

January 25, 2021

## CALIFORNIA ATTORNEY GENERAL END OF TERM UPDATE

To Our Clients and Friends:

### **Introduction**

In December 2020, California Attorney General Xavier Becerra was announced to be President-Elect Joseph R. Biden, Jr.'s pick to lead the Department of Health and Human Services. The California Attorney General's Office is the second largest Justice Department in the United States, second only to the U.S. Department of Justice, and California Attorney General Xavier Becerra was the first Latino Attorney General in California's history. Before becoming the Attorney General of California, Becerra had a 24-year career in the U.S. House of Representatives.[1] In 2017, Governor Jerry Brown appointed Becerra to the last two years of Kamala Harris's term as Attorney General, after she won election to the United States Senate. Now, Governor Gavin Newsom will appoint a successor to complete the remaining two years of Becerra's term, assuming he is confirmed by the U.S. Senate.[2]

In his time as California's Attorney General, Becerra investigated and brought lawsuits against businesses across a wide range of industries, products, and practices, including over-the-counter medications, alleged wire fraud scams, for-profit colleges, alleged opioid abuse, oil and gas mergers, and contracting practices in the healthcare field.[3] Since winning his first statewide election at the end of 2018, AG Becerra and his Office have been particularly active in the following areas: antitrust, privacy, environmental, and consumer protection, and his Office's stated priorities have also included the opioid epidemic, gun control and public safety, and challenging the Trump administration. Gibson Dunn provides this January 2021 end-of-term update summarizing the most significant recent work of AG Becerra's elected term in office, and providing some initial thoughts about how his successor will deploy the Office's resources in 2021 and beyond as California finds a new partner in the incoming Biden Administration.

### **Antitrust**

AG Becerra's antitrust section has investigated, litigated, and entered into settlements of multiple cases involving major healthcare and technology companies and generic drug manufacturers, and sought to enforce California's primary antitrust statute (the Cartwright Act) and the Unfair Competition Law.

#### ***Healthcare Mergers***

The California Department of Justice monitors and regulates healthcare mergers within California. AG Becerra highlighted this area in a recent tweet paired with the conditional approval of a merger between two hospitals in Los Angeles County, emphasizing his view that, "[a]s our hospital systems get bigger by affiliating with one another, it is critical that they continue to provide quality services at affordable

prices to the families that count on them in times of crisis.”[4] In October 2019, the California Department of Justice issued a letter denying a proposed partnership between Adventist System/West and St. Joseph Health System on the grounds that the merger might increase costs or limit access to health care services.[5] Similarly, in August 2020, AG Becerra announced a settlement with Verity Health System of California, Inc., and Prime Healthcare Services, Inc., that imposed additional conditions on the sale of St. Francis Medical Center in Los Angeles.[6] The settlement required Prime to provide additional funding for charity care and community benefit services.[7] Aiming to expand his authority in this sphere, AG Becerra also supported SB 977, which would expand the Attorney General’s authority to review certain transactions, such as acquisitions or change-of-control transactions, involving health care facilities.[8] The bill, which has already passed the state Senate, also authorizes the Attorney General to file civil suits to slow hospital mergers under certain circumstances.

## *Sutter Health*

This longstanding case, along with the parallel class action lawsuit on behalf of self-managed healthcare plans, against Sutter Health was announced to have reached a settlement on December 19, 2020.[9] Under the terms of the settlement, Sutter Health would pay \$575 million to the plaintiff class and agreed to end practices that the private plaintiffs and California Attorney General alleged stifled competition, such as all-or-nothing contracting deals and patient steering practices. Sutter would also be required to limit what it charged patients for out-of-network services, increase its transparency on pricing information, and limit the bundling of certain services. A provision within the settlement required that a monitor be established to ensure Sutter abide by the settlement terms. In June 2020, Sutter Health attempted to delay final approval of the settlement due to catastrophic losses stemming from the COVID-19 pandemic.[10] On July 9, 2020, the court ultimately denied Sutter’s motion to delay the final settlement hearing, which would take place in August. As of the publishing of this alert, the court had rejected the proposed settlement and sent the proposal back to the parties in order to select a monitor with a more diverse background. This case is just one of the many now being handled by AG Becerra’s new Healthcare Rights and Access Section, which is charged with increasing and protecting the affordability, accessibility, and quality of healthcare in the State of California including healthcare and prescription drug marketing, nonprofit healthcare transactions, alleged violations of antitrust laws in the healthcare context, and healthcare privacy and healthcare civil rights, such as reproductive rights and LGBTQ healthcare-related rights.

## *Google*

This year, in July 2020, it was reported that the Office had launched an antitrust investigation into Google—and had declined to join in either of the two ongoing investigations involving 48 other state attorneys general.[11] The investigation follows both the ongoing state AG investigations as well as other publicly announced investigations by federal prosecutors and Congressional subcommittees. On July 11, 2020, AG Becerra filed to join the Department of Justice’s antitrust suit against Google, which alleges that Google violated antitrust laws by entering into exclusionary business agreements that shut out competitors and suppressed innovation.[12]

While the various investigations have not concluded, this recent action may signal the Office's further interest in policing alleged anticompetitive conduct under novel interpretations of the Cartwright Act and Unfair Competition Law.

## *Generic Drugs*

AG Becerra reached settlement agreements with three pharmaceutical companies (Teva, Endo, and Teikoku) for allegedly entering into so-called "pay-for-delay agreements," wherein brand-name drug companies compensate generic drug manufacturers for not introducing a generic version of a brand-name drug for some period of time in order to avoid unnecessary and burdensome litigation costs.<sup>[13]</sup> In addition to these alleged "pay for delay" and other price fixing conspiracies,<sup>[14]</sup> AG Becerra was instrumental in pushing through AB 824, which was signed into law by Governor Newsom in October 2019. The law increases antitrust scrutiny of patent settlement agreements between branded and generic pharmaceutical manufacturers. Not only does the law cover the traditional "pay-for-delay" agreement under the Hatch-Waxman Act, but it also covers settlements brought under the Biologics Price Competition and Innovation Act (BPCIA). The California Attorney General's Office is granted specific enforcement capabilities under the new law but has yet to bring any enforcement action under AB 824. It has been reported that AG Becerra is investigating various pharmaceutical companies over a multitude of drugs.

For more information on AB 824, please find a detailed client alert prepared by Gibson Dunn [here](#).

## *T-Mobile/Sprint Merger*

Last year, AG Becerra, along with New York Attorney General Letitia James, led a coalition of fourteen states that unsuccessfully sued to enjoin the merger between T-Mobile and Sprint.<sup>[15]</sup> The trial was an uphill battle as the Department of Justice and the Federal Communications Commission approved the proposed merger, with qualifications, before the trial started. As part of the efforts to gain the federal government's approval to the merger, T-Mobile and Sprint agreed to set up satellite TV company Dish as a new cellular competitor. The coalition of states, however, argued this was not an adequate replacement for Sprint. Additionally, the state AGs alleged that the merger would harm consumers by reducing competition in the shrinking wireless telecommunications market and result in higher prices and/or reduced services.<sup>[16]</sup> Ultimately, a New York federal judge disagreed with the states and allowed the merger to close.<sup>[17]</sup> Under previously agreed-to settlement terms with various states that individually settled, T-Mobile agreed to reimburse the state-led working group \$15 million and agreed to provide various consumer benefits such as freezing prices in California for five years and offering free internet and Wi-Fi hot spots to low-income households.

In a statement made after the defense verdict was announced, one of the attorneys from the California Attorney General's Office stated that moving forward, the Office may not "put too much faith in the economics," noting that she believed the decision did not consider the complicated economic theory and models put forth by the States.<sup>[18]</sup> "The economics went out the window, so anyone that comes in to talk to [the California Attorney General] needs more than just an economic story."<sup>[19]</sup>

## Employment

The Office appeared as an amicus in support of employees in labor actions. In *Bernstein v. Virgin America, Inc.*, the district court awarded a class of flight attendants \$77 million.<sup>[20]</sup> The court found that Virgin America was subject to California’s labor laws, both as to work done in California and based on employment policies decided from Virgin’s California headquarters, and that the plaintiff flight attendants had been undercompensated.<sup>[21]</sup> (Virgin’s meal break policy was not centralized, so meal break violations that happened outside California were not covered.) The Office appeared when Virgin appealed to the Ninth Circuit. The Office’s amicus brief in support of the flight attendants focused on California’s state labor policy and laws and argued that certain aspects of California’s labor laws are not preempted by federal law. Although the Ninth Circuit has not yet issued its decision in this case, it offers yet another example of how AG Becerra, apart from his enforcement authority, inserted himself into private litigation to advance a regulatory agenda.

AG Becerra, however, has not limited himself to amicus briefs. Recently, the Office became involved in litigation related to employee classification. In December 2019, AG Becerra announced an \$800,000 settlement with Infosys stemming out of allegations that Infosys claimed that some of its foreign workers were covered by B-1 visas as opposed to H-1B visas.<sup>[22]</sup> H-1B visas, unlike B-1 visas, are subject to payroll taxes and require employers to pay workers at the prevailing local wage. The suit, brought under both California’s False Claims Act and Unfair Competition Law, demonstrated the range of legal approaches that AG Becerra has been willing to deploy, by seeking to enforce California’s labor laws even though such laws are primarily the province of the Labor Commissioner.

AG Becerra also moved to enforce AB 5, a recently enacted California statute that codifies the so-called “ABC test” for determining whether a worker is an employee or an independent contractor.<sup>[23]</sup> On May 5, 2020, the Office, along with the City Attorneys of Los Angeles, San Diego, and San Francisco, filed suit against rideshare companies, alleging violations of both California’s Unfair Competition Law and the Labor Code, even though Labor Code enforcement is traditionally the province of the Labor Commissioner.<sup>[24]</sup> Becerra sought injunctive relief under AB 5, seeking reclassification of rideshare drivers as employees and not independent contractors.<sup>[25]</sup> Becerra also sought restitution for drivers and civil penalties for alleged violations under the Unfair Competition Law.

Despite these enforcement efforts, California voters overwhelmingly approved Proposition 22 in the November election, passing it by the largest margin of any ballot initiative that year. Proposition 22 exempts app-based workers from AB 5 and definitively classifies them as independent contractors so long as basic guarantees of driver independence are satisfied. Proposition 22 can be seen as a rebuke of the Attorney General and City Attorneys’ attempt to stifle worker independence, and the outcome of the Office’s and City Attorneys’ suit may serve as a bellwether for future enforcement as to workers who do not fall within the Prop 22 exemption. If AG Becerra’s successor succeeds in using the Unfair Competition Law to enforce Labor Code provisions he lacks authority to directly enforce, this may signal more aggressive enforcement of the labor laws in the future, including the provisions of Prop 22.

Beyond AB 5, AG Becerra also obtained several employment-related settlements. In March 2020, he, along with other state attorneys general, announced three agreements with Burger King, Popeyes, and

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Tim Hortons in which they agreed to stop including “no-poach” provisions in their U.S. franchise agreements.[26] These follow similar settlements with Arby’s, Dunkin’, Five Guys, and Little Caesars in 2019,[27] and were part of AG Becerra’s attack on non-competes and similar agreements.[28]

## **Environmental**

Shortly after winning election, in 2018 AG Becerra announced the creation of an Environmental Justice Bureau within the Environment Section of the California Department of Justice.[29] Charged with “protect[ing] people and communities that endure a disproportionate share of environmental pollution and public health hazards,” the Bureau launched investigations and actions seeking to recover damages for and abatement of alleged violations, including allegedly contaminated drinking water, purported exposure to lead and other toxins in the environment and consumer products, and claimed discharges to air and water.

In addition to the Office’s wide-ranging challenges to Trump administration environmental policies, AG Becerra coordinated with local district and city attorneys to secure a settlement with Autozone over allegations of improper waste disposal.[30] The settlement required Autozone to submit to a range of audits of its trash receptacles, prohibited unlawful waste, and required payment of \$11 million to dozens of district attorneys’ offices throughout the state, including nearly a million dollars directly to his own Office.[31]

AG Becerra also lent the support of his Office to municipalities’ ongoing lawsuits against energy companies through his amicus submissions. In March 2019, the Office filed an amicus brief in the Ninth Circuit supporting Oakland and San Francisco in their suit against several major energy companies.[32] Oakland and San Francisco had sued the defendant energy companies for alleged injuries from sea-level rise induced by global warming. Opposing federal removal, the Office’s brief emphasized the need for state courts to be able to adjudicate climate-change related claims brought by state political subdivisions.[33] Similarly in July 2020, the Office filed a brief in support of an Oakland ordinance prohibiting the storage and handling of coal and petroleum coke within city limits.[34] The Office brief claimed broad authority of the State and municipalities to regulate activities that may contribute to climate change.[35] While his Office supported these suits, the Attorney General did not bring any such suits himself.

## **False Claims Act**

Under AG Becerra, the Office’s False Claims Unit has investigated and prosecuted alleged overcharges by private companies to State agencies and pension funds, with some actions dating back more than a decade. One area of particular False Claims Act focus over the past decade, which continued during AG Becerra’s term, has been the recovery of investment losses suffered by California’s public pension funds during the 2008 financial crisis. In December 2017, AG Becerra announced a \$120 million settlement with Royal Bank of Scotland (RBS), over alleged misrepresentations about residential mortgage-backed securities sold to California’s public employee and teacher pension funds.[36] In April 2019, the Office announced a \$150 million settlement with Morgan Stanley for allegedly failing to provide adequate disclosures for mortgage-backed securities sold to those same pensions from 2003 to 2007.[37] The

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Office has pursued other pension-related False Claims Act cases, including a recent \$7 million settlement with HSBC for alleged foreign currency trading overcharges to the California Public Employees Retirement System (CalPERS) in 2008 and 2009.[38] The Office has also participated in multi-state and federal Medicaid-related False Claims Act cases, including most recently a \$40 million dollar nationwide settlement with Apria Healthcare over Medicaid reimbursements for ventilation machines that allegedly were unnecessary.[39]

Other recent settlements include a \$102 million settlement with BP Energy Company over alleged natural gas contract overcharges dating from 2003 to 2012, which originated as a *qui tam* suit brought by a former employee and in which the Office intervened[40]; and a \$4 million settlement with VMware for alleged overcharges to the State and local governments for information technology software spanning a period of six years.[41] Finally, AG Becerra has been a vocal supporter of legislation that would broaden the scope of the False Claims Act. In 2019 and 2020, he sponsored legislation that would have expanded the statute to cover tax fraud—creating a whole new class of claims for which private plaintiffs could profit through *qui tam* actions and for which the Attorney General could obtain treble damages and civil penalties. Each attempt to date has failed to pass in the Legislature despite Democratic majorities in both the Assembly and the Senate, due to significant concerns about creating financial incentives for private plaintiffs to file predatory *qui tam* lawsuits against unsuspecting businesses, and the potentially devastating financial cost associated with responding to even frivolous claims. Nevertheless, the bills' author, Assembly Member Mark Stone, is expected to continue to attempt to expand the statute to cover tax claims.[42]

## **Healthcare**

In addition to the Office's activity regulating healthcare mergers and alleged price-fixing agreements discussed above, AG Becerra obtained substantial awards based on allegedly deceptive marketing of certain health care products. In January 2019, AG Becerra announced a \$120 million nationwide settlement—of which California will receive \$8 million—with Johnson & Johnson related to purported misrepresentations as to the effectiveness and safety of hip implants devices.[43] In November 2019, the Office (along with the Los Angeles District Attorney and Los Angeles County Counsel) filed suit against JUUL Labs, for allegedly marketing and selling electronic cigarettes to minors.[44] And, in January 2020, the Office secured a \$344 million judgment after a trial against Johnson & Johnson for deceptive marketing related to its pelvic mesh for women.[45]

Along the same lines, in late 2017, numerous pharmaceutical companies announced in public filings that the California Attorney General's Office, along with other state attorneys general and federal prosecuting and enforcement agencies, were investigating the pricing and sales of insulin, which had increased in price over the preceding decade.[46] AG Becerra also recently announced a \$11.8 million settlement with Novartis Pharmaceuticals, covering alleged violations of California's False Claims Act as well as the federal False Claims Act and Anti-Kickback Statute related to the provision of various drugs to Medicare and Medi-Cal patients.[47]



## **Privacy and Cybersecurity**

The Attorney General’s Office has long been active in investigating and prosecuting companies for data breaches that exposed consumers’ personally identifiable information. For example, over the last two years, the Office has announced various multi-million dollar settlements arising out of data breaches, including against large health insurance and retail companies for allegedly failing to maintain adequate data security measures.[48] In September 2020, the Attorney General’s Office also secured a settlement against an app developer in which no breach was alleged, but in which the design of the app was alleged to pose risks to the personal information of app users.[49]

During this time period, California’s privacy landscape also witnessed a sea change with the passage of two recent statutes: the California Consumer Privacy Act (“CCPA”), which went into effect on January 1, 2020 (and which the California Attorney General has been empowered to enforce as of July 1, 2020),[50] and the California Privacy Rights Act (“CPRA”), which California’s voters approved in the November 2020 general election. AG Becerra and his Office stand to play a pivotal role in their enforcement in the coming years.

Even before it was empowered to enforce the CCPA, the Office was vested with the duty under that statute to draft its implementing regulations—essentially, creating the regulations it would then enforce. The Office announced on June 1, 2020 that those regulations had been submitted to the California Office of Administrative Law,[51] which issued the final text of the regulations on August 14, 2020. At that time, the final regulations became enforceable.[52] To execute its enforcement power, the Office has the authority to bring a civil action for any violation of the CCPA, and can seek to impose civil penalties of up to \$2,500 per violation or \$7,500 per intentional violation (or violation involving a minor’s personal information). Beyond reports of compliance letters being issued by the Office, to date, no enforcement actions have been brought by the Office under the CCPA.

The CPRA is an initiative statute that was placed on the November 3, 2020 ballot and was passed by the voters. The CPRA amends the CCPA to clarify and broaden it, and imposes a January 1, 2023 deadline for businesses to come into compliance with the new CPRA provisions.[53] The Office preserves its authority to issue CCPA regulations during part of the time period before CPRA takes effect, until a new privacy agency, the California Privacy Protection Agency (“CPPA”)—the first enforcement agency in the United States focused solely on privacy—would be formed with its own rulemaking authority.[54] While the composition of the CPPA has not yet been announced, it is likely that at least some of its staff will come from the California Attorney General’s Office. The Office will continue to be tasked with enforcing the CCPA until January 1, 2023, at which time the California Privacy Protection Agency and the Office will have parallel authority to enforce the CPRA (CPPA from an administrative enforcement standpoint, and the Office maintaining its civil action enforcement authority). The CPRA contains various additional provisions governing the two enforcement bodies’ interactions and detailing their enforcement powers.

For more information on the CCPA or the CPRA, find Gibson Dunn Client Alerts [here](#), [here](#), and [here](#).

## **Looking Forward Into 2021 and Beyond**

California's Constitution provides that the Governor fills any vacancy in the office of the Attorney General, to complete the remainder of the existing term, by nominating a candidate who must be confirmed by a majority of the state Assembly and state Senate.<sup>[55]</sup> Unlike other statewide offices such as Secretary of State, the Attorney General must be admitted to the California Bar, and for at least five years immediately preceding his or her appointment or election to that Office.<sup>[56]</sup> Numerous potential candidates have been named, and we expect Governor Newsom to consider carefully Becerra's replacement as one piece of the larger reshuffling of California's highest elected offices, which includes the appointment of Secretary of State Alex Padilla to replace Vice-President-Elect Harris in the U.S. Senate, and the appointment of Assemblywoman Shirley Weber to replace Padilla in his prior role. It is likely that Governor Newsom will announce his choice for Attorney General once Becerra is confirmed by the U.S. Senate.

Regardless of who Governor Newsom appoints to replace AG Becerra, we expect the next two years to look directionally similar to Becerra's term. The incoming Biden Administration (including AG Becerra himself at the helm of the Department of Health and Human Services) will undoubtedly result in a shift in the Attorney General's priorities. We expect to see litigation against the federal government to take a back burner as the Biden Administration rolls-back and ceases enforcement of Trump-era policies, and implements new policies that are more aligned with California's elected officeholders. We also expect to see the Attorney General partner with federal agencies, including the Department of Justice, Federal Trade Commission, Environmental Protection Agency, and Consumer Financial Protection Bureau on various initiatives. As a result, the change in the occupant at the White House will likely shift the Attorney General's focus away from challenging federal actions and toward greater litigation against private actors within California. The Office's aggressive enforcement positions on antitrust, consumer protection, environmental, and labor issues, for example, are unlikely to change in the coming months and will require that companies pay careful attention to the incoming statements and actions of the new Attorney General—including the potential reshuffling of the Office's senior leadership. The Office will likely continue to look for and seize upon opportunities in a broad range of areas.

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[1] <https://xavierbecerra.com/about/>

[2] Numerous candidates have been mentioned in media reports as to possible replacements, and the potential field remains wide open. As of mid-January 2021, some of the reported potential candidates include Assembly member Rob Bonta, Contra Costa County District Attorney Diana Becton, San Francisco City Attorney Dennis Herrera, and California Supreme Court Justice Goodwin Liu.

[3] *Id.*

[4] @AGBecerra, Twitter, <https://twitter.com/AGBecerra/status/1337180686810148867> (Dec. 10, 2020).



[5] Press Release, Cal. Attorney General, *California Department of Justice Denies Transaction between Adventist Health and St. Joseph Health Systems* (Oct. 31, 2019), available at <https://oag.ca.gov/news/press-releases/california-department-justice-denies-transaction-between-adventist-health-and-st>.

[6] Press Release, Cal. Attorney General, *Attorney General Becerra Reaches Settlement with Verity Health on Conditions of Transfer of St. Francis Medical Center* (Aug. 14, 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-reaches-settlement-verity-health-conditions-transfer-st>.

[7] *In re Verity Health Sys. of Cal., Inc.*, No. 2:18-bk-20151-ER (C.D. Cal. Aug. 31, 2020) (Stipulation).

[8] Press Release, Cal. Attorney General, *Attorney General Becerra and Senator Monning Announce That Legislation to Reduce Healthcare Costs, Increase Access to Affordable Care Passes Senate Health Committee* (May 13, 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-and-senator-monning-announce-legislation-reduce>.

[9] Lesley Stahl, 60 Minutes, *How a Hospital System Grew to Gain Market Power and Drove Up California Health Care Costs* (December 13, 2020), available at <https://www.cbsnews.com/news/california-sutter-health-hospital-chain-high-prices-lawsuit-60-minutes-2020-12-13/>.

[10] Robert King, Fierce Healthcare, *Sutter Health Seeks Delay of \$575M Settlement to Assess Impact of COVID-19* (June 17, 2020), available at <https://www.fiercehealthcare.com/hospitals/sutter-health-seeks-delay-575m-settlement-to-assess-impact-covid-19>.

[11] Leah Nysten, Politico, *California Investigating Google for Potential Antitrust Violations* (July 9, 2020), available at <https://www.politico.com/news/2020/07/09/california-google-anti-trust-investigation-355710>.

[12] Press Release, Cal. Attorney General, *Attorney General Becerra Moves to Join Federal Lawsuit Against Google for Anticompetitive Actions* (December 11, 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-moves-join-federal-lawsuit-against-google>.

[13] Press Release, Cal. Attorney General, *Attorney General Becerra Secures Nearly \$70 Million against Several Drug Companies for Delaying Competition and Increasing Drug Prices* (July 29, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-secures-nearly-70-million-against-several-drug>.

[14] See Press Release, Cal. Attorney General, *Attorney General Becerra Joins Price-Fixing Lawsuit Against Six Drug Companies* (March 1, 2017), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-joins-price-fixing-lawsuit-against-six-drug-companies>.

[15] *State of New York et al. v. Deutsche Telekom AG et al.*, No. 1:19-cv-05434 (June 11, 2019 S.D.N.Y.)

[16] *Id.* (Complaint) at Dkt. 2.

[17] *Id.* (Complaint) at Dkt. 410.

[18] Matthew Perlman, Law360, *Calif. Enforcer Sees Less Focus On Economics After T-Mobile* (Sept. 10, 2020), available at <https://www.law360.com/articles/1308930/calif-enforcer-sees-less-focus-on-economics-after-t-mobile>.

[19] *Id.*

[20] *Bernstein v. Virgin America, Inc.*, No. 15-cv-02277-JST, Doc. No. 365 (N.D. Cal. Jan. 16, 2019).

[21] *Bernstein v. Virgin America, Inc.*, No. 15-cv-02277-JST, Doc. No. 97 (N.D. Cal. Jan. 5, 2017).

[22] Press Release, Cal. Attorney General, *Attorney General Becerra Announces \$800,000 Settlement Against Infosys for Misclassification of Foreign Workers and Tax Fraud* (Dec. 17, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-800000-settlement-against-infosys>.

[23] Pursuant to AB5, Labor Code § 2750.3(a)(1) was amended to read:

[A] person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.

(B) The person performs work that is outside the usual course of the hiring entity's business.

(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

[24] *People v. Uber Techs., Inc.*, No. CGC-20-584402 (Cal. Super. Ct., S.F. Cty. May 5, 2020) (Complaint).

[25] Labor Code § 2750.3(j).

[26] Press Release, Cal. Attorney General, *Attorney General Becerra Announces Multistate Settlements to Block "No-Poach" Contract Provisions That Harm Fast Food Workers* (Mar. 2, 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-multistate-settlements-block-%E2%80%9Cno-poach%E2%80%9D>.

[27] Press Release, Cal. Attorney General, *Attorney General Becerra Announces Multistate Settlements Targeting “No-Poach” Policies that Harm Workers* (Mar. 12, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-multistate-settlements-targeting-%E2%80%9Cno-poach%E2%80%9D>.

[28] Press Release, Cal. Attorney General, *Attorney General Becerra Calls for Nationwide Ban on Non-Compete Agreements, Reminds Businesses of Existing Prohibition in California* (Nov. 15, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-calls-nationwide-ban-non-competite-agreements-reminds>.

[29] Press Release, Cal. Attorney General, *Attorney General Becerra Establishes Bureau of Environmental Justice* (Feb. 22, 2018), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-establishes-bureau-environmental-justice>.

[30] Press Release, Cal. Attorney General, *Attorney General Becerra Announces \$11 Million Settlement Against Autozone for Illegal Disposal of Hazardous Waste Statewide* (June 18, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-11-million-settlement-against-autozone>.

[31] *California v. Autozone, Inc.*, No. RG19019395 (Cal. Super. Ct., Alameda Cty. June 18, 2019) (Final Judgment and Permanent Injunction on Consent).

[32] Press Release, Cal. Attorney General, *Attorney General Becerra Filed Brief in Support of Lawsuit by Oakland and San Francisco Communities to Hold Oil and Coal Companies Accountable for Costs of Sea-Level Rise* (Mar. 20, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-files-brief-support-lawsuit-oakland-and-san-francisco>.

[33] *City of Oakland v. BP P.L.C.*, No. 18-16663 (9th Cir. Mar. 20, 2019) (Brief of Amici Curiae States of California, Connecticut, Maryland, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, and Washington, and the District of Columbia).

[34] Press Release, Cal. Attorney General, *Attorney General Becerra Files Brief in Support of Oakland’s Authority to Protect Environmental Justice Communities* (July 20, 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-files-amicus-brief-support-oaklands-authority-protect>.

[35] *City of Oakland v. Oakland Bulk & Oversized Terminal, LLC*, No. 18-16105 (9th Cir. July 20, 2020) (Brief of the State of California as Amicus Curiae)

[36] Press Release, Cal. Attorney General, *Attorney General Xavier Becerra Announces \$125 Million Settlement Against Royal Bank of Scotland For Misleading California’s Pension Funds* (Dec. 22, 2017), available at <https://oag.ca.gov/news/press-releases/attorney-general-xavier-becerra-announces-125-million-settlement-against-royal>.

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[37] Press Release, Cal. Attorney General, *Attorney General Becerra Announces \$150 Million Settlement Against Morgan Stanley for Misleading California's Teachers and Workers with Pensions* (April 25, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-150-million-settlement-against-morgan-stanley>.

[38] Press Release, Cal. Attorney General, *Attorney General Becerra Announces \$7 Million Settlement Against Multinational Bank HSBC for Overcharging CalPERS on Foreign Exchange Transactions* (Sept. 24, 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-7-million-settlement-against-multinational>.

[39] Press Release, Cal. Attorney General, *Attorney General Becerra Announces \$40 Million Nationwide Settlement with Apria Healthcare* (January 22, 2021), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-40-million-nationwide-settlement-apria>.

[40] Press Release, Cal. Attorney General, *Attorney General Becerra: BP Energy Company Pays \$102 Million in Settlement for Overcharging Californians for Natural Gas* (Jan. 11, 2018), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-bp-energy-company-pays-102-million-settlement>.

[41] Press Release, Cal. Attorney General, *Attorney General Becerra Announces Settlement Against Cloud Software Manufacturer VMware for Overcharging California* (Oct. 23, 2020), available [here](#).

[42] See AB 2570 False Claims Act (2019-2020), California Legislative Information, available [here](#); AB 1270 False Claims Act (2019-2020), California Legislative Information, available at [https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill\\_id=201920200AB1270](https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201920200AB1270).

[43] Press Release, Cal. Attorney General, *Attorney General Becerra Announces \$120 Million Settlement against Johnson & Johnson for Deceptive Marketing of Hip Replacement Products* (Jan. 21, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-120-million-settlement-against-johnson>.

[44] Press Release, Cal. Attorney General, *Attorney General Becerra and Los Angeles Leaders Announce Lawsuit Against JUUL for Deceptive Marketing Practices Targeting Underage Californians and Endangering Users of Its Vaping Products* (Nov. 18, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-and-los-angeles-leaders-announce-lawsuit-against-juul>.

[45] Press Release, Cal. Attorney General, *Attorney General Becerra Secures nearly \$344 Million Judgment Against Johnson & Johnson for Endangering Patients through Deceptive Marketing of Pelvic Mesh Products* (Jan. 30. 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-secures-nearly-344-million-judgment-against-johnson>.

[46] See, e.g., Sarah Jane Tribble, Kaiser Health News, Business Insider, *States Are Investigating Drug Companies And Middlemen Involved In The Pricing Of A Key Diabetes Medicine* (Oct. 30, 2017),

available at <https://www.businessinsider.com/federal-and-state-probes-target-insulin-drugmakers-and-middlemen-2017-10>.

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[48] Press Release, Cal. Attorney General, *Attorney General Becerra Announces \$8.69 Million Settlement Against Anthem, Inc., Over Failure to Protect Patients' Personal Data* (Sept. 30, 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-869-million-settlement-against-anthem-inc>; Press Release, Cal. Attorney General, *Attorney General Becerra Recovers Over \$1 Million for California from Premera Blue Cross Health Records Data Breach* (July 11, 2019), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-recovers-over-1-million-california-premera-blue-cross>.

[49] Press Release, Cal. Attorney General, *Attorney General Becerra Announces Landmark Settlement Against Glow, Inc. – Fertility App risks Exposing Millions of Women's Personal and Medical Information* (September 17, 2020), available at <https://oag.ca.gov/news/press-releases/attorney-general-becerra-announces-landmark-settlement-against-glow-inc-%E2%80%93>.

[50] Civ. Code § 1798.185(c).

[51] Cal. Attorney General, CCPA Regulations, available at <https://www.oag.ca.gov/privacy/ccpa/regs>.

[52] *Id.*

[53] Cal. Secretary of State, Official Voter Information Guide, Proposition 24, available at <https://voterguide.sos.ca.gov/propositions/24/>.

[54] *Id.*

[55] Cal. Const. Art. V, Sec. 5, subd. (b).

[56] Gov't Code, § 12503. The Attorney General must also be a registered voter (Elections Code § 201), not been convicted of certain felonies (Elections Code § 20), and not already subject to term limits (Cal. Const. Art. V, Sec. 1).



# GIBSON DUNN

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