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A Review of 2023 Labor & Employment Law Cases

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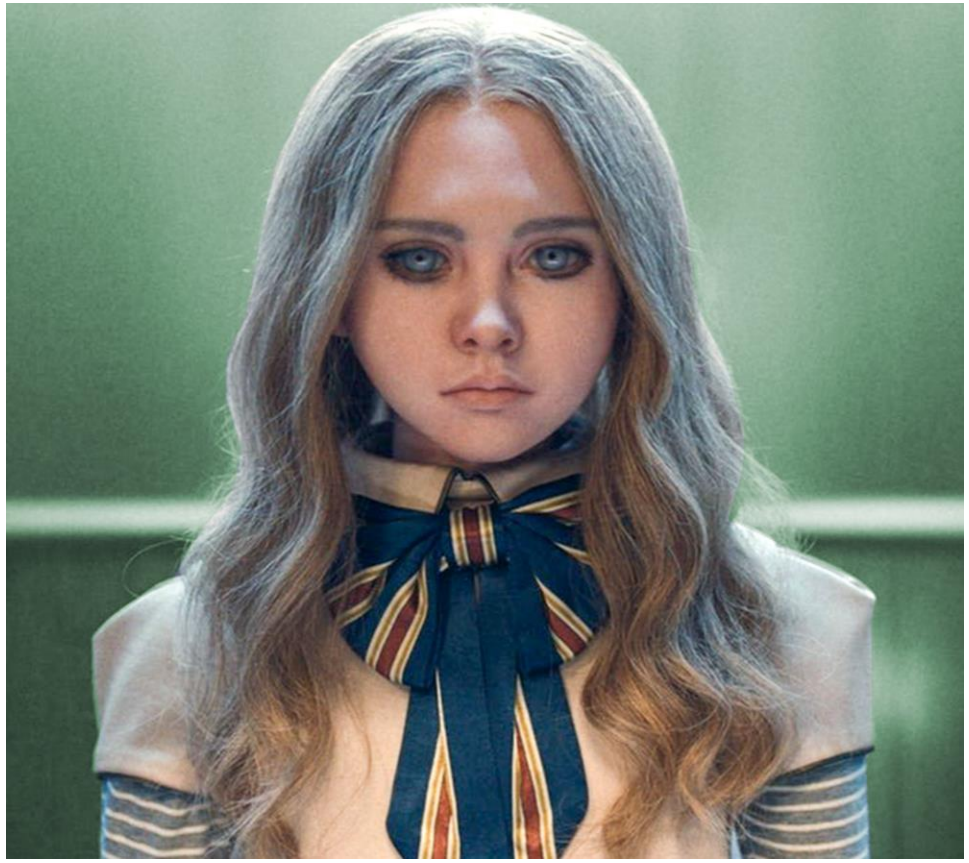
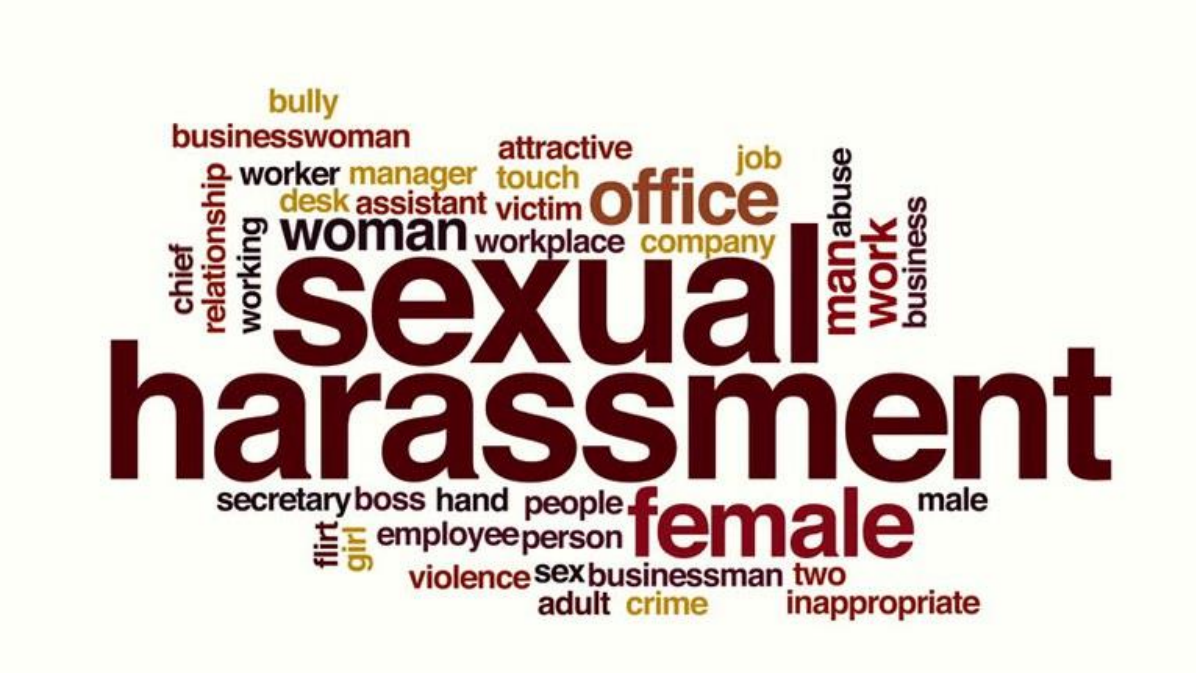
Harassment





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Bailey v. San Francisco District Attorney's Office, 2024 WL 3561569 (Cal., 2024)

- Can a coworker's one-time use of a racial slur may be actionable in a claim of harassment. **YES!**
- Can a course of conduct that effectively seeks to withdraw an employee's means of reporting and addressing racial harassment in the workplace be actionable in a claim of retaliation? **YES!**

Mattioda v. Nelson, 98 F.4th 1164 (9th Cir. 2024)

- As matter of first impression, disability-based harassment claim is available under the ADA and the Rehabilitation Act.
- NASA scientist's hostile work environment claim should not have been dismissed.

Okonowsky v. Garland, 2024 WL 3530231 (9th Cir. 2024)

- Totality of the circumstances in a hostile work environment claim includes evidence of:
  - sexually harassing conduct, even if it does not expressly target the plaintiff, and
  - non-sexual conduct directed at the plaintiff that a jury could find retaliatory or intimidating.
- Rejecting notion that only conduct that occurs inside the physical workplace can be actionable in light of the ubiquity of social media.

Argueta v. Worldwide Flight Services, Inc., 97 Cal. App. 5th 822 (2023)

- Reversing trial court's denial of plaintiff’s motion for a new trial in a sexual harassment case.
- Excellent discussion regarding use of admissible versus inadmissible use of “character evidence.”
- Holding that admission of employee complaints that plaintiff was mean, rude, lazy, and dishonest was prejudicial error.

Beltran v. Hard Rock Hotel Licensing, Inc., 97 Cal. App. 5th 865 (2023)

- Excellent discussion regarding the adoption of Government Code section 12923 and its impact on hostile work environment claims, particularly in the context of summary judgment motions.
  - **One act of harassment may be enough to create a hostile work environment.**
- Summary adjudication in favor of employer as to hostile work environment claim reversed
- Excellent discussion regarding the use and misuse of separate statements.

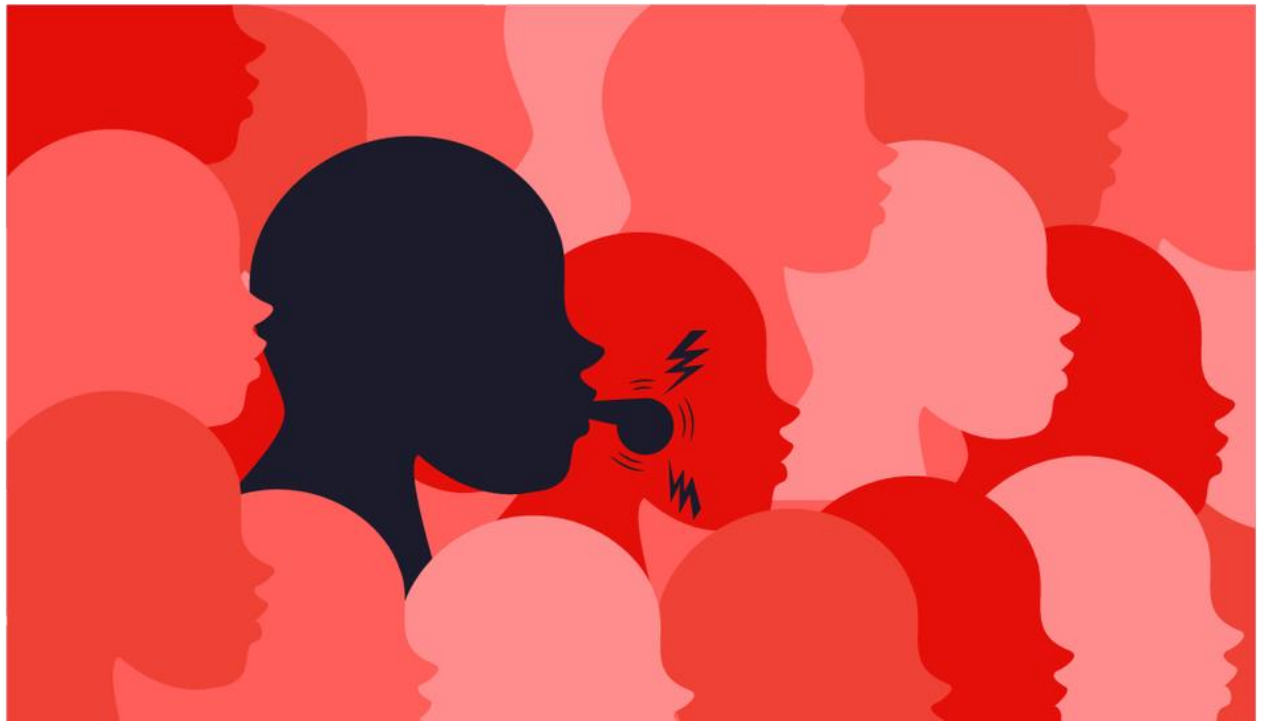
Whistleblower, Labor Code Section 1102.5, Retaliation, & Wrongful Termination

Kama v. Mayorkas, 2024 WL 3449142 (9th Cir. 2024)

- Although "plaintiff's evidentiary burden is low" and "very little evidence is necessary to raise a genuine issue of fact regarding an employer's motive," summary judgment in favor of employer affirmed.
- Temporal proximity of 56 days between protected activity and the termination is ***not*** sufficient to show pretext.

Daramola v. Oracle America, Inc., 92 F.4th 833 (9th Cir. 2024)

- Sarbanes-Oxley anti-retaliation provision does ***not*** protect a citizen of another Country employed by an American company in that other Country.

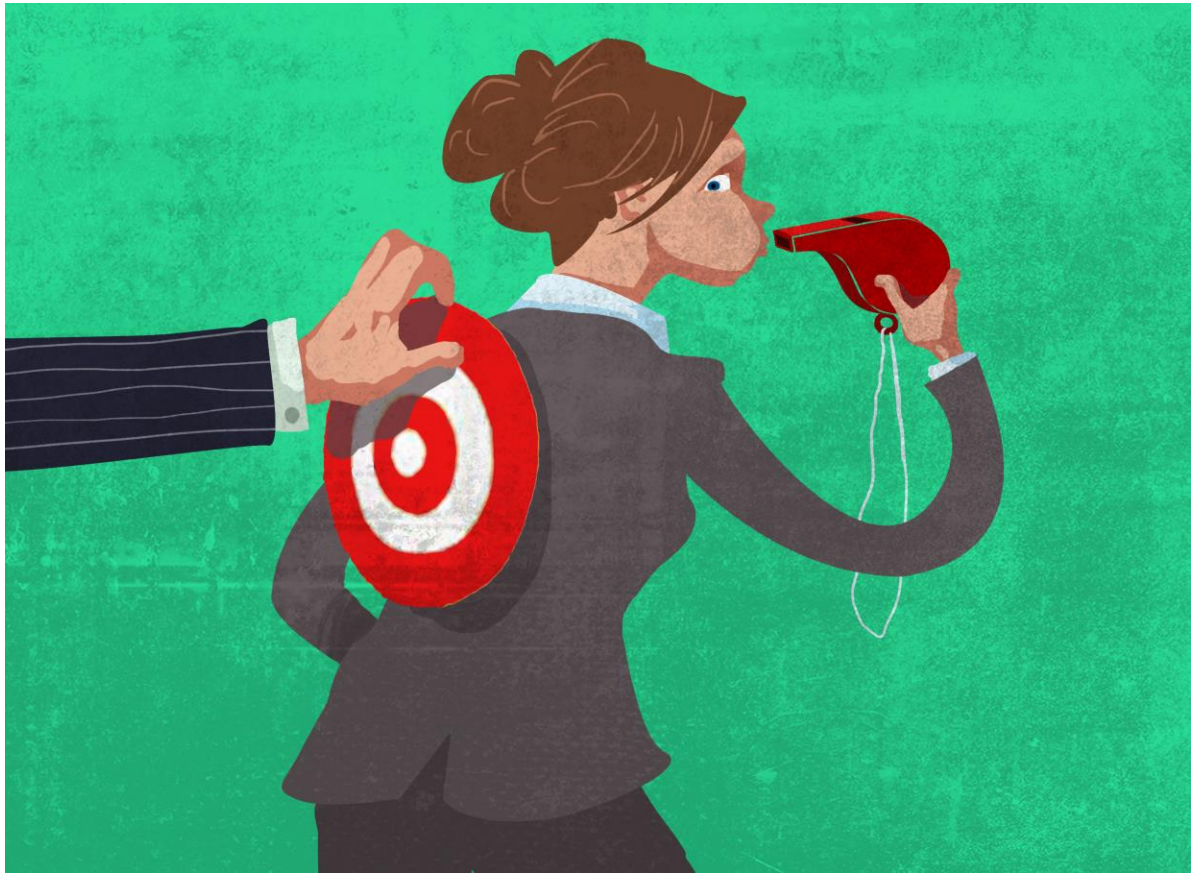


Ververka v. Department of Veterans Affairs, 102 Cal. App. 5th 162 (2024)

- Employer's "same decision" showing on an Section 1102.5 claim does not allow plaintiff to recover declaratory relief and reasonable attorney's fees and costs as would be available under a FEHA claim under *Harris v. City of Santa Monica*, 56 Cal.4th 203 (2013).
- An employer's same decision showing is a complete defense under Section 1102.6.

Murray v. UBS Securities, LLC, 601 U.S. 23 (2024)

- Whistleblower bringing Sarbanes-Oxley retaliation claim need ***not*** prove that his employer acted with retaliatory intent.
- Rather, whistleblower need merely prove that his protected activity was a contributing factor in the unfavorable personnel action.



Discrimination & Reasonable Accommodation

Muldrow v. City of St. Louis, Missouri, 601 U.S. ----, 144 S.Ct. 967, 2024 WL 1642826 (2024)

- An employee challenging a job transfer as discriminatory under Title VII does ***not*** have to show that the harm incurred was significant, serious, substantial, or any similar adjective suggesting that the disadvantage to the employee must exceed a heightened bar.

Paleny v. Fireplace Products U.S., Inc., 2024 WL 3197646 (Cal.App. 3 Dist., 2024)

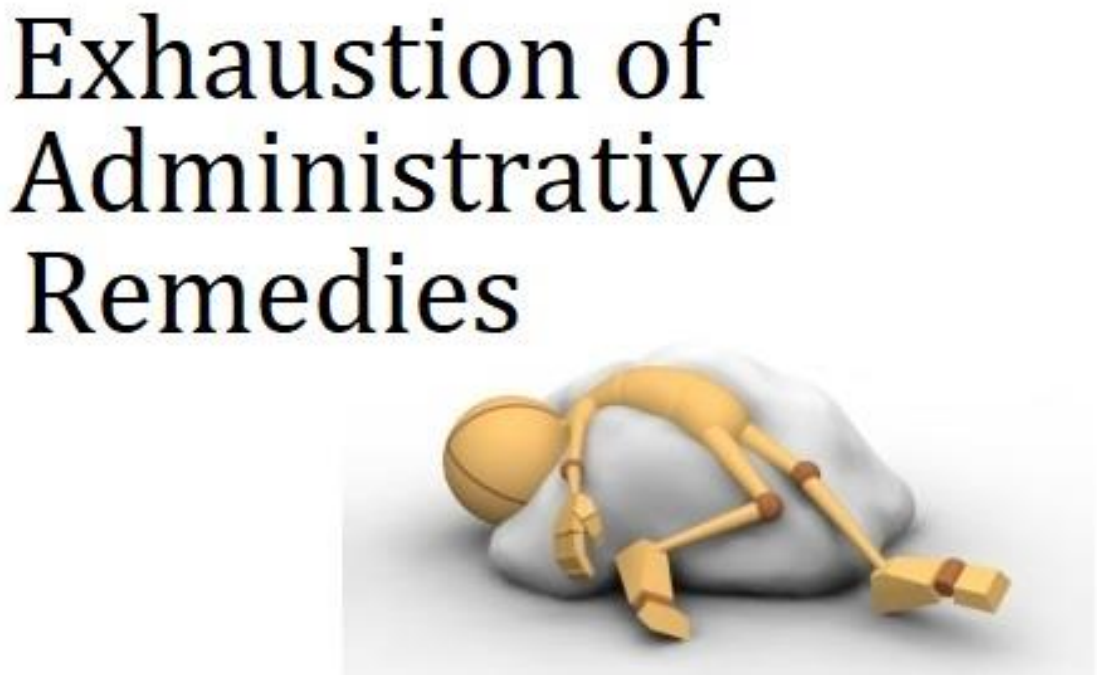
- Employers are free to discriminate against employees on the basis of their egg retrieval and freezing.

Hittle v. City of Stockton, California, 101 F.4th 1000 (9th Cir. 2024)

- Amended opinion affirms summary judgment in favor of employer on employment discrimination action under Title VII and FEHA.
- Amended opinion seemingly holds that plaintiffs must use the *McDonnell-Douglas* burden shifting test even if they have direct evidence of discrimination.

Kuigoua v. Department of Veteran Affairs, 101 Cal. App. 5th 499 (2024)

- Affirming summary judgment in favor of employer where plaintiff employee failed to exhaust his administrative remedies.
- Employee alleged gender discrimination in his CRD filing but sued for racial and national origin discrimination.



Rajaram v. Meta Platforms, Inc., 2024 WL 3192178 (9th Cir. 2024)

- As a matter of first impression, § 1981 prohibits employers from discriminating against United States citizens.

Raines v. U.S. Healthworks Med. Group, 15 Cal. 5th 268 (2023)

- Business entity agents of employers share potential FEHA liability.
- Employer engaged third party to administer pre-employment medical tests.
- Applicants sued employer and third party for asking intrusive and illegal questions unrelated to the applicants' ability to work.

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Martin v. Board of Trustees of the Cal. State Univ., 97 Cal. App. 5th 149 (2023)

- Plaintiff sued university for race, gender and sexual orientation harassment and discrimination.
- Trial court granted employer's motion for summary judgment after concluding that plaintiff could not demonstrate he was performing competently or that discriminatory animus could be inferred.
- Employer's general commitment to diversity and use of images of diverse individuals in public materials does not provide sufficient insight into the motivations of decision-makers who fired him.

Arbitration

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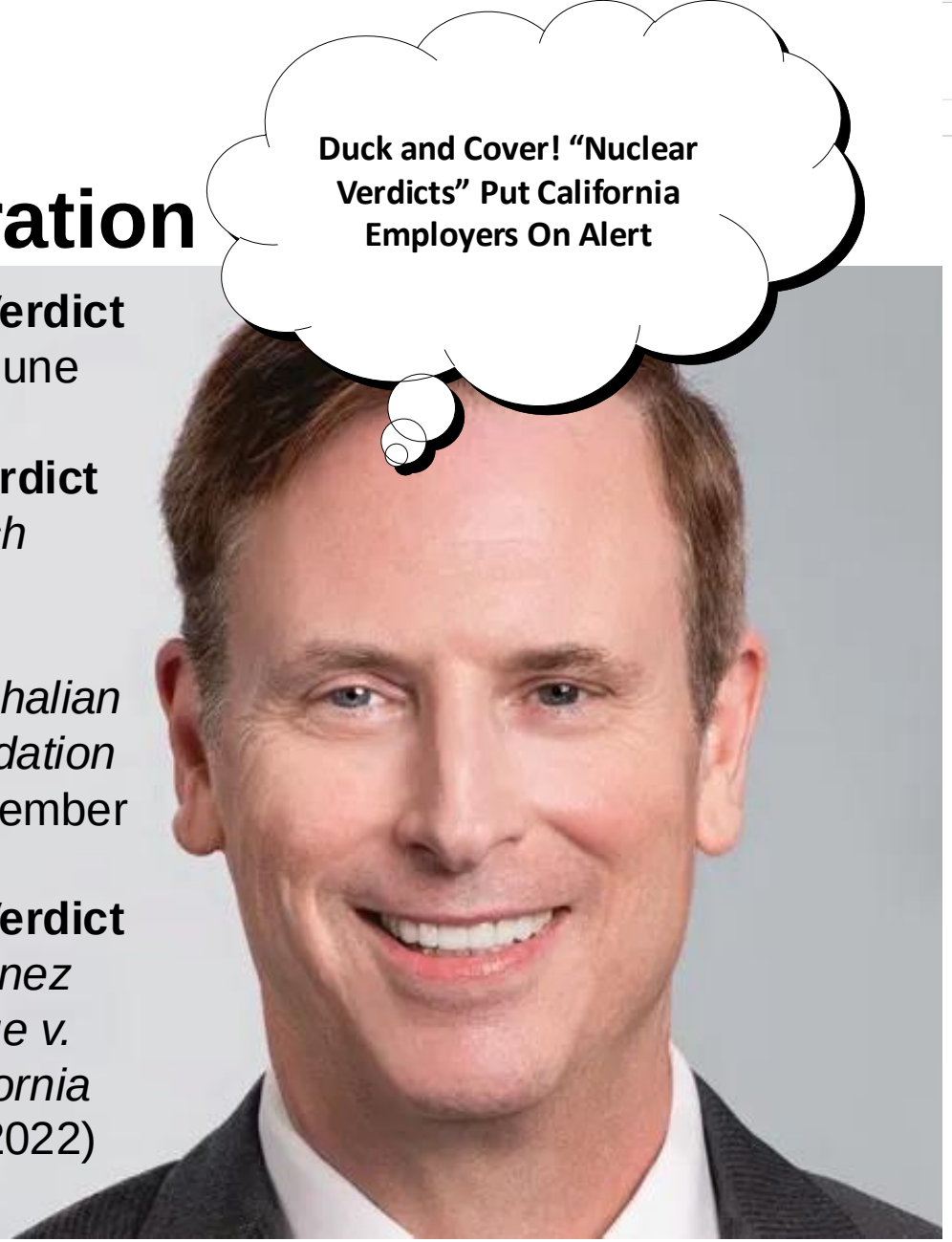
Arbitration

- **$900 Million Verdict – *Doe v. Alki*** (June 2024)
- **$80 Million Verdict – *Koos v. Zurich*** (April 2024)
- **$41.5 Million Verdict** – *Gatchalian v. Kaiser Foundation Hospitals (*December 2023)
- **$464 Million Verdict** – *Alfredo Martinez and Justin Page v. Southern California Edison* (June 2022)



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RISK & COMPLIANCE JOURNAL

‘Nuclear’ Jury Verdicts Rise Alongside American Anger

The insurance industry says more U.S. cases are ending with outsize damage awards against corporations. Victims’ lawyers say the amounts are justified.

By Richard Vanderford Follow

July 8, 2024 at 5:30 am ET

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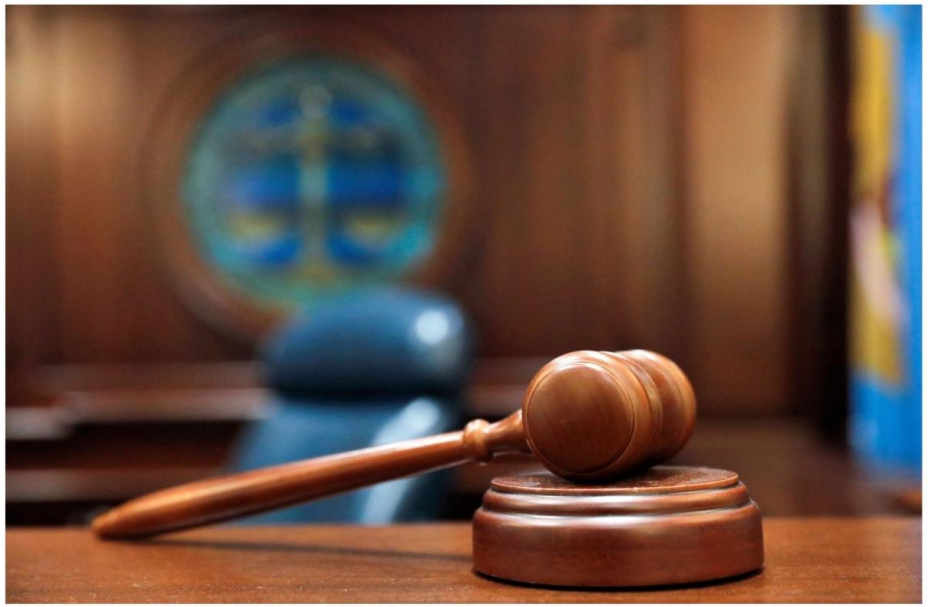

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Ramirez v. Charter Communications, Inc., 2024 WL 3405593 (Cal. 2024)

- Upholding finding of unconscionability:
  - Unconscionability arises when an arbitration agreement covers claims more likely to be brought by an employee and excludes claims more likely to be brought by an employer.
  - Shortening statutes of limitation may be unconscionable.
  - Adequate discovery is indispensable for the vindication of FEHA claims.
  - Provision for an award of interim attorneys' fees is unconscionable.
  - Whether an arbitration agreement works an unconscionable hardship is determined with reference to the time it was made (not with hindsight).
- Remanding re whether or not to sever offending provisions.

Quach v. California Commerce Club, Inc., 2024 WL 3530266 (Cal., 2024)

- No showing of prejudice is required to establish waiver of a contractual right to arbitration.
- Following *Morgan v. Sundance, Inc.*, 596 U.S. 411 (2022).

Smith v. Spizzirri, 144 S. Ct. 1173, 2024 WL 2193872 (2024)

- When a ***federal*** court finds that a dispute is subject to arbitration and a party has requested a stay of the court proceeding pending arbitration, the FAA compels the federal court to stay the proceeding (and to not dismiss it).

Coinbase, Inc. v. Suski, 144 S.Ct. 1186, 2024 WL 2333424 (2024)

- Where parties have agreed to two contracts—one sending arbitrability disputes to arbitration, and the other either explicitly or implicitly sending arbitrability disputes to the courts—a court must decide which contract governs.

Bissonnette v. LePage Bakeries Park St., LLC, 144 S. Ct. 905, 2024 WL 1588708 (2024)

- FAA's exemption for transportation workers is ***not*** limited to workers employed in a transportation industry.

Soltero v. Precise Distribution, Inc., 102 Cal. App. 5th 887 (2024)

- Employee of temporary staffing agency agreed to arbitrate all disputes with agency. Agency placed employee on a temporary assignment with Precise.
- Employee brought class action against Precise for wage and hour violations.
- Precise moved to compel arbitration based on agency's arbitration agreement with employee.
- Held: Because Precise was not a party to the arbitration agreement it cannot compel arbitration based on theories of equitable estoppel, third-party beneficiary, or agency.

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Diaz v. Macys West Stores, Inc., 101 F.4th 697 (9th Cir. 2024)

- Per the terms of the parties' mandatory arbitration agreement, the plaintiff's non-individual PAGA claims should be stayed while individual claims proceed to arbitration.

Chamber of Commerce of the USA et al. v. Becerra et al., No. 2:19-cv-02456 (E.D. Cal. Jan. 1, 2024).

- Entering permanent injunction barring the State of California from enforcing AB 51 (which precludes employers from requiring arbitration agreements as a condition of employment), as it is preempted by the FAA.

Hohenshelt v. Superior Court,
99 Cal. App. 5th 1319 (2024), *Review Granted*

- FAA does not preempt California Code of Civil Procedure Section 1281.97 (*e.g.*, employers are required to pay their arbitration fees with 30 days). *See also Keeton v. Tesla, Inc.*, 2024 WL 3175244 (Cal.App. 1 Dist., 2024); *Suarez v. Superior Court of San Diego Cnty.*, 99 Cal.App.5th 32 (Cal.App. 4 Dist., 2024); *Cvejic v. Skyview Capital, LLC*, 92 Cal. App. 5th 1073 (2023)*De Leon v. Juanita's Foods*, 85 Cal.App.5th 740 (Cal.App. 2 Dist., 2022); *Espinoza v. Superior Court*, 83 Cal.App.5th 761 (Cal.App. 2 Dist., 2022); *Gallo v. Wood Ranch USA, Inc.*, 81 Cal.App.5th 621 (Cal.App. 2 Dist., 2022).
- *But see Hernandez v. Sohnen Enterprises, Inc.*, 102 Cal.App.5th 222 (Cal.App. 2 Dist., 2024)(when arbitration agreement covered by FAA, Section 1281.97 is preempted).

Ramirez v. Golden Queen Mining Company, LLC, 102 Cal. App. 5th 821 (2024)

- An individual is capable of recognizing his or her handwritten signature and if that individual does not deny a handwritten signature is his or her own, that person's failure to remember signing the document does not create a factual dispute about the signature's authenticity.
- *See also Garcia v. Stoneledge Furniture LLC*, 102 Cal. App. 5th 41 (2024)(Employee declaration that she did not electronically sign arbitration agreement sufficient to shift burden to employer to prove agreement's existence).

Mar v. Perkins, 102 Cal. App. 5th 201 (2024)

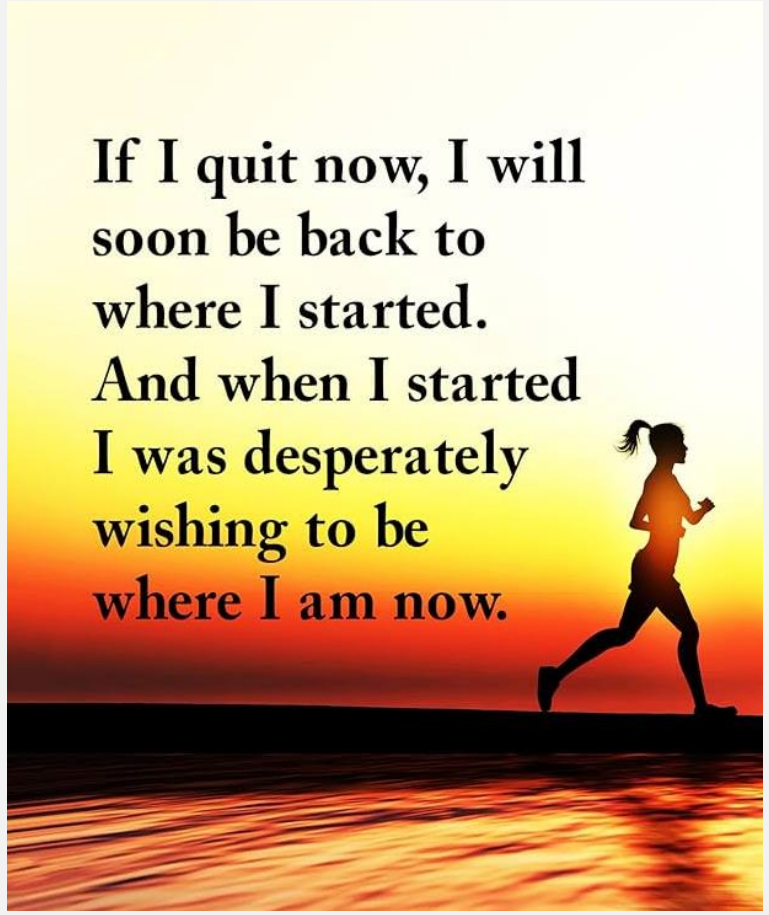
- Where an employer modifies its employment policy to require employees to arbitrate their disputes and clearly communicates to employees that continued employment will constitute assent to an arbitration agreement, the employees will generally be bound by the agreement if they continue to work for the company.
- However, where the employee promptly rejects the arbitration agreement and makes clear he or she refuses to be bound by the agreement, there is no mutual assent to arbitrate.

Cook v. University of Southern California, 102 Cal. App. 5th 312 (2024)

- Arbitration agreement of infinite duration requiring employee to arbitrate all claims against the employer, its agents, affiliates, and employees irrespective of whether they arise from the employment relationship is unconscionable.

Vazquez v. SaniSure, Inc., 101 Cal. App. 5th 139 (2024)

- Arbitration agreement from prior term of at will employment does not cover a second term of employment where no such agreement was made.



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Mondragon v. Sunrun Inc., 101 Cal. App. 5th 592 (2024)

- Affirming denial of petition to arbitrate individual and representative PAGA claims because agreement to arbitrate "unambiguously" ***excluded*** PAGA claims and did not differentiate between individual PAGA claims and PAGA claims brought on behalf of other employees.
- Holding that mere reference to AAA arbitration rules does not clearly and unmistakably delegate arbitrability decisions to the arbitrator.

Johnson v. Lowe's Home Centers, LLC, 93 F.4th 459 (9th Cir. 2024)

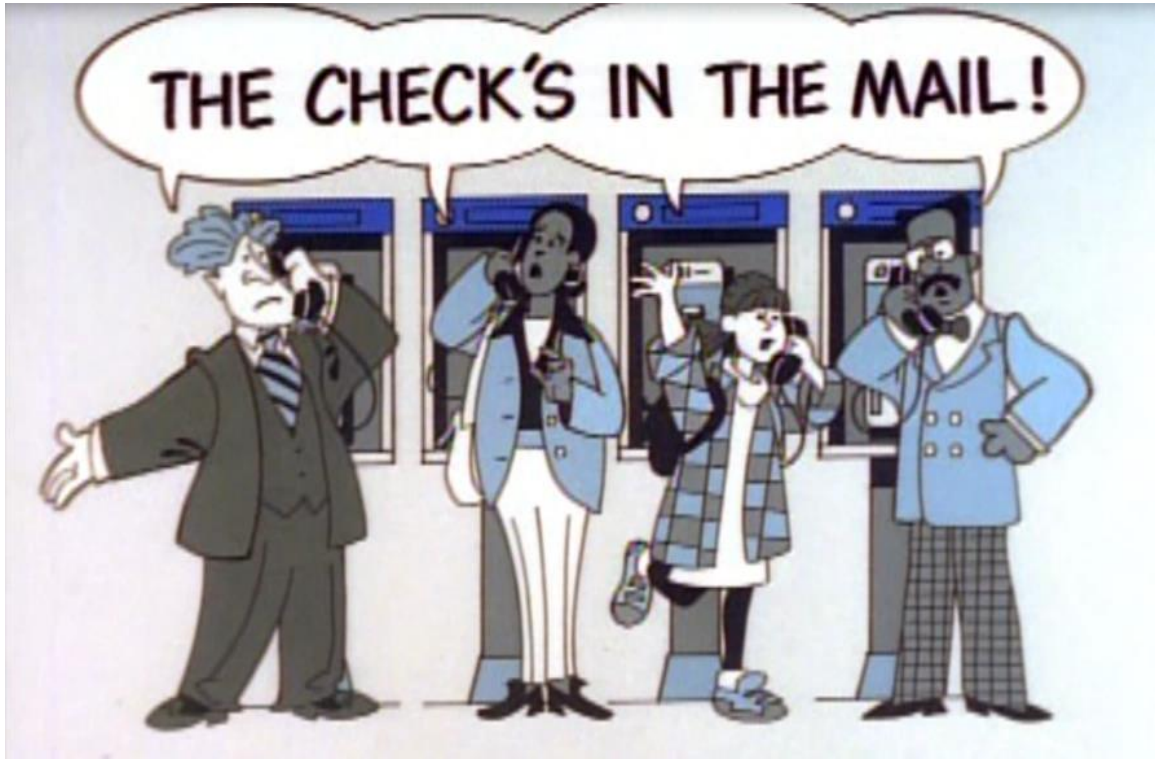
- Majority in *Viking River* misunderstood California law.
- *Adolph v. Uber Technologies* is consistent with *Viking River.*
- Plaintiff employee must arbitrate individual PAGA claims ***but*** may litigate non-individual PAGA in court.

Reynosa v. Superior Court of Tulare Cnty., 101 Cal. App. 5th 967 (2024)

- CCP § 1281.98 allows arbitration providers to extend the due date for paying fees and costs if "agreed upon by all parties."
- "agreed upon by all parties" does not mean a claimant's silence, failure to object, or other seemingly acquiescent conduct (not amounting to direct expression).
- Court of Appeal reverses denial of motion to withdraw from arbitration and awards monetary sanctions including reasonable attorney's fees incurred in prosecuting his writ petition.

Doe v. Superior Court, 95 Cal. App. 5th 346 (2023)

- Another annoyed Court of Appeal rejects a "the check is in the mail" argument.
- Satisfaction of Cal. Civ. Proc. Code § 1281.98(a)(1) does not occur until the arbitration provider receives the mailed check.



Kadar v. Southern California Medical Center, Inc., 99 Cal. App. 5th 214 (2024)

- A "dispute," for Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act purposes, does not arise from the fact of an injury.
- For a "dispute" to arise, a party must first assert a right, claim, or demand.
- *See also Famuyide v. Chipotle Mexican Grill, Inc.*, 2024 WL 3643637 (8th Cir. 2024)(plaintiff attorney's letter asking if employer wanted to discuss out-of-court resolution of claims does not create a "dispute").

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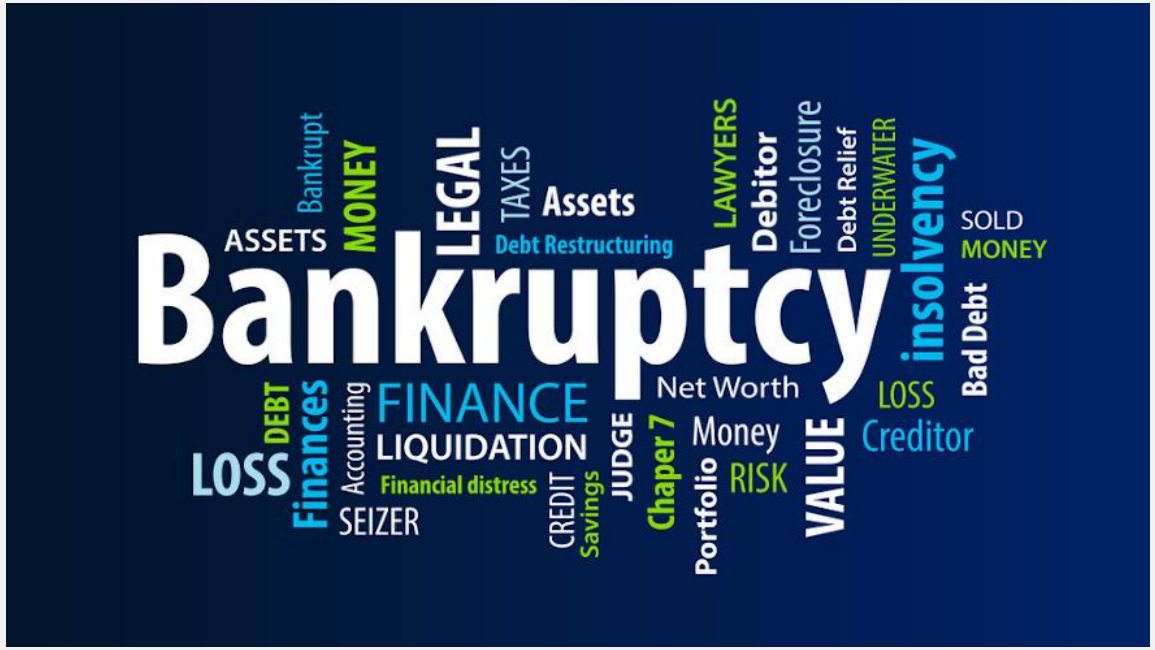
Procedural & Miscellaneous

Starbucks Corporation v. McKinney, 144 S.Ct. 1570, 2024 WL 2964141 (U.S., 2024)

- District courts must use the traditional four-part test for preliminary injunctions, *e.g.*, likelihood of success on merits, irreparable harm, balance of equ ities, and public interest, when evaluating NLRB requests for preliminary injunctions under the NLRA.
- Injunction requiring Starbucks to reinstate fired employees vacated and case remanded.

Bercy v. City of Phoenix, 103 F.4th 591 (9th Cir. 2024)

- Hostile work environment claim, encompassing acts occurring pre-petition and post-petition, constituted one unlawful employment practice that accrued before plaintiff petitioned for bankruptcy.
- As a result, plaintiff's claim belonged to the bankruptcy estate, and she lacked standing to pursue it.



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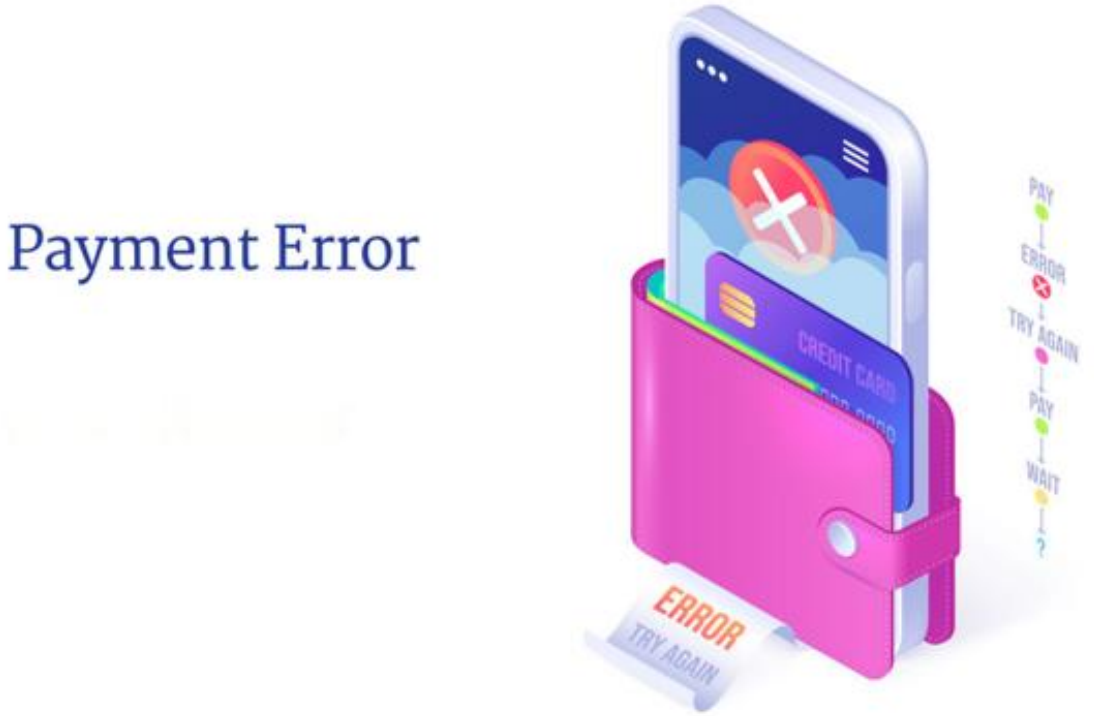
Neeble-Diamond v. Hotel California By the Sea, LLC, 99 Cal. App. 5th 551 (2024)

- Prevailing defendant employer's cost memorandum was an ineffective means of requesting a discretionary award of costs.
- Since defendant employer failed to file a noticed motion requesting a discretionary cost award, the trial court erred when it ordered that costs be added to the judgment.



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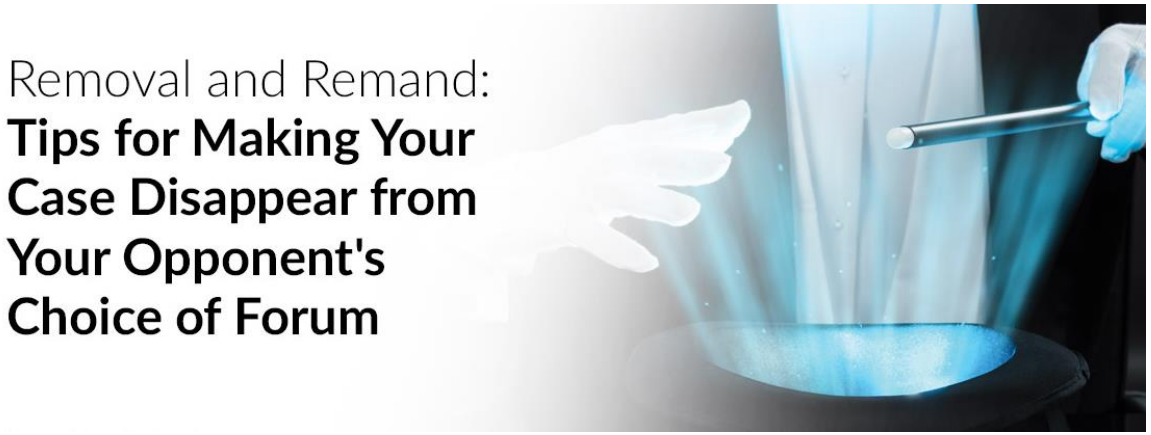
Hardell v. Vanzyl, 102 Cal. App. 5th 960 (2024)

- Colorado employee of California company sued Board of Directors member residing in Australia for sexual harassment based on an event occurring in Florida.
- Trial court denies request for jurisdictional discovery and quashes service of the lawsuit on Board member finding no motion to quash, the trial court specific or general jurisdiction.
- Court of Appeal reversing holding plaintiff was entitled to conduct discovery of jurisdictional facts.

Casola v. Dexcom, Inc., 98 F.4th 947 (9th Cir. 2024)

- "Super snap removal" ineffectual.
- Defendant's purported attempt to remove case to federal court before the electronically filed complaint had been processed by California Superior Court invalid.
- Ninth Circuit expresses no opinion on the permissibility of "snap removals" in the Ninth Circuit.



Lugo v. Pixior, LLC, 101 Cal. App. 5th 511 (2024)

- Employer reported to police that employee deleted valuable computer files.
- Employee was arrested and charged.
- Charges dismissed as an employee of Employer lied at preliminary hearing – Court finds employee factually innocent.
- Employee sues Employer for malicious prosecution.
- Employer is not liable for malicious prosecution against former employee because independent police investigation acted as an superseding cause.

Applied Medical Distribution Corporation v. Jarrells, 100 Cal. App. 5th 556 (2024)

- Former employer was entitled to injunction and attorney's fees, pursuant to the the California Uniform Trade Secrets Act, for employee's misappropriation of trade secrets, even though jury found no damages.

Jones v. Riot Hospitality Group LLC, 95 F.4th 730 (9th Cir. 2024)

- Ninth Circuit affirms dismissal of employment case due to the plaintiff's intentional spoliation of electronically stored information.
- "Production of some evidence does not excuse destruction of other relevant evidence."
- Ninth Circuit also affirms sanctions of $69,576.00 in fees and costs.

Valley Hospital Medical Center, Inc. v. National Labor Relations Board, 100 F.4th 994 (9th Cir. 2024)

- Affirming NLRB's order finding that employer committed an unfair labor practice by unilaterally ceasing union dues checkoff after the expiration of a collective bargaining agreement.
  - "[W]e are persuaded that the Board acted rationally by adequately considering and explaining its decision."
- Hon. Diarmuid F. O'Scannlain specially concurs to suggest the time is ripe to end deference to agency interpretations foreshadowing Supreme Court's end to *Chevron* deference. *See Loper Bright Enterprises v. Raimondo*, 2024 WL 3208360 (2024)

Snoeck v. ExakTime Innovations, Inc., 96 Cal. App. 5th 908 (2023)

- Employee's attorney's "pervasive incivility" justified $460,000 reduction in fees.
- *See also Karton v. Ari Design & Constructic Inc.*, 61 Cal. App. 5th 734, 747 (2021)("It is salutary incentive for counsel in fee-shifting to know their own low blows may return to l them in the pocketbook."); *WasteXperts, Inc. v. Arakelian Enterprises, Inc.*, 2024 WL 3370547 (Cal.App. 2 Dist., 2024)(admonishes counsel to be civil in conduct and papers).

Wage & Hour

Castellanos v. State, 2024 WL 3530208 (Cal., 2024)

- Business and Professions Code Section 7451, enacted through Proposition 22 (the Protect App-Based Drivers and Services Act) provides that drivers for an app-based transportation or delivery companies are independent contractors as long as several conditions are met.
- As a result of Section 7451, app-based drivers are not covered by California workers' compensation laws, which generally apply to employees and not to independent contractors.

Olson v. California, 104 F.4th 66 (9th Cir. 2024)(en banc)

- Was it rational for the California legislature to enact AB 5 applying one test to determine the classification of Uber drivers and a different test to determine the classification of dogwalkers who provide services through Wag!, the "Uber for dogs"?
- **Yes! -** There are plausible reasons for treating transportation and delivery referral companies differently from other types of referral companies, particularly where the legislature perceived transportation and delivery companies as the most significant perpetrators of the problem it sought to address—worker misclassification.

Naranjo v. Spectrum Security Services, Inc., 15 Cal. 5th 1056 (Cal., 2024)

- California Supreme Court holds that if an employer reasonably and in good faith believed it was providing a complete and accurate wage statement in compliance with the requirements of section 226, then it has not knowingly and intentionally failed to comply with the wage statement law.

Huerta v. CSI Electrical Contractors, 15 Cal. 5th 908 (2024)

- Time spent on an employer's premises in a personal vehicle and waiting to scan an identification badge, have security guards peer into the vehicle, and then exit a Security Gate is compensable as ‘hours worked’ within the meaning of IWC Wage Order No. 16.

Gramajo v. Joe's Pizza On Sunset, Inc., 100 Cal. App. 5th 1094 (2024)

- Pursuant to Code of Civil Procedure Section 1033(a), Superior Court denies attorneys' fees and costs sought under Labor Code Section 1194(a) because plaintiff severely over-litigated case.
- **Reversed** - employees who prevail in actions to recover unpaid minimum and overtime wages are entitled to their reasonable litigation costs under Labor Code Section 1194(a) irrespective of the amount recovered.

Ibarra v. Chuy & Sons Labor, Inc., 102 Cal.App.5th 874 (2024)

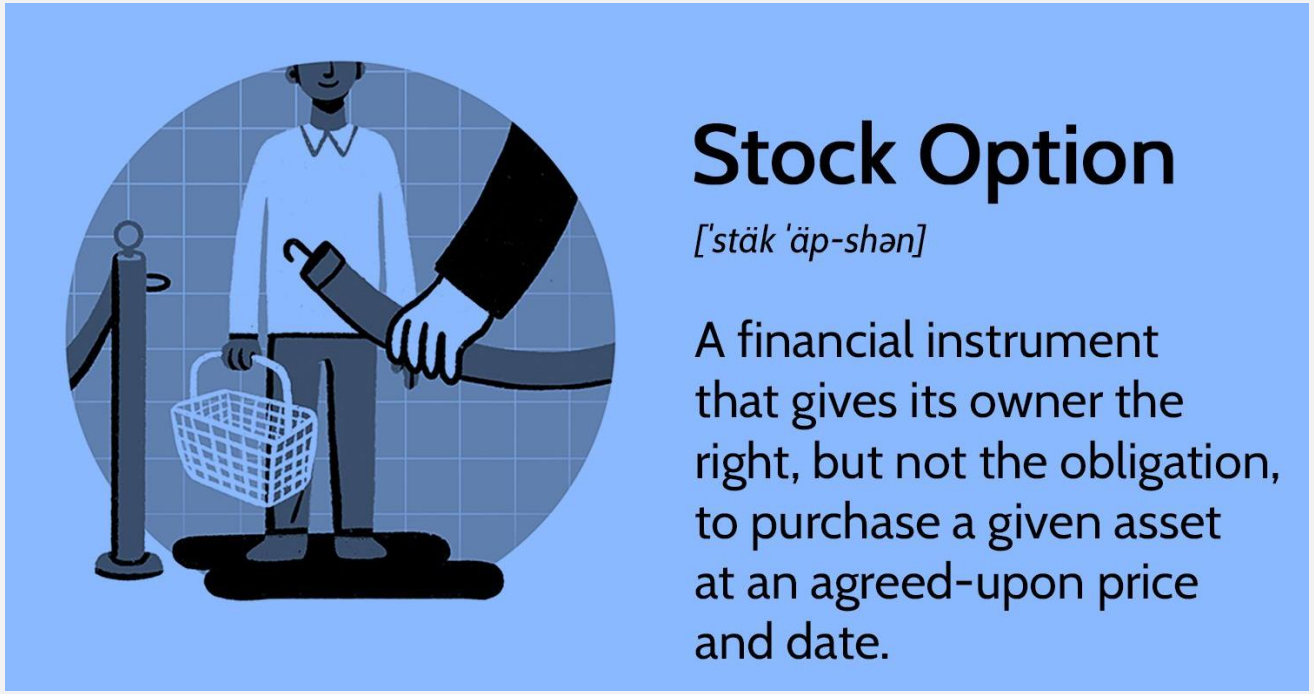
- Trial court dismisses PAGA lawsuit for failure to comply with PAGA's prefiling notice requirements by not adequately describing "aggrieved employees."
- Court of Appeal reverses finding the following sufficient:
  - Naming four employers;
  - Alleging they committed wage and hour violations against plaintiff and other employees; and
  - Citing Labor Code Section 2810.3(b), providing that a labor contractor, such as one of the defendants, is jointly liable with a "client employer" for the workers that the contractor supplies.

Estrada v. Royalty Carpet Mills, Inc., 15 Cal. 5th 582 (2024)

- Trial courts lack inherent authority to strike PAGA claims on manageability grounds.

Shah v. Skillz Inc., 101 Cal. App. 5th 285 (2024)

- Stock options are not wages under the Labor Code because they are neither "amounts" as used in § 200 nor are they money.
- Damages for breach of a contract involving stock options need not be measured as of the date of breach.



Balderas v. Fresh Start Harvesting, Inc., 101 Cal. App. 5th 533 (2024)

- Employee may proceed with lawsuit despite only alleging "representative" PAGA claims.

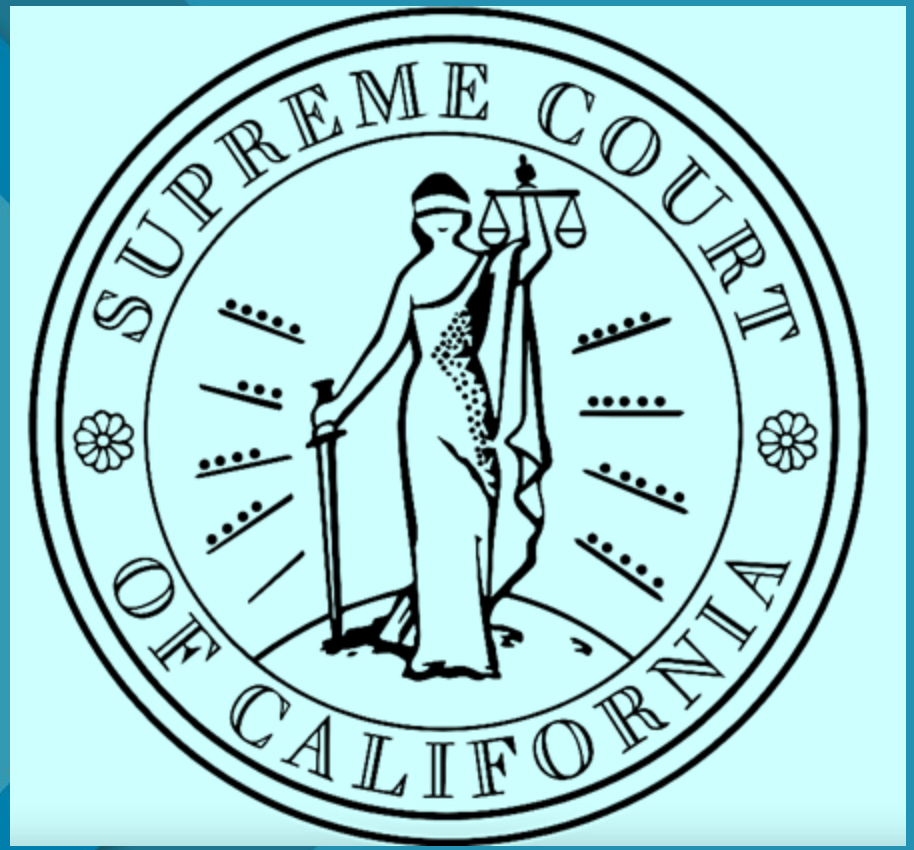
Young v. RemX Specialty Staffing, 91 Cal. App. 5th 427 (2023)

- No final paycheck due after end of temporary assignment.

Arce v. Ensign Grp., Inc., 96 Cal. App. 5th 622 (2023)

- Employee's meal and rest break PAGA claims survive summary judgment because employer did not furnish evidence that negated plaintiff's allegations that its actual practices conflicted with its written break policies - it was not enough that the employer's policies and handbooks all required employees to take meal and rest breaks if the employer pressured its employees not to take breaks

Labor & Employment Cases Pending before the California Supreme Court



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ARBITRATION

- *Basith v. LAD Carson-Nm LLC*, 90 Cal. App. 5th 951 (2023), review granted, 2023 WL 5114947 (Aug. 9, 2023); S280258/B316098

The petition for review is granted. Further action in this matter is deferred pending consideration and disposition of a related issue in Fuentes v. Empire Nissan, Inc., S280256 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the court. Submission of additional briefing, pursuant to California Rules of Court, rule 8.520, is deferred pending further order of the court. Holding for lead case.

ARBITRATION

- *Fuentes v. Empire Nissan*, 90 Cal. App. 5th 919 (2023), review granted, 2023 WL 5114942 (Aug. 9, 2023); S280256/B314490

Petition for review after reversal of order denying a petition to compel arbitration. Is the form arbitration agreement that the employer here required prospective employees to sign as a condition of employment unenforceable against an employee due to unconscionability? Fully briefed.

ARBITRATION

- *Hohenshelt v. Superior Court*, 99 Cal. App. 5th 1319 (2024), review granted, 321 Cal. Rptr. 3d 633 (Mem) (Jun. 12, 2024); S284498/B327524

Petition for review after the grant of petition for writ of mandate. Does the Federal Arbitration Act (9 U.S.C. § 1 et seq.) preempt state statutes prescribing the procedures for paying arbitration fees and providing for forfeiture of the right to arbitrate if timely payment is not made by the party who drafted the arbitration agreement and who is required to pay such fees? Review granted/brief due.

ARBITRATION

- *Zhang v. Superior Court*, 85 Cal. App. 5th 167 (2022), *review granted*, 304 Cal. Rptr. 3d 549 (Mem) (Feb. 15, 2023); S277736/B314386

Petition for review after denial of petition for writ of mandate. (1) If an employer files a motion to compel arbitration in a non-California forum pursuant to a contractual forum-selection clause, and an employee raises as a defense CAL. LAB. CODE § 925, which prohibits an employer from requiring a California employee to agree to a provision requiring the employee to adjudicate outside of California a claim arising in California, is the court in the non-California forum one of "competent jurisdiction" (CAL. CODE CIV. PROC. § 1281.4) such that the motion to compel requires a mandatory stay of the California proceedings? (2) Does the presence of a delegation clause in an employment contract delegating issues of arbitrability to an arbitrator prohibit a California court from enforcing CAL. I CODE § 925 in opposition to the employer's stay motion? Fully briefed.

RETIREMENT

- *Ventura County Employees' Retirement Assn. v. Criminal Justice Attorneys Assn. of Ventura County*, 98 Cal. App. 5th 1119 (2024), *review granted*, 320 Cal. Rptr. 3d 117 (Mem) (Apr. 17, 2024); S283978/B325277

Petition for review after affirmance of judgment. For purposes of calculating retirement benefits for members of County Employees Retirement Law of 1937 (CAL. GOV'T CODE § 31450 *et seq*.) retirement systems, does CAL. GOV'T CODE § 31461(b)(2) exclude payments for accrued, but unused hours of annual leave that would exceed the maximum amount of leave that was earnable and payable in a cale[illegible] year? Answer brief due.

WAGE AND HOUR

- *Accurso v. In-N-Out Burgers* (*Piplack*), 94 Cal. App. 5th 1128 (2023), *review granted*, 2023 WL 8264179 (Mem) (Nov. 29, 2023); /A165320

Review granted after vacating order denying intervention. Further action in this matter is deferred pending consideration and disposition of related issues in *Turrieta v. Lyft* (*Seifu*), S271721 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the court. Submission of additional briefing, pursuant to California Rules of Court, rule 8.520, is deferred pending further order of the court. Holding for lead case.

WAGE AND HOUR

- *Camp v. Home Depot U.S.A., Inc.*, 84 Cal. App. 5th 638 (2022), *review granted* (Feb. 1, 2023); S277518/H049033

Petition after reversal of judgment. Under California law, are employers permitted to use neutral time-rounding practices to calculate employees' work time for payroll purposes? Fully briefed.

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WAGE AND HOUR

- *Iloff v. LaPaille*, 80 Cal. App. 5th 427 (2022), *review granted*, 299 Cal. Rptr. 3d 770 (Mem) (Oct. 26, 2022); S275848/A163504

Petition for review after affirmance in part and reversal in part. (1) Must an employer demonstrate that it affirmatively took steps to ascertain whether its pay practices comply with CAL. LAB. CODE and Industrial Welfare Commission Wage Orders to establish a good faith defense to liquidated damages under CAL. LAB. CODE §1194.2(b)? (2) May a wage claimant prosecute a paid sick leave claim under section 248.5(b) of the Healthy Workplaces, Healthy Families Act of 2014 (CAL. LAB. CODE § 245 et seq.) in a de novo wage claim trial conducted pursuant to CAL. LAB. CODE § 98.2? Fully briefed.

WAGE AND HOUR

- *Rattagan v. Uber Techs.*, 19 F.4th 1188 (9th Cir. Dec. 6, 2021), *cert. granted* (Feb. 29, 2022) S272113/9th Circ. No. 20-16796

Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. Under California law, are claims for fraudulent concealment exempted from the economic loss rule? Submitted/opinion due.

WAGE AND HOUR

- *Stone v. Alameda Health System*, 88 Cal. App. 5th 84 (2023), *rev. granted*, 2023 WL 3514241 (May 17, 2023); S279137/A164021

Petition for review after affirmance in part and reversal in part an order in a civil action. (1) Are all public entities exempt from the obligations in the CAL. LAB. CODE regarding meal and rest breaks, overtime, and payroll records, or only those public entities that satisfy the "hallmarks of sovereignty" standard adopted by the Court of Appeal in this case? (2) Does the exemption from the prompt payment statutes in CAL. LAB. CODE § 220, subdivision (b), for "employees directly employed by any county, incorporated city, or town or other municipal corporation" include all public entities that exercise governmental functions? (3) Do the civil penalties available under the Private Attorneys General Act of 2004, codified at CAL. LAB. CODE § 2698 *et seq.*, apply to public entities? Submitted/opinion due.

WHISTLEBLOWER

- *Brown v. City of Inglewo*od, 92 Cal. App. 5th 1256 (2023), *review granted*, 2023 WL 6300304 (Mem) (Sept. 27, 2023), S280773/B320658

Petition for review after affirmance in part and reversal in part of an anti-SLAPP order. Are elected officials employees for purposes of whistleblower protection under CAL. LAB. CODE § 1102.5 (b)? Fully briefed.

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Thank you

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