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SEMI-ANNUAL CALIFORNIA CASE LAW UPDATE

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Bikkina v. Mahadevan
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In 2007, Prem Bikkina entered a Ph.D. program at the McDougall School of Petroleum Engineering at the University of Tulsa ("University"). Jagan Mahadevan was his dissertation advisor and supervisor from 2007 to 2010. Bikkina published a scientific paper on carbon sequestration that Mahadevan believed contained inaccuracies. The dispute over the paper led both Bikkina and Mahadevan to file formal complaints alleging violations of the University's policies. Bikkina completed his Ph.D. and began working at Lawrence Berkeley National Laboratory ("LBNL"). Shortly thereafter, Mahadevan contacted various officials at LBNL to inform them that Bikkina had falsified the data in his papers. Bikkina filed a complaint for damages against Mahadevan alleging four causes of action: (1) libel per se; (2) negligence; (3) intentional infliction of emotional distress and; (4) slander per se.

Mahadevan filed a special motion to strike Bikkina's complaint pursuant to *Code of Civil Procedure* § 425.16 (anti-SLAPP statute). Mahadevan argued that Bikkina improperly sought to chill public discourse on carbon sequestration and its impacts on global warming. Mahadevan asserted that his statements concerned important public issues and constituted protected speech. Bikkina filed an opposition to the motion to strike, arguing Mahadevan's statements were not made in a public forum and did not concern matters of public interest. The trial court denied the motion to strike finding "while the content of any scholarly works may arguably concern a matter of public interest, the facts here do not invoke the SLAPP statute."

The Court of Appeal affirmed the trial court's decision holding that Bikkina showed a prima facie case of libel and slander per se, requiring denial of anti-SLAPP motion regardless of whether suit arose from protected activity, because Mahadevan's written and oral statements stated Bikkina had falsified and plagiarized data in his scientific papers, and Bikkina denied having done so.

Nunez v. Pennisi
(2015) 241 Cal.App.4th 861
October 27, 2015

Joseph Nunez ("Nunez") hoped to establish a commercial fishing business so that his son, Edward, could be become a businessman and entrepreneur. Nunez contracted with Guiseppe Pennisi ("Pennisi") to make necessary repairs to a boat he purchased for his business. When a dispute arose about the quality of Pennisi's work, Nunez sued for

breach of contract, among other claims. Pennisi filed a cross-complaint alleging Nunez had failed to pay amounts due under the contract. Following Nunez's opening statement, the trial court granted the Pennisi's motion for nonsuit. The trial proceeded on Pennisi's claims. The jury returned a verdict against the Nunezes and the court entered judgment in favor of Pennisi.

Thereafter, Pennisi filed a complaint against Nunez and his attorneys alleging they committed the tort of malicious prosecution by filing and pursuing the original claims against t Pennisi. Nunez appealed the order denying his *Code of Civil Procedure* § 425.162 (anti-SLAPP) motion to strike the malicious prosecution complaint and awarding $8,315 in attorney's fees to the Pennisi. On appeal, Nunez challenged both the denial of the anti-SLAPP motion and the award of attorney's fees.

The Court of Appeal reversed the trial court's decision holding that unless a trial court otherwise specifies, a grant of nonsuit in the underlying case is a "legal termination favorable to the plaintiff" for the purposes of a subsequent malicious prosecution action. With respect to the order awarding attorney's fees, the Court held that a reversal is required because the order failed to comply with the requirements of §§ 425.16(c) and 128.5(c).

Arbitration

Garrido v. Air Liquide Industrial U.S. LP
(2015) 241 Cal.App.4th 833
October 26, 2015

Air Liquide produces and distributes industrial gases throughout the United States. Mario Garrido was hired as a truck driver by Air Liquide in June 2009. Upon his hiring, Garrido entered into an "Alternative Dispute Resolution Agreement" (the "ADR agreement"). The ADR agreement stipulates that all disputes arising out of Garrido's employment with Air Liquide are to be resolved through alternative dispute resolution, including arbitration "if necessary." According to its terms, the agreements, and any arbitration proceedings, are governed by the Federal Arbitration Act ("FAA"). Garrido's employment with Air Liquide was eventually terminated and in June 2012, Garrido filed a class action complaint against Air Liquide, alleging various *Labor Code* violations. Air Liquide promptly moved to compel arbitration of Garrido's claims. Garrido opposed the motion, arguing that the FAA does not apply to transportation workers like Garrido.

The trial court denied Air Liquide's motion to compel individual arbitration. It found that the FAA applied due to the express terms of the ADR agreement, which states that the agreement and any proceedings are governed by the FAA. The court found, however, that, even under the FAA, the ADR agreement could not be enforced pursuant to *Gentry v. Superior Court* (2007) 42 Cal.4th 443 (*Gentry*), because, by denying the ability to bring a class claim, the agreement stood as an obstacle to an employee's right to vindicate statutory labor rights. Air Liquide timely appealed.

The Court of Appeal affirmed the trial court's order denying the motion to compel arbitration, holding that that the agreement's class waiver provision is unenforceable and that while the matter is not subject to the FAA, and *Gentry's* holding has not been overturned under California law in situations where the FAA does not apply.

Jenks v. DLA Piper Rudnick Gray Cary US LLP
(2015) 243 Cal.App.4th 1
December 16, 2015

On May 8, 2000, the law firm Gray Cary Ware & Friedenrich ("Gray Cary") sent Todd Jenks a letter offering him employment as an associate attorney with the firm ("Offer Letter"). The Offer Letter included a provision requiring both parties to submit all disputes or claims relating to or arising out of their employment relationship to binding arbitration. Jenks accepted Gray Cary's offer. Gray Cary merged into DLA Piper. On February 19, 2006, Jenks signed a "Confidential Resignation Agreement and General Release of Claims" ("Termination Agreement"). Under the Termination Agreement, DLA Piper agreed to continue to provide Jenks with insurance coverage and other benefits, currently provided by the Firm to him until August 2006, when his employment

with DLA Piper would officially terminate. The Termination Agreement is silent with respect to dispute resolution.

In 2009, Jenks filed a complaint against DLA Piper and Standard Insurance Company alleging four causes of action: (1) breach of the implied covenant of good faith and fair dealing, (2) breach of contract, (3) promissory fraud, and (4) constructive fraud. Jenks contended that while the Termination Agreement obligated DLA Piper to provide him with short-term disability benefits, the firm had "undervalued" his benefits by computing them based on "artificially reduced salary figures." DLA Piper successfully moved to compel arbitration as the successor by merger to an arbitration agreement entered into between plaintiff and his prior employer. After the arbitration was completed, the trial court granted DLA Piper's motion to confirm the award, and denied Jenks' motion for new trial. Jenks appealed.

The Court of Appeal affirmed holding that Jenks' arguments against arbitrability fail on their merits.

Ramos v. Westlake Services LLC
(2015) 242 Cal.App.4th 674
October 30, 2015, publication ordered November 24, 2015

Alfredo Ramos sued Westlake Services, LLC ("Westlake") for causes of actions arising out of their purchase of used automobiles. In the operative first amended complaint, Ramos alleged that he purchased an automobile from Pena's Motors, and negotiations for the relevant transaction were conducted primarily in Spanish. Pena's Motors and its employees had authority to sell and make representations on behalf of Westlake with respect to the sale of its Guaranteed Auto Protection ("GAP") contracts covering automobiles. Westlake eventually charged Ramos for a GAP contract to cover the vehicle he purchased. A copy of the GAP contract was not provided to him in Spanish. Ramos asserted three causes of action based on Westlake's failure to provide a translation of the GAP contract: (1) violation of the Consumers Legal Remedies Act, *Code of Civil Procedure* § 1750, *et seq.*; (2) violation of *Code of Civil Procedure* §1632; and (3) violation of the unfair competition law, *Business and Professions Code* § 17200, *et seq*.

Westlake moved to compel arbitration of Ramos' claims, relying on the arbitration provisions contained in the underlying sales contracts they each had signed. Ramos argued in his opposition to the motion to compel arbitration that there was no agreement to arbitrate between him and Westlake. The contract was negotiated primarily in Spanish and an accurate translation that included the arbitration provision was never provided. The trial court denied Westlake's motion to compel arbitration. Westlake then filed a motion for clarification of the trial court's order. The trial court denied the motion for clarification, but at the hearing stated that its ruling permitted Ramos to make an election to declare the entire English Contract void as a result of the §1632 violation or to stand on the contract, but with the unconscionable arbitration provision excised. Westlake appealed.

The Court of Appeal affirmed holding that arbitration provision appearing only in English version of contract was void for fraud in execution.

Civil Procedure

Behm v. Clear View Technologies
(2015) 241 Cal.App.4th 1
October 8, 2015

Pamela Behm asserted that she was persuaded by the false representations of officers and directors of Clear View Technologies ("CVT") to invest approximately $200,000 in the company. CVT claimed to be developing BarMaster, a product that would measure pours of alcohol with such precision that it would save large sums of money for purveyors of adult beverages and reap great profits for CVT. When CVT had financial difficulties and Behm discovered the product did not have the viability she had been assured, she filed a lawsuit against CVT and its officers and directors seeking compensatory damages. During litigation, CVT failed to produce discovery and to comply with court orders. Behm obtained terminating sanctions and default judgment for over $1.2M, including $924,000 in punitive damages against CVT. Thereafter, CVT moved to vacate the default judgment, arguing that it did not have sufficient notice of the amount of punitive damages under *Code of Civil Procedure* § 425.115 (f) and that it was entitled to mandatory relief from default under § 473(b) because the default was incurred due to the mistake, inadvertence, surprise, or neglect of its prior attorney, Chang Yi. The trial court granted the motion in part, vacating the default judgment after finding the notice of damages was insufficient. However, it denied CVT's request to be relieved from the underlying default. Both parties appealed.

The Court of Appeal affirmed holding that due process requires that when a plaintiff moves for discovery terminating sanctions and seeks punitive damages, a statement under § 425.115(f) must be served a reasonable time before obtaining those sanctions. Notice must be sufficient to afford a defendant the opportunity to fairly appraise the full amount of damages sought by the time he or she needs to respond and oppose the motion.

Catalina Island Yacht Club v. Superior Court (Beatty)
(2015) 242 Cal.App.4th 1116
December 4, 2015

Catalina Island Yacht Club ("Yacht Club") hosts social events for its members and also arranges for its members to dock their boats in Avalon Harbor on Catalina Island. Real party in interest Timothy Beatty and petitioners Charles Boppell, V. Kelley York, Lowell Dreyfus, Tom Nix, and Dave Horst were members of the Yacht Club and its board of directors. In 2013, Beatty sued Petitioners, alleging they conspired to remove him from the board and suspend his membership in the Yacht Club. In December 2013, Beatty served inspection demands on Petitioners seeking written communications and other documents relating to his removal from the Yacht Club's board of directors and

suspension of his membership. In early February 2014, Petitioners served written responses that included objections based on the attorney-client privilege and work product doctrine. Nearly two months later, Petitioners served a privilege log identifying "communications" they withheld from production based on the attorney-client privilege and work product doctrine. Beatty filed a motion to compel Petitioners to produce 167 emails identified in their privilege log, arguing that the Petitioners waived the attorney-client privilege and work product doctrine by failing to timely serve a privilege log that provided sufficient factual information to enable him to evaluate the merits of Petitioners' privilege objections. The trial court granted Beatty's motion and ordered Petitioners to produce the 167 emails within 10 days and to pay $1,140 in monetary sanctions. Petitioners then filed a petition seeking to stay the trial court's order and a writ of mandate compelling the court to vacate that order.

The Court of Appeal granted the petition for writ of mandate. The Court issued a writ of mandate directing the respondent court to vacate its order granting Beatty's motion to compel Petitioners to produce the e-mails, and to issue a new order granting Beatty's motion and compelling Petitioners to serve a supplemental privilege log that identifies each withheld document with particularity and provides sufficient factual information for Beatty and respondent court to evaluate each privilege claim, and awarding Beatty monetary sanctions in an amount to be determined by respondent court.

Dhawan v. Biring
(2015) 241 Cal.App.4th 963
October 28, 2015

Yogesh Dhawan and Manmohan Singh Biring were in a business relationship. After the relationship deteriorated, Dhawan filed a civil complaint in September 2004, alleging 13 contract and fraud-based causes of action against Biring and a corporate defendant, HealthWest, Inc. Dhawan obtained entry of Biring's defaults in February 2005. In August 2005, Dhawan served a statement of damages on defendants. The statement of damages identified a total of $2,153,333 in general and special damages, including $250,000 for emotional distress. It also informed defendants that Dhawan reserved the right to seek an additional $1M in punitive damages. On September 12, 2005, the court issued a default judgment for $1,924,008.64 in money damages, which did not include any damages for emotional distress or punitive damages. Dhawan served defendants with a notice of entry of judgment on September 22, 2005.

On March 1, 2013, Biring filed a motion to vacate and set aside the default judgment the court had entered almost seven years earlier. Biring sought relief arguing the default judgment was void because the damages exceeded the amounts demanded in plaintiff's complaint. After oral arguments, the court granted Biring's motion to vacate the default judgment. Dhawan appealed.

The Court of Appeal affirmed the trial court's order setting aside the default judgment holding that because Dhawan's complaint did not specify the amount of damages sought

which does not meet the requirements of *Code of Civil Procedure* § 580. As such, The Court determined that the default judgment was void and subject to collateral attack at any time.

Garibotti v. Hinkle
(2015) 243 Cal.App.4th 470
December 29, 2015

Nora Garibotti was comedian Joey Bishop's girlfriend and the pair lived together in his Lido Island residence for over 10 years. Bishop died in October 2007, and Garibotti was one of his estate's major beneficiaries. She continued to live in the Lido Island residence for about a year after Bishop's death, until the trustee of the Joey and Sylvia Bishop Revocable Trust ("Trust") began to prepare the residence for sale. During his lifetime, Bishop had hired Bruce Hinkle to perform construction projects at the Lido Island residence based on Hinkle's claim he was a skilled and licensed contractor. Hinkle was neither. After Bishop's death, Hinkle was hired to move items from the home to a storage facility. Hinkle stole, vandalized, damaged or otherwise lost many of the items he was supposed to move to storage.

In October 2009, Garibotti sued Hinkle to recover the items he stole and also damages for his unlicensed and substandard construction work. Hinkle appeared and answered the complaint, but the trial court later struck his answer as a terminating sanction for his repeated failure to appear for deposition. Garibotti obtained a default judgment against Hinkle. Hinkle then filed a motion to vacate the judgment on numerous grounds. The trial court granted the motion in part, concluding that the compensatory damages awarded were excessive because the operative complaint failed to allege the amount that Garibotti sought, and therefore she could not recover any more than the court's $25,000 jurisdictional minimum; Garibotti could not recover punitive damages because she failed to give Hinkle notice of the amount of punitive damages she sought before taking his default; and Garibotti lacked standing to recover for the unlicensed contractor work because she did not personally pay for the work. Garibotti appealed.

The Court of Appeal reversed both the order and revised judgment because the court failed to rule on Hinkle's motion within the jurisdictional time frame established by *Code of Civil Procedure* § 663a(b).

Mitchell v. Superior Court (Johnson)
(2015) 243 Cal.App.4th 269
December 4, 2015

Karla Danette Mitchell filed an action against Ernestine Lisa Johnson, for personal injury and property damage allegedly suffered in an automobile accident in 2012. Mitchell asserts she has incurred wage loss, loss of use of property, hospital and medical expenses, general damage, property damage, loss of earning capacity, and miscellaneous related

damages. Johnson propounded form interrogatories published by the Judicial Council. Interrogatory No. 12.1 relates to general investigation of an incident and provides: "State the name, ADDRESS, and telephone number of each individual: (a) who witnessed the INCIDENT or the events occurring immediately before or after the INCIDENT; (b) who made any statement at the scene of the INCIDENT; (c) who heard any statements made about the INCIDENT by any individual at the scene; and (d) who YOU OR ANYONE ACTING ON YOUR BEHALF claim has knowledge of the INCIDENT…" In response to interrogatory No. 12.1 and to Johnson's request for supplemental answers to interrogatories, Mitchell did not identify any witness to the "incident" except one of her children, Destin Shares, who was a passenger in the vehicle. Subsequently, Mitchell identified several witnesses whom she intended to call at trial who would testify to Mitchell's physical limitations allegedly resulting from the accident. In particular, these witnesses intended to describe how Mitchell's accident-related physical disabilities interfere with her care of her special-needs son, impact the performance of her job as a grocery store worker, and her related lost wage claim and dictate problems in her activities of daily living. None of the three witnessed the accident. Johnson filed a motion in limine to exclude the testimony of any witnesses not previously disclosed in discovery, arguing that the testimony of such witnesses should be excluded as an evidence sanction for Mitchell's failure to divulge their identity in response to interrogatories. The trial court granted Johnson's motion in limine, excluding the testimony of the three witnesses at trial. Mitchell appealed.

The Court of Appeal reversed holding that trial court committed an abuse of discretion by imposing an evidence sanction for Mitchell's alleged failure to respond completely to an interrogatory, where a narrow construction of the interrogatory compelled the conclusion that the answer was complete, and where the ostensible omission was neither willful nor a violation of a court order compelling a response.

Roos v. Honeywell International, Inc.
(2015) 241 Cal.App.4th 1472
filed November 10, 2015

A class-action complaint generally alleged that Honeywell International, Inc. engaged in uncompetitive and illegal conduct to increase its market share of round thermostats and to use its dominant market position to overcharge customers. The plaintiff class certified in February 2012 is composed of persons residing in California who purchased round thermostats indirectly from Honeywell in California as from 1986, to 2013 for their own use and not for resale. The parties reached a settlement and on February 4, 2014, the court preliminarily approved the settlement. The notice of settlement was subsequently published and distributed to class members.

In response to the notice, Art Rogers, Chuck Congdon, Richard Moser, and Amanda Waldenville (the "objectors") filed objections to the amount of the potential award for attorney's fees. Meanwhile, class counsel filed a motion for reimbursement of their fees and costs. The motion sought an award of fees in the amount of $3,056,250 plus

accumulated interest. This amount represented 37.5% of the settlement fund, which was the limit on the amount of fees that could be awarded as represented in the settlement notice to the class. According to class counsel, the amount sought was only 20% of the total fees they incurred. They submitted evidence that they had spent "nearly 36,000 hours" on the case, and they maintained that their lodestar "exceeds $15M." The objectors did not object to this evidence or offer any contradictory evidence. A hearing to consider final approval of the settlement and the award of class counsel's fees was held and none of the objectors appeared at the hearing. The trial court then issued its final written order and judgment. It found that the settlement was "fair, reasonable, and adequate."

The Court of Appeal affirmed the trial court's ruling holding that an award of attorney's fees totaling 37.5 % of recovery to counsel for class action plaintiffs was not an abuse of discretion where there was extensive evidence that this amount was less than the lodestar.

Insurance

Nationwide Mutual Insurance Company v. Shimon
(2015) 243 Cal.App.4th 29
December 3, 2015, publication ordered December 17, 2015

17-year-old driver, Simone Lionudakis ("Simone"), got into a motor vehicle accident, injuring Aweia Shimon and Flora Shimon. Simone was driving a GMC pickup truck owned by and registered to her father, but he had excluded Simone from his insurance policy to save money. Simone's mother, Kristen Doornenbal, had insurance through Nationwide Mutual Insurance Company ("Nationwide") for her own and her current husband's vehicles, but not the GMC. The Doornenbals's Nationwide policy provided coverage for a household family member's use of a "non-owned" vehicle, but not if the non-owned auto was "furnished or available" for her "regular use." The trial court entered declaratory judgment in favor of plaintiff Nationwide against the Shimons as defendants, finding the GMC was furnished or available for Simone's regular use and therefore coverage was excluded. The Shimons appealed.

The Court of Appeal affirmed the trial court's judgment holding that the auto policy's "regular use" exclusion barred coverage where the allegedly negligent driver was the policyholder's minor daughter who was not a named insured and was operating a vehicle that was driven exclusively by her and owned by her father.

Labor and Employment

Cardenas v. M. Fanaian, D.D.S., Inc.
(2015) 240 Cal.App.4th 1167
October 1, 2015

After Rosa Lee Cardenas reported to the Reedley Police Department that a coworker may have stolen her wedding ring at her workplace, she was terminated from her employment as a dental hygienist. Cardenas filed a lawsuit against her employer, M. Fanaian, D.D.S., Inc. ("defendant"), and against Masoud Fanaian, D.D.S. individually, seeking to recover compensatory damages based on two distinct causes of action: (1) retaliation in violation of *Labor Code* § 1102.5 (forbidding employers from retaliating against employees who report violations of law to a law enforcement agency) and (2) wrongful termination in violation of public policy under *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167. The jury found in favor of Cardenas on both causes of action and awarded her $117,768 in damages. The trial court entered judgment on the verdict against defendant. Defendant appealed.

The Court of Appeal affirmed the trial court's judgment holding that the plain and unambiguous language of § 1102.5(b) creates a cause of action for damages against an employer who retaliates against an employee for reporting to law enforcement a theft of her property at the workplace.

Performance Team Freight Systems, Inc. v. Aleman
(2015) 241 Cal.App.4th 1233
November 2, 2015

Performance Team Freight Systems, Inc. ("Performance Team") is a motor carrier company involved in warehousing, shipping, and distributing merchandise. The individual respondents are truck drivers who were employed by Performance Team. The individual respondents filed wage claims for unreimbursed business expenses and improper deductions with the Division of Labor Standards Enforcement ("DLSE"). Following the filing of a wage claim, a California Labor Commissioner may accept the matter and conduct an administrative hearing (commonly known as a "Berman hearing"). In matters where a Berman hearing is held, the commissioner determines whether the claimant was an employee, and issues an order, decision, or award stating, among other things, whether any sums are owed to the claimant.

Prior to commencement of the Berman hearings, Performance Team filed in the superior court a petition to compel arbitration and motion to stay the Berman hearings. Performance Team asserted that each of the individual respondents entered into "Independent Contractor Agreements" that set forth the terms of trucking services to be provided to Performance Team. The agreements contained an arbitration provision

stating: “Any dispute between the parties with respect to the interpretation or the performance of the terms of this Agreement may be submitted to arbitration by reason of either party giving written notice of its desire for arbitration to the other party.” The commissioner opposed Performance Team’s petition arguing that the claims asserted by the individual respondents were not covered by the arbitration provision, that the individual respondents were exempt from the FAA because they were transportation workers, and that, in any event, the agreements were unconscionable. The trial court denied Performance Team’s petition to compel arbitration and its request to stay the Berman hearings. Performance Team timely appealed.

The Court of Appeal reversed holding that the respondents presented no evidence supporting their argument that the agreements were exempt from the FAA, the arbitration provisions were broad enough to cover the claims asserted. Moreover, the Court held that the respondents failed to submit any evidence in support of their additional argument that the agreements were unconscionable, and the trial court, therefore, erred by denying appellant’s petition to compel arbitration.

Prue v. Brady Company/San Diego, Inc.
(2015) 242 Cal.App.4th 1367
November 17, 2015, publication ordered December 11, 2015

In April 2013, Adam Prue filed a complaint against Brady Company/San Diego, Inc. (“Brady”) alleging four causes of action, including a cause of action for wrongful termination in violation of public policy. In June 2011, Prue suffered a work-related injury that arose out of and during the course of employment. On the day of the injury, Prue was in the course and scope of his employment with Brady and on Brady’s property. Brady was immediately notified of Prue’s industrial injury and [he] was treated at an emergency room as approved by Brady’s manager/supervisor. On information and belief, and upon that basis Prue alleges, that Brady was made aware that Prue filed and/or had an intention to file and/or make a claim for workers’ compensation benefits arising out of the industrial accident. Prue was terminated in July 2011.

Brady filed an answer to Prue’s complaint, generally denying its allegations and specifically asserting certain affirmative defenses, including those based on statutes of limitations, workers’ compensation exclusivity, and insufficiency of allegations to support the first cause of action. In December 2013, Brady filed a motion for summary judgment or, in the alternative, summary adjudication of Prue’s causes of action. The trial court granted Brady’s motion for summary judgment. Prue timely appealed.

The Court of Appeal reversed holding that Prue’s complaint adequately alleged facts apprising Brady of his cause of action for wrongful termination in violation of public policy and was timely filed, and therefore the trial court erred in granting Brady’s motion for summary judgment.

Sheridan v. Touchstone Television Productions, LLC
(2015) 241 Cal.App.4th 508
October 20, 2015

Touchstone Television Productions ("Touchstone") hired actress Nicollette Sheridan to appear in the television series *Desperate Housewives*, a show created by Marc Cherry. The agreement was for the show's initial season and gave Touchstone the option to renew the contract on an annual basis for an additional six seasons. Touchstone renewed Sheridan's contract for five seasons, through 2008. Sheridan alleged that during a rehearsal, Sheridan attempted to question Cherry about the script, and he struck her in response. Sheridan complained about the alleged battery to Touchstone. After Touchstone did not renew Sheridan's contract for season 6, she sued Touchstone under *Labor Code* § 6310, alleging that Touchstone fired her in retaliation for her complaint about a battery allegedly committed on her by Cherry. The trial court sustained Touchstone's demurrer to the complaint on the basis that Sheridan failed to exhaust her administrative remedies by filing a claim with the Labor Commissioner. Sheridan appealed.

The Court of Appeal reversed the trial court's decision holding that Sheridan was not required to exhaust her administrative remedies as the relevant statutes make filing of such a claim permissive rather than mandatory.

U.S. Equal Employment Opportunity Commission v. McLane Company, Inc.
(2015) 804 F.3d 1051
October 27, 2015

In January 2008, Damiana Ochoa, a former employee of a McLane Company, Inc., filed a charge with the Equal Employment Opportunity Commission ("EEOC") alleging sex discrimination (based on pregnancy) in violation of Title VII of the Civil Rights Act of 1964. Ochoa alleged that when she tried to return to work after taking maternity leave, McLane informed her that she could not resume her position as unless she passed a physical capability strength test. Ochoa alleged that the company requires all new employees and all employees returning to work following a medical leave to take the test. Based on her failure to pass the test, McLane terminated her employment.

The EEOC notified McLane of Ochoa's charge and began an investigation. McLane voluntarily provided general information about the test and the individuals who had been required to take it. However, McLane refused to disclose what the parties have referred to as "pedigree information" for each test taker (name, social security number, last known address, and telephone number). McLane also refused to disclose, for those employees who had taken the test and were later terminated, when and why their employment was terminated. The EEOC then filed a subpoena enforcement action. The district court granted in part and denied in part the EEOC's request for enforcement. The court required McLane to disclose the following information: the gender of each test taker, the date the test was given, the score the test taker received, the position for which the test

was taken, the passing score for the position in question, and any adverse employment action imposed within 90 days of an employee's taking the test. The court did not require McLane to divulge the pedigree information for each test taker; and for those employees who were terminated after taking the test, the reasons for termination. The EEOC appealed.

The Court of Appeal reversed in part, vacated in part and remanded. The Court held that the district court erred in refusing to compel production of pedigree information (name, social security number, last known address, and telephone number) of other applicants and employees who took a qualifying test because the information was relevant to the EEOC's investigation. District court's order denying enforcement of subpoena's request for the reasons for termination of other employees was also error, in the absence of a ruling on whether requiring the employer to produce that information would in fact be unduly burdensome.

Torts

Brady v. Calsol, Inc.
(2015) 241 Cal.App.4th 1212
October 7, 2015

Ernest Brady and David Gibbs ("plaintiffs") were diagnosed with acute myelogenous leukemia allegedly caused by exposure to Safety-Kleen 105 Solvent during the course of their employment. Plaintiffs brought action against various defendants including Calsol, Inc., a distributor of mineral spirits for the ultimate manufacturer, Safety-Kleen Systems, Inc. Calsol filed a motion for summary judgment based on the raw material or component parts doctrine, which shields a supplier from liability "caused by the finished product into which the component has been incorporated unless the component itself was defective and caused harm." The trial court granted the summary judgment motion.

The Court of Appeal reversed the summary judgment and remanded for further proceedings. The Court held that the component parts doctrine requires a showing the mineral spirits supplied to Safety-Kleen was not inherently dangerous (*Artiglio v. General Electric Co.* (1998) 61 Cal.App.4th 830.) Because Calsol failed to make that showing, there remains a dispute of material fact as to whether mineral spirits are inherently dangerous.

Garcia v. Holt
(2015) 242 Cal.App.4th 600
October 27, 2015, publication ordered November 23, 2015

Michele Holt and Niel Mamerto (the "Mamertos") owned residential property (the "Premises") and leased the Premises to George Jakubec. At some time during the tenancy, Jakubec created homemade explosives and stored explosive devices and materials on the Premises.

The Mamertos hired Mario Garcia ("Mario") in 2005 to maintain the landscaping at the Premises. Mario or his employees worked on the Premises at least once every two weeks throughout the approximately five years leading up to the accident and never noticed anything suspicious or dangerous. On November 18, 2010, Mario was injured when he walked over unstable explosive material on the backside of the Premises and the material exploded under him. Mario and his wife (the "Garcias") sued for premises liability alleging the Mamertos were negligent in the maintenance of the Premises by allowing explosive materials to be kept on the Premises. The Mamertos moved for summary judgment arguing they owed no duty to Mario. In opposition, the Garcias argued the Mamertos had a duty to exercise reasonable care to inspect the Premises periodically because the lease was a month-to-month tenancy. The Garcias further argued there was a triable issue of material fact as to whether the Mamertos breached that duty. The trial court granted summary judgment in favor of the Mamertos on the ground the Mamertos

owed no duty to the Garcias absent actual knowledge of a dangerous condition on the Premises. The Garcias appealed.

The Court of Appeal affirmed the trial court's order holding that a landlord cannot be held liable where he or she had no actual knowledge of a dangerous condition.

Hernandezcueva v. E.F. Brady Company, Inc.
(2015) 243 Cal.App.4th 249
December 22, 2015

Joel and Jovana Hernandezcueva asserted claims for negligence and strict products liability, together with several related claims, against respondent E.F. Brady Company, Inc., alleging that asbestos-containing products it distributed caused Joel Hernandezcueva's mesothelioma. At trial, following presentation of the Hernandezcuevas' case-in-chief, the court ranted E.F. Brady's motion for nonsuit on their claim for strict products liability and some related claims. After the jury returned special verdicts against the Hernandezcuevas on their negligence claim, they filed an unsuccessful motion for a new trial. Jovana Hernandezcueva appealed.

The Court of Appeal affirmed the denial of a new trial, but reversed in part, concluding the trial court erred in granting a nonsuit on the strict products liability claim because the Hernandezcuevas' evidence sufficed to show that E.F. Brady, while acting as a subcontractor in the construction of a commercial building, was in the stream of commerce relating to the asbestos-containing products, for purposes of the imposition of strict liability.

Regents of the University of California v. Superior Court (Rosen)
(2015) 240 Cal.App.4th 1296
October 7, 2015

Katherine Rosen, a student at the University of California, Los Angeles ("UCLA"), suffered severe injuries after being attacked by another student, Damon Thompson, during a chemistry laboratory. Several months before the attack, the school had treated Thompson for symptoms indicative of schizophrenia disorder. Rosen filed a negligence action against the Regents of the University of California and several UCLA employees alleging that defendants had breached their duty of care by failing to adopt reasonable measures that would have protected her from Thompson's violent conduct. Defendants moved for summary judgment, arguing that public colleges and their employees do not have a duty to protect adult students from third party criminal misconduct.

The trial court denied the motion, concluding that defendants owed Rosen a duty of care based on her status as a student and, alternatively, as a business invitee onto campus property. The court further concluded there were triable issues of fact whether UCLA had voluntarily undertaken a duty to protect Rosen by providing mental health treatment

to Thompson. Defendants filed a petition for writ of mandate and we issued an order to show cause.

The Court of Appeal reversed the trial court's decision holding that a public university has no general duty to protect its students from the criminal acts of other students.

Vebr v. Culp
(2015) 241 Cal.App.4th 1044
October 28, 2015

In September 2011, Gary Culp and his family owned a home in the City of Orange. They hired OC Wide Painting, a business owned by Ondrej Kubacka, to paint the interior of their home. The Culps and OC Wide Painting entered into a "Home Improvement Contract" (the "contract") which included OC Wide Painting's license number and the statement that OC Wide Painting had workers' compensation insurance, or would acquire it. As Gary was not a painter, and the project to paint the interior of the Culps' residence was beyond his level of expertise, he only told Kubacka which surfaces inside the residence he wished to have painted; he did not tell the painters how to paint or provide Kubacka with details on how the work was to be done. OC Wide Painting provided the materials for the job, including the paint, ladders, and other tools; the Culps provided a portable bathroom and an interior cover for the piano. Kubacka was often at the residence and did some of the painting himself. Tomas Vebr had been a painter since 2000. He did not have a license, but he had done many projects over the years and had experience painting high ceilings. He was hired by OC Wide Painting to help paint a ceiling in the Culps' home.

On September 28, 2011, Vebr arrived at the Culps' residence to begin work on painting an 18-foot-high ceiling. About an hour after he had begun work, Vebr was two or three rungs below the top of the ladder when he fell from a height of 12 to 15 feet. He did not know what caused the ladder to tip over. In July 2013, Vebr filed a complaint, asserting claims for general negligence and premises liability against the Culps and OC Wide Painting. The Culps filed a motion for summary judgment on the ground there were no facts to show they were liable for Vebr's injuries. The trial court granted the motion for summary judgment. Vebr appealed.

The Court of Appeal affirmed holding that in light of the absence of a triable issue of material fact as to either of Vebr's claims, the trial court did not err by granting the Culps' motion for summary judgment