surgeon removed Knox's bandages and began to remove the sutures on her incision to relieve pressure, Knox stopped breathing. Knox was without a pulse for several minutes and as a result of her blocked airway, suffered permanent brain injury. Knox was transferred to the intensive care unit where she died after life support was withdrawn some ten days after her surgery. Knox's daughter, Phyllis Keys, and sister, Erma Smith, both accompanied Knox to Alta Bates and saw her immediately after the surgery. It was Keys who asked a nurse to call the surgeon because Knox appeared uncomfortable and her post-surgical condition was not improving. Both Keys and Smith were present and saw Knox's eyes roll back and her arm go up as she stopped breathing. Keys, Smith, and Keys' sister Starlette Settles sued Alta Bates, alleging claims for wrongful death and negligent infliction of emotional distress ("NIED"). A jury awarded Keys and Settles damages for wrongful death and Keys and Smith damages for NIED. Alta Bates appealed from the damages awards for NIED. Alta Bates argued that there was no evidence to support the jury's finding that Keys and Smith meaningfully comprehended the medical negligence that led to Knox's death at the time that negligence occurred.

The First Appellate District affirmed the judgment. The Court held that substantial evidence supported the jury's finding that a decedent's family meaningfully comprehended the medical negligence that led to the death at the time that negligence occurred.

McClellan v. I-Flow Corporation
(2015) 776 F.3d 1035
January 23, 2015

After failed shoulder surgery, Christina McClellan sued manufacturer I-Flow Corporation and distributors DJO, LLC and DJO Inc., for negligently failing to warn of limitations in the use of an infusion pump device used in her surgery. McClellan also alleged that I-Flow was strictly liable for the device being unreasonably dangerous due to the lack of adequate warnings. The device, known as the "PainBuster", was regulated under the Medical Device Amendments of 1976 ("MDA") to the Food, Drug & Cosmetics Act. Prior to submission of the case to the jury, McClellan requested the jury be instructed on the theory of negligence per se. The district court refused, finding that this and related instructions were preempted because they were an obstacle to the purpose and objective of the MDA. The jury returned a verdict in favor of I-Flow and DJO.

The Court of Appeals vacated the judgment of the district court and remanded. The Court held that negligence per se instruction in a medical device product liability case would not contravene Congressional intent underlying the MDA to the Food, Drug & Cosmetics Act.

Miles v. Deutsche Bank National Trust Company
(2015) 236 Cal.App.4th 394
April 29, 2015

In 2009, John Miles filed a complaint against Deutsche Bank National Trust Company and HomEq Servicing. Miles alleged claims for breach of contract, fraud, negligent misrepresentation, and wrongful foreclosure. According to the complaint, in July 2005, Miles obtained a mortgage loan and executed a promissory note and deed of trust in a stated amount. The promissory note called for interest-only payments for two years. The loan was assigned to Deutsche Bank and serviced by HomEq (collectively, "HomEq").

In 2007, after his principal-and-interest payments commenced, Miles applied for a loan modification. Miles missed several payments. In March 2008, Miles alleged, he and HomEq signed a modification agreement. Miles made a payment under that agreement, but the next month HomEq stated it would no longer honor the agreement. Instead, HomEq sent a new agreement that increased the loan balance with no explanation. However, Miles believed the March agreement was valid and made payments to HomEq under that agreement through June 2008, when HomEq demanded a specified payment to process a new loan modification. HomEq then refused Miles' payments under the March agreement and demanded higher payments. When Miles insisted on the terms of the March agreement, HomEq recorded a notice of default and election to sell the property. In October, HomEq recorded a notice of trustee's sale of the property with a sale date in November. HomEq then told Miles it would give him a new modification if he would send a particular payment. In light of the sale date, Miles complied. HomEq sent no agreement. Instead, HomEq sent a forbearance agreement and demanded an additional payment before it would send a modification agreement. Miles tried to work with HomEq until February 2009, when HomEq sent another loan modification agreement and asked for an upfront payment in a specified amount. Miles alleged that he declined to make that payment. HomEq set a sale date in March 2009. However, Miles obtained a temporary restraining order. Nonetheless, HomEq proceeded with the sale and dispossessed Miles.

HomeEq demurred to Miles' complaint. The trial court sustained the demurrer as to breach of contract, fraud, and negligent misrepresentation. HomeEq moved for summary judgment on Miles' wrongful foreclosure claim. The court granted the motion on the sole basis that Miles could not prove damages because he did not have any equity in the home when it was sold.

The Court of Appeal reversed the judgment. The Court held that, notwithstanding the failure of a plaintiff to show he had equity in his home, his claims of loss of rent and emotional damage raised triable issues as to the alleged tort of wrongful foreclosure.

Paul v. Patton
(2015) 235 Cal.App.4th 1088
April 9, 2015

In 2011, Gilbert Paul retained attorney Richard Patton to draft an amendment to the revocable living trust that Gilbert settled in 1995. Under the 1995 trust, Helen Paul, Gilbert's second wife, was entitled to live in or lease but not to sell the marital home and was also entitled to all of the income from Gilbert's real property known as Quick Stop, but to none of Gilbert's other assets. However, under Patton's draft of the amendment, which Gilbert signed, Helen was entitled to a specified portion of the proceeds of the sale of the martial home, to a stated portion of the income from the Quick Stop property, and to a particular portion of Gilbert's other assets aside from his personal property. In addition to Helen, the beneficiaries of the trust as amended by Patton were Stephen Paul, David Paul, Alan Paul, and Nancy Dybdahl – Gilbert's children by his deceased wife (the "Pauls").

Following Gilbert's death, Stephen and David, as successor trustees, petitioned the probate court to modify the trust amendment. The trustees alleged that Gilbert did not intend to grant Helen an interest in his brokerage accounts and other personal property or in the Quick Stop property. In his deposition, Patton admitted that the trust amendment did not reflect Gilbert's intention that such property was to be divided among his children. Stephen and David settled the action with Helen. Thereafter, the Pauls filed a legal malpractice action against Patton. The Pauls alleged that Patton failed to exercise reasonable care by failing to draft the trust amendment in accord with Gilbert's intentions. Patton demurred, contending that he owed no duty to the Paul children because they were not his clients. The trial court sustained the demurrer without leave to amend. The Pauls appealed.

The Court of Appeal reversed the judgment and remanded. The Court held that on demurrer, it could not be said as a matter of law that an attorney who admitted a drafting error in a decedent's trust amendment did not owe a duty to the intended beneficiaries who were not clients of the attorney.

Pouzbaris v. Prime Healthcare Services-Anaheim, LLP
(2015) 236 Cal.App.4th 116
April 23, 2015

Asama Pouzbaris was patient at Prime Healthcare Services - Anaheim LLP, doing business as West Anaheim Medical Center ("WAMC"). In 2010, Pouzbaris apparently slipped and fell on a recently mopped hospital floor that lacked any warning signs. Two years later, Pouzbaris filed a complaint for premises liability against WAMC that alleged WAMC's negligence in connection with the injuries she sustained in the 2010 slip-and-fall. WAMC moved for summary judgment. WAMC argued that Pouzbaris' action was barred by the one-year limitation period in *Code Civil Procedure* § 340.5 imposed by the Medical Injury Compensation Reform Act ("MICRA"). The trial court granted the motion, finding that under the MICRA and subsequent case law, Pouzbaris' action was for professional negligence because it alleged an injury sustained while she was a patient in WMAC. Pouzbaris appealed, contending that her action was for WMAC's ordinary negligence and subject to the two-year limitation period in § 335.1.

The Court of Appeal reversed the judgment. The Court held that an alleged lack of any warning signs on a hospital's recently mopped floor on which a patient slipped and fell was ordinary negligence subject to a two-year limitation period, not professional negligence within the meaning of *Code Civil Procedure* § 340.5.

Rosas v. BASF Corporation
(2015) 236 Cal.App.4th 1378
May 21, 2015

Ismael Rosas was working at Gold Coast Ingredients, Inc., for about two years when he was transferred to the powder production room in 1996. At that point, his daily duties included working with liquid chemicals such as diacetyl and benzaldehyde to make food flavorings. Rosas began coughing in 2001 or 2002, after experiencing eye, nose and throat irritation. He saw a doctor for flu-like symptoms in 2001 and, after being off work for two or three days, returned with a doctor's note indicating that he had "chronic acute bronchitis." In 2003, Rosas spent four days in the hospital with symptoms of pneumonia. Doctors did not give Rosas a diagnosis or tell him that his illness was work-related. The coughing and flu-like symptoms continued in 2004. In 2005, Rosas asked to be moved to the warehouse to avoid the powder in the powder production area, which he believed related to his increasing cough.

In 2005, Rosas was diagnosed with severe obstructive lung disease, of unclear origin by a pulmonary physician. In 2006, Rosas's primary care physician gave him a note stating that he should not work around chemicals or toxic substances. Soon after, the pulmonary physician indicated that the likely cause of Rosas's disease was an old infection, and that his symptoms might be exacerbated by exposure to strong odors or chemicals. In late 2006, doctors from the National Institute for Occupational Safety and Health met with Gold Coast employees. One of the physicians told Rosas that he had bronchiolitis obliterans caused by diacetyl. Rosas's pulmonary physician came to agree after he was educated about the connection between the flavoring industry and lung disease by a physician with the California Department of Health Services. In a subsequent workers' compensation proceeding, a qualified medical examiner opined that Rosas's injury became permanent and stationary in March 2007. Rosas became totally disabled from working due to a severe and chronic lung infection in 2008.

In October 2008, Rosas sued BASF Corporation and numerous other defendants, contending that they were liable for his lung injuries based on his workplace exposure to diacetyl, a chemical that they manufactured or sold for use in food manufacturing. BASF sought summary judgment, contending that Rosas's claims were barred by limitations because he was on inquiry notice more than two years before he filed suit. According to BASF, limitations accrued at the latest by mid-2005, when Rosas was told that he had severe obstructive lung disease and he asked to be moved out of the powder production area. The trial court ultimately granted the motion.

The Court of Appeal reversed the judgment and remanded the action for further proceedings. The Court held that a trial court erred in granting summary judgment on statute of limitations grounds where triable issues existed.

Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.
(2015) 234 Cal.App.4th 748
February 20, 2015

Between 2009 and 2012 American Asphalt South, Inc., outbid either Roy Allan Slurry Seal, Inc. ("Allan"), or Doug Martin Contracting, Inc. ("Martin"), on 23 public works contracts totaling more than $14.6M to apply a slurry seal protective coating to various roadways throughout Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties. Allan and Martin jointly sued American in those five counties for intentional interference with prospective economic advantage and other torts, alleging that American had only been able to submit the lowest bid by paying its workers less than the statutorily required prevailing wage. Allan and Martin alleged that one or the other of them was the second lowest bidder as to each of the contracts, and they would have been awarded those contracts as the lowest bidder had American's bid included labor costs based on the prevailing wage. They alleged that each contractor's material costs were effectively the same and that the only substantial difference in their bids came from American's unlawfully deflated labor costs. Allan and Martin also alleged causes of action under the Unfair Practices Act ("UPA") and the Unfair Competition Law ("UCL"). American demurred to the complaints, contending, among other things, that Allan and Martin did not have the required existing relationship and reasonable probability of being awarded the contracts that was required to show intentional interference with prospective economic advantage. The Los Angeles Superior Court overruled American's demurrers to the intentional interference with economic advantage and UCL claims, but sustained the demurrer as to the UPA claim with leave to amend. The San Diego Superior Court overruled American's entire demurrer. Finally, the Riverside Superior Court sustained without leave to amend the entire demurrer.

The Second Appellate District affirmed in part and reversed in part the judgment. The Court held that a losing bidder on a public works contract might be able to state a cause of action for intentional interference with prospective economic advantage if it alleges it was the second lowest bidder and would have been awarded the contract but for the winning bidder's submission of a bid that was lower solely due to that bidder's failure to pay its workers the prevailing wage.

State Ready Mix, Inc. v. Moffatt & Nichol
(2015) 232 Cal.App.4th 1227
January 8, 2015

Project manager Bellingham Marine, Inc. hired Major Engineering Marine, Inc., to build a harbor pier. Bellingham hired civil engineering form Moffatt & Nichol to prepare the plans for the pier. Moffatt's plans included specific requirements for the concrete to be used in the pier. Major's contract with Bellingham provided that if the concrete failed to meet Moffatt's strength standard, the concrete would be removed and replaced at Major's expense. Major hired State Ready Mix, Inc., to supply the concrete for the project. State submitted a concrete mix design that stated how Moffatt's strength standard would be met. Review of State's mix design was not a part of Moffatt's job duties. However, at Major's request, Moffatt reviewed and approved State's mix design. The concrete that State finally delivered to the project and that was used in the pier did not meet Moffatt's strength standard. Major was forced to demolish and rebuild the affected portion of the pier. Major sued State to recover the cost of removing and replacing the defective concrete, alleging causes of action for breach of contract and breach of warranty. State cross-complained against Moffatt for implied equitable indemnity and contribution. State alleged that Moffatt did not use reasonable care in reviewing State's concrete mix design. The trial court sustained Moffatt's demurrer without leave to amend, finding that Moffatt was not in privity of contract with Major or State and that the cross-complaint was barred by the economic loss rule.

The Second Appellate district affirmed the judgment. The Court held that the economic loss rule barred a supplier that was sued for delivering a defective product from cross-complaining against a consultant that reviewed its product specifications, at no charge, prior to its delivery of the defective product.

Stofer v. Shapell Industries, Inc.
(2015) 233 Cal.App.4th 176
January 15, 2015

In 2008, Donna Stofer purchased a home from Marcus Laux. In 2010, Stofer sued the homebuilder, Shapell Industries, Inc., for strict liability, negligence, and fraudulent concealment. Stofer alleged that among other things, the home was built on uncompact soil that was unstable and that the home had an inadequate foundation. Stofer alleged that those conditions caused differential movement that damaged the home. Shapell moved for summary judgment, contending that it did not conceal any material information and that Stofer did not have standing to sue because her claims accrued while Laux owned the home. The trial court granted the motion as to Stofer's fraudulent concealment claim. The court denied the motion as to Stofer's other claims, finding a triable factual issue as to whether Stofer owned any claims for design and construction defects. The court held a bench trial on the accrual issue. The court awarded judgment to Shapell, finding that Stofer lacked standing because her claims accrued when Laux owned the home and because Laux did not assign those claims to Stofer. Stofer appealed, contending among other things that a jury had to find the disputed facts as to when and to whom the claims accrued.

The First Appellate District reversed the judgment. The Court held that a jury had to find the disputed facts on which the trial court later based its legal finding that the plaintiff's construction-defect claims did not accrue to her.

Uriell v. Regents of the University of California
(2015) 234 Cal.App.4th 735
January 29, 2015

In the summer of 2007, Barbara Kastan discovered a small lump in her breast. Kastan, who had an extensive family history of breast cancer, immediately consulted a physician. Two physicians at the University of California San Diego Medical Center ("UCSD") examined Kastan and concluded Kastan had simple cysts. Neither physician ordered an MRI or any other follow-up testing. Kastan was diagnosed with advanced and incurable breast cancer in May 2009. She died in December 2010. Kastan's husband and two children sued the Regents of the University of California, alleging a cause of action for wrongful death.

At trial, the family's medical expert testified that Kastan had a common form of breast cancer that was readily amenable to treatment. The expert opined, "to a reasonable degree of medical probability," that Kastan would have survived 10 years had she been treated promptly, even if she had stage 4 cancer in 2007. The trial court instructed the jury on causation with Judicial Council of California Civil Jury Instructions ("CACI") Nos. 430 and 431. CACI No. 430 stated: "A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm. Conduct is not a substantial factor in causing harm if the same harm would have occurred without that conduct." CACI No. 431 stated: "A person's negligence may combine with another factor to cause harm. If you find that UCSD's negligence was a substantial factor in causing the Uriells' harm, then UCSD is responsible for the harm. UCSD cannot avoid responsibility just because some other person, condition, or event was also a substantial factor in causing the harm." The jury rendered a verdict in favor of the family. The Regents appealed, arguing that the trial court's instructions on causation were error.

The Fourth Appellate District affirmed the judgment. The Court held that the trial court properly instructed the jury on the issue of causation in the subject medical malpractice case.

Vargas v. FMI, Inc.
(2015) 233 Cal.App.4th 638
January 23, 2015

FMI, Inc. was a federally licensed motor carrier that operated a shipping distribution center in California. FMI hired contractors, also known as owner/operators, who leased their tractors and drivers to the company. FMI contracted to deliver cargo from California to New Jersey. FMI selected a tractor leased from Eves Express, Inc., and two of Eves' drivers, Jose Vargas and Luis Felipe Villalobos. While Vargas was in the tractor's sleeping compartment during the trip, Villalobos lost control of the vehicle and crashed. Vargas was injured.

Vargas filed suit in California state court, alleging a single count of negligence against FMI, Eves, Eves' principal, and Villalobos. In relevant part, FMI sought summary judgment on the ground that it had implicitly delegated to Vargas, as an independent contractor, all workplace safety responsibilities and tort liabilities. Vargas responded that his negligence claim against FMI was governed by the non-delegable duty doctrine because FMI was operating under a public franchise as a federal motor carrier regulated by the Department of Transportation and state law. The doctrine, Vargas said, barred FMI from delegating its responsibility to the public by characterizing its drivers as independent contractors. The trial court granted summary judgment in favor of FMI and Eves. The court reasoned that in keeping with *Privette v. Superior Court* (1993) 5 Cal.4th 689, the duty to provide a safe working environment was implicitly delegated in all independent contractor agreements, and *Privette* had been extended to service contracts under *SeaBright v. US Airways* (2011) 52 Cal.4th 590.

The Second Appellate District reversed the trial court's judgment. The Court held that FMI failed to show that it had delegated its duty to ensure a safe workplace to an independent contractor truck owner/operator.

Wright v. State of California
(2015) 233 Cal.App.4th 1218
January 30, 2015

Monnie Wright was a correctional officer at San Quentin State Prison and lived on the San Quentin premises, in a unit he rented from his employer, the State. Living on the grounds was not mandatory and Wright paid market rate rent. Wright was injured when he fell in the course of his lengthy walk from his home to his actual place of work and received workers' compensation. He then sued the state, which moved for summary judgment on the ground that workers' compensation was Wright's exclusive remedy, based on the "premises line" rule, which provides that the employment relationship commences once the employee enters the employer's premises. The trial court agreed and granted the motion.

The Court of Appeal reversed, concluding that there were triable issues of fact as to whether Wright's injury arose out of and in the course of his employment. That Court further held that the State did not intend its workers' compensation policy would insure Wright for all injuries suffered on San Quentin grounds, even at or near the home where he lived, is evidenced by the terms of Wright's lease agreement, which required Wright to obtain a "broad policy of comprehensive coverage of public liability insurance, naming the State as the insured."