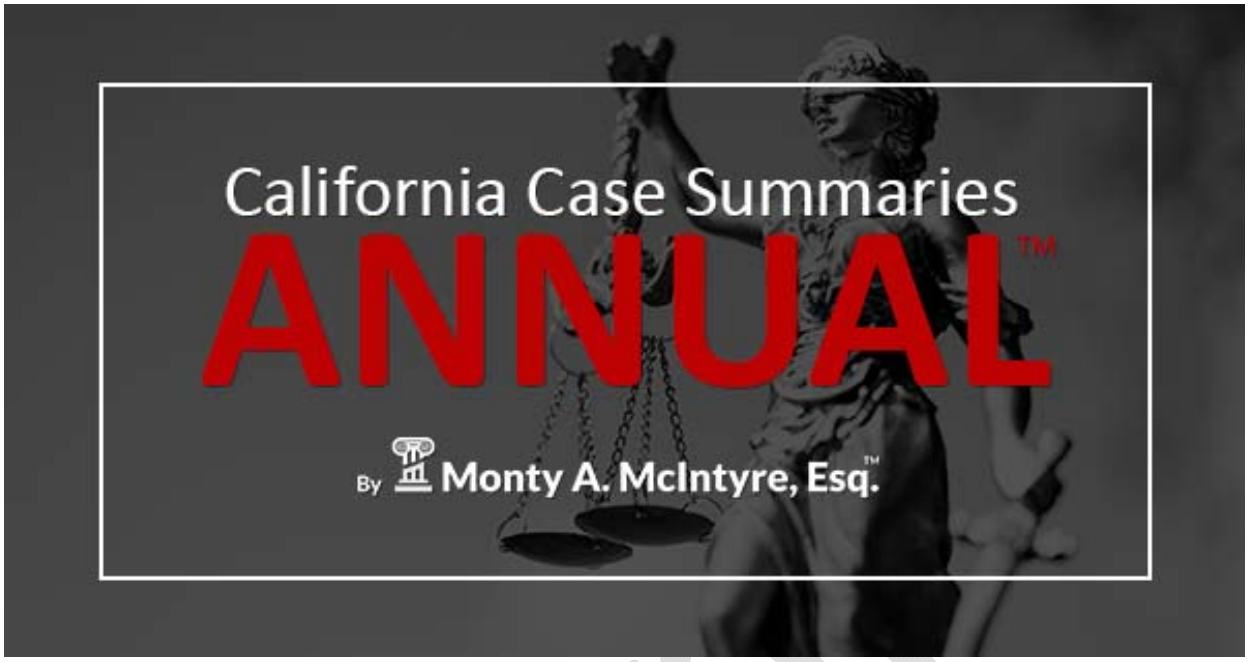

California Case Summaries: Annual 2019™

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CALIFORNIA SUPREME COURT

Arbitration

*OTO, L.L.C. v. Kho (*2019) 8 Cal.5th 111: The California Supreme Court reversed the decision of the Court of Appeal that had ordered the parties to arbitrate a wage dispute brought by a former employee against his former employer. The Supreme Court found that the arbitration agreement involved an extraordinarily high degree of procedural unconscionability because the document was given to the employee at his workstation, was not explained, the employee was asked to quickly sign it, and no copy of the document was given to the employee. Although noting it was a close question, in part because the arbitration process was no more complicated than ordinary civil litigation, the Supreme Court concluded, that because of the unusually coercive setting in which the agreement was made, it was substantively unconscionable and sufficiently onesided as to render the agreement unenforceable. The Supreme Court did not say that no arbitration could provide an appropriate forum for resolution of the employee's wage claim, but only that this particular arbitral process, forced upon the employee under especially oppressive

circumstances and erecting new barriers to the vindication of his rights, was unconscionable. (August 29, 2019.)

Civil Code

White v. Square, Inc. (2019) 7 Cal.5th 1019: The California Supreme Court, answering a question posted by the United States Court of Appeals for the Ninth Circuit, ruled that a plaintiff has standing to bring a claim under the Unruh Civil Rights Act (Unruh Act; Civil Code, section 51 et seq.) when the plaintiff visits a business's website with the intent of using its services, encounters terms and conditions that allegedly deny the plaintiff full and equal access to its services, and then leaves the website without entering into an agreement with the service provider. A person suffers discrimination under the Unruh Act when the person presents himself or herself to a business with an intent to use its services but encounters an exclusionary policy or practice that prevents him or her from using those services. (August 12, 2019.)

Civil Procedure

Black Sky Capital, LLC v. Cobb (2019*)* 7 Cal.5th 156: The California Supreme Court affirmed the decision of the Court of Appeal regarding the application of the anti-deficiency rule in Code of Civil Procedure section 580d. When a creditor holds two deeds of trust on the same property, section 580d does not preclude the creditor from recovering a deficiency judgment on the junior lien extinguished by a nonjudicial foreclosure sale on the senior lien. (May 6, 2019.)

FilmOn.com Inc. v. DoubleVerify Inc. (2019) *7* Cal.5th 133: The California Supreme Court reversed the decision of the Court of Appeal regarding the application of an anti-SLAPP motion to strike (Code of Civil Procedure, section 425.16) to commercial speech. The California Supreme Court ruled that the context of a defendant's statement is relevant, though not dispositive, in analyzing whether the statement was made "in furtherance of" free speech "in connection with" a public issue. (Section 425.16(e)(4).) The Supreme Court ruled that defendant's online tracking, verification and "brand safety" reports to internet advertisers — generated for profit and exchanged confidentially, without being part of any attempt to participate in a larger public discussion — did not qualify for anti-SLAPP protection under section 426.16(e)(4) because they were too tenuously tethered to the issues of public interest they implicated, and too remotely connected to the public conversation about those issues to merit protection under the catchall provision. (May 6, 2019.)

Heimlich v. Shivji (2019) 7 Cal.5th 350: The California Supreme Court reversed the Court of Appeal directing it to affirm the trial court's order confirming the arbitration award but denying costs to respondent. A request for costs under section 998 is timely if filed with the arbitrator within 15 days of a final award. An arbitrator has authority to award costs to the requesting party, but if the arbitrator refuses to award costs, judicial review is limited. (May 30, 2019.)

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.)

Wilson v. Cable News Network, Inc. (2019) 7 Cal.5th 871: The California Supreme Court affirmed in part and reversed in part the Court of Appeal's judgment in a wrongful termination case holding that the anti-SLAPP statute (Code of Civil Procedure, section 425.16) did not apply to claims alleging discriminatory or retaliatory employment actions, or to a defamation claim for privately discussing the alleged reasons for plaintiff's termination with potential employers and others. The California Supreme Court ruled that the anti-

SLAPP statute has no exception for discrimination or retaliation claims, and in some cases the actions a plaintiff alleges may qualify as protected speech or petitioning activity under section 425.16. Because defendant employer established that some of plaintiff's claims arose in limited part—though not in whole—from protected activity, the trial court should determine whether those portions of plaintiff's claims had sufficient potential merit to proceed. The Supreme Court held that the privately communicated remarks were not made in connection with any issue of public significance, so the anti-SLAPP statute did not apply to them. (July 22, 2019.)

Class Actions

Noel v. Thrifty Payless (2019) 7 Cal.5th 955: The California Supreme Court reversed the Court of Appeal decision that had upheld the trial court's order denying class certification in a class action alleging violations of the unfair competition law (UCL; Business & Professions Code, section 17200 et seq.), the false advertising law (FAL; Business & Professions Code, section 17500 et seq.), and the Consumers Legal Remedies Act (CLRA; Civil Code, section 1750 et seq.) arising from purchases of inflatable outdoor pools. The Supreme Court ruled that the trial court erred when it determined that the class proposed by plaintiff was not ascertainable; it was. The phrase, "All persons who purchased the Ready Set Pool at a Rite Aid store located in California within the four years preceding the date of the filing of this action" was neither vague nor subjective. A member of the class could appreciate from this definition whether he or she was included within it, and thus be in a position to take appropriate steps to protect his or her interests. To the extent that the trial court had concerns regarding the state of the record as it pertained to matters such as the provision of notice to class members, or how burdensome it would be to identify class members, those issues should not have been resolved in the context of ascertainability. (July 29, 2019.)

Education

Cal. School Bds. Assn. v. State of Cal. (2019) _ Cal.5th _ , 2019 WL 6904534: The California Supreme Court affirmed the Court of Appeal's decision affirming the trial court's order denying a writ petition challenging the Legislature's designation of state funding in Education Code sections 42238.24 and 56523(f) as offsetting revenues to pay the Graduation Requirements (GR) mandate and Behavioral Intervention Plans (BIP) mandate costs under Government Code section 17557(d)(2)(B). The Supreme Court ruled that the legislation did not violate article XIII B, section 6 of the state Constitution. It also ruled that the mandate reimbursement as provided by the statutes did not negate the Commission on State Mandates mandate determinations and therefore did not violate the separation of powers. (December 19, 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.)

Melendez v. S.F. Baseball Associates LLC (2019) 7 Cal.5th 1: The California Supreme Court reversed the judgment of the Court of Appeal finding that a wage and hour action by security guards at what is now named Oracle Park in San Francisco was preempted by section 301 of the Labor Management Relations Act, 29 United States Code, section 185(a). The California Supreme Court ruled that the lawsuit did not require interpretation of the collective bargaining agreement (agreement) between the guards' union and the San Francisco Giants. Although the agreement might be relevant to the lawsuit and might need to be consulted to resolve it, the Supreme Court ruled that the dispute would be decided on the interpretation of state law, the meaning of "discharge" under Labor Code section 201, rather than an interpretation of the agreement. Because no party had identified any provision of the agreement whose meaning was uncertain and required interpretation to resolve plaintiffs' claim, the lawsuit was not preempted and state courts could decide it on the merits. (April 25, 2019.)

Stoetzl v. Dept. of Human Resources (2019) 7 Cal.5th 718: The California Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeal in a coordinated proceeding of three class-action cases alleging wage and hour and other Labor Code violations because correctional officers were not properly paid for their walk time.[1] The

[1] Time spent on pre- and postwork activities, including traveling from the outermost gate of the prison facility to their work posts within the facility, traveling back from their work posts to the outermost gate, being briefed before the start of a shift, briefing relief staff at the end of a shift, checking out and checking back in mandated safety equipment, putting on and removing such equipment, and submitting to searches at various security checkpoints within the facility.

Supreme Court ruled that union member supervisors were not entitled to any additional compensation for either entry-exit walk time or duty-integrated walk time. Non-union supervisors may be entitled to additional compensation for duty-integrated walk time, but are not entitled to additional compensation for entry-exit walk time. (July 1, 2019.)

*Voris v. Lampert (*2019) 7 Cal.5th 1141: The California Supreme Court ruled that a terminated employee, who had sued defendant employer companies and recovered contractual and statutory damages for unpaid wages, could not also sue one of the individual owners of defendant companies for conversion. Plaintiff claimed that, by failing to pay the wages, the defendant companies had converted his personal property to their own use, and the individual owner should be personally liable for the companies' misconduct. The Supreme Court ruled that a conversion claim was not available to plaintiff, concluding that this tort was not the right fit for the wrong alleged, nor was it the right fix for alleged deficiencies in the existing system of remedies for nonpayment of wages. (August 15, 2019.)

*ZB, N.A. v. Superior Court (*2019) 8 Cal.5th 175: The California Supreme Court affirmed the judgment of the Court of Appeal ordering the trial court to deny a motion to compel arbitration, but for different reasons. Plaintiff filed an action under the Private Attorneys General Act of 2004 (PAGA; Labor Code, section 2698 et seq.) seeking civil penalties under Labor Code section 558. The California Supreme Court ruled that Labor Code section 558 has no private right of action, and employees cannot recover the unpaid wages described in section 558 in a PAGA claim. Because the amount for unpaid wages was not recoverable under the PAGA, and section 558 did not otherwise permit a private right of action, the trial court should have denied the motion to compel arbitration. On remand, the trial court may consider striking the unpaid wages allegations from plaintiff's complaint or permitting her to amend the complaint. (September 12, 2019.)

Elections

Patterson v. Padilla (2019) 8 Cal.5th 220: The California Supreme Court exercised its original jurisdiction and granted an emergency petition for a writ of mandate to forbid respondent from enforcing the recently enacted Presidential Tax Transparency and Accountability Act (the Act; Elections Code, section 6880 et seq.).[2] Elections Code sections 6883 and 6884 purport to make the appearance of a "recognized" candidate for president on a primary ballot contingent on whether the candidate has made the disclosures specified by the Act. The California Supreme Court ruled that this additional requirement, however, is in conflict with the California Constitution's specification of an inclusive open presidential primary ballot in article II, section 5, subdivision (c) of the California Constitution. (November 21, 2019.)

Environment

Union of Medical Marijuana Patients v. City of San Diego (2019) 7 Cal.5th 1171: The California Supreme Court reversed the Court of Appeal and remanded the matter to the trial

[2] This act was intended to prevent President Trump's name from appearing on the primary ballot if he did not release his income tax returns.

court. Petitioner filed a writ petition challenging respondent's decision to amend a zoning ordinance to allow and regulate medical marijuana dispensaries, and its conclusion that the ordinance adoption was not a project for purposes of the California Environmental Quality Act (CEQA; Public Resources Code sections 21000 et seq.), and therefore no environmental review was necessary. The Supreme Court ruled that Public Resources Code 21080 does not override the definition of project found in section 21065; so the various activities listed in section 21080 must satisfy the requirements of section 21065 before they are found to be a project for purposes of CEQA. However, the Supreme Court ruled that the Court of Appeal misapplied the test for determining whether a proposed activity has the potential to cause environmental change under section 21065[3], and erred in affirming respondent's finding that adoption of the ordinance did not constitute a project. A proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur. (August 19, 2019.)

Evidence

Mathews v. Becerra (2019) _ Cal.5th _ , 2019 WL 7176898: The California Supreme Court reversed the trial court's order sustaining a demurrer, without leave to amend, to plaintiffs' complaint alleging that the amended and expanded definition of the Child Abuse and Neglect Reporting Act's (CANRA; Stats. 1987, ch. 1459.) term "sexual exploitation", approved in Assembly Bill 1775, violated the plaintiffs' patients right to privacy under the state and federal Constitutions. The California Supreme Court held that plaintiffs had asserted a cognizable privacy interest under the California Constitution and their complaint survives demurrer. This holding does not mean the reporting requirement is unconstitutional. It means only that the burden shifts to the state to demonstrate a sufficient justification for the incursion on privacy as this case moves forward. The case was remanded for further proceedings to determine whether the statute's purpose of protecting children is actually advanced by mandatory reporting of psychotherapy patients who admit to possessing or viewing child pornography. (December 26, 2019.)

Government

Plantier v. Ramona Mun. Water Dist. (2019) 7 Cal.5th 352: The California Supreme Court affirmed the decision of the Court of Appeal that had reversed the trial court's decision. When an agency considers increasing a property-related fee, a fee payor seeking to challenge the agency's method of calculating the fee is not required to exhaust its administrative remedies by first participating in a Proposition 218 public hearing at which the agency considers the proposed rate increase. (May 30, 2019.)

T-Mobile West LLC v. City and County of S.F. (2019) 6 Cal.5th 1107: The California Supreme Court affirmed the rulings of the Court of Appeal and the trial court holding that the City of San Francisco's Ordinance 12-11 is not preempted by Public Utilities Code 7901 and does not violate section 7901.5. Neither the plain language of section 7901 nor the way it has been interpreted by courts and the Public Utilities Commission supported plaintiffs'

[3] Established in Muzzy Ranch Co. v. Solano County Airport Land Use Commission (2007) 41 Cal.4th 372

argument that the Legislature intended to preempt local regulation based on aesthetic considerations. Section 7901.1 only applies to temporary access during construction and installation of telephone lines and equipment. Because the City treated all entities similarly in that regard, there was no section 7901.1 violation. (April 4, 2019.)

San Diegans for Open Gov. v. Public Facilities Financing etc. (2019) _ Cal.5th _ , 2019 WL 7176900: Reversing the decision of the Court of Appeal, the California Supreme Court ruled that Government Code section 1092 did not give plaintiff a private right of action to challenge public contracts because plaintiff was not a party to the contracts. (December 26, 2019.)

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CALIFORNIA COURTS OF APPEAL

Appeals

Benton v. Benton (2019) 39 Cal.App.5th 212: The Court of Appeal dismissed the appeal of the trial court's order denying an anti-SLAPP motion to strike under Code of Civil Procedure section 425.16. Plaintiff's complaint alleged misappropriation of trade secrets, intentional interference with prospective economic advantage, defamation, and unfair competition. One of the reasons for the trial court's denial of the motion was that the commercial speech exemption in Code of Civil Procedure section 425.17 applied to the conduct underlying the operative complaint. The appeal was dismissed because the Legislature has precluded interlocutory appellate jurisdiction over an appeal from an order denying an anti-SLAPP motion on the ground that the commercial speech exemption applies. (C.A. 4th, August 27, 2019.)

Brown v. Upside Gading, LP (2019) 42 Cal.App.5th 140: The Court of Appeal dismissed an appeal from the trial court's order in a landlord-tenant putative class action that invalidated broad releases of claims signed by approximately 26 tenant putative class members and required the parties to meet and confer regarding a corrective notice for the putative class after the court found the releases contained misleading and one-sided information regarding the underlying lawsuit. The Court of Appeal dismissed the appeal because Code of Civil Procedure section 904.1 provides no basis for appealing an interlocutory trial court order. (C.A. 1st, filed October 17, published November 18, 2019.)

Davis v. Mariposa County Board of Supervisors (2019) 38 Cal.App.5th 1048: The Court of Appeal dismissed an appeal of a judgment for defendant, following a bench trial, because the appeal was untimely filed. Plaintiffs sued defendant to challenge its imposition of a tax to help pay for firefighting services. Plaintiffs alleged the tax was a special tax requiring a vote of 2/3 of the voters. Plaintiffs appealed the judgment 56 days after it was entered. Both Government Code section 50078.17 and Code of Civil Procedure section 870(b) required an appeal to be filed within 30 days of the notice of entry of judgment. (C.A. 5th, August 29, 2019.)

PG&E "San Bruno Fire" Cases (2019) _ Cal.App.5th _ , 2019 WL 6888248: The Court of Appeal dismissed an appeal challenging the trial court's allocation of attorney fees and costs after the settlement of consolidated San Bruno Fire Derivative Cases against PG&E. The

settlement agreement provided that settling plaintiffs' counsel would be paid in the aggregate $25 million in attorney fees and $500,000 in costs. The Court of Appeal dismissed the appeal because the operative settlement agreement unequivocally deemed the trial court's allocation determination to be final and not subject to appellate review. (C.A. 1st, December 18, 2019.)

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.)

Shepard-Branom v. Diamond (2019) 39 Cal.App.5th Supp. 1: The Appellate Department of the Los Angeles Superior Court dismissed a purported appeal by plaintiff of the trial court's order denying plaintiff's motion for a new trial following a voluntary expedited jury trial where jury awarded economic damages to plaintiff of $2,450. Pursuant to Code of Civil Procedure section 630.09, plaintiff and all parties waived their right to appeal by entering into a consent order stipulating that they waived "all rights to appeal" and by participating in a voluntary expedited jury trial. (Appellate Department of the Los Angeles Superior Court, August 23, 2019.)

Arbitration

Bakersfield College v. Cal. Community College Athletic Assn. (2019) 41 Cal.App.5th 753: The Court of Appeal reversed the trial court's order granting a motion to compel arbitration. The undisputed facts, as stated by the trial court, were that plaintiff had no ability to individually negotiate the terms of the contract at the time it was made, it could not opt out of the arbitration provision, and it thus had no meaningful choice but to accept the arbitration provision as drafted by defendant. The uncontroverted evidence supported a finding of procedural unconscionability. There was also substantive unconscionability primarily due to lack of mutuality in multiple provisions including the attorney fee and cost provision, the very short limitation period provision, and the arbitration panel selection process provision. Finding the unconscionable provisions could not be severed, the Court of Appeal reversed the trial court's order. (C.A. 3rd, October 31, 2019.)

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.)

Clifford v. Quest Software Inc. (2019) 38 Cal.App.5th 745: In an action alleging wage and hour claims, the Court of Appeal reversed the trial court's order denying defendant's motion to compel arbitration of plaintiff's unfair competition claim (UCL; Business & Professions Code, section 172001) because it concluded this claim was not arbitrable. The Court of Appeal ruled that *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303 (*Cruz*) provides that UCL claims for "public" injunctive relief are not arbitrable. *Cruz,* however, does not bar arbitration of a UCL claim for private injunctive relief or restitution, which is what plaintiff sought in this case. Because plaintiff's UCL claim was subject to arbitration, the motion to compel arbitration should have been granted as to that cause of action. (C.A. 4th, filed July 23, 2019, published August 14, 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.)

Davis v. TWC Dealer Group, Inc. (2019) 41 Cal.App.5th 662: The Court of Appeal affirmed the trial court's order denying defendants' motion to compel arbitration in an action alleging numerous causes of action arising from plaintiffs' employment by defendants. The trial court properly found that the agreements in question were both procedurally and substantively

unconscionable. The Court of Appeal was also very concerned about counsel's lack of candor and violation of Rule 3.3 of the new California Rules of Professional Conduct. (C.A. 1st, October 30, 2019.)

Diaz v. Sohnen Enterprises (2019) 34 Cal.App.5th 126: The Court of Appeal reversed the trial court's order denying a petition to compel arbitration in an action alleging workplace discrimination. Because plaintiff continued her employment, after notification that an agreement to arbitration was a condition of continued employment, plaintiff impliedly consented to the arbitration agreement. The record contained no evidence of surprise, nor of sharp practices demonstrating substantive unconscionability. Because plaintiff failed to specify, with appropriate citations to the record and relevant legal authority, any terms of the agreement that she believed were unconscionable, she waived any argument that the agreement was unenforceable. (C.A. 2nd, April 10, 2019.)

Fabian v. Renovate America, Inc. (2019) 42 Cal.App.5th 1062: The Court of Appeal affirmed the trial court's order denying defendant's petition to compel arbitration. The trial court properly denied the petition. Defendant offered no evidence about the process used to verify plaintiff's electronic signature via DocuSign, including who sent plaintiff the contract, how the contract was sent to her, how plaintiff's electronic signature was placed on the contract, who received the signed contract, how the signed contract was returned to defendant, and how plaintiff's identification was verified as the person who actually signed the contract. Defendant's DocuSign authentication argument was therfore unsupported and unpersuasive. Moreover, by not providing any specific details about the circumstances surrounding the contract's execution, defendant's declaration offered little more than a bare statement that plaintiff "entered into" the contract without offering any facts to support that assertion. (C.A. 4th, filed November 19, 2019, published December 4, 2019.)

Franco v. Greystone Ridge Condominium (2019) 39 Cal.App.5th 221: The Court of Appeal reversed the trial court's order denying defendant's motion to compel arbitration of a complaint asserting employment-related claims. Although the complaint was filed ten days before the arbitration agreement was signed, the Court of Appeal ruled that the agreement was clear, explicit, and unequivocal with regard to the claims subject to it and contained no qualifying language limiting its applicability to claims that had yet to accrue. Moreover, the agreement's reference to claims relating to "pre-hire" matters expressed an intent to cover all claims, regardless of when they accrued, that were not otherwise expressly excluded by the arbitration agreement. (C.A. 4th, filed August 14, 2019, published August 27, 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.)

J.H. Boyd Enterprises, Inc. v. Boyd (2019) 39 Cal.App.5th 802: The Court of Appeal affirmed the trial court's order denying a motion to compel arbitration but dismissed the portion of the appeal from an order denying judicial reference because that was not an appealable order. The Court of Appeal ruled that the dispute, as framed by the complaint, was governed by California law. Since the dispute concerned a secured loan and plaintiff had not elected to proceed with the arbitration, under paragraph F of the promissory note, the dispute could not be submitted to arbitration. (C.A. 5th, filed August 23, 2019, published September 10, 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.)

Lacayo v. Catalina Restaurant Group Inc. (2019) 38 Cal.App.5th 244: In a class action alleging wage and hour violations, the Court of Appeal dismissed the portion of defendants' appeal seeking to appeal the trial court's order granting defendants' motion to compel arbitration of plaintiff's individual claims but denying defendants' motion to dismiss plaintiff's class action claims,[4] and it affirmed the trial court's order denying the motion to compel arbitration as to an unfair competition claim. The Court of Appeal found it had no jurisdiction to consider the portions of the appeal it dismissed. The trial court properly concluded that the arbitration agreement intended to exempt the unfair competition claim from arbitration. (C.A. 4th, August 1, 2019.)

Levinson Arshonsky & Kurtz LLP v. Kim (2019) 35 Cal.App.5th 896: The Court of Appeal dismissed plaintiff's appeal of the trial court's order denying his petition to compel arbitration under the Mandatory Fee Arbitration Act (MFAA; Business and Professions Code section 6200, et seq.). The trial court found plaintiff waived his right to arbitration under the MFAA by failing to request arbitration within the required 30 days. The Court of Appeal lacked jurisdiction to consider the appeal because the denial of a petition to compel a MFAA arbitration is not an appealable order. (C.A. 2nd, May 29, 2019.)

Lopez v. Bartlett Care Center, LLC (2019) 39 Cal.App.5th 311: The Court of Appeal affirmed the trial court's order denying defendant's petition to compel arbitration of claims including elder abuse and wrongful death brought by decedent's daughter as successor in interest and individually. The trial court properly found the successor claims were not arbitrable because no arbitration agreement existed between decedent and defendant because defendant failed to prove decedent's daughter had authority to sign the agreement on decedent's behalf, and

[4] The trial court left it to the arbitrator to decide whether the class claims were subject to arbitration or a class action waiver.

the arbitration agreement was unenforceable against daughter individually on grounds of unconscionability. (C.A. 4th, filed July 30, 2019, published August 28, 2019.)

Mejia v. Merchants Building Maintenance (2019) 38 Cal.App.5th 723: The Court of Appeal affirmed the trial court's order denying defendants' motion to compel arbitration of part of a PAGA claim. Agreeing with the decisions in *Lawson v. ZB, N.A.* (2017) 18 Cal.App.5th 705 and *Zakaryan v. The Men's Wearhouse, Inc.* (2019) 33 Cal.App.5th 659, the Fourth District Court of Appeal ruled that a single PAGA claim seeking to recover section 558 civil penalties may not be "split" between that portion of the claim seeking an "amount sufficient to recover underpaid wages" and that portion of the claim seeking the $50 or $100 per-violation, per-pay-period assessment imposed for each wage violation. An employee bringing a PAGA claim to recover the civil penalties identified in section 558 may not be compelled to arbitrate that portion of their PAGA claim that seeks an amount sufficient to recover underpaid wages pursuant to that statute, while the rest of the claim that seeks the $50 or $100 per-violation, per-pay-period portion of the penalty remains in a judicial forum. (C.A. 4th, August 13, 2019.)

Muller v. Roy Miller Freight Lines, LLC (2019) 34 Cal.App.5th 1056: The Court of Appeal affirmed the trial court's order granting in part and denying in part (as to one cause of action for lost wages) defendant's motion to compel arbitration in a wage and hour action. The trial court correctly concluded that plaintiff was a transportation worker engaged in interstate commerce under 9 U.S.C. § 1 and thus exempt from Federal Arbitration Action coverage. Even though plaintiff did not physically transport goods across state lines, his employer was in the transportation industry, and the vast majority of the goods he transported originated outside California. Thus, California Labor Code section 229 required staying the prosecution of his cause of action for unpaid wages while the other five causes of action proceeded to arbitration. (C.A. 4th, May 1, 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.)

Nunez v. Nevell Group, Inc. (2019) 35 Cal.App.5th 838: The Court of Appeal affirmed the trial court's order denying defendant's motion to compel arbitration. The trial court properly denied the motion. Defendant explicitly waived its right to compel arbitration by advising the court in writing that it would not file such a motion. Defendant implicitly waived arbitration by its delay in filing the motion and by engaging in significant discovery and other litigation activities inconsistent with arbitration. Finally, plaintiff would have suffered prejudice if the motion was granted. (C.A. 4th, filed May 2, 2019, published May 28, 2019.)

Oxford Preparatory Academy v. Edlighten Learning Solutions (2019) 34 Cal.App.5th 605: The Court of Appeal reversed the trial court's order denying defendant's petition to compel arbitration. Defendant entered into three contracts with plaintiff. One of the contracts was a management services agreement with an arbitration clause. The parties later entered into a

termination agreement terminating all rights and obligations under the three contracts with the exception of two payment obligations. The Court of Appeal held the termination agreement did not supersede the arbitration clause for pretermination disputes. The case was reversed and remanded for the trial court to decide whether any of plaintiff's causes of action fell within the scope of the arbitration clause. (C.A. 4th, April 22, 2019.)

Prima Donna Development Corp. v. Wells Fargo Bank, N.A. (2019) 42 Cal.App.5th 22: The Court of Appeal affirmed the trial court's orders compelling arbitration and confirming the arbitration award as a judgment. The arbitration award found for defendant, ruling that defendant was not liable for wire transfers of $638,400 of plaintiff's funds that was made following the agreed wire fund procedures.[5] The Court of Appeal ruled that plaintiff forfeited its arguments about procedural unconscionability by not raising them at the initial court hearing. The Court of Appeal rejected plaintiff's arguments that there was substantive unconscionabitliy. Finally, the trial court properly denied plaintiff's motion to vacate the arbitration award and granted defendant's motion to confirm the award. (C.A. 6th, November 13, 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.)

Soni v. SimpleLayers, Inc. (2019) 42 Cal.App.5th 1071: The Court of Appeal reversed a judgment for plaintiff attorney of $2, 2019 plus an attorney fee award of $79,898 to plaintiff as the prevailing party. The parties initially went through a fee arbitration under the rules of the Los Angeles County Bar Association (the LACBA rules). The arbitrator awarded plaintiff

[5] Apparently, the company CEO's email account was hacked when he was overseas. Emails were sent from the hacked account to another company employee requesting that this employee have defendant make the wire transfers. The employee did so believing the emails came from the CEO.

attorney $2.50. Thirty-three days after the arbitration award was served on the parties by mail, the plaintiff attorney filed an action in the trial court to recover the full amount of the disputed fees. The trial court denied the client's petition to confirm the award and, after a bench trial, entered judgment in favor of plaintiff. The Court of Appeal ruled that, under the LACBA rules pursuant to Business & Professions Code section 6200 et seq., service of the arbitration award was complete at the time of deposit in the mail and was not extended for service by mail. Section 6206 did not extend this 30-day deadline. The arbitration award became binding when the attorney did not file an action within 30 days after service. Code of Civil Procedure section 1288 barred plaintiff from asserting a ground that supported vacating the award because plaintiff did not file a petition within 100 days of service of the award. Moreover, even if plaintiff was able to raise arbitrability issues, under the LACBA rules, the arbitrator had the authority to determine jurisdiction, and the arbitrator's ruling that the fee dispute was arbitrable was not reviewable for errors of law or fact. (C.A. 2nd, filed November 22, 2019, published December 4, 2019.)

Spracher v. Paul M. Zagaris, Inc. (2019) _ Cal.App.5th _ , 2019 WL 4447403: The Court of Appeal affirmed the trial court's order denying a motion to compel arbitration of a class action on behalf of people who had used defendants to buy or sell a residence. The trial court properly denied the motion due to waiver after 20 months of active litigation where defendants filed multiple demurrers, engaged in extensive discovery, and filed a motion for summary judgment that resulted in some representative plaintiffs being dismissed. Defendants substantially invoked the litigation machinery before providing any notice regarding an intent to arbitrate and did so in a manner inconsistent with the right to arbitrate. The trial court also properly ruled that defendants' delay resulted in prejudice to plaintiff by causing her to expend significant time and resources while denying her the efficiencies of arbitration. (C.A. 1st, filed August 26, 2019, published September 17, 2019.)

Subcontracting Concepts (CT), LLC v. De Melo (2019) 34 Cal.App.5th 201: The Court of Appeal affirmed the trial court's order denying a petition to compel arbitration and stay administrative wage claim proceedings. The trial court properly found the arbitration agreement was procedurally unconscionable and substantively unconscionable because of its numerous provisions seeking to evade statutory protections and limit the remedies available to respondent[6]. Because there was no single provision that could be stricken to remove the unconscionable taint from the agreement, the trial court did not abuse its discretion in concluding the arbitration clause could not be enforced. (C.A. 1st, April 10, 2019.)

Valentine v. Plum Healthcare Group, LLC (2019) 37 Cal.App.5th 1076: The Court of Appeal affirmed the trial court's order denying a motion to compel arbitration of an action for elder abuse and wrongful death. The plaintiffs were the husband as decedent's successor in interest, the husband individually, and the children of decedent. The trial court properly found that, although the husband did not sign the arbitration agreements as decedent's agent, he expressly bound himself to arbitrate all claims he held individually and as the successor in interest. As a result, both decedent's claim for elder abuse and the husband's individual claim for wrongful death were subject to arbitration. However, the trial court

[6] Including not allowing recovery of attorney fees or the pursuit of an individual PAGA claim.

properly denied the petition because the children's claims were not subject to arbitration, and allowing the arbitration and the litigation to proceed concurrently could result in inconsistent findings of fact and law. (C.A. 3rd, filed July 2, 2019, published July 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.)

Attorney Fees

Beames v. City of Visalia (2019) _ Cal.App.5th _ , 2019 WL 6907520: The Court of Appeal reversed the trial court's order denying petitioner's motion for attorney fees under the Civil Rights Act of 1976 (42 U.S.C. section 1988 (section 1988)) after the trial court had granted petitioner's writ petition overturning a decision of respondent's hearing officer that had ruled against petitioner in a zoning dispute concerning commercial property. The writ petition also contained a claim under the Civil Rights Act of 1871 (42 U.S.C. section 1983 (section 1983)), alleging that the hearing officer's errors denied petitioner due process of law under the 14th Amendment. The denial of the motion for attorney fees under section 1988 was an abuse of discretion because the 1983 claim was not insubstantial and was based on the same nucleus of operative facts as the municipal code violation claim. The case was remanded and the trial court was directed to determine a reasonable fee and grant the fee motion. (C.A. 5th, December 19, 2019.)

*Bustos v. Wells Fargo Bank, N.A. (*2019) 39 Cal.App.5th 369: The Court of Appeal affirmed the trial court's order awarding plaintiff $4,260 in attorney fees and costs, pursuant to Civil Code section 2924.12, finding that she was the prevailing borrower in her Homeowners Bill of Rights action against defendant because she obtained injunctive relief in the form of a TRO against defendant. (C.A. 3rd, August 28, 2019.)

Canyon View Ltd. v. Lakeview Loan Servicing, LLC (2019) 42 Cal.App.5th 1096: The Court of Appeal affirmed in part and reversed in part rulings made by trial courts denying plaintiff's request for attorney fees and costs in four actions by plaintiff to quiet title on four mobilehomes purchased by plaintiff via Mobilehome Residency Law-regulated (MRL; Civil Code, section 798 et seq.) proceedings and public sales. The MRL addresses numerous issues and rights, including the right of a purchaser at an MRL-regulated abandonment or warehouse lien sale to take title free and clear of any existing liens and interests, other than a lien in favor of the state for nonpayment of fees and penalties. Because plaintiff's actions against defendants were necessary to perfect plaintiff's right to free and clear title under the MRL, they arose out of the MRL, and plaintiff was entitled to recover its reasonable attorney fees and costs as the prevailing party. However, before the lawsuit was filed defendants Ocwen Loan Servicing, LLC and Power Default Services, Inc. offered to take all steps within their power to remove any cloud on plaintiff's title, including executing a reconveyance and recording a quitclaim deed. Suing these defendants was not necessary to enforce plaintiff's right under the MRL to clear title, this action did not arise out of the MRL, and plaintiff was not entitled to attorney fees or costs under the MRL in that action. (C.A. 2nd, December 4, 2019.)

City of Los Angeles v. Metropolitan Water Dist. etc. (2019) 42 Cal.App.5th 290: The Court of Appeal affirmed but revised the trial court's orders awarding attorney fees to intervenor San Diego Union-Tribune (Union). The trial court denied a writ petition by the City of Los Angeles Department of Water and Power (DWP) against the Metropolitan Water District (MWD) attempting to prevent MWD from disclosing records of DWP customers to the Union. The trial court granted Union's California Public Records Act (CPRA; Government Code, section 6250 et seq.) cross-petition against MWD. The trial court properly awarded Union $25,319 in attorney fees under CPRA against MWD for Union's work on the CPRA cross-petition up until the point where MWD agreed it would produce complete customer names and addresses. For its work opposing the mandamus petition, Union properly received $136,645.82 in attorney fees under Code of Civil Procedure section 1021.5 against DWP and other intervenor utilities jointly and severally. As between DWP and the other intervenor utilities, the award was properly apportioned so that DMP was solely responsible for the $40,053 in collusion fees. However, the Court of Appeal held the trial court abused its discretion in denying fees for Union's work preparing reply briefs, and it ordered that Union be awarded $12,350.33 in fees for its work as to DWP and the other intervenor utilities only. (C.A. 2nd, November 19, 2019.)

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.)

Dane-Elec Corp. v. Bodokh (2019) 35 Cal.App.5th 761: The Court of Appeal affirmed in part, reversed in part, and remanded the trial court's orders granting attorney fees in an action where plaintiff prevailed on its complaint to recover on a promissory note and also defeated defendant's cross-complaint to recover allegedly unpaid wages. The trial court found that defendant had not brought the wage claim in bad faith and declined to award

plaintiff attorney fees incurred solely in connection with the wage claim, but it awarded plaintiff attorney fees incurred in defending the wage claim that were inextricably intertwined with the contract claim. The Court of Appeal disagreed, ruling that, unless a trial court finds a wage claim was brought in bad faith, Labor Code section 218.5(a) prohibits, as a matter of law, an award of attorney fees to a nonemployee prevailing party for successfully defending a wage claim that is inextricably intertwined with a claim subject to a contractual prevailing party attorney fees provision. To the extent the wage claim and the contract claim are inextricably intertwined, section 218.5(a)'s prohibition on recovering attorney fees controls over the contractual attorney fees provision. (C.A. 4th, May 24, 2019.)

*de la Carriere v. Greene (*2019) 39 Cal.App.5th 270 , 2019 WL 4051755: The Court of Appeal reversed the trial court's order awarding plaintiff attorney fees of $67,238 under Civil Code 1717. Plaintiff was the losing party after a four-day bench trial regarding a note and deed of trust. The trial court awarded defendant/cross-complainant damages of $150,329.21 and later awarded defendant attorney fees of $123,975 as the prevailing party under Civil Code 1717. Both parties appealed the judgment, defendant claiming the trial court had miscalculated the damages owing. During the appeal, plaintiff paid the judgment in full (including the attorney fees) and an acknowledgement of satisfaction of judgment was filed in the trial court. Defendant later dismissed his appeal, and afterwards plaintiff sought her attorney fees, and the trial court awarded them to her as the prevailing party. The Court of Appeal reversed this fee award because there can only be one prevailing party, and that was defendant. The Court of Appeal also ruled that Code of Civil Procedure section 128.5 does not explicitly permit a trial court to impose sanctions against a party for pursuing a frivolous appeal, and plaintiff did not provide any authority suggesting it does so implicitly.[7] (C.A. 2nd, August 28, 2019.)

Friends of Spring Street v. Nevada City (2019) 33 Cal.App.5th 1092: The Court of Appeal reversed the trial court's orders striking plaintiff's memorandum of costs and motion for attorney fees. Plaintiff filed a writ petition and complaint for declaratory and injunctive relief challenging a determination by defendant that property owners were entitled to resume operation of a bed and breakfast in a residential district of defendant despite the fact that, years earlier, voters had passed an initiative measure repealing the provisions in defendant's municipal code allowing such facilities. After losing in the trial court, plaintiff prevailed in the Court of Appeal. After returning to the trial court, plaintiff requested fees and costs as the prevailing party, and the trial court erred in striking these requests. Plaintiff was the prevailing party because it realized its primary litigation objective. Regarding fees, plaintiff was successful on an issue of public interest that resulted in a substantial benefit to city residents. On remand, the trial court was ordered to determine the amount of costs to be awarded to plaintiff under Code of Civil Procedure section 1032, and determine whether the necessity and financial burden of private enforcement rendered an attorney fee award appropriate and, if so, the amount to be awarded. (C.A. 3rd, filed March 28, 2019, published April 4, 2019.)

[7] The trial court was asked by plaintiff to award fees under both Civil Code 1717 and Code of Civil Procedure 128.5. It did not address section 128.5 after it concluded that fees should be awarded under section 1717. The Court of Appeal decided to address section 128.5 to avoid more wasteful litigation.

Guillory v. Hill (2019) 36 Cal.App.5th 802: The Court of Appeal affirmed the trial court's order denying plaintiffs' motion for attorney fees as prevailing parties. Plaintiffs brought a civil rights claim against defendant Orange County Sheriff's Department Investigator Michele Hill. Plaintiffs originally sought over $1 million in damages but ultimately obtained an award of less than $5,400. Plaintiffs then moved for almost $3.8 million in attorney fees in a 392-page motion containing, in the trial court's words, "bloated, indiscriminate," and sometimes "'cringeworthy'" billing records. In light of plaintiffs' minimal success and inflated fee request, the trial court properly exercised its discretion to deny their 42 U.S.C. section 1988 motion for attorney fees. (C.A. 4th, filed May 31, 2019, published June 25, 2019.)

Hanna v. Mercedes-Benz USA (2019) 36 Cal.App.5th 493: The Court of Appeal affirmed the trial court's order, following a settlement for $60,000 of a Song-Beverly Consumer Warranty Act (Civil Code, section 1790 et seq.) action, awarding plaintiff costs of $13,409.21. However, it reversed the trial court's order awarding plaintiff attorney fees of only $60,869 instead of the fees requested of $259,068.75 using the lodestar method. The Court of Appeal ruled that plaintiff was entitled to recover attorney fees after a January 2016 CCP 998 offer from defendant, the trial court erred in failing to use the lodestar method to determine fees after the January 2016 998 offer, and a fee award under the Song-Beverly Act may not be based on a percentage of plaintiff's recovery. (C.A. 2nd, June 18, 2019.)

Highland Springs Conference etc. v. City of Banning (2019) 42 Cal.App.5th 416: The Court of Appeal reversed the trial court's 2017 orders awarding two plaintiffs $80,000 each in attorney fees (instead of the fees of $446,710 and $216,545 requested by plaintiffs) after they successfully amended a judgment to add a new judgment debtor under an alter ego theory. The Court of Appeal ruled that the fees plaintiffs incurred in pursuing their alter ego motion were prejudgment fees incurred in obtaining the February 8, 2017, judgment; so the fee motions were governed by Rules of Court, Rule 3.1702(b), not Rule 3.1702(c)(1) or the Enforcement of Judgments Law (the EJL; Code of Civil Procedure, section 680.010 et seq.) The Court of Appeal remanded the matter for the trial court to redetermine the amounts of fees to award each plaintiff under Code of Civil Procedure section 1021.5, based on all of the fees each plaintiff incurred in pursuing the alter ego motion, without applying the EJL's two-year time limitation. (C.A. 4th, November 21, 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.)

Morris v. Hyundai Motor America (2019) 41 Cal.App.5th 24: The Court of Appeal affirmed the trial court's order awarding plaintiff attorney fees of $73,864 (not the $127,792.50 requested) after the settlement of her action against defendant under the Song-Beverly Consumer Warranty Act (Civil Code, section 1790 et seq.). The trial court did not engage in inappropriate proportionality analysis in setting the attorney fee award. The trial court did not abuse its discretion in cutting the fees billed by 6 of the 11 attorneys. Moreover, plaintiff showed no abuse of discretion regarding the reduction of hourly rates by the trial court. (C.A. 2nd, filed September 16, 2019, published October 11, 2019.)

O&C Creditors Group, LLC v. Stephens & Stephens XII, LLC (2019) 42 Cal.App.5th 546: The Court of Appeal affirmed the trial court's order granting an anti-SLAPP motion to strike (Code of Civil Procedure, section 425.16) against a cross-complaint seeking damages based upon the assignment of an attorney lien. The trial court properly ruled that the settlement of civil lawsuits is petitioning activity protected by the anti-SLAPP statute. The court also properly concluded that cross-complainant's claims lacked merit. Attorney liens arise only by contract, and a valid attorney lien can exist only if there is an enforceable contract. The attorney did not sign his engagement letter, so cross-defendants were able to and did void the contract, voiding the attorney lien. Because all of the cross-complaint claims arose from a void lien, the trial court properly granted the motion to strike. (C.A. 1st, November 25, 2019.)

Patel v. Mercedes-Benz USA (2019) _ Cal.App.5th _ , 2019 WL 6872940: The Court of Appeal reversed the trial court's order denying plaintiff Nilay Patel's (Patel) motion for attorney fees. Patel leased a Mercedes from defendant. Patel leased it for his friend Arjang Fayaz (Fayaz) who drove the car. Patel paid the lease payments to defendant, and Fayaz reimbursed Patel. During the lease, the car's navigation system experienced recurring problems, which defendant was unable to repair. Patel sued under the Song-Beverly Consumer Warranty Act (the Act, Civil Code, sections 1790-1795.8). The trial court, during the jury trial, ordered that Fayaz be added as a plaintiff. The jury found the vehicle had a substantial impairment, defendant failed to repair or replace the vehicle, and awarded damages to Fayaz. That the jury awarded fees to Fayaz rather than Patel did not support

the trial court's holding that Patel was not a prevailing party entitled to attorney fees. The Court of Appeal remanded for the trial court to make a determination of the appropriate attorney fee award to plaintiffs under section 1794(d). (C.A. 2nd, December 31, 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.)

Robles v. Employment Development Dept. (2019) 38 Cal.App.5th 191: The Court of Appeal affirmed in part and reversed in part the trial court's order that had affirmed in part and denied in part plaintiff's attorney fee request under Code of Civil Procedure section 1021.5. The Court of Appeal ruled that the trial court improperly limited plaintiff's fee request to the second appeal in this long-running action by plaintiff for the wrongful denial of unemployment benefits by defendants Employment Development Department and the California Unemployment Insurance Board. The Court of Appeal ruled that the litigation involving the first appeal satisfied all the criteria for a fee award under section 1021.5, and the trial court's conclusion to the contrary was error. On remand, the trial court was ordered to determine a supplemental fee award to compensate for the reasonable hours spent on legal services in connection with the first appeal portion of the litigation. (C.A. 1st, July 31, 2019.)

Rudisill v. Cal. Coastal Commission (2019) 35 Cal.App.5th 1062: The Court of Appeal reversed the trial court's award of $28,795.70 in attorney fees under Code of Civil Procedure 128.5(b)(2) to petitioner after it denied an anti-SLAPP motion to strike filed by real parties in interest and found it to be totally without merit. The Court of Appeal disagreed, holding that a reasonable attorney could have concluded that the petition (filed against the California Coastal Commission and the City of Los Angeles) asserted a claim against Real Parties arising from protected conduct. (C.A. 2nd, June 5, 2019.)

SSL Landlord v. County of San Mateo (2019) 35 Cal.App.5th 262: The Court of Appeal affirmed the trial court's order denying plaintiff's motion for attorney fees under Revenue and Taxation Code sections 1611.6 and 5152. The trial court properly denied the motion for attorney fees. Because the San Mateo County Assessment Appeals Board's resolution of plaintiff's assessment appeals was neither arbitrary nor capricious, nor caused by a legal position taken in bad faith, no award of attorney fees was warranted under section 1611.6. The trial court made no finding, and the Court of Appeal saw no basis to make a finding, that the San Mateo County Assessor's position was based on a belief that a tax law or regulation was unconstitutional or invalid either on its face or as applied in this case, so plaintiff was not entitled to an award of attorneys under section 5152. (C.A. 1st, April 23, 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.)

Sweetwater Union HS Dist. v. Julian Union Elementary Sch. (2019) 36 Cal.App.5th 970: The Court of Appeal affirmed the trial court's order awarding petitioner attorney fees of $166,027.05 under Code of Civil Procedure section 1021.5. Petitioner filed a petition for writ of mandate asking the court to order the Julian Union Elementary School District (Julian) to revoke the charter for Diego Plus Education Corporation doing business as Diego Valley Public Charter (Diego Valley). The trial court declined to issue a writ of mandate directing that Julian revoke Diego Valley's charter, essentially concluding this form of relief would unreasonably disrupt students. However, the court declared that Diego Valley's operation at the National City and Chula Vista facilities would be in violation of the Education Code and enjoined Diego Valley from operating both facilities. Although the court ultimately denied the petition for writ of mandate, its denial did not reflect adversely on the merits for such claims. The trial court did not abuse its discretion in awarding the attorney fees. (C.A. 4th, filed June 4, 2019, published June 28, 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.)

Doe v. Superior Court (2019) 36 Cal.App.5th 199: The Court of Appeal granted a petition for writ of mandate directing the trial court to vacate its order granting defendant's motion to disqualify plaintiff's attorney and enter a new order denying the motion. Plaintiff brought claims for sexual harassment and sexual assault against defendants Southwestern Community College District (District) and three District employees. The complaint also alleged sexual harassment of two other female District employees which presumably showed that defendant had notice of other similar misconduct. The trial court granted a motion to disqualify plaintiff's counsel because he spoke with a District employee before her deposition was taken. There was no evidence that the employee had accepted the District's offer to represent her or had otherwise retained counsel at the time of the contact. The Court of Appeal ruled that the purpose of California State Bar Rules of Professional Conduct Rule 4.2 is to prevent ex parte contact with employees who engaged in acts or conduct for which the employer might be liable. It is not designed to prevent a plaintiff's lawyer from talking to employees of an organizational defendant who might provide relevant evidence of actionable misconduct by another employee for which the employer may be liable. (C.A. 4th, June 13, 2019.)

Jackson v. LegalMatch.com (2019) 42 Cal.App.5th 760: The Court of Appeal reversed the trial court's judgment for plaintiff LegalMatch.com on its complaint seeking recovery of unpaid subscription fees from defendant/cross-complainant attorney Dorian Jackson. The Court of Appeal agreed with Jackson that LegalMatch was operating an uncertified lawyer referral service in violation of Business and Professions Code section 6155, rendering the subscription contract illegal and unenforceable. However, the Court of Appeal remanded for the trial court to consider LegalMatch's argument that the doctrine of unclean hands should bar Jackson's argument that section 6155 prohibited enforcement of the subscription contract. (C.A. 1st, November 26, 2019.)

Mancini & Associates v. Schwetz (2019) 39 Cal.App.5th 656: The Court of Appeal affirmed the trial court's entry of judgment for plaintiff in the sum of $409,351, following a court trial, based upon tort theories of interference with contract and economic advantage. Plaintiff was a law firm that had previously sued defendant for employment related claims on behalf of a client. That lawsuit resulted in a jury verdict in favor of plaintiff's client for $68,650 against defendant, plus an award of $12,622.46 in costs and $136,050 in attorney fees. Plaintiff law firm sought to collect on the judgment for its client, without success, except for collecting $40 in a judgment debtor exam. Six years after the judgment was entered, plaintiff's client contacted defendant, met him for lunch, and resumed their friendship. Defendant and plaintiff's client later entered into a Memorandum of Settlement and Mutual Release that released defendant from all judgments, fees and costs. The Court of Appeal ruled that defendant's conduct was noncommunicative and therefore was not protected by the litigation privilege in Civil Code section 47. It affirmed the judgment for plaintiff because a third party who impairs an attorney's rights pursuant to a contractual lien may be subject to liability for tortious interference with contractual relations or prospective economic advantage. (C.A. 2nd, September 4, 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.)

Sprengel v. Zbylut (2019) 40 Cal.App.5th 1028: The Court of Appeal affirmed the trial court's order granting defendants' motion for summary judgment against plaintiff's complaint alleging legal malpractice in representing a limited liability company that plaintiff owned a 50% interest in. Plaintiff lacked standing because her claims were derivative not

direct. Shareholders do not have a direct ownership interest in company assets, so the use of company funds to pay legal fees could not cause plaintiff a direct injury. Moreover, the representation of the limited liability company did not create an attorney-client relationship with plaintiff. (C.A. 2nd, filed September 10, 2019, published October 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.)

*The Nat. Grange of the Order of Patrons of Husbandry v. California Guild (*2019) 38 Cal.App.5th 706: The Court of Appeal affirmed the trial court's orders granting motions to disqualify the Ellis Law Group (Ellis) in two cases. Ellis represented the California Guild (Guild) and the California Grange Foundation in litigation against the National Grange of the Order of Patrons of Husbandry (the National Grange) and the California State Grange (California Grange), who were represented by Porter Scott. Ellis hired an attorney who had been an associate at Porter Scott and who had worked on the litigation while at Porter Scott. The associate had previously represented the National Grange and the California Grange, both of which had a substantial relationship to Ellis Law Group's representation of the Guild because the representation involved the same case. Because of this relationship, it was presumed that the associate possessed confidential information adverse to the National Grange and the California Grange, and he was therefore disqualified from representing the Guild. Ellis Law Group was also automatically disqualified from representing the Guild because the associate had represented the opposing side. (C.A. 3rd, filed July 23, 2019, published August 13, 2019.)

Wu v. O'Gara Coach Co., LLC (2019) 38 Cal.App.5th 1069: The Court of Appeal reversed the trial court's order disqualifying Richie Litigation, P.C. (Richie Litigation) and its attorneys from representing plaintiff, a former sales advisor employed by defendant, in plaintiff's lawsuit against defendant for race discrimination in violation of the California Fair Employment and Housing Act (FEHA; Government Code, § 12900 et seq.) and other employment-related misconduct. Defendant failed to present evidence that Richie Litigation possessed confidential attorney-client privileged information material to the employment dispute between plaintiff and defendant. Darren Richie's (Richie) potential role as a witness did not justify disqualification because plaintiff gave his informed consent to Richie being called as a witness and Richie would not act as both advocate and witness because other attorneys in the firm are representing plaintiff. (C.A. 2nd, August 21, 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.)

Pneuma International, Inc. v. Cho (2019) 36 Cal.App.5th 692: The Court of Appeal affirmed the trial court's judgment, following a bench trial, against plaintiff on all causes of action except one for trespass to chattel, and in favor of defendant/cross-complainant, in an action alleging multiple business torts and other claims arising from the manufacturing and sale of paper soup cups. Except for trespass to chattel, plaintiff failed to establish any of its other causes of action. The Court of Appeal held that a determination that a party engaged in a trespass to chattel in a business context does not, without more, establish that the party engaged in an unlawful business practice under California's Unfair Competition Law. (Business & Professions Code, section 1700.) (C.A. 1st, June 24, 2019.)

Quidel Corporation v. Super. Ct. (2019) 39 Cal.App.5th 530: The Court of Appeal granted a writ petition directing the trial court to vacate the summary judgment it granted in favor of defendant. The Court of Appeal ruled that Business & Professions Code 16600 doe not invalidate all contractual noncompete provisions outside the employment context. The trial court improperly extended, beyond the employment context, the holding from *Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937 to a provision in a business agreement[8] between two companies. (C.A. 4th, August 29, 2019.)

Civil Code

Berger v. Varum (2019) 35 Cal.App.5th 1013: The Court of Appeal reversed the trial court's order sustaining a demurrer to a complaint alleging fraudulent transfer under Civil Code section 34393 and conspiracy to defraud. Plaintiff initially alleged defendants fraudulently transferred assets to avoid paying a judgment. While the action was pending, certain defendants paid the judgment. Plaintiff then amended the complaint to allege consequential damages from the delay in payment. The Court of Appeal ruled that the Uniform Voidable Transactions Act (UVTA; Civil Code section 3439 et seq.) does not preclude a common law action for fraudulent transfer and found that plaintiff had sufficiently pled a cause of action

[8] A B-type natriuretic peptide assay agreement

alleging specific financial injury caused by the defendants' alleged fraudulent transfer. (C.A. 1st, May 31, 2019.)

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.)

Cavalry SPV I, LLC v. Watkins (2019) 36 Cal.App.5th 1070: The Court of Appeal affirmed in part and reversed in part the trial court's judgment, after a bench trial, in an action seeking to collect a credit card debt and a cross-complaint alleging violations of the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act; Civil Code, section 1788 et seq.). The trial court correctly concluded defendant was liable for the original debt. On the cross-complaint, the trial court's denial of the cross-complaint was proper as plaintiff could have accrued statutory prejudgment interest under Civil Code section 3289(a). The trial court, however, erred by awarding attorney fees to plaintiff/cross-defendants related to the defense of the cross-complaint. It should have limited the fee award to time spent on efforts necessary to prove the allegations in the complaint. (C.A. 4th, July 1, 2019.)

Cheema v. L.S. Trucking, Inc. (2019) _ Cal.App.5th _ , 2019 WL 4440131: The Court of Appeal reversed the trial court's order denying plaintiff's request for prejudgment interest, and also penalty interest under Civil Code section 3322. After a nine day bench trial, the trial court properly found for plaintiff and awarded him net damages of $19,113.84. The trial court later properly awarded plaintiff attorney fees of $100,415. The trial court erred in holding that plaintiff was not entitled to prejudgment interest. There was no dispute or uncertainty over the amount of damages plaintiff claimed and to which he was ultimately determined to be entitled. The only dispute was whether defendant was entitled to deduct rental charges, in an ascertained amount, from the undisputed amount otherwise owed. Plaintiff was also entitled to 2 percent penalty interest under section 3322. However, the penalty should be applied only to the payments not made to plaintiff within the specified statutory period, excluding those amounts that were withheld as rental deductions. (C.A. 1st, September 17, 2019.)

Chen v. Berenjian (2019) 33 Cal.App.5th 811: The Court of Appeal reversed the trial court's order sustaining a demurrer[9] 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

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

noncommunicative act of transferring assets by executing on a judgment. (C.A. 4th, March 28, 2019.)

Davis v. Ross (2019) 39 Cal.App.5th 627: The Court of Appeal affirmed the trial court's orders granting defendant's motion for judgment on the pleadings, and denying plaintiff's motion for new trial, based upon the litigation privilege (Civil Code, section 47). Defendant filed a complaint with police stating that plaintiff had vandalized his car in a parking lot and plaintiff later entered a plea of no contest to misdemeanor vandalism related to this complaint. Plaintiff turned around and sued defendant over the incident alleging false imprisonment, fraud, libel, slander, intentional infliction of emotional distress, and abuse of process. The trial court properly granted the motion for judgment on the pleadings and denied the motion for new trial. (C.A. 3rd, September 3, 2019.)

Front Line Motor Cars v. Webb (2019) 35 Cal.App.5th 153: The Court of Appeal affirmed the trial court's order denying a writ of administrative mandate seeking to overturn a decision by the Department of Motor Vehicles (DMV), following an administrative hearing, adopting the administrative law judge's proposed order for petitioner's license to be conditionally revoked for two years due to petitioner's violation of the Rees-Levering Motor Vehicles Sales and Finance Act (the Act; Civil Code, section 2981 et seq.) for failing to refund buyer deposits after petitioner repossessed cars due to the failure of buyers to obtain financing. The Court of Appeal ruled the trial court properly denied the writ because the transactions were seller-assisted loans subject to section 2982.5 of the Act, which expressly required petitioner to return the buyers' down payments. (C.A. 4th, May 13, 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.)

Minton v. Dignity Health (2019) _ Cal.App.5th _ , 2019 WL 4440132: The Court of Appeal reversed the trial court's order sustaining a demurrer, without leave to amend, to plaintiff's complaint alleging that defendant's refusal to permit his doctor to perform a hysterectomy

on plaintiff[10] at one of its hospitals because of his sexual identity was a violation of the Unruh Civil Rights Act (Unruh Act; Civil Code section 51). The Court of Appeal held that, because plaintiff's complaint alleged that defendant initially failed to provide its services, its subsequent rectification of its denial, while likely mitigating plaintiff's damages, did not extinguish his cause of action for discrimination in violation of the Unruh Act. (C.A. 1st, September 17, 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.)

Potocki v. Wells Fargo Bank, N.A. (2019) 38 Cal.App.5th 566: The Court of Appeal reversed the trial court's order sustaining a demurrer, without leave to amend, to a complaint alleging several causes of action arising out of plaintiffs' attempt to get a loan modification. The Court of Appeal ruled that plaintiffs had alleged sufficient facts to state a claim for violation of Civil Code section 2923.61. (C.A. 3rd, filed July 11, 2019, published August 7, 2019.)

Precision Framing Systems Inc. v. Luzuriaga (2019) 39 Cal.App.5th 457: The Court of Appeal affirmed the trial court's order granting defendant's motion for summary judgment in an action by plaintiff to foreclose a mechanic's lien. Plaintiff provided the framing for a commercial building, including the trusses. Plaintiff contracted with Inland Empire Truss, Inc. (Inland) for the fabrication of the trusses. After plaintiff recorded its mechanic's lien, there was a problem with some of the trusses, and Precision and/or Inland came back to the site and repaired the trusses. The trial court properly granted defendant's summary judgment because the mechanic's lien claim was filed prematurely — i.e., before plaintiff had ceased to provide work. (Civil Code, section 8414(a).) (C.A. 4th, August 29, 2019.)

Taniguchi v. Restoration Homes LLC (2019) _ Cal.App.5th _ , 2019 WL 6837966: The Court of Appeal reversed the trial court's order granting summary judgment for defendant in an action where plaintiff alleged that defendant violated Civil Code section 2924c by demanding excessive amounts to reinstate a loan after plaintiff had defaulted in making several payments. The loan had previously been modified to reduce the interest rate and monthly payments and change other terms. The modified loan provided that, if there was a default, the modification would be null and void at the lender's option, and the lender would have the right to enforce the loan and associated agreements according to the original terms. Plaintiffs later defaulted on the modified loan and missed four payments. The Court of Appeal ruled that, under Civil Code sections 2924c and 2953, plaintiffs could reinstate the modified loan by paying the four missed payments, plus fees and expenses. (C.A. 1st, December 16, 2019.)

[10] to treat his gender dysphoria

Thurston v. Midvale Corporation (2019) _ Cal.App.5th _ , 2019 WL 4166620: The Court of Appeal affirmed the trial court's order granting plaintiff's motion for summary judgment and entering an injunction[11] in a case alleging that plaintiff (who is blind) could not use her screen reader software to access defendant's restaurant website, and this was a violation of the Unruh Civil Rights Act (Unruh Act; Civil Code, section 51 et seq.) and the federal American with Disabilities Act of 1990 (ADA; 42 U.S.C. section 12101 et seq.). The Court of Appeal ruled that Title III of the ADA applied to defendant's website; the trial court's references to nongovermental guidelines[12] did not violate defendant's Due Process rights; the issue of whether defendant's provision of a telephone number and email address on its website was a reasonable means of satisfying the "effective communications" mandate of the ADA was not a triable issue of fact; and the injunction issued by the trial court was not overbroad or uncertain. (C.A. 2nd, September 3, 2019.)

Timlick v. Nat. Enterprise Systems, Inc. (2019) 35 Cal.App.5th 674: The Court of Appeal reversed the trial court's order granting defendant's motion for summary judgment in a putative class action for violation of the Consumer Collection Notice law minimum type-size requirements for consumer collection letters under Civil Code sections 1812.700 to 1812.702. The Court of Appeal agreed with the trial court that the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act; § 1788 et seq.) cure provision set forth in section 1788.30(d) is available to debt collectors to correct curable violations of the Consumer Collection Notice law. However, the trial court erred in dismissing the entire putative class action without first affording plaintiff the opportunity to amend her complaint, redefine the putative class, or locate a suitable class representative, and without giving notice to the putative class. (C.A. 1st, filed May 7, 2019, published May 23, 2019.)

Civil Procedure

A.J. Fistes Corp. v. GDL Best Contractors, Inc. (2019) 38 Cal.App.5th 677: The Court of Appeal reversed the trial court's order sustaining a demurrer, without leave to amend, to the third amended complaint seeking a declaration that a contract defendant school district awarded to defendant contractor for the remediation of school properties was void due to violations of the Public Contract Code and the Government Code. The trial court erred in ruling that plaintiff lacked standing. Plaintiff alleged facts sufficient to establish standing under section Code of Civil Procedure section 526a based on its payment of state taxes that funded defendant school district. While plaintiff did not state facts sufficient to adequately allege a cause of action against the individual defendants, it made a sufficient showing for the trial court to grant leave to amend, and the trial court erred in not doing so. (C.A. 2nd, filed July 16, 2019, published August 13, 2019.)

[11] mandating compliance with Web Content Accessibility Guidelines promulgated by the WorldWide Web Consortium

[12] related to creating and maintaining websites accessible to individuals with disabilities