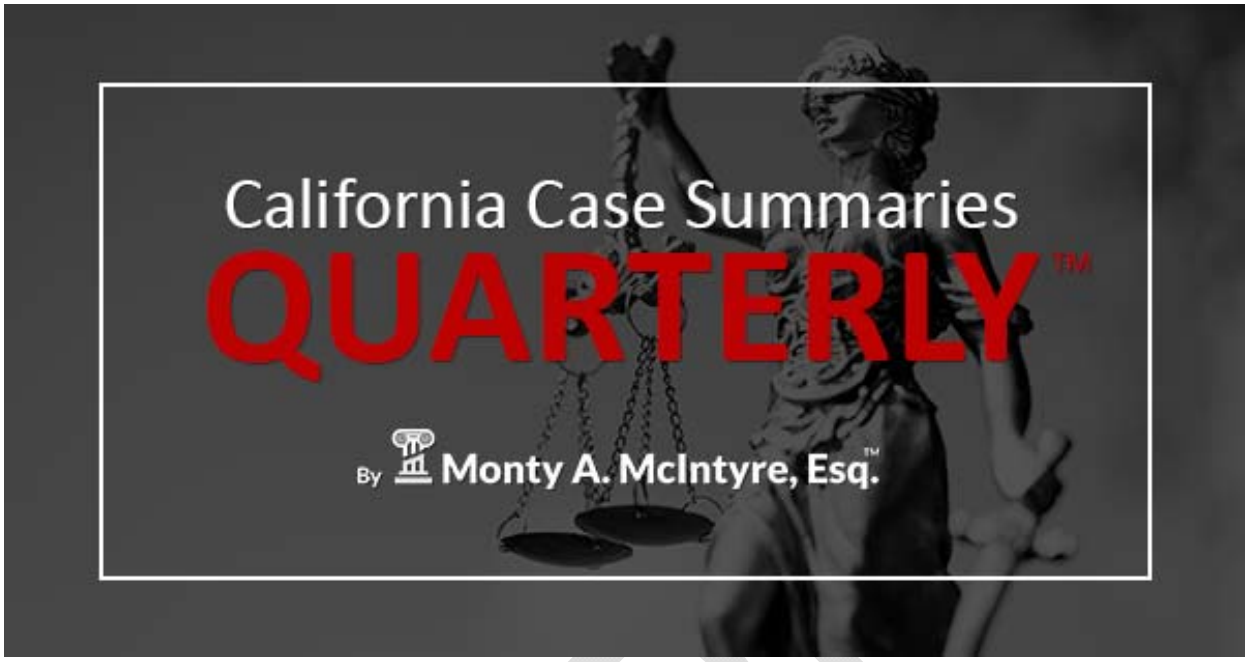

California Case Summaries: Quarterly™
January to March, 2019: Q1

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CALIFORNIA SUPREME COURT

Civil Procedure

Meza v. Portfolio Recovery Associates, LLC (2019) *6 Cal.5th 844*:The California Supreme Court answered the following question from the Ninth Circuit Court of Appeals about evidence allowable in limited civil cases where the amount in controversy is $25,000 or less: Under Code of Civil Procedure section 98(a), must the affiant be physically located and personally available for service of process at the address provided in the declaration that is within 150 miles of the place of trial? The California Supreme Court ruled that a section 98(a) affiant's personal availability for service at an address within 150 miles of the place of trial often will be required for his or her affidavit to be admissible as evidence under that section, but such presence is not always necessary for all affiants. Such personal presence is required only if it is necessary for lawful service, at the specified location, of process that directs the affiant to appear at trial, under the standard rules prescribing the pertinent types of process and how such process is to be served. (February 15, 2019.)

Rand Resources, LLC v. City of Carson (2019) 6 Cal.5th 610: The California Supreme Court reversed in part and affirmed in part the decision of the Court of Appeal that had reversed the trial court's order granting anti-SLAPP motions to strike (Code of Civil Procedure, section 425.16) all six plaintiffs' causes of action in an action against defendants arising from the hiring and later replacement of plaintiffs by defendant City of Carson (City) regarding negotiations with the National Football League about the possibility of building a football stadium in the City. The California Supreme Court held that the statements on which plaintiffs based their claims against the City defendants were either (1) unrelated to the issue considered by the City Council, or (2) made long before the issue came "under consideration or review" by the City Council and therefore were not protected activities. However, the statements attributed to the City's codefendants — Leonard Bloom and his company — were protected activities. The case was remanded for further proceedings including a determination of whether plaintiffs have established a probability of prevailing on their claims arising from protected activity. (February 4, 2019.)

Sweetwater Union High School Dist. v. Gilbane Bldg. Co. (2019) 6 Cal.5th 931: The California Supreme Court affirmed the Court of Appeal's decision that affirmed the trial court's denial of defendants' anti-SLAPP motion to strike under Code of Civil Procedure section 425.16. In the second stage of an anti-SLAPP hearing, when determining a plaintiff's probability of success, a court may consider statements that are the equivalent of affidavits and declarations because they were made under oath or penalty of perjury in California. In this case, change of plea forms, factual narratives, and excerpts from grand jury testimony satisfied this requirement. A court may consider affidavits, declarations, and their equivalents only if it is reasonably possible the proffered evidence set out in those statements will be admissible at trial. Conversely, if the evidence relied upon cannot be admitted at trial, because it is categorically barred or undisputed factual circumstances show inadmissibility, the court may not consider it in the face of an objection. If an evidentiary objection is made, the plaintiff may attempt to cure the asserted defect or demonstrate the defect is curable. (February 28, 2019.)

Employment

Cal Fire Local 2881 v. Cal. Pub. Employees' Retirement System (2019) 6 Cal.5th 965: The California Supreme Court affirmed the decisions of the Court of Appeal and the trial court that concluded that the California Public Employees' Pension Reform Act of 2013's (PEPRA; Stats. 2012, ch. 296, § 15; see Government Code, sections 7222 et seq.) elimination of the opportunity to purchase additional retirement service (ARS) credit did not violate the Constitution. The California Supreme Court ruled that the opportunity to purchase ARS credit was not a right protected by the contract clause. There was no indication in the statute conferring the opportunity to purchase ARS credit that the Legislature intended to create contractual rights. Unlike core pension rights, the opportunity to purchase ARS credit was not granted to public employees as deferred compensation for their work, and the Court found no other basis for concluding that the opportunity to purchase ARS credit was protected by the contract clause. In the absence of constitutional protection, the opportunity to purchase ARS credit could be altered or eliminated at the discretion of the Legislature. (March 4, 2019.)

Goonewardene v. ADP, LLC (2019) 6 Cal.5th 817: The California Supreme Court reversed the Court of Appeal decision that had allowed an employee to bring causes of action for unpaid wages against a payroll company for the employer for breach of the payroll company's contract with the employer under the third party beneficiary doctrine, negligence, and negligent misrepresentation. The California Supreme Court ruled that an employee may not be viewed as a third party beneficiary who may maintain an action against the payroll company for an alleged breach of the contract between the employer and the payroll company with regard to the payment of wages. Moreover, an employee who alleges that he or she has not been paid wages that are due cannot maintain tort causes of action for negligence and negligent misrepresentation against a payroll company. (February 7, 2019.)

Taxes

McClain v. Sav-On Drugs (2019) 6 Cal.5th 951: The California Supreme Court affirmed the decision of the Court of Appeal affirming the trial court's order sustaining a demurrer, without leave to amend, to a complaint filed on behalf of customers who had paid sales tax reimbursement on purchases they believed to be exempt from sales tax. Plaintiffs filed suit to compel the retailers to seek a tax refund from the California Department of Tax and Fee Administration (Department) when there had been no determination by the Department or a court that the purchases were exempt. The California Supreme Court declined to extend the remedy allowed in *Javor v. State Bd. of Equalization* (1974) 12 Cal.3d 790, 800 in this case. (March 4, 2019.)

CALIFORNIA COURTS OF APPEAL

Appeal

Rostack Investments v. Sabella (2019) 32 Cal.App.5th 70: The Court of Appeal affirmed the trial court's order denying plaintiff's motion to tax defendant's appellate costs (awarded after her successful appeal of a summary judgment) of approximately $1.4 million related to

obtaining a surety bond, secured by a letter of credit, pending the appeal. The Court of Appeal ruled that the judgment for costs on appeal was a final enforceable judgment, and the bond and letter of credit premiums were reasonable and necessary. (C.A. 2nd, February 5, 2019.)

Arbitration

Bravo v. RADC Enterprises, Inc. (2019) 33 Cal.App.5th 920: The Court of Appeal affirmed in part and reversed in part the trial court's order regarding defendants motion to compel arbitration. The trial court properly severed and stayed the PAGA claims. The trial court properly compelled arbitration on three of plaintiff's individual claims. The Court of Appeal reversed the portion of the trial court order denying the motion to compel as to plaintiff's remaining six individual claims by plaintiff on the basis that California Labor Code section 229 prohibited arbitration of those wage claims. The Court of Appeal ruled that the California choice of law provision in the arbitration agreement required that all of plaintiff's individual claims be arbitrated. (C.A. 2nd, March 29, 2019.)

Cohen v. TNP 2008 Participating Notes etc. (2019) 31 Cal.App.5th 840: The Court of Appeal reversed the trial court's order denying a petition to vacate a judgment confirming an arbitration award. The Court of Appeal ruled that (1) an attorney does not have standing to petition to compel arbitration of his clients' claims; (2) a signatory to an arbitration agreement can compel a nonsignatory parent company of a signatory subsidiary on an agency theory where (a) the parent controlled the subsidiary to such an extent that the subsidiary was a mere agent or instrumentality of the parent and (b) the claims against the parent arose out of the agency relationship; (3) the arbitrator did not exceed his authority by substituting the attorney's clients as the real parties in interest in the arbitration; and (4) the arbitrator did not exceed his authority by denying attorney fees to a party that prevailed in the arbitration. The judgment was vacated and the matter was remanded with several directions for the trial court. (C.A. 2nd, January 29, 2019.)

Correia v. NB Baker Electric, Inc. (2019) 32 Cal.App.5th 602: The Court of Appeal affirmed the trial court's order granting a petition to compel arbitration of all causes of action in a wage and hour case, except the Private Attorney General Act of 2004 (PAGA; Labor Code, section 2699 et seq.) claim, and staying the PAGA claim until the conclusion of the arbitration. The trial court acted within its discretion in considering plaintiffs' response to the arbitration petition even though plaintiffs filed the response after the statutory deadline. The California Supreme Court decision of *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 (*Iskanian*), which held unenforceable agreements to waive the right to bring PAGA representative actions in any forum, remains binding on California courts. The recent decision of the United States Supreme Court, in *Epic Systems Corp. v. Lewis* (2018) __ U.S. __ [138 S.Ct. 1612] (*Epic*), does not change this result. While *Epic* reaffirmed the broad preemptive scope of the Federal Arbitration Act, it did not address the specific issues before the *Iskanian* court involving a claim for civil penalties brought on behalf of the government and the enforceability of an agreement barring a PAGA representative action in any forum. The trial court also properly declined to compel arbitration of the PAGA claim and stayed that issue until after the arbitration. (C.A. 4th, February 25, 2019.)

Jackpot Harvesting, Inc. v. Applied Underwriters, Inc. (2019) 33 Cal.App.5th 719: The Court of Appeal affirmed the trial court's order denying a motion to compel arbitration. Plaintiff, who purchased workers' compensation insurance from defendant, sued defendant alleging violations by defendant of the California Insurance Code. The trial court properly denied the motion to compel arbitration on the basis that it had authority to decide that issue, and the arbitration agreement was invalid under California law. Defendants violated California law when they issued a Request to Bind form without first submitting it for regulatory approval. (C.A. 6th, March 28, 2019.)

Juen v. Alain Pinel Realtors, Inc. (2019) 32 Cal.App.5th 972: The Court of Appeal affirmed the trial court's order denying a motion to compel arbitration in a putative class action for plaintiffs who had used defendant in a transaction to buy or sell a home in California and had utilized TransactionPoint, a real estate software program developed by Fidelity National Financial, Inc. Defendants moved to compel arbitration, relying on the arbitration clause in plaintiff's residential listing agreement with defendant Alain Pinel Realtors (Pinel). The original agreement was destroyed under the document retention policy of Pinel. The trial court properly denied the motion because defendants failed to prove that defendant Pinel signed the arbitration clause. (C.A. 6th, filed February 6, 2019, published March 6, 2019.)

Nieto v. Fresno Beverage Company, Inc. (2019) 33 Cal.App.5th 274: The Court of Appeal affirmed the trial court's order denying defendant's petition to compel arbitration in a putative wage and hour class action. The trial court properly ruled that plaintiff's employment came within a statutory exemption to the Federal Arbitration Act (9 U.S.C., section 1 et seq.) granted to transportation workers engaged in interstate commerce. (C.A. 5th, filed March 7, 2019, published March 22, 2019.)

Rymel v. Save Mart Supermarkets (2018) 30 Cal.App.5th 853: The Court of Appeal affirmed the trial court's order denying a motion to compel arbitration in an action alleging various state law statutory employment claims. All of plaintiffs' claims were based on nonnegotiable state law policies against medical condition discrimination and related torts under the California Fair Employment and Housing Act (FEHA; Government Code, section 12900 et seq.), whistleblower retaliation (Labor Code, section 1102.5), and discipline in violation of public policies set by positive law (FEHA and the workers' compensation statutes). The Court of Appeal ruled that the collective bargaining agreement providing for arbitration of employment grievances did not provide for arbitration of workers' claims based on violations of state anti-discrimination or retaliation statutes, and federal labor relations laws did not preempt such claims. (C.A. 3rd, December 31, 2018.)

Salgado v. Carrows Restaurants Inc. (2019) 33 Cal.App.5th 356: The Court of Appeal reversed the trial court's order denying defendant's motion to compel arbitration. The trial court erred when it found that defendants had failed to demonstrate that the arbitration agreement applied to the suit that was filed before the arbitration agreement was signed. The Court of Appeal ruled that the arbitration agreement applied to the action. The matter was remanded to the trial court to determine whether defendant knew or should have known that plaintiff was represented by counsel when she signed the arbitration agreement. Depending upon the finding, the trial court should then determine whether the arbitration agreement was enforceable. (C.A. 2nd, filed February 26, 2019, published March 25, 2019.)

Vasquez v. San Miguel Produce, Inc. (2019) 31 Cal.App.5th 810: The Court of Appeal reversed the trial court's order denying a motion to compel arbitration. Plaintiffs were hired by Employer's Depot, Inc. (EDI), a staffing agency, and they agreed in writing to arbitrate all disputes that may arise within the employment context. EDI assigned plaintiffs to pack produce for defendants San Miguel Produce, Inc. et al. Plaintiffs later sued defendants for labor law violations, and defendants cross-complained against EDI. The Court of Appeal ruled that arbitration was mandated even though plaintiffs did not name EDI as a defendant. Defendants and EDI were co-employers with an identity of interests and mutual responsibility for complying with state law governing employers in the produce packing industry. Plaintiffs agreed to arbitrate all disputes arising from their employment and at all relevant times EDI was their employer. (C.A. 2nd, filed January 3, 2019, published January 30, 2019.)

Zakaryan v. The Men's Warehouse, Inc. (2019*)* 33 Cal.App.5th 659: The Court of Appeal affirmed the trial court's order denying a motion to compel arbitration in a putative class action PAGA case where the employee plaintiff had agreed to arbitrate their individual claims. For reasons different than those expressed in *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705 (*Lawson*), the Court of Appeal ruled that courts may not split a solitary PAGA claim and send it to two different forums. NOTE: The *Lawson* decision is currently under review by the California Supreme Court (review granted Mar. 21, 2018, S246711). (C.A. 2nd, March 28, 2019.)

<u>Attorney Fees</u>

Conservatorship of Ribal (2019) 31 Cal.App.5th 519: The Court of Appeal reversed the trial court's order awarding attorney fees of $43,507.50 incurred in enforcing an underlying judgment. Because the motion for attorney fees was made after the judgment was satisfied in full, it was untimely under Code of Civil Procedure, section 685.080(a). (C.A. 4th, January 18, 2019.)

Linton v. County of Contra Costa (2019*)* 31 Cal.App.5th 628: The Court of Appeal affirmed the trial court's order denying plaintiff's request for attorney fees after defendants accepted plaintiff's Code of Civil Procedure, section 998 offer to settle her complaint alleging violations of the California Disabled Persons Act (DPA; Civil Code, section 54 et seq.) and the Unruh Civil Rights Act (Unruh Act; Civil Code, section 51 et seq.). The 998 offer included the language "attorney's fees allowed by law as determined by the court." The trial court properly ruled that both the Unruh Act and the DPA require a finding of liability under the statutes for an award of attorney fees. Because the 998 offer was silent as to liability under the statutes, plaintiff was not entitled to attorney fees. (C.A. 1st, January 23, 2019.)

Martinez v. O'Hara (2019) 32 Cal.App.5th 853: The Court of Appeal affirmed the trial court's order denying a motion for attorney fees seeking $146,634 under Labor Code section 218.5 and Government Code section 12965. Plaintiff sued alleging several causes of action related to his employment and termination. Plaintiff's wage claim was resolved before trial and his fraud claim was dismissed when the trial court granted a motion for nonsuit. A jury returned a verdict awarding $8,080 in damages on the claim for sexual harassment in violation of the California Fair Employment and Housing Act (FEHA). Following a bench trial of plaintiff's

remaining claims, the trial court found in favor of defendants. The Court of Appeal ruled that the record supported the trial court's application of the special circumstance of an excessive request for attorney fees, and supported the court's exercise of discretion in denying prevailing party attorney fees on the FEHA claim. Moreover, the trial court also properly denied the motion because plaintiff recovered less than the maximum recoverable in a limited civil case. The Court of Appeal reported the plaintiff's attorney to the State Bar of California for misconduct and gender bias on appeal for his statement in the Notice of Appeal that the ruling of the female judicial officer was "succubustic." A succubus is defined as a demon assuming female form which has sexual intercourse with men in their sleep. The Court of Appeal declared that gender bias by an attorney appearing before it would not be tolerated, period. (C.A. 4th, February 28, 2019.)

Richmond Compassionate Care Collective v. 7 Stars Holistic Found (2019) 32 Cal.App.5th 458: The Court of Appeal affirmed the trial court's award of attorney fees and costs to a defendant who was partly successful in their anti-SLAPP motion to strike a complaint alleging violation of the Cartwright Act. The Court of Appeal affirmed the trial court's order awarding attorney fees totaling of $23,120 and costs of $688.12. The Court of Appeal ruled there is no conflict between the Cartwright Act and the anti-SLAPP statute, and both could be applied. (C.A. 1st, March 15, 2019.)

Stratton v. Beck (2019) 30 Cal.App.5th 901: The Court of Appeal affirmed the trial court's order awarding plaintiff their appellate attorney fees of $57,420 under Labor Code section 98.2(c) plus $9,020 in fees incurred in opposing the motion to reconsider the appellate attorney fee award. Ironically, this lawsuit started over $303.50 in unpaid wages. At the end of an earlier appeal, the Court of Appeal had stated that in "the interest of justice, the parties are to bear their own costs of appeal." (*Stratton v. Beck* (2017) 9 Cal.App.5th 483, 487, 498.) The Court of Appeal ruled that its order on costs did not deprive the trial court of jurisdiction to entertain plaintiff's motion for appellate attorney fees. (C.A. 2nd, filed December 7, 2018, published January 2, 2019.)

Attorneys

Connelly v. Bornstein (2019) 33 Cal.App.5th 783: The Court of Appeal affirmed the trial court’s order granting defendant law firm’s motion for judgment on the pleadings in a malicious prosecution case filed after the defendant law firm’s client dismissed an unlawful detainer action. On an issue where the Courts of Appeal are divided, the First District Court of Appeal ruled that the statute of limitations for a malicious prosecution action against a lawyer is one year under Code of Civil Procedure section 340.6. (C.A. 1st, March 28, 2019.)

O'Gara Coach Co., LLC v. Ra (2019) 30 Cal.App.5th 1115: The Court of Appeal reversed the trial court's order denying a motion by cross-complainant O'Gara Coach Co., LLC (O'Gara) to disqualify Darren Richie and Richie Litigation P.C. from representing O'Gara's former senior executive cross-defendant Joseph Ra (Ra) in litigation, including cross-actions between O'Gara and Ra, arising from allegations by Marcelo Caraveo that O'Gara and Ra had committed fraud in connection with Caraveo's acquisition of luxury vehicles from O'Gara. Because Richie never had an attorney-client relationship with O’Gara Coach while employed as its president and chief operating officer (he was not yet a licensed California attorney),

the trial court correctly rejected O'Gara's argument for disqualification of Richie and Richie Litigation based on a theory of improper successive representation. However, disqualification of Richie and his law firm was required as a prophylactic measure because the firm was in possession of confidential information, protected by O'Gara's attorney-client privilege, concerning Ra's allegedly fraudulent activities at issue in this litigation. (C.A. 2nd, January 7, 2019.)

Strawn v. Morris, Polich & Purdy (2019) 30 Cal.App.5th 1087: The Court of Appeal reversed in part the trial court's order sustaining a demurrer, without leave to amend, to a complaint alleging invasion of privacy and elder abuse against defendants Douglas K. Wood and his law firm (defendants) for their conduct in representing their client State Farm General Insurance Company in processing an insurance claim by plaintiffs arising from a fire loss. Plaintiffs alleged that attorney Wood wrongfully transmitted plaintiffs' privileged tax returns to State Farm. The Court of Appeal overruled the demurrer to the invasion of privacy cause of action because the allegations of the complaint raised a factual question as to whether, when Wood forwarded plaintiffs' tax returns, State Farm was seriously and in good faith considering litigation. The demurrer therefore should have been overruled despite the claim of litigation privilege. (C.A. 1st, January 4, 2019.)

Business

Farmers & Merchants Trust Co. v. Vanetik (2019) 33 Cal.App.5th 638: The Court of Appeal affirmed in part and reversed in part a verdict awarding compensatory and punitive damages in an action arising from a business investment of $750,000. The Court of Appeal held that substantial evidence supported the jury's verdict against defendants Yuri Vanetik (Yuri) and Tony Vanetik (Tony), the claims for breach of written contract, breach of oral contract, and fraud. The jury's special verdict findings on the contract and fraud claims neither resulted in inconsistent verdicts, nor required plaintiff to make an election of remedies. Plaintiff, however, failed to offer substantial evidence supporting the punitive damages awards against Tony and Yuri, and they were reversed. The trial court properly granted a judgment notwithstanding the verdict in favor of defendant law firms Weed & Company, L.C. and Weed & Company LLP (Weed defendants) on the fraud causes of action. The Court of Appeal also affirmed the attorney fee award to plaintiff, and the attorney fee award to the Weed defendants. (C.A. 4th, filed February 27, 2019, published March 27, 2019.)

Civil Code

Brown v. Mortensen (2019) 30 Cal.App.5th 931: The Court of Appeal reversed the trial court's order finding that article I, section 16 of the California Constitution does not guarantee the right to a jury trial for nominal statutory damages claims, and/or claims for attorney fees, under the Confidentiality of Medical Information Act (CMIA: Civil Code, section 56 et seq.). The Court of Appeal ruled that a jury trial is guaranteed for CMIA's nominal statutory damages claims brought before 2013 under section 56.36(b)(1), but not for attorneys' fees claims under section 56.35. (C.A. 2nd, January 3, 2019.)

Chen v. Berenjian (2019) 33 Cal.App.5th 811: The Court of Appeal reversed the trial court's

order sustaining a demurrer[1] to a complaint for fraudulent transfer under the Uniform Voidable Transactions Act (Civil Code, section 3439 et seq.). Plaintiff alleged that defendant brothers had attempted to thwart plaintiff's attempts to execute on his judgments against one brother by colluding in a sham lawsuit, stipulating to a judgment, and allowing the other brother to execute on the judgment. The trial court found the action was barred by the litigation privilege in Civil Code section 47(b). The Court of Appeal disagreed, ruling that section 47(b) did not bar the action because the gravamen of the cause of action was the noncommunicative act of transferring assets by executing on a judgment. (C.A. 4th, March 28, 2019.):

Hardie v. Nationstar Mortgage LLC (2019) 32 Cal.App.5th 714: The Court of Appeal reversed the trial court's order awarding plaintiff attorney fees of $3,500, pursuant to Civil Code section 2924.12, after plaintiff obtained an ex parte temporary restraining order enjoining a trustee's sale of real property. Although section 2924.12(h) permits an award of fees to a borrower who prevails in obtaining a TRO, the fee award was reversed because the fee request was not brought in a properly noticed motion as required by Rule 3.1702 of the California Rules of Court. (C.A. 5th, February 27, 2019.)

Martinez v. California Pizza Kitchen, Inc. (2019) 30 Cal.App.5th Supp. 14: The Appellate Department of the San Bernardino Superior Court affirmed the trial court's order sustaining a demurrer, without leave to amend, in an action alleging a violation of the Unruh Act (Civil Code section 51) and the American With Disabilities Act because defendant restaurant did not provide a customer with a partial hearing loss an assistive hearing device so he could hear the background music playing in the restaurant. Plaintiff was not denied the food, beverage, or hospitality services offered by defendant. Since there were no facts alleged indicating the music was integrated or otherwise connected with the food and services in any meaningful way, the demurrer was properly sustained. (Appellate District of the San Bernardo Superior Court, filed November 20, 2018, published January 8, 2019.)

Orchard Estate Homes v. Orchard Homeowners Alliance (2019) 32 Cal.App.5th 471: The Court of Appeal affirmed the trial court's order granting a petition pursuant to Civil Code section 4275 seeking authorization to reduce the percentage of affirmative votes to adopt an amendment of the covenants, conditions, and restrictions of a homeowner's association that would prohibit short term-rentals for less than 30 days. Voter apathy is not included in the list of elements that must be established to get relief under section 4275. (C.A. 4th, filed January 29, 2019, published February 22, 2019.)

Civil Procedure

Berkeley Cement, Inc. v. Regents of the Univ. of Cal. (2019) 30 Cal.App.5th 1133: The Court of Appeal affirmed a judgment, following a lengthy jury trial, finding for defendant on plaintiff's complaint for breach of contract because defendant did not breach the contract or any implied covenant, and finding for defendant on its cross-complaint but holding that defendant was not harmed by plaintiff's breach. However, the Court of Appeal ruled that the

[1] The trial court sustained the demurrer with leave to amend, but plaintiff allowed dismissal to be entered against him and pursued the appeal.

trial court erred in awarding defendant, as costs, $6,486.25 for deposition fees paid to plaintiff's expert witnesses. California Code of Civil Procedure, section 1033.5 (b)(1) clearly provides that fees of experts not ordered by the court are not allowable costs, "except when expressly authorized by law." (C.A. 5th, January 7, 2019.)

CA Dept. of Finance v. City of Merced (2019) 33 Cal.App.5th 286: The Court of Appeal affirmed the trial court's orders granting petitioner's writ petition to compel respondent to transfer money to petitioner due to the dissolution of respondent's redevelopment agency, and striking a cross-complaint that respondent filed after it filed its answer but without obtaining leave of court. Respondent participated in the due diligence review (DDR) process of petitioner, but it never challenged the transfer decision by filing a mandamus action. Respondent's answer and affirmative defenses filed in this case did not properly raise any issues about the correctness of the DDR determination. The trial court properly struck the cross-complaint because it was filed after the answer was filed without first obtaining leave of court. Because both parties agreed that the amount to be transferred should not include $491,815 in bond proceeds, the Court of Appeal directed the trial court to recall the writ and modify the judgment to issue a new writ specifying the exact dollar amount to be transferred. (C.A. 3rd, March 22, 2019.)

Issa v. Applegate (2019) 31 Cal.App.5th 689: The Court of Appeal affirmed the trial court's order granting an anti-SLAPP motion to strike (Code of Civil Procedure, section 425.16) a complaint alleging libel based upon two television advertisements during a congressional campaign in 2016. The parties agreed the action arose from protected activity. The trial court properly concluded that plaintiff had failed to demonstrate a probability of prevailing on his claims against defendants because he could not demonstrate that the statements in question were not substantially true. (C.A. 4th, January 24, 2019.)

Jackson v. Kaiser Foundation Hospitals (2019) 32 Cal.App.5th 166: The Court of Appeal affirmed the trial court's order denying a motion for relief from default under Code of Civil Procedure section 473(b). The Court of Appeal found the trial court's order was appealable. However, it affirmed the trial court because the mandatory relief allowed under section 473(b) from a default judgment or dismissal that is entered against a party due to the fault of the party's attorney did not apply to a voluntary dismissal, without prejudice, filed as to defendant. (C.A. 1st, February 8, 2019.)

Jayone Foods v. Aekyung Industrial Co. Ltd. (2019) 31 Cal.App.5th 543: The Court of Appeal reversed the trial court's order granting a motion to quash service of summons for lack of personal jurisdiction in a wrongful death action. The Court of Appeal ruled that Korean manufacturer cross-defendant Aekyung Industrial Co. Ltd. (Aekyung) did not merely place its products into the stream of commerce with an awareness that they might end up in California. Aekyung purposefully availed itself of the benefits of doing business in California by directing its activities toward California businesses when it repeatedly sold its products to various California distributors over a seven-year period and purposefully derived benefits from its activities in California when it generated almost $2 million in revenue from these California sales. To satisfy the jurisdictional requirement that plaintiffs' claims arise out of or relate to Aekyung's forum contacts, defendant and cross-complainant Jayone Foods, Inc. (Jayone) was not required to prove that the bottles of the Humidifier

Mate that it purchased directly from Aekyung in 2006 and 2007 in fact ended up in the hands of decedent. It was sufficient for Jayone to show that, within the time period covering decedent's alleged injuries, Jayone sold bottles of the Humidifier Mate that Aekyung had shipped to Jayone in California to Kim's Home Center in Los Angeles. (C.A. 2nd, January 22, 2019.)

Jensen v. Jensen (2019) 31 Cal.App.5th 682: The Court of Appeal affirmed the trial court's order granting a motion to quash service of summons regarding a cross-complaint. Defendant Kari Jenson filed and attempted to serve a cross-complaint against her sister, Trine Jenson, a resident of Utah, to allege a claim against Trine in her individual capacity for interference with prospective economic advantage. At the time Trine was the guardian ad litem for their elderly mother Grethe Jensen, who had sued Kari in Ventura County for the partition by sale of the real property that Grethe and Kari owned as joint tenants. The Court of Appeal found that Trine did not purposefully and voluntarily direct activities toward California. Her contacts with California were directed toward protecting the best interests of her "client," Grethe, in the litigation. They did not establish purposeful availment of the benefits and protections of California law. (C.A. 2nd, January 24, 2019.)

Korman v. Princess Cruise Lines, Ltd. (2019) 32 Cal.App.5th 206: The Court of Appeal affirmed the trial court's order granting a motion to dismiss for forum non conveniens, under Code of Civil Procedure sections 410.30 and 418.10, in an action filed in the Los Angeles Superior Court for personal injuries plaintiff suffered while on a cruise ship traveling from Buenos Aires, Argentina to Santiago, Chile. The forum selection clause in the passage contract required a lawsuit to be filed in the federal court in Los Angeles. The Court of Appeal ruled that the forum selection clause was mandatory, not permissive, and enforcement of the clause was not unreasonable. (C.A. 2nd, February 14, 2019.)

Laker v. Bd. of Trustees of the Cal. State Univ. (2019) 32 Cal.App.5th 745: The Court of Appeal reversed in part and affirmed in part the trial court's order denying defendants' anti-SLAPP motions to strike plaintiff's complaint under Code of Civil Procedure section 425.16. The trial court erred in ruling that defendants had failed to show the defamation claim arose from protected activity under section 425.16. Moreover, plaintiff failed to show his defamation claim had the requisite merit, because the statements supporting its allegations were absolutely privileged under Civil Code section 47(b)(3), which protects statements made in "official proceedings." The Court of Appeal affirmed the trial court's order denying the motion to strike by defendant Board of Trustees of the California State University regarding plaintiff's retaliation claim, but it struck the allegation in that claim relating to defamatory statements. (C.A. 6th, February 28, 2019.)

Licudine v. Cedars-Sinai Medical Center (2019) 30 Cal.App.5th 918: The Court of Appeal affirmed the trial court's order denying plaintiff's request for $2,335,929.20 in prejudgment interest because it concluded that plaintiff's Code of Civil Procedure section 998 settlement offer, served only five days after defendant filed its answer, was not made in good faith and was "premature" because defendant had not yet had an adequate opportunity to evaluate the damages in this case. The Court of Appeal concluded that the trial court did not abuse its discretion in finding that plaintiff's 998 offer was not made in good faith. (C.A. 2nd,

January 3, 2019.)

MDQ, LLC v. Gilbert, Kelly, Crowley & Jennett (2019) 32 Cal.App.5th 702: The Court of Appeal affirmed the trial court's order, in an interpleader action, awarding interpleaded funds to a judgment creditor with a properly recorded judgment lien and not to an assignee (the law firm), who did not file a financing statement with respect to distributions irrevocably assigned to it by the judgment debtor before the judgment lien was recorded. It also affirmed the trial court's order that the $11,550 in attorney fees awarded to the judgment creditor be paid by the assignee rather than from the interpleaded funds. Although the assignment created a security interest, the judgment creditor was entitled to the interpleaded funds because its recorded judgment lien had priority over the unperfected security interest. (C.A. 2nd, February 27, 2019.)

Orange County Water Dist. v. The Arnold Engineering Co. (2019) 31 Cal.App.5th 96: The Court of Appeal reversed the trial court's post-judgment order awarding defendant $615,000 in costs based upon plaintiff's failure to admit certain fact-specific requests for admission (RFAs) during discovery in an action to recover expenses associated with the North Basin Groundwater Protection Project (NBGPP), a proposed $200 million effort intended to address groundwater contamination in northern Orange County, California caused by volatile organic compounds (VOCs) and other chemicals. The Court of Appeal ruled that the trial court abused its discretion in awarding costs as to several requests because plaintiff had reasonable grounds to believe it would prevail on the matters at issue regarding those requests. However, the trial court properly awarded costs as to three requests denied by plaintiff. The Court of Appeal ruled that expert-witness-invoice evidence was inadequate to support the award because it did not distinguish between recoverable and nonrecoverable costs. On the other hand, the Court of Appeal found that attorney invoices including a notation, for each time entry, identifying the RFAs to which that entry related could be adequate to distinguish those tasks for which an award of costs would be proper. (C.A. 4th, filed December 19, 2018, published January 10, 2019.)

Rall v. Tribune 365 LLC (2019) 31 Cal.App.5th 479: The Court of Appeal affirmed the trial court's order granting anti-SLAPP (Code of Civil Procedure, section 425.16) motions to strike plaintiff's complaint alleging causes of action including defamation and for wrongful termination in violation of public policy. The complaint was filed after Los Angeles Times Communications LLC (The Times) published a "note to readers" and a later more detailed report questioning the accuracy of a blog post plaintiff wrote for The Times; stating the piece should not have been published; and stating that plaintiff's future work would not appear in The Times. The trial court properly found that the allegations arose from protected activity and that plaintiff failed to establish a probability of prevailing on the merits. (C.A. 2nd, January 17, 2019.)

Richmond Compassionate Care etc. v. 7 Stars Holistic etc. (2019) 32 Cal.App.5th 458: The Court of Appeal affirmed the trial court's order denying the anti-SLAPP motion to strike, under Code of Civil Procedure section 425.16, filed by defendant to plaintiff's third amended complaint. The Court of Appeal found the essence of the third amended complaint to be the private actions defendant took to restrain trade and monopolize the medical marijuana

market in Richmond. The trial court properly ruled that the third amended complaint was not based upon protected activity. (C.A. 1st, filed January 29, 2019, published February 21, 2019.)

Sass v. Cohen (2019) 32 Cal.App.5th 1032: The Court of Appeal reversed the trial court's order denying a motion to vacate a default judgment and reversed the trial court's default judgment awarding plaintiff compensatory damages of $2,806,532 in an action for an accounting arising from the alleged breach of a Marvin agreement because the judgment exceeded the $987,500 in compensatory damages specified in the complaint. The Court of Appeal stated it was joining the growing majority of cases rejecting the decision in *Cassel v. Sullivan, Roche & Johnson* (1999) 76 Cal.App.4th 1157. In comparing the default judgment to the complaint, a trial court should compare the total compensatory relief granted by the default judgment to the total compensatory relief demanded in the operative pleadings. The complaint requested either $3,837,500 in damages, or $987,500 in damages plus a constructive trust over a house on Oakley Drive in Los Angeles (the Oakley house). The default judgment awarded plaintiff $2,806,532 in compensatory damages plus a constructive trust over the Oakley house, therefore exceeding the amount of compensatory damages demanded in the complaint by $1,819,032. The Court of Appeal ruled that the default judgment was void to the extent of that overage, but the default judgment's remaining awards were valid. (C.A. 2nd, March 7, 2019.)

Shrewsbury Management, Inc. v. Superior Court (2019) 32 Cal.App.5th 1213: The Court of Appeal reversed the trial court's order denying plaintiff judgment creditor's motion for an order directing Wells Fargo Bank to comply with a subpoena duces tecum requesting it to produce bank records for two entities over which the judgment debtor allegedly had signatory authority. The Court of Appeal ruled that a subpoena duces tecum may be issued to a third party in connection with a judgment debtor examination under Code of Civil Procedure section 708.110, and it issued a preemptory writ of mandate directing the trial court to vacate its order denying plaintiff's motion and to conduct further proceedings to reconsider plaintiff's motion. (C.A. 6th, March 11, 2019.)

Sunrise Financial, LLC v. Super. Ct. (2019) 32 Cal.App.5th 114: The Court of Appeal denied a writ petition challenging the trial court's denial of a Code of Civil Procedure section 170.6 challenge by several defendants to the trial judge on the basis that it was untimely filed. The Court of Appeal ruled that the trial court properly found defendants' section 170.6 challenge was untimely because it was filed more than 15 days after they made an appearance in the action by filing an opposition to a Code of Civil Procedure section 403 transfer/consolidation motion in the judge's department. While the section 170.6 time deadlines were not written with section 403 transfer motions in mind, this conclusion best effectuates the legislative intent when viewing the specific words of the statute and the statutory purpose and objectives. (C.A. 4th, February 7, 2019.)

Symmonds v. Mahoney (2019) 31 Cal.App.5th 1096: The Court of Appeal reversed the trial court's order denying defendants' anti-SLAPP motion to strike (Code of Civil Procedure, section 425.16) a complaint filed by the fired drummer for Edward Joseph Mahoney (also known as Eddie Money) alleging discrimination on the basis of age, disability, and medical condition. The trial court denied the motion on the basis that the action did not arise from

protected activity. The Court of Appeal disagreed, ruling the trial court erred in denying defendants' special motion to strike at the first step of anti-SLAPP analysis. The Court of Appeals agreed with defendants that the activity underlying the first cause of action was the decision to terminate plaintiff, a decision defendant Mahoney contended was in furtherance of his free speech rights in connection with an issue of public interest. The matter was remanded for the trial court to evaluate the second step of the anti-SLAPP process. (C.A. 2nd, February 1, 2019.)

United Farmers Agents Assoc. v. Farmers Group (2019) 32 Cal.App.5th 478: The Court of Appeal affirmed the trial court's judgment, following a bench trial, finding that plaintiff lacked standing to pursue its claims and had failed to demonstrate it was entitled to declaratory relief. Plaintiff was a trade association whose members were independent insurance agents who worked for the defendant insurance companies. Plaintiff sued alleging that defendants violated the agreements with the agents and sought four declarations from the court that: (1) the agreements' no-cause termination provisions were unconscionable; (2) the agreements precluded defendants' use of performance programs and imposition of discipline based on an agent's failure to meet performance standards; (3) the agreements precluded defendants from taking adverse action against agents based on the "location, nature, hours, and types of offices maintained" by the agents; and (4) the agreements precluded defendants from sharing customer information acquired by agents with competitors, such as 21st Century Insurance. The Court of Appeal found that plaintiff did have standing to pursue the claims related to office locations and performance standards, but lacked standing to pursue the claims related to unconscionability and sharing of customer information. However, plaintiff was not entitled to declaratory relief on its claims related to office locations and performance standards. (C.A. 2nd, February 22, 2019.)

Whyenlee Industries Ltd. v. Super. Ct. (2019) 33 Cal.App.5th 364: The Court of Appeal denied a petition for writ of mandate seeking to reverse the trial court's order denying a motion to quash service of summons. The Court of Appeal ruled that, under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638), plaintiffs were permitted to use an agent to serve defendant personally in Hong Kong without first making a request to Hong Kong's Central Authority. (C.A. 1st, March 22, 2019.)

Yu v. Liberty Surplus Ins. Corp. (2019) 30 Cal.App.5th 1024: The Court of Appeal affirmed the trial court's orders granting summary judgment and motions for judgment on the pleadings in favor of defendants in a judgment creditor's action (under Insurance Code section 11580(b)(2)) against several insurance companies to collect a 1,264,604.77 default judgment entered against insureds Fitch Construction and Fitch Plastering who had been named as cross-defendants in a cross-complaint filed in a construction defect action. The cross-complaint had alleged "damages according to proof." The trial court properly ruled that the default judgment was void and invalid because the cross-complaint failed to allege a specific money demand. (C.A. 4th, filed December 11, 2018, published January 4, 2019.)

Zhang v. Jenevein (2019) 31 Cal.App.5th 585: The Court of Appeal affirmed the trial court's order denying an anti-SLAPP motion to strike (Code of Civil Procedure, section 425.16) a complaint alleging invasion of privacy and eavesdropping due to defendant secretly

recording confidential conversations in violation of Penal Code sections 632 and 637.2. Defendant's actions in recording the conversations and using the recordings in a contractual arbitration were not made in connection with a judicial or official proceeding authorized by law as discussed in section 425.16, so they were not protected activities under section 425.16. (C.A. 2nd, filed January 2, 2019, published January 23, 2019.)

Class Actions

Fierro v. Landry's Restaurant, Inc. (2019) 32 Cal.App.5th 276: The Court of Appeal reversed the trial court's order sustaining a demurrer, without leave to amend, to a class action complaint on the basis that a prior class action with identical class claims against defendant had been dismissed for failure to bring the case to trial in five years as required by Code of Civil Procedure sections 583.310 and 583.360. After the Court of Appeal issued its original opinion, the California Supreme Court granted review and transferred the matter to the Court of Appeal with directions to vacate its earlier opinion and reconsider the cause in light of the United States Supreme Court's opinion in *China Agritech, Inc. v. Resh* (2018) __ U.S. __ [138 S.Ct. 1800] (*China Agritech*). *China Agritech* which held that, upon denial of class certification, a putative class member may not commence a new class action asserting the same claim if the statute of limitations on the claim has run. (Id. at p. __ [138 S.Ct. at p. 1804].) The efficiency and economy of litigation which support tolling the statutes of limitations for individual claims during the pendency of the initial class action do not support tolling the statutes of limitations for the class claims. (Id. at p. __ [138 S.Ct. at p. 1806].) Applying *China Agritech,* the Court of Appeal ruled as follows: The trial court erred in applying the section 583.360 dismissal of the earlier action as a bar to plaintiff's class claims. In determining whether statutes of limitations barred the class claims, there was no basis for the application of equitable or other tolling. However, on the record before it, the Court of Appeal could not say that all of the class claims were untimely, so the matter was reversed and remanded for further proceedings by the trial court. (C.A. 4th, February 15, 2019.)

Jimenez-Sanchez v. Dark Horse Express, Inc. (2019) 32 Cal.App.5th 224: The Court of Appeal reversed the trial court's order denying class certification in a wage and hour class action for truck drivers who were paid on a piece-rate basis to transport agricultural products within California. Defendant identified 76 current and former drivers as potential class members and indicated it has obtained settlement agreements and releases from 54 of the drivers. The Court of Appeal ruled that the trial court used improper criteria or erroneous legal assumptions in determining whether common issues predominated in the rest break claims. It did not separately analyze the issue of compensation for rest breaks, but included rest break claims in its discussion of the nonproductive time issue. The Court of Appeal further found that the error in considering the rest break claims also affected the trial court's analysis of the meal break and release claims. (C.A. 5th, filed January 16, 2019, published February 14, 2019.)

Myers v. Raley's (2019) 32 Cal.App.5th 1239: The Court of Appeal reversed the trial court's order denying class certification in a wage and hour putative class action. The Court of Appeal found that the trial court parroted the ultimate finding needed to deny certification but did not provide any insight into its analytic route in reaching that finding. By not

providing the reasons for its ultimate finding, it foreclosed the type of review dictated by the standard of review of a denial of class certification. A trial court cannot stymie appellate review by simply remaining mute and thereby failing to reveal whether it used either improper criteria or an incorrect legal analysis. The Court of Appeal remanded the case back to the trial court for reconsideration in light of *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522 and *Jones v. Farmers Ins. Exchange* (2013) 221 Cal.App.4th 986 and for a statement of reasons to ensure the trial court does not employ improper criteria or rely on erroneous legal assumptions. (C.A. 3rd, filed February 12, 2019, published March 12, 2019.)

Rel v. Pacific Bell Mobile Services (2019) 33 Cal.App.5th 882: The Court of Appeal affirmed the trial court's order granting dismissal of class action lawsuits for failure to bring the cases to trial within five years as required by Code of Civil Procedure section 583.310. Ruling on issues of first impression, the Court of Appeal held that a pretrial death knell order dismissing the class claims does not qualify as a trial for purposes of the five-year dismissal statute, and an appellate decision reversing a death knell order does not trigger a three-year extension under section 583.320(a)(3). (C.A. 1st, March 29, 2019.)