

## Seeking Justice For All

I am honored to address you as the new President of Consumer Attorneys of San Diego ("CASD"). I am particularly honored because CASD is an association that seeks justice for all. CASD attorneys represent people who are injured, oppressed, subject to deceptive trade practices or falsely accused. These are people who typically do not have the power, wealth and knowledge to access the civil justice system and whose only recourse is a CASD attorney.

by Raul Cadena, CASD President



### The People We Represent

The people CASD attorneys represent include the people who come to my office seeking justice in the workplace. They are often workers who toil long hours without getting paid overtime or earned commissions or receiving meal or rest breaks. They are workers whose employers misclassify them as "managers" "independent contractors" or "franchisees" to justify not paying them overtime. It is not uncommon for these workers to work an average of eighty (80) hours a week without overtime compensation or breaks. They work in various industries and include restaurant workers, hotel workers, janitorial workers, technology workers, construction workers, retail workers and agricultural workers.

In my practice, the epitome of people who do not have the power, wealth or knowledge to access our civil justice system are the agricultural workers who are often the most downtrodden and abused of workers. Unlike workers in most other industries, agricultural workers, who spend long hours in the hot sun picking the crops we eat, are not eligible for overtime pay until they work over ten (10) hours in a day. The agricultural industry has strong lobbyists but the agricultural workers do not. Regardless of their immigration status, these workers are intimidated by the court system and fear retaliation due to the highly vocal anti-immigrant stance taken by many of our politicians. Employers often use language and immigration status to maintain control over these workers and prevent them from vindicating their rights.

In the employment context, the class action is the most economic and judicially effective way for workers who suffer wage and hour abuse to vindicate their rights and bring about programmatic changes to the workplace. The claims in these types of cases are too small to prosecute on an individual basis. Further, bringing about programmatic changes to the workplace in an individual claim is unlikely.

### The Challenges We Face

Seeking justice for these workers and California consumers in general has become more challenging in the face of recent legal trends, which seek to diminish the use of class actions. Federal legislation like the Class Action Fairness Act of 2005, which expands federal jurisdiction over class action lawsuits as well as the United States Supreme Court decision of *AT&T Mobility LLC v. Concepcion* (2011) 131 S. Ct. 1740, which requires California courts to enforce arbitration agreements which include class action waivers have collectively eroded the right of individuals to join civil actions. In one fell swoop, the *Concepcion* decision and its progeny have encouraged corporations to include arbitration provisions with class action waivers in their agreements which they unilaterally impose on consumers who purchase goods, services, and health care.

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Corporations are also requiring workers who seek employment to sign such agreements. These trends have emboldened employers to use other methods to destroy the class action process such as the practice described in *Chindarah v. Pick up Stix* (2009) 171 Cal. App. 4th 796 whereby employers are permitted to "pick off" class members one by one in exchange for a nominal amount of money. The end result is that we face greater obstacles in our ability to seek justice and corporations are more readily able to violate the law.

The challenges we face as we seek justice for consumers as well as workers extend beyond the unilateral imposition of mandatory arbitration agreements, which not only undermine the Seventh Amendment right to trial by jury but also erode the class action process. More recently, the California Supreme Court's decision in *Howell v. Hamilton Meats & Provisions* (2011) 52 Cal. 4th 541 has

detrimentally impacted the amount of damages injured parties receive. Prior to the Howell decision, injured parties were entitled to collect the full value of their medical care without a reduction accounting for their own health insurance. Howell has changed the standard and now a reduction in medical charges to an injured party is a basis upon which to reduce the amount of damages awarded. Not only is this contrary to the public policy that wrongdoers must take full responsibility for their actions and it benefits insurance companies at the expense of the people we represent.

Not a recent development but nevertheless a significant challenge our members continue to face in representing victims of medical malpractice is the Medical Injury Compensation Reform Act, known as MICRA, became law in 1975 and capped at \$250,000 the compensation for non-economic damages. That law was prompted by a desire to control the

rising cost of premiums for medical malpractice insurance. The law did not have the intended effect. Yet 38 years later, the cap remains in place without even an adjustment for inflation, which would result in a cap of no less than \$1,000,000. Accordingly, the value to a parent seeking justice for the loss of a child due to medical malpractice remains astonishingly at no more than \$250,000.

We also continue to face the ever present myths perpetrated by those who call themselves tort-reformers about the explosion of frivolous lawsuits driving up the costs of goods and services, including health care and insurance, and about huge verdicts regularly and easily derived from these frivolous cases. The truth, however, is entirely different. CASD members take on cases in which they represent people who have been injured, oppressed, subject to deceptive trade practices or falsely accused and typically on a con-

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tingency fee basis. CASD members place their businesses at financial risk for an uncertain outcome and for an unspecified time frame. Recently, and due to the funding shortages to our court system, the length of time between the filing of a case and the resolution of that case has significantly increased. When successful, our members face years of frivolous appeals and have to wait it out for as long as it takes, which in some instances can mean a decade or longer.

Nevertheless, in the face of these challenges and through their hard work in representing people CASD attorneys continue to hold corporations accountable when they fail to produce safe products, continue to require competent health care, continue to fight against deceptive trade practices, continue to demand a safe and fair workplace, and continue to require that the state prove the guilt of persons who are charged with a crime.

### Leveling the Playing Field

CASD helps to level the playing field as we seek justice for all. CASD inspires excellence in advocacy through training and education. CASD members regularly volunteer to present quality programs to the membership on a wide array of topics which include, but are not limited to, launching a law practice, trial tactics for the novice to the more experienced practi-

tioner, effective deposition techniques, handling liens and the latest trends in class action practice. CASD members support one another and serve as a resource for each other through the listserv, which is available to eligible CASD members. Trial Bar News, a CASD publication, offers eight columns with substantive discussions regarding recent cases and legal trends and helps to keep our members up to date on the law. CASD provides camaraderie and recognition of outstanding members. Finally, CASD has an unparalleled staff that efficiently and effectively helps to make all this happen.

### Going Forward

Our work is not limited to presenting the best case we can in the courtroom on behalf of the people we represent. We must educate the public about the people we represent and the work we do. We can do this in our civic organizations, our places of worship and within our respective communities. We must educate our legislators as their decisions can have a significant impact on our ability to seek justice for the people we represent. A great starting point is to attend Justice Day which occurs in May of each year in Sacramento. I encourage everybody to attend.

Justice Day provides an excellent opportunity to meet with lawmakers from both sides of the aisle and discuss

pending legislation, which impacts California consumers. Legislators, most of whom are not lawyers and are always pressed for time, often only hear from lobbyists from the insurance industry and other monied interests who represent only one perspective which is not on the side of the consumer. However, you should not wait until Justice Day to meet the legislators in your district. Get to know them and make yourself a resource for your legislator so that you are ready to answer questions regarding proposed legislation that may be hostile to our clients. If you do not feel you are well versed on the issue, CASD has a vast array of members in the various practice areas that are available to answer any such questions. We must all become more engaged in the legislative process as the rights of the people we represent depend on it. I look forward to a productive year for this extraordinary organization and I look forward to all of us becoming more engaged in advocating for the rights of the people we represent as we seek justice on their behalf.

Finally, I want to thank my predecessor, Rebecca Mowbray, for her work, dedication and commitment to CASD. She is a stalwart member of CASD and she has led us well by example and by her compassion for others. **TBN**

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