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GIBSON DUNN
California Supreme Court
Spring 2016 Round Up

Overview

The California Supreme Court Round-Up previews upcoming cases and summarizes select opinions issued by the Court. This edition includes opinions handed down from November 2015 through April 2016, organized by subject. Each entry contains a description of the case, as well as a substantive analysis of the Court's decision.

2015 - 2016 Term Civil Cases Decided

Civil Procedure

1. ***DeSaulles v. Cmty. Hosp. of the Monterey Peninsula*, S219236 (6th App. Dist., 225 Cal.App.4th 1427). This case addresses the following issue: When plaintiff dismissed her action in exchange for the defendant's payment of a monetary settlement, was she the prevailing party for purposes of an award of costs under Code of Civil Procedure section 1032, subdivision (a)(4), because she was "the party with a net monetary recovery," or was defendant the prevailing party because it was "a defendant in whose favor a dismissal is entered"?**

   Decided Mar. 10, 2016 (62 Cal.4th 1140). Liu, J., for a majority of the Court (Kruger, J., dissenting, joined by Werdegar, J.). The Court affirmed and held that, under Code of Civil Procedure section 1032(a)(4), a plaintiff who receives money from a defendant to settle a case has obtained a "net monetary recovery" and that the post-settlement dismissal of such a case is not a dismissal "in [the defendant's] favor." A hospital paid a former employee a monetary settlement in exchange for the dismissal of two of her claims against it. In subsequent proceedings, each party argued that it was entitled to an award of costs as the "prevailing party" under section 1032(a)(4): the hospital because it was "a defendant in whose favor a dismissal [was] entered" and the employee because the monetary settlement made her a "party with a net monetary recovery." The trial court held that the hospital was entitled to costs as the "prevailing party." The Court of Appeal reversed. Affirming the Court of Appeal, the Court first concluded that because the purpose of section 1032 is to impose costs on the losing party, a defendant (like the hospital in this case) who enters into a monetary settlement agreement in exchange for dismissal of a plaintiff's case cannot be considered "a defendant in whose favor a dismissal is entered." Regarding whether the employee would be entitled to costs as the "prevailing party," the Court concluded that nothing in the text or legislative history of the statute indicated that a monetary settlement was


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not a "net monetary recovery." As such, the employee was the "prevailing party" under section 1032(a)(4).

2. ***Gaines v. Fidelity National Title Insurance Company, et al.*, S215990 (2d App. Dist., 222 Cal.App.4th 25). This case presents the following issue: Was this action properly dismissed for the failure to bring it to trial within five years or should the period during which the action was stayed for purposes of mediation have been excluded under Code of Civil Procedure section 583.340, subdivision (b) or (c)?**

   Decided Feb. 25, 2016 (62 Cal.4th 1081). Corrigan, J., for a majority of the Court (Kruger, J., dissenting, joined by Liu, J.). The Court affirmed and held that a stipulated court order staying the case to permit the parties to participate in mediation did not toll the statutory time limit within which an action must be brought to trial. Under Code of Civil Procedure section 583.310, an action "shall be brought to trial within five years after the action is commenced." Sections 583.340(b) and (c) toll this time limit at any time during which "[p]rosecution or trial of the action was stayed or enjoined," or during which "[b]ringing the action to trial, for any other reason, was impossible, impracticable, or futile." At the parties' request, the trial court entered an order staying the case for 120 days, but requiring discovery to continue and the parties to participate in mediation. When defendant later moved to dismiss for failure to bring the action to trial within five years, plaintiff argued that the section 583.310 time limit should have been tolled while the stay order was in effect. The Court held that the order was not a stay of the trial under section 583.340(b) because it was not an indefinite postponement lasting until "the occurrence of an event that is usually extrinsic to the litigation and beyond the plaintiff's control." Similarly, because "mediation . . . is one means by which a settlement of the lawsuit may be reached," the order did not "encompass[] all proceedings in the action" and thus was also not a stay of prosecution under section 583.340(b). Finally, the order staying the case did not render it "impossible, impracticable, or futile" to bring the action to trial under section 583.340(c) because it did not deprive plaintiff of a "substantial portion" of the five-year period and could likely have been vacated at the parties' request. The Court therefore upheld the trial court's ruling that the stay order did not toll the section 583.310 time limit.

Employment Law

3. ***Baltazar v. Forever 21, Inc., et al.*, S208345 (2d App. Dist., 212 Cal.App.4th 221). This case presents the following issue: Is an arbitration clause in an employment application that provides "I agree to submit to binding arbitration all disputes and claims arising out of the submission of this application" unenforceable as substantively unconscionable for lack of mutuality, or does the language create a mutual agreement to arbitrate all such disputes?**

Decided Mar. 28, 2016 (____). Kruger, J., for a unanimous Court. The Court affirmed and held that the arbitration agreement was not unconscionable. In arguing that the trial court properly denied defendants' motion to compel arbitration, plaintiff claimed that the agreement's provisional relief clause (permitting the parties to seek preliminary injunctive relief in court) unfairly favored defendant as an employer. Plaintiff contended that employers are more likely to invoke equitable jurisdiction in order to stop employee competition or protect intellectual property. The Court held that regardless of whether that is practically true, the clause merely recited protections secured by Code of Civil Procedure section 1281.8(b), which permits parties to seek preliminary injunctive relief. In no way did that render the arbitration agreement unreasonably one-sided. Plaintiff next argued that the agreement was unfairly one-sided because it listed only employees' claims as examples of claims subject to arbitration. The Court held that the agreement explicitly covered "any claim or action," including employers' claims. The list of examples was illustrative, not exhaustive.

Constitutional Law

4. ***Howard Jarvis Taxpayers Association v. Padilla (Legislature of the State of California)*, S220289 (original proceeding). This case presents the following issue: Whether the Legislature had the authority to place a non-binding measure, Proposition 49, on the ballot seeking the views of the electorate in the November 2014 General Election.**

Decided Jan. 4, 2016 (62 Cal.4th 486). Werdegar, J., for a majority of the Court (Cantil-Sakauye, C.J., concurring; Corrigan, J., concurring; Liu, J., concurring; Chin, J., dissenting). The Court upheld the Legislature's authority to pose advisory questions to the electorate via a statewide ballot as a reasonable exercise of the Legislature's implied power to investigate and determine the best course of action in connection with federal constitutional amendments. In 2014, the Legislature enacted a statute to place a nonbinding advisory question on the general election ballot. Proposition 49 would have asked the electorate whether Congress should propose, and the Legislature ratify, a federal constitutional amendment to overturn *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, which invalidated as unconstitutional federal restrictions on the political speech of corporations. In concluding that such advisory questions are permissible, the Court recognized that the Legislature possesses the inherent power to investigate "in order to select the wisest policy course." The exercise of this investigative power "must be tethered to the exercise of other established legislative powers, and the method chosen in a particular instance must be reasonable." The Court reasoned that because the Legislature has textual and historical authority to participate in federal constitutional change, it also has the power to investigate "the wisdom or desirability of choosing one or another course of action." Moreover, nothing in the federal or state constitutions bars the use of advisory ballot questions to inform decisions regarding potential constitutional amendments; such investigative means have been used historically by state legislatures to inform similar decisions. Finally, notwithstanding the Legislature

already having submitted a call to Congress for a national convention, Proposition 49 still would be a reasonable exercise of the Legislature's investigative power because the electorate's response could inform decisions related to future resolutions and potential ratification.

Environmental Law

5. ***California Building Industry Assn. v. Bay Area Air Quality Management Dist.*, S213478 (1st App. Dist., 218 Cal.App.4th 1171). This case presents the following issue: Under what circumstances, if any, does the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?**

   Decided Dec. 17, 2015 (62 Cal.4th 369). Cuéllar, J. for a unanimous Court. The Court reversed and held that the California Environmental Quality Act ("CEQA") does not generally require an agency to consider the effects of existing environmental conditions on a proposed project's future residents or users, except where a project would either exacerbate existing environmental hazards or fall into specific statutory categories (i.e., school, airport, and certain housing projects). The California Natural Resources Agency had previously adopted administrative guidelines, calling for other agencies subject to CEQA to develop "thresholds of significance" for determining "the significance of environmental effects." In 2009, one such agency, the Bay Area Air Quality Management District ("District"), proposed—and ultimately adopted—new thresholds of significance for air pollutants. This case, brought by a participant in the District's public hearing process, called for the Court to consider the validity of section 15126.2(a) of the administrative guidelines, which requires that agencies prepare environmental impact reports ("EIRs") that "analyze any significant environmental effects [a] project might cause by bringing development and people into the area affected." The Court upheld the administrative guidelines to the extent it mandates agencies to evaluate the "project's impact on the environment" (e.g., where a project could disperse a contaminant otherwise locked in an adjacent lot, the agency would be compelled to evaluate the presence of the contaminant as part of the project's EIR). But the Court struck down the provision to the extent it would require agencies to consider the "environment's impact on the project," because this was a mandate not authorized by the "text and structure" of CEQA.

6. ***Center for Biological Diversity, et al. v. Cal. Dep't of Fish & Wildlife*, S217763 (2d App. Dist., 224 Cal.App.4th 1105). This case presents the following issues pertaining to an environmental impact report prepared under the California Environmental Quality Act ("CEQA") in connection with a large residential development project: (1) Did the Department of Fish and Wildlife ("DFW") abuse its discretion in determining in its report that the development would not significantly impact the environment by its discharge of greenhouse gases? (2) Are mitigation measures adopted for protection of a freshwater fish improper because they involve a taking of the fish prohibited by the Fish and Game Code? (3) Were plaintiffs' comments on two other areas of disputed impact submitted too late in the environmental review process to exhaust their administrative remedies under Public Resources Code section 21177?**

Decided Nov. 30, 2015 (62 Cal.4th 204). Werdegar, J., for a majority of the Court (Corrigan, J., dissenting in part and concurring in part; Chin, J., dissenting). The Court reversed and held, first, that the DFW did not abuse its discretion by adopting a benchmark to reduce greenhouse gas emissions by 30% by the year 2020 as a criterion for assessing the significance of the development's impact on greenhouse gas emissions rather than a specific numerical threshold. However, DFW did abuse its discretion by concluding that the development's emissions met the 2020 benchmark because it pointed to nothing in the law or administrative record to indicate that "the required percentage reduction from business as usual is the same for an individual project as for the entire state population and economy." The Court faulted DFW for "simply assum[ing] that the level of effort required in one context, a 20% reduction from business as usual statewide, will suffice in the other, a specific land use development." Second, the Court concluded that DFW's mitigation measures for protecting a "special status" fish species would violate Section 5515 of the Fish and Game Code, which authorizes the taking or possessing of protected fish for the purposes of "scientific research" only, and explicitly prohibits these activities if undertaken "as part of specified mitigation for a project." Third, the Court held that plaintiffs' challenges to an environmental impact report prepared jointly with a federal agency were timely because, even though the CEQA comment period had ended, they were brought within the applicable federal law comment period, which the lead agency had treated as an opportunity to receive additional comments on CEQA issues. The Court noted that California's mandate to substantially reduce future greenhouse gas emissions "is critically important to our environment and must be treated very seriously."

Property Law

7. ***Coker v. JP Morgan Chase Bank, N.A.*, S213137 (4th App. Dist., 218 Cal.App.4th 1). This case presents the following issues: (1) Do the anti-deficiency protections in Code of Civil Procedure section 580b apply to a borrower who engages in a "short sale" of real property when the lender approved the sale and reconveyed its deed of trust to facilitate the sale on the condition that the borrower remain liable for any outstanding balance on the loan following the sale? (2) Does a borrower's request that the creditor release its security interest in real property to facilitate a short sale result in a waiver of the protection of the "security first" rule set forth in Code of Civil Procedure section 726?**

   Decided Jan. 21, 2016 (62 Cal.4th 667). Liu, J., for a unanimous Court. The Court held that Code of Civil Procedure section 580b, which prohibits banks from obtaining deficiency judgments against borrowers if sale proceeds are insufficient to repay the borrower's loan, applies not only to bank-initiated foreclosure sales, but also to borrower-initiated short sales. Plaintiff borrowed $452,000 from defendant bank in order to purchase a condominium. The loan was secured by a deed of trust recorded against the condominium. When plaintiff defaulted on her loan payments, she asked the bank to allow her to engage in a short sale rather than a bank-initiated foreclosure sale. The bank approved the request subject to several conditions, including that the sale proceeds serve as consideration for the release of the bank's security interest only, and that plaintiff still be responsible for any deficiency. Plaintiff ultimately sold her condominium to a third party for $400,000, which she transferred to the bank, which subsequently demanded the $116,686.89 balance remaining on her loan. Plaintiff brought a declaratory action, claiming that section 580b prohibited the bank from collecting the deficiency, and that her agreement with the bank constituted an unenforceable waiver of the statute's protections. The trial court sustained the bank's demurrer without leave to amend, but the Court of Appeal reversed, agreeing with plaintiff that section 580b applies to short sales as well as foreclosure sales. The Court affirmed, holding that section 580b's plain language, legislative history, and prior case law each mandated broad interpretation of the anti-deficiency provision. The policies underlying the statute—including preventing banks from overvaluing homes when lending and protecting borrowers in the event of large economic downturns—also supported applying the anti-deficiency provision to short sales.

8. ***Yvanova v. New Century Mortgage Corp.*, S218973 (2d App. Dist., 226 Cal.App.4th 495). This case presents the following issue: In an action for wrongful foreclosure on a deed of trust securing a home loan, does the borrower have standing to challenge an assignment of the note and deed of trust on the basis of defects allegedly rendering the assignment void?**

   Decided Feb. 18, 2016 (62 Cal.4th 919). Werdegar, J., for a unanimous Court. The Court reversed and held that a home loan borrower has standing to claim a nonjudicial foreclosure was wrongful because only the original beneficiary of a deed of trust or its assignee or agent may direct the trustee to sell the property, and

thus an allegation that the assignment was void deprives the foreclosing party of any legitimate authority to order a trustee's sale. Plaintiff was a borrower on a home loan secured by a deed of trust. New Century Mortgage Corporation ("New Century"), the lender and beneficiary of the trust deed, executed a purported assignment of the trust deed to Deutsche Bank National Trust. Plaintiff's property was later sold at a public auction. Plaintiff filed an action for wrongful foreclosure, alleging that the assignment of the deed of trust was void. The trial court sustained defendant's demurrer and the Court of Appeal affirmed, holding that the plaintiff was not a party to the assignment and thus lacked standing to assert defects in the assignment. The Court reversed, holding that a borrower challenging a foreclosing party's authority on the grounds of a void assignment is not asserting the rights of the parties to the assignment; rather, "she is asserting her own interest in limiting foreclosure on her property to those with legal authority to order a foreclosure sale." The Court, however, cautioned that its "ruling in this case is a narrow one" and it "holds only that a borrower who has suffered a nonjudicial foreclosure does not lack standing to sue for wrongful foreclosure based on an allegedly void assignment merely because he or she was in default on the loan and was not a party to the challenged assignment."

Tax Law

9. ***The Gillette Co., et al. v. Franchise Tax Bd.*, S206587 (1st App. Dist., 209 Cal.App.4th 938). This case presents the following issue: Were multistate taxpayers required to apportion business income according to the formula set forth in Revenue and Taxation Code section 25128 as amended in 1993 or could they elect to apportion income according to the formula set forth in former Revenue and Taxation Code section 38006 pursuant to the adoption of the Multistate Tax Compact in 1974?**

Decided Dec. 31, 2015 (62 Cal.4th 468). Corrigan, J., for a unanimous Court. The Court reversed and held that multistate taxpayers must use the apportionment formula set forth in Revenue and Taxation Code section 25128(a). In 1974, California joined the Multistate Tax Compact ("Compact"), which allowed taxpayers to elect between the Compact's apportionment formula and any other formula provided by state law. The Legislature later adopted a different formula in section 25128(a), which "shall" apply "notwithstanding" the Compact. Six multistate corporations tried to elect the Compact's formula, arguing that the Compact—as an interstate contract and reciprocal statute—superseded the later law. The Court rejected the taxpayers' argument. Applying a three-part test derived from *Northeast Bancorp v. Board of Governors, FRS* (1985) 472 U.S. 159, the Court held that the Compact was not a binding contract. First, the Compact's election provision did not create any reciprocal obligations among member states. Second, member states could unilaterally join or leave the Compact, and they often unilaterally adopted their own apportionment formulas. Third, the commission created by the Compact was only an advisory body—able to study, recommend, advise, and, by invitation only, audit—with no regulatory power. The Legislature was therefore free to prescribe a new apportionment formula, and section

25128(a)'s unambiguous text and legislative history demonstrated that it did in fact do so.

Unfair Competition and False Advertising Law

10. ***Quesada v. Herb Thyme Farms, Inc.*, S216305 (2d App. Dist., 222 Cal. App. 4th 642). This case presents the following issue: Does the Organic Foods Production Act of 1990 (7 U.S.C. § 6501 et seq.) preempt state consumer lawsuits alleging that a food product was falsely labeled "100% Organic" when it contained ingredients that were not certified organic?**

Decided Dec. 3, 2015 (62 Cal.4th 298). Werdegar, J., for a unanimous Court. The Court reversed and held that the Organic Foods Production Act of 1990 ("the Act") does not preempt a state-law claim that a defendant is intentionally mislabeling produce as organic. Plaintiff brought a putative class action against a large, herb-growing operation with multiple farms throughout California, alleging that it packages and labels as organic some herbs that are conventionally grown and asserting state-law false advertising (Bus. & Prof. Code, § 17500 et seq.) and unfair competition claims (Bus. & Prof. Code, § 17200 et seq.). Defendant moved for judgment on the pleadings, arguing that the Act both expressly and impliedly preempts state truth-in-advertising requirements. The Court first concluded that the Act does not expressly preempt general state consumer fraud statutes. The Court noted that although the Act explicitly establishes federal exclusivity as to when a product may be labeled organic and the process for certifying a product as organic, it contains no language suggesting that federal remedies for misuse of the organic label should displace existing state-law remedies. Because nothing in the statutory text indicated that Congress intended to prohibit states from augmenting its federal remedies, the Court held that the Act did not expressly preempt general state consumer fraud statutes. The Court next determined that there was no implied preemption because the pleaded state claims did not pose an obstacle to achieving the purposes of the Act, reassuring consumers and enabling fair competition, and in fact furthered its purposes. The Court also noted that the extensive history of state regulation of food labeling and general deception in the marketplace created a strong presumption against preemption.

Other

11. ***Ardon v. City of Los Angeles*, S223876 (2d App. Dist., 232 Cal.App.4th 175). This case presents the following issue: Does inadvertent disclosure, in response to a request under the California Public Records Act (Gov. Code, § 6250 et seq.), of documents that are privileged under the attorney-client privilege or the privilege for attorney work product waive the Act's exemption for privileged information under the Act's waiver provision (Gov. Code, § 6254.5)?**

Decided Mar. 17, 2016 (____). Chin, J. for a unanimous Court. The Court reversed and held that the waiver provision of Government Code section 6254.5 does not waive the Public Records Act's exemption from disclosure for privileged

records if a government entity inadvertently discloses such privileged documents. Plaintiff had filed a class action against the City of Los Angeles challenging the validity of a tax, and the City had withheld certain documents as privileged in response to discovery requests. Years later, the City inadvertently provided some of those documents in response to a Public Records Act request by one of plaintiff's attorneys. When notified of that disclosure, the City demanded the return of the documents, and plaintiff's attorney refused. The Court concluded that Section 6254.5 was ambiguous as to the effect of inadvertent disclosure, and that while the purpose of the statute was to prevent selective disclosure by public agencies to some members of the public but not others, it appeared that the Legislature had not contemplated inadvertent disclosures in passing the provision. Examining case law holding that inadvertent disclosure by attorneys responding to discovery requests in litigation did not waive the attorney-client privilege or attorney work-product privilege, the Court held that similar concerns applied to responses to Public Records Act requests. Accordingly, the Court saw "no reason to construe Government Code section 6254.5 differently than Evidence Code section 912 in this regard, and good reason not to do so."

Select Pending Civil Cases[1]

Gibson Dunn
for Plaintiffs and Respondents

1. ***Association of California Ins. Companies v. Jones*, S226529 (2d App. Dist., 235 Cal.App.4th 1009). This case presents the following issues: (1) Does the Unfair Insurance Practices Act (Ins. Code, § 790, et seq.) give the Insurance Commissioner authority to promulgate a regulation that sets forth requirements for communicating replacement value and states that noncompliance with the regulation constitutes a misleading statement, and therefore an unfair trade practice, for purposes of the act? (2) Does the Insurance Commissioner have the statutory authority to promulgate a regulation specifying that the communication of a replacement cost estimate that omits one or more of the components in subdivisions (a)-(e) of section 2695.183 of title 10 of the California Code of Regulations is a "misleading" statement with respect to the business of insurance? (Cal. Code Regs., tit. 10, § 2695.183, subd. (j).)**

Gibson Dunn
for Defendant and Appellant

2. ***Augustus v. ABM Security Services, Inc.*, S224853 (2d App. Dist., 233 Cal.App.4th 1065). This case presents the following issues: (1) Do Labor Code, § 226.7, and Industrial Welfare Commission wage order No. 4-2001 require that employees be relieved of all duties during rest breaks? (2) Are security guards who remain on call during rest breaks performing work during that time under the analysis of *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833?**

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1 Pending civil cases are organized alphabetically. Summaries of pending civil cases are excerpted from the California Supreme Court's website. The summaries are intended to inform the public and the press of the general subject matter of the case. They do not necessarily reflect the views of the Court, or define the specific issues that will be addressed by the Court.

Gibson Dunn
for Defendant and
Respondent Aetna
Health of California

3. ***Bristol-Myers Squibb Co. v. Superior Court*, S221038 (1st App. Dist., 228 Cal.App.4th 605). This case includes the following issues: (1) Did the plaintiffs in this action who are not residents of California establish specific jurisdiction over their claims against the nonresident pharmaceutical drug manufacturer? (2) Does general jurisdiction exist in light of *Daimler AG v. Bauman* (2014) 571 U.S. __ [134 S.Ct. 746, 187 L.Ed.2d 624]?**

4. ***Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.*, S218497 (2d App. Dist., 225 Cal.App.4th 237). This case presents the following issues: (1) Does the delegation — by a health care service plan (HMO) to an independent physicians association (IPA), under Health and Safety Code section 1371.4, subdivision (e) — of the HMO's responsibility to reimburse emergency medical service providers for emergency care provided to the HMO's enrollees relieve the HMO of the ultimate obligation to pay for emergency medical care provided to its enrollees by non-contracting emergency medical service providers, if the IPA becomes insolvent and is unable to pay? (2) Does an HMO have a duty to emergency medical service providers to protect them from financial harm resulting from the insolvency of an IPA which is otherwise financially responsible for the emergency medical care provided to its enrollees?**

5. ***Connor v. First Student, Inc.*, S229428 (2d App. Dist., 239 Cal.App.4th 526). This case presents the following issue: Is the Investigative Consumer Reporting Agencies Act (Civ. Code, § 1786 et seq.) unconstitutionally vague as applied to background checks conducted on a company's employees, because persons and entities subject to both that Act and the Consumer Credit Reporting Agencies Act (Civ. Code, § 1785.1 et seq.) cannot determine which statute applies?**

6. ***Delano Farms Co. v. California Table Grape Com.*, S226538 (5th App. Dist., 235 Cal.App.4th 967). This case presents the following issue: Under Article 1, section 2, subdivision (a), of the California Constitution, can the California Table Grape Commission compel unwilling produce growers to contribute for generic commercial advertising?**

7. ***DisputeSuite.com, LLC v. Scoreinc.com*, S226652 (2d App. Dist., 235 Cal.App.4th 1261, mod. 236 Cal.App.4th 529e). This case presents the following issue: Were defendants entitled to an award of attorney fees under Civil Code section 1717 as the prevailing parties in an action on a contract when they obtained the dismissal of the action on procedural grounds pursuant to a Florida forum selection clause?**

8. ***Dynamex Operations West, Inc. v. Superior Court*, S222732 (2d App. Dist., 230 Cal.App.4th 718). This case presents the following issue: In a wage and hour class action involving claims that the plaintiffs were misclassified as independent contractors, may a class be certified based on the Industrial Welfare Commission definition of employee as construed in *Martinez v. Combs* (2010) 49 Cal.4th 35, or should the common law test for distinguishing between employees and independent contractors discussed in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 control?**

9. ***F.P. v. Monier*, S216566 (3d App. Dist., 222 Cal.App.4th 1087). The Court limited review to the following issue: Is a trial court's error in failing to issue a statement of decision upon a timely request reversible per se?**

10. ***Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.*, S214061 (1st App. Dist., nonpublished opinion). This case presents the following issue: When a lead agency performs a subsequent environmental review and prepares a subsequent environmental impact report, a subsequent negative declaration, or an addendum, is the agency's decision reviewed under a substantial evidence standard of review (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385), or is the agency's decision subject to a threshold determination whether the modification of the project constitutes a "new project altogether," as a matter of law (*Save our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288)?**

11. ***Gerard v. Orange Coast Memorial Medical Center*, S225205 (4th App. Dist., 234 Cal.App.4th 285). This case presents the following issues: (1) Is the health care industry meal period waiver provision in section 11(D) of Industrial Wage Commission Order No. 5-2001 invalid under Labor Code section 512, subdivision (a)? (2) Should the decision of the Court of Appeal partially invalidating the Wage Order be applied retroactively?**

12. ***Gerawan Farming, Inc. v. Agricultural Labor Relations Bd.*, S227243 (5th App. Dist., 236 Cal.App.4th 1024). This case presents the following issues: (1) Does the statutory "Mandatory Mediation and Conciliation" process (Lab. Code, §§ 1164-1164.13) violate the equal protection clauses of the state and federal Constitutions? (2) Do the "Mandatory Mediation and Conciliation" statutes effect an unconstitutional delegation of legislative power? (3) May an employer oppose a certified union's request for referral to the "Mandatory Mediation and Conciliation" process by asserting that the union has "abandoned" the bargaining unit?**

13. ***Gradillas v. Lincoln General Ins. Co.*, S227632 (9th Cir. No. 13-15638, 792 F.3d 1050). 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. As restated by the Court, the question presented is: "For purposes of coverage under an automobile insurance policy, what is the proper test for determining whether an injury arises out of the 'use' of a vehicle?"**

14. ***Haver v. BNSF Railway Co.*, S219919 (2d App. Dist., 226 Cal.App.4th 1104, mod. 226 Cal.App.4th 1376b). *Kesner v. Superior Court*, S219534 (1st App. Dist., 226 Cal.App.4th 251). *Haver* and *Kesner* present the following issue: If an employer's business involves either the use or the manufacture of asbestos-containing products, does the employer owe a duty of care to members of an employee's household who could be affected by asbestos brought home on the employee's clothing?**

15. ***Horiike v. Coldwell Banker Residential Brokerage Co.*, S218734 (2d App. Dist., 225 Cal.App.4th 427). This case presents the following issue: When the**

buyer and the seller in a residential real estate transaction are each independently represented by a different salesperson from the same brokerage firm, does Civil Code section 2079.13, subdivision (b), make each salesperson the fiduciary to both the buyer and the seller with the duty to provide undivided loyalty, confidentiality and counseling to both?

16. ***Kim v. Toyota Motor Corporation*, S232754 (2d App. Dist., 243 Cal.App.4th 1366). This case includes the following issue: Is evidence of industry custom and practice admissible in a strict products liability action?**

17. ***Lafitte v. Robert Half Internat., Inc.*, S222996 (2d App. Dist., 231 Cal.App.4th 860). This case presents the following issue: Does *Serrano v. Priest* (1977) 20 Cal.3d 25 permit a trial court to anchor its calculation of a reasonable attorney's fees award in a class action on a percentage of the common fund recovered?**

18. ***McGill v. Citibank, N.A.*, S224086 (4th App. Dist., 232 Cal.App.4th 753). This case presents the following issue: Does the Federal Arbitration Act (9 U.S.C. § 1 et seq.), as interpreted in *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 321, preempt the California rule (*Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066; *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303) that statutory claims for public injunctive relief are not subject to compulsory private arbitration?**

19. ***Mendoza v. Nordstrom*, S224611 (9th Cir. No. 12-57130, 778 F.3d 834). 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. The questions presented are: "(A) California Labor Code section 551 provides that '[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven.' Is the required day of rest calculated by the workweek, or is it calculated on a rolling basis for any consecutive seven-day period? (B) California Labor Code section 556 exempts employers from providing such a day of rest 'when the total hours of employment do not exceed 30 hours in any week *or six hours in any one day thereof*.' (Italics added.) Does that exemption apply when an employee works less than six hours in any one day of the applicable week, or does it apply only when an employee works less than six hours in each day of the week? (C) California Labor Code section 552 provides that an employer may not 'cause his employees to work more than six days in seven.' What does it mean for an employer to 'cause' an employee to work more than six days in seven: force, coerce, pressure, schedule, encourage, reward, permit, or something else?**

20. ***Mountain Air Enterprises, LLC v. Sundowner Towers, LLC*, S223536 (1st App. Dist., 231 Cal.App.4th 805). This case includes the following issues: (1) Does the assertion of an agreement as an affirmative defense implicate the attorney fee provision in that agreement? (2) Does the term "action" or "proceeding" in Civil Code section 1717 and in attorney fee provisions encompass the assertion of an affirmative defense?**

Gibson Dunn
for Plaintiff and
Appellant

21. ***Nickerson v. Stonebridge Life Ins. Co.*, S213873 (2d App. Dist., 219 Cal.App.4th 188). The Court limited review to the following issue: Is an award of attorney's fees under *Brandt v. Superior Court* (1985) 37 Cal.3d 813 properly included as compensatory damages where the fees are awarded by the jury, but excluded from compensatory damages when they are awarded by the trial court after the jury has rendered its verdict?**

22. ***926 North Ardmore Avenue v. County of Los Angeles*, S222329 (2d App. Dist., 229 Cal.App.4th 1335). This case presents the following issue: Does Revenue and Taxation Code section 11911 authorize a county to impose a documentary transfer tax based on a change in ownership or control of a legal entity that directly or indirectly holds title to real property?**

23. ***Parrish v. Latham & Watkins*, S228277 (2d App. Dist., 238 Cal.App.4th 81). This case presents the following issue: Does the denial of former employees' motion for summary judgment in an action for misappropriation of trade secrets conclusively establish that their former employer had probable cause to bring the action and thus preclude their subsequent action for malicious prosecution, even if the trial court in the prior action later found that it had been brought in bad faith?**

24. ***People v. Miami National Enterprises*, S216878 (2d App. Dist., 223 Cal.App.4th 21). This case presents the following issue: Is a payday loan company owned by a federally recognized Indian tribe entitled to tribal sovereign immunity, and thus exempt from state regulation, if the day-to-day management of the business is handled by a third party management company that is not affiliated with the tribe and pays the tribe a small percentage of the gross revenues?**

25. ***Property Reserve v. Superior Court*, S217738 (3d App. Dist., 224 Cal.App.4th 828). The Court limited review to the following issues: (1) Do the geological testing activities proposed by the Department of Water Resources constitute a taking? (2) Do the environmental testing activities set forth in the February 22, 2011, entry order constitute a taking? (3) If so, do the precondemnation entry statutes (Code Civ. Proc., §§ 1245.010-1245.060) provide a constitutionally valid eminent domain proceeding for the taking?**

26. ***Roy Allen Slurry Seal, Inc. v. American Asphalt South, Inc.*, S225398 (2d App. Dist., 234 Cal.App.4th 748). This case presents the following issues: (1) In the context of competitive bidding on a public works contract, may the second lowest bidder state a claim for intentional interference with prospective economic advantage against the winning bidder based on an allegation that the winning bidder did not fully comply with California's prevailing wage law after the contract was awarded? (2) To state a cause of action for intentional interference with prospective economic advantage, must the plaintiff allege that it had a preexisting economic relationship with a third party with probable future benefit that preceded or existed separately from defendant's interference, or is it sufficient for the plaintiff to allege that its economic expectancy arose at the time the public agency awarded the contract to the low bidder?**

27. ***Sandquist v. Lebo Automotive, Inc.*, S220812 (2d App. Dist., 228 Cal.App.4th 65). This case presents the following issue: Does the trial court or the arbitrator decide whether an arbitration agreement provides for class arbitration if the agreement itself is silent on the issue?**

28. ***Solus Industrial Innovations, LLC v. Superior Court*, S222314 (4th App. Dist., 229 Cal.App.4th 1291). This case presents the following issue: Does federal law preempt a district attorney's attempt to recover civil penalties under California's unfair competition law based on an employer's violation of workplace safety standards that resulted in the deaths of two employees?**

29. ***Tri-Fanucchi Farms v. Agricultural Labor Relations Bd.*, S227270 (5th App. Dist., 236 Cal.App.4th 1079). This case presents the following issues: (1) May an employer assert as a defense to a request for collective bargaining under the Agricultural Labor Relations Act (Lab. Code, § 1140, et seq.) that the certified union has "abandoned" the bargaining unit? (2) Did the Board err in granting "make whole" relief (Lab. Code, § 1160.3) as a remedy for the employer's refusal to bargain with the union?**

30. ***Williams v. Superior Court*, S227228 (2d App. Dist., 236 Cal.App.4th 1151). This case presents the following issues: (1) Is the plaintiff in a representative action under the Labor Code Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.) entitled to discovery of the names and contact information of other "aggrieved employees" at the beginning of the proceeding or is the plaintiff first required to show good cause in order to have access to such information? (2) In ruling on such a request for employee contact information, should the trial court first determine whether the employees have a protectable privacy interest and, if so, balance that privacy interest against competing or countervailing interests, or is a protectable privacy interest assumed? (See *Hill v. National Collegiate Athletic Association* (1994) 7 Cal.4th 1; *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360.)**

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