California Employment Law Notes

May 2025, Vol. 24, No. 3

By Anthony J. Oncidi

California Employment Law Blog

For the latest news, insights and analysis of California employment law, please visit our blog at http://calemploymentlawupdate.proskauer.com. To subscribe, enter your email address in the "Subscribe" section.

Apple Studio's Casting Decision Protected By The First Amendment

Sexton v. Apple Studios LLC, 110 Cal. App. 5th 183 (2025)

In early 2022, Apple Studios LLC conditionally offered actor Brent Sexton the role of U.S. President Andrew Johnson in its production of "Manhunt," a limited streaming series about the hunt for John Wilkes Booth following the assassination of Abraham Lincoln. One of the conditions for Sexton's casting was that he be fully vaccinated in compliance with Apple's mandatory on-set vaccination policy. Sexton refused to get vaccinated, seeking an exemption on medical grounds. After considering Sexton's request, Apple ultimately decided that an unvaccinated actor could not safely be accommodated on set and withdrew Sexton's offer. Sexton sued Apple for disability discrimination and related claims.

In response, Apple filed a motion to strike Sexton's complaint under California's anti-Strategic Lawsuit Against Public Participation ("anti-SLAPP") law. The trial court denied Apple's motion, but the Court of Appeal reversed, holding that: (1) Apple's decision not to cast Sexton was in fact "protected expressive conduct" under the First Amendment; and (2) Sexton's claims lacked merit because, by remaining unvaccinated, he failed to meet the "safety" qualification required for the job he sought.

The Court concluded that Apple's decision not to cast Sexton furthered free speech in two ways. First, the choice of how to portray Andrew Johnson — a controversial and important historical figure — was a creative endeavor in and of itself, with the selection of different actors "contribut[ing] to the public issue of how contemporary viewers might conceive of Johnson." Second, by making vaccination mandatory on the "Manhunt" set, "Apple took a stand" on the ongoing public debate about vaccination policy. In addition to finding Apple's actions to be protected as expressive conduct, the Court also concluded that Sexton's discrimination claims failed on the merits. A key element for a meritorious employment discrimination claim is that the plaintiff show that he or she is qualified for the position. Here, the Court found that, because Sexton was unvaccinated, he was not qualified for the job he sought.

Anthony J. Oncidi is a partner in the firm's Los Angeles office and Chair of the West Coast Labor & Employment Group of Proskauer Rose LLP, where he exclusively represents employers and management in all areas of employment and labor law. His telephone number is +1.310.284.5690 and his email address is aoncidi@proskauer.com.

Judge's "Extreme and Bizarre" Comments Result In Reversal Of $10 Million Verdict

Odom v. Los Angeles Cmty. Coll. Dist., 110 Cal. App. 5th 470 (2025)

Sabrena Odom, a tenured Los Angeles Community College ("LACC") professor, sued LACC and one of its top administrators for sexual harassment and retaliation. After a three-week trial, the jury awarded plaintiff a total of $10 million for past and future mental suffering and emotional distress damages. The Court of Appeal reversed, finding that the trial judge improperly admitted 20-year-old newspaper articles regarding the administrator-defendant's stalking and prior conviction for sexual assault. The judge also erred in allowing "me too" testimony from a student at LACC regarding her complaint against a different administrator.

The Court held the trial court committed additional error when the judge made "extreme and bizarre" racial and gender-based comments to defendant's counsel, a Black woman, during the post-judgment phase of trial. Among other things, the judge talked about "miscegenation" and the societal impact of mixed-race football players as well as his support for Black Lives Matter. He also repeated an offensive joke he heard as a young lawyer about female secretaries doing a better job providing sexual favors than typing. The judge eventually recused himself after defendant's counsel moved to disqualify him.

Finally, the Court of Appeal found the $10 million jury award for mental suffering and emotional distress to be "excessive" in that plaintiff continued to work through the close of trial and proved no economic damages. The Court agreed with defendants that there is no precedent for this high of an award absent economic or debilitating injuries, and the award was grossly disproportionate to awards in comparable cases; the Court remanded for a new trial.

Unsigned Contract Cannot Form Basis For Summary Judgment

De la Cruz v. Mission Hills Shopping Ctr. LLC, 2025 WL 1218040 (Cal. Ct. App. 2025)

Myranda De la Cruz tripped on a pothole in a Mission Hills shopping center parking lot. There was an exculpatory clause in a contract between De la Cruz's employer (a tenant in the shopping center) and the shopping center that relieved the shopping center of any liability for negligent or wrongful acts. De la Cruz was neither a party nor signatory to the contract, which formed the basis for the shopping center's successful motion for summary judgment. In a remarkably concise four-paragraph opinion from Justice John Shepard Wiley Jr., the Court of Appeal reversed the trial court, holding that the shopping center had not established that De la Cruz was bound by a contract she did not sign — even though De la Cruz apparently failed to make that argument before the trial court.

Company's President And CFO Are Liable For Filing Inaccurate Tax Forms

Nazaryan v. FemtoMetrix, Inc., 2025 WL 1177060 (Cal. Ct. App. 2025)

Hovik Nazaryan sued his former employer and several of its officers and a member of the board of directors after the parties settled a prior dispute between them and the defendants agreed to classify the settlement proceeds as "Founder's Stock" and not "compensation, salary or income for [Nazaryan's] services to FemtoMetrix." The defendants subsequently issued 1099-MISC forms characterizing the settlement proceeds as "non-employee compensation." Nazaryan sued and claimed the company and its officers breached the settlement agreement and violated Internal Revenue Code § 7434 by filing "fraudulent 1099 forms." The trial court entered judgment for Nazaryan, and the Court of Appeal affirmed, holding that the trial court did not err by finding the company's president and its CFO liable under IRC § 7434.

Plaintiffs Waived Right To Arbitrate By Litigating In Court

Hofer v. Boladian, 2025 WL 1354795 (Cal. Ct. App. 2025)

Plaintiffs in this case initiated litigation against defendants, notwithstanding the existence of binding arbitration agreements between the parties. For six months following the filing of the litigation, plaintiffs sought two forms of preliminary injunctive relief, opposed a demurrer, propounded more than 700 discovery requests, demanded a jury trial in their case management conference statement, represented they would be litigating substantive motions in court and posted jury fees. It was not until the opposing party filed a cross-complaint that plaintiffs filed a motion to compel arbitration. The trial court denied the motion on the ground that plaintiffs' conduct in the case constituted a waiver under *Quach v. California Com. Club, Inc.*, 16 Cal. 5th 562 (2024), and the Court of Appeal affirmed. *See also Ford v. The Silver F, Inc.*, 110 Cal. App. 5th 553 (2025) (motion to compel arbitration of individual PAGA claim was properly denied because the arbitration agreement specifically excluded all PAGA claims); *Sanders v. Superior Court*, 2025 WL 1303386 (Cal. Ct. App. 2025) (statute requiring payment of arbitration fees within 30 days (Cal. Code Civ. Proc. § 1281.98) is not preempted by the Federal Arbitration Act).

Federal Court Lacked Jurisdiction To Confirm Zero-Dollar Arbitration Award

Tesla Motors, Inc. v. Balan, 134 F.4th 558 (9th Cir. 2025)

Tesla Motors and Elon Musk prevailed in an arbitration proceeding against a former employee based on California's one-year statute of limitations. Tesla and Musk subsequently petitioned the United States District Court for the Northern District of California to confirm the arbitration award in their favor. The district court granted the petition to confirm, but the Ninth Circuit vacated the order and remanded the action to the district court with instructions to dismiss the action for lack of jurisdiction based on the failure to satisfy the $75,000 amount-in-controversy requirement necessary to establish diversity jurisdiction in federal court.

Prospective Meal Period Waiver Is Enforceable

Bradsbery v. Vicar Operating, Inc., 110 Cal. App. 5th 899 (2025)

La Kimba Bradsbery and Cheri Brakensiek sued their former employer (Vicar Operating, Inc.) in a putative class action, alleging that Vicar had failed to provide them with meal periods for shifts between five and six hours. Vicar responded that plaintiffs had prospectively waived in writing all waivable meal periods throughout their employment with Vicar. The prospective waivers provided that plaintiffs could revoke the agreement at any time. The trial court determined the waiver was valid and ruled in favor of Vicar. The Court of Appeal affirmed, holding that "revocable, prospective waivers are enforceable in the absence of any evidence the waivers are unconscionable or unduly coercive."

PAGA Plaintiff Must Have Viable Individual Claim To Represent Other Employees

Williams v. Alacrity Solutions Grp., LLC, 110 Cal. App. 5th 932 (2025)

Corbin Williams sued his former employer (Alacrity Solutions Group, LLC) for various wage and hour violations. However, Williams failed to provide written notice of his claims to the state Labor & Workforce Development Agency (LWDA) until more than a year had passed since the end of his employment with Alacrity, thus barring any individual claims he may have had under the Private Attorneys General Act (PAGA). Williams subsequently filed a PAGA claim only on behalf of "other current and former employees" but, according to the Court of Appeal, "critically, not on his own behalf." Alacrity filed a demurrer in response to the complaint on the ground that the purported representative action that Williams asserted was barred by the one-year statute of limitations in that he lacked standing to assert any claim (individual or representative) under the statute. The trial court sustained the demurrer to the complaint without leave to amend. The Court of Appeal affirmed the dismissal. *Other recent PAGA developments: Moniz v. Adecco USA, Inc.*, 109 Cal. App. 5th 317 (2025) (plaintiff in parallel PAGA action lacks standing to challenge settlement of another employee's PAGA suit (*citing Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024)); *Rose v. Hobby Lobby Stores, Inc.* 2025 WL 1392271 (Cal. Ct. App. 2025) (prevailing party employer may not recover its costs from LWDA, which was not a party to the action); *Chavez v. Hi-Grade Materials Co.*, 2025 WL 1231999 (Cal. Ct. App. 2025) (putative class action plaintiff cannot "ring the death knell" for the entire class by voluntarily dismissing all remaining representative claims after class certification has been denied).