

PUBLICATION UPDATE

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California Forms of Pleading and Practice Annotated

Publication 181

Release 250

November 2023

HIGHLIGHTS

- **2023 Legislation, Rules of Court, Regulations, Judicial Council Forms, and Latest Cases.** This release updates various chapters throughout the publication with the changes to California legislation and regulations effective 2023, as well as the latest 2023 changes to the Rules of Court and Judicial Council Forms. This release also updates various chapters with the latest state and federal case law opinions.

Important new developments are added in other areas of law, including:

- Alternative Dispute Resolution
- Appeals

- Attorneys
- Civil Procedure
- Civil Rights
- Class Actions
- Contracts and Commercial Law
- Corporations and Business Entities
- Costs and Attorney Fees
- Discovery
- Employment Law
- Family Law
- Injunctions and Provisional Remedies
- Insurance
- Intellectual Property
- Judgments and Enforcement of Judgments
- Mandate and Prohibition
- Probate

- Public Administrative Law
- Torts
- Trial

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Release 250 of California Forms of Pleading and Practice Annotated updates the publication in many areas noted in more detail below.

ALTERNATIVE DISPUTE RESOLUTION

Contractual Arbitration—Implied Agreement. *Fleming v. Oliphant Fin., LLC* (2023) 88 Cal. App. 5th 13, 304 Cal. Rptr. 3d 464, applied the rule that establishing an implied-in-fact agreement requires a showing that the person to be compelled to arbitrate has received the terms of the agreement to a credit card holder. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.20[4][b][ii][A].

Contractual Arbitration—

Implied Consent. *Oberstein v. Live Nation Entm't, Inc.* (9th Cir. 2023) 60 F.4th 505, assessed assent to a browsewrap agreement under the ambiguous, fact-intensive objective-reasonableness standard. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.20[4][b][ii][B].

Contractual Arbitration—Implied Consent. *Doe v. Massage Envy Franchising, LLC* (2022) 87 Cal. App. 5th 23, 303 Cal. Rptr. 3d 269, dealt with an alleged arbitration agreement where the customer already had an account and was not informed that he or she was digitally signing up for a new service or setting up a new or amended account. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.20[4][b][ii][B].

Contractual Arbitration—Multiple Agreements. *Suski v. Coinbase, Inc.* (9th Cir. 2022) 55 F.4th 1227, concluded that a forum selection clause in a later agreement superseded the arbitration clause in an earlier agreement between the parties. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.20[4][f][ii].

Contractual Arbitration—Multiple Agreements. *Johnson v. Walmart Inc.* (9th Cir. 2023) 57 F.4th 677, decides that where two contracts are separate and concern unrelated transactions, the lack of an arbitration clause in one means disputes over that agreement are not subject to arbitration. See Ch. 32, *Contractual Arbitration: Agreements and Com-*

elling Arbitration, § 32.20[4][f][ii].

Contractual Arbitration—Burden of Proof. *Beco v. Fast Auto Loans, Inc.* (2022) 86 Cal. App. 5th 292, 302 Cal. Rptr. 3d 168, ruled that in the employment context, incorporation of arbitration service provider rules that delegate the issue of arbitrability to the arbitrator does not meet the “clear and unmistakable” test. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.20[6][a][i].

Contractual Arbitration—Signature. *Iyere v. Wise Auto Grp.* (2023) 87 Cal. App. 5th 747, 303 Cal. Rptr. 3d 835, holds that no evidence created a question about the authenticity of the employee’s personal signature on the agreement. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.20[6][b].

Contractual Arbitration—Capacity. *Algo-Heyres v. Oxnard Manor LP* (2023) 88 Cal. App. 5th 1064, 305 Cal. Rptr. 3d 296, addressed a challenge to an arbitration clause on the basis that the signing party did not have legal capacity. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.20[7][a][i].

Contractual Arbitration—Choice of Law. *Davis v. Shiekh Shoes, LLC* (2022) 84 Cal. App. 5th 956, 300 Cal. Rptr. 3d 787, determined that a choice-of-law clause unambiguously applied the Federal Arbitration Act to the parties’ agreement. See Ch. 32, *Contractual Arbitration: Agreements and Compelling*

Arbitration, § 32.21[2].

Contractual Arbitration—FAA Preemption. *Vaughn v. Tesla, Inc.* (2023) 87 Cal. App. 5th 208, 303 Cal. Rptr. 3d 457, held that the FAA does not preempt the ban on arbitration of claims for public injunctive relief under the Fair Employment and Housing Act. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.22[1][b][i].

Contractual Arbitration—FAA Preemption. *Galarsa v. Dolgen Cal., LLC* (2023) 88 Cal. App. 5th 639, 305 Cal. Rptr. 3d 15, ruled that standing is not precluded for representative actions under the language of the Private Attorneys General Act. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.22[1][b][ii][B].

Contractual Arbitration—Equitable Estoppel. *Pac. Fertility Cases* (2022) 85 Cal. App. 5th 887, 301 Cal. Rptr. 3d 611, specifies that allegations of substantially interdependent and concerted misconduct by signatories and nonsignatories, standing alone, are not enough to apply equitable estoppel to compel the signatory to arbitrate. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.24[5][g][i][C].

Contractual Arbitration—Equitable Estoppel. *Hernandez v. Meridian Mgmt. Servs., LLC* (2023) 87 Cal. App. 5th 1214, 304 Cal. Rptr. 3d 402, determines that where plaintiff fairly brings no claim against the signatory, the nonsignatory defen-

dants cannot claim equitable estoppel to compel arbitration of claims against them. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.24[5][g][i][C].

Contractual Arbitration—Unconscionability. *Hang v. RG Legacy I, LLC* (2023) 88 Cal. App. 5th 1243, 1254–58, 305 Cal. Rptr. 3d 182; *Navas v. Fresh Venture Foods, LLC* (2022) 85 Cal. App. 5th 626, 636, 301 Cal. Rptr. 3d 423; and *Mills v. Facility Solutions Grp., Inc.* (2022) 84 Cal. App. 5th 1035, 1055–57, 300 Cal. Rptr. 3d 833, uphold findings of various provisions as unconscionable. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.25.

Contractual Arbitration—Waiver. *Morgan v. Sundance, Inc.* (2022) 142 S. Ct. 1708, 212 L. Ed. 2d 753, decided that under federal law, a showing of waiver of the contractual right to arbitrate normally does not require proof of detrimental reliance. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.28[3][a][i].

Contractual Arbitration—Waiver. *Hill v. Xerox Bus. Servs., LLC* (9th Cir. 2023) 59 F.4th 457, specified that the extensive use of discovery and the filing of a motion for summary judgment in federal district court waived the right to arbitration. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.28[3][a][i].

Contractual Arbitration—Waiver. *Desert Reg'l Med. Ctr., Inc.*

v. Miller (2022) 87 Cal. App. 5th 295, 303 Cal. Rptr. 3d 412, rules that under the federal rule, filing a de novo appeal from a decision of the California Labor Commissioner waived the right to arbitration. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.28[3][a][i].

Contractual Arbitration—Waiver. *Leger v. R.A.C. Rolling Hills L.P.* (2022) 84 Cal. App. 5th 240, 300 Cal. Rptr. 3d 235, upheld the trial court's finding of waiver where it held the other party to be "greatly prejudiced" by the moving party's waiting to move to compel until after extensive use of litigation machinery, given the short life expectancy of the other party. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.28[3][d][i].

Contractual Arbitration—Standing. *Villareal v. LAD-T, LLC* (2022) 84 Cal. App. 5th 446, 300 Cal. Rptr. 3d 415, clarified that a limited liability company that had not filed a fictitious name statement is barred from requesting arbitration in a contract action. See Ch. 32, *Contractual Arbitration: Agreements and Compelling Arbitration*, § 32.43[1A].

Contractual Arbitration—Qui Tam Claim. *Oswald v. Murray Plumbing & Heating Corp.*, 82 Cal. App. 5th 938, 299 Cal. Rptr. 3d 143, concludes that employee did not have claim under Private Attorney General Act, so the parties' collective bargaining agreement controlled the issue of arbitration. See Ch. 32, *Con-*

tractual Arbitration: Agreements and Compelling Arbitration, § 32.94C[2].

Contractual Arbitration—Arbitration Fees. *Williams v. W. Coast Hosps., Inc.* (2022) 86 Cal. App. 5th 1054, 302 Cal. Rptr. 3d 803, decided that Code Civ. Proc. § 1281.97 applies to voluntary arbitration. See Ch. 33, *Contractual Arbitration: Appointment of Arbitrator and Conduct of Proceeding*, § 33.17.

Contractual Arbitration—Vacating Award. *Darby v. Sisyphean, LLC* (2023) 87 Cal. App. 5th 1100, 304 Cal. Rptr. 3d 227, follows the rule that a response to a petition to confirm an award requesting that the award be vacated must be served and filed within 10 days after service of the petition, even though the 100-day period set forth in Code Civ. Proc. § 1288.2 has not otherwise lapsed. See Ch. 34, *Contractual Arbitration: Judicial Review*, § 34.14[2][b][ii].

Contractual Arbitration—Vacating Award. *Law Fin. Grp., LLC v. Key* (2023) 14 Cal. 5th 932, rules that the 100-day deadline for filing a response to a petition to confirm in Code Civ. Proc. § 1288.2 may be extended by equitable tolling. See Ch. 34, *Contractual Arbitration: Judicial Review*, § 34.14[2][b][ii].

Contractual Arbitration—Vacating Award. *Starr v. Mayhew* (2022) 83 Cal. App. 5th 842, 299 Cal. Rptr. 3d 99, determined that an arbitrator's denial on equitable grounds of a remedy set forth in the agreement in mandatory terms does not constitute a remedy in excess of the

arbitrator's power. See Ch. 34, *Contractual Arbitration: Judicial Review*, § 34.19[4][i][i].

Contractual Arbitration—Correcting Award. *E-Com. Lighting, Inc. v. E-Com. Trade LLC* (2022) 86 Cal. App. 5th 58, 302 Cal. Rptr. 3d 218, specified that a trial court may not reverse the award of a setoff under the guise of correcting the award. See Ch. 34, *Contractual Arbitration: Judicial Review*, § 34.20[1][b][i].

Contractual Arbitration—Issue Preclusion. *JPV I L.P. v. Koetting* (2023) 88 Cal. App. 5th 172, 304 Cal. Rptr. 3d 550, applied the rule that an arbitration award can have issue preclusion effect. See Ch. 34, *Contractual Arbitration: Judicial Review*, § 34.24[1].

International Commercial Arbitration—Confirming. *Hayday Farms, Inc. v. FeeDx Holdings, Inc.* (9th Cir. 2022) 55 F.4th 1232, held that an international arbitration award rationally interpreted and applied the parties' agreements, and confirmed it even though it might violate Civ. Code § 3358. See Ch. 35, *Arbitration and Conciliation of International Commercial Disputes*, § 35.64[2].

APPEALS

Retroactive Application of Statutes. In *Goldstein v. Superior Court* (2023) 2023 Cal. App. LEXIS 546, *15, the court of appeal held that a statutory change that the Legislature expressly intended to apply to the situation at issue applied retroactively to the situation. See Ch. 41, *Appeal: Review Standards and Ap-*

pellate Rules of Law, § 41.32.

Sanctions When Only Part of Appeal Is Frivolous. In *Estate of Kempton* (2023) 91 Cal. App. 5th 189, 207, 308 Cal. Rptr. 3d 249, the court of appeal held that sanctions for an appeal which is partially frivolous are appropriate if the frivolous claims are a significant and material part of the appeal. See Ch. 49, *Appeal: Sanctions*, § 49.11[3].

ATTORNEYS

New California Rule of Professional Conduct—Reporting Professional Misconduct. Effective August 1, 2023, the California Supreme Court approved Cal. Rules Prof. Conduct, Rule 8.3, which requires a lawyer to inform the State Bar, or a tribunal with jurisdiction to investigate or act upon such misconduct, when the lawyer knows of credible evidence that another lawyer has committed a criminal act or has engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation or misappropriation of funds or property that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. See Ch. 72, *Attorney Practice and Ethics*, § 72.306.

New State Bar Rule—Client Trust Account Protection Program. Effective January 1, 2023, the California State Bar requires lawyers to register their client trust accounts annually with the State Bar, complete an annual self-assessment of their practice managing client trust accounts, and certify with the State Bar

that they comply and understand the requirements for safekeeping funds. See Ch. 72, *Attorney Practice and Ethics*, § 72.312[6].

Review of Attorney Disqualification Order. The court of appeal in *A.F. v. Jeffrey F.* (2023) 90 Cal. App. 5th 671, 681, 307 Cal. Rptr. 3d 325, held that even though a collateral order, an order disqualifying an attorney tends to be automatically stayed on appeal because doing so prevents mooted the appeal through the replacement of counsel. See Ch. 72, *Attorney Practice and Ethics*, § 72.411[7].

CIVIL PROCEDURE

Amend Pleading—Discretion to Be Liberally Exercised. *Jo Redland Trust, U.A.D. 4-6-05 v. CIT Bank, N.A.* (2023) 92 Cal. App. 5th 142, 309 Cal. Rptr. 3d 339, holds that the trial court abused its discretion in denying leave to file an amended complaint, where the lawsuit was mistakenly brought in the name of a trust and a proposed amendment would have substituted the trustee as plaintiff. The complaint was not a nullity as filed. The trial court had jurisdiction in the fundamental sense—that is, it was empowered to hear and decide the type of claims alleged. Although a legitimate question had been raised as to whether the trust had any independent legal existence separate from the trustee, the defect was easily curable by allowing the trustee to substitute into the case by amendment under Code Civ. Proc. § 473(a)(1). The trial court could have, and on this record should have,

followed the traditional default rule that amendments to a complaint should be liberally allowed. See Ch. 21, *Amended and Supplemental Pleadings*, § 21.43[4][a].

Anti-SLAPP—Moving Party’s Burden. In *Park v. Nazari* (2023) 2023 Cal. App. LEXIS 564, *13, the court of appeal held that when a defendant moves to strike an complaint through a motion for anti-SLAPP, and fails to identify specific claims that are asserted to arise from protected activity, the defendant does not carry its first-step burden so long as the complaint presents at least one claim that does not arise from protected activity. See Ch. 376, *Motions to Strike: Anti-SLAPP*, § 376.14[4].

Continuance—Good Cause. *Preciado v. Freightliner Custom Chassis Corp.* (2023) 87 Cal. App. 5th 964, 972, 304 Cal. Rptr. 3d 209, affirms the trial court’s denial of plaintiff’s continuance request to conduct jurisdictional discovery because plaintiffs failed to articulate what specific facts they would seek to develop if granted a continuance. The trial court could reasonably conclude that plaintiffs did not demonstrate that discovery is likely to lead to the production of evidence of facts establishing jurisdiction. See Ch. 136, *Continuances*, § 136.45[3][a].

Judges—Nature of Disqualifying Bias or Prejudice. *Bassett Unified School Dist. v. Superior Court* (2023) 89 Cal. App. 5th 273, 292, 305 Cal. Rptr. 3d 647, holds that although an objective observer might have understood a text message sent to a trial

judge to reflect that the sender, who was also a judge, was celebrating the verdict, receiving the text did not warrant disqualification based on doubts about impartiality under Code Civ. Proc. § 170.1(a)(6)(A)(iii), and it was appropriate for the trial judge to continue to sit under Code Civ. Proc. § 170, because the trial judge, in accordance with Cal. Code Jud. Ethics, canons 3B(7)(d), 3E(2)(a)), directed the sender to refrain from further communication about the case and disclosed the ex parte communication to the parties. Substantial evidence supported a factual finding that the sender’s conduct did not influence an evidentiary ruling because the trial judge credibly stated that there was no meeting in chambers and because changing a tentative ruling was not suspicious. See Ch. 317, *Judges*, § 317.114[1][a].

Jurisdiction—Personal Jurisdiction Over Foreign Corporations. *Mallory v. Norfolk Southern Ry.* (2023) ___ U.S. ___, 143 S.Ct. 2028, 2023 U.S. LEXIS 2786], holds in a 5–4 decision that, under the laws and facts before it, the Due Process Clause does not prohibit a state from requiring businesses that register to do business in that state to consent to general jurisdiction in the state’s courts. See Ch. 323, *Jurisdiction: Personal Jurisdiction, Inconvenient Forum, and Appearances*, §§ 323.15[5][a], 323.15[5][d], 323.86[1][b].

Jurisdiction—Consent. In *re Marriage of Sullivan* (2023) 89 Cal. App. 5th 585, 589, 306 Cal. Rptr. 3d

215, holds that plaintiff consented to the jurisdiction of the court within the meaning of the federal Uniformed Services Former Spouses' Protection Act (FUSFSPA) by voluntarily filing her dissolution petition in California, seeking a judicial confirmation of "all" her separate property acquired before marriage, asking the court to determine "any" community property assets, and requesting the appointment of an expert under Evidence Code section 730 to determine a proposed division of the parties' retirement accounts. In so ruling, the appellate court rejected the trial court's ruling that a service member must explicitly and specifically consent to the court's authority to divide her military retirement under the FUSFSPA. See Ch. 323, *Jurisdiction: Personal Jurisdiction, Inconvenient Forum, and Appearances*, § 323.86[1][b].

Jurisdiction—Minimum Contacts. *Preciado v. Freightliner Custom Chassis Corp.* (2023) 87 Cal. App. 5th 964, 983, 304 Cal. Rptr. 3d 209, an action arising from a bus accident, holds that California did not have general jurisdiction under Code Civ. Proc. § 410.10 over the manufacturer of the bus's chassis because the Delaware corporation had its principal place of business in South Carolina and did not have any offices or facilities in California. It was not enough that its products were sold and serviced in California through independent dealers. For purposes of specific jurisdiction, plaintiffs did not establish that their product liability claim arose from the contacts that the

manufacturer had with California because the evidence did not show the manufacturer ever advertised, sold, or serviced the model of chassis at issue in California. There was also no evidence that authorized service centers in California have serviced the model of chassis involved. See Ch. 323, *Jurisdiction: Personal Jurisdiction, Inconvenient Forum, and Appearances*, § 323.86[8][c].

Forum Selection Clause—Public Policy. *G Companies Management, LLC v. LREP Arizona, LLC* (2023) 88 Cal. App. 5th 342, 304 Cal. Rptr. 3d 651, holds that the trial court erred in staying, based on a forum selection clause, a borrower's cross-complaint alleging that usurious interest rates were void and seeking indemnity or reimbursement from the lender for any such interest that the borrower might be obligated to pay its guarantors on their complaint because a forum selection clause contrary to fundamental public policy was not enforceable and California's usury law reflected a significant public policy, as shown by its inclusion in Cal. Const. art. XV, § 1, and its unwaivable nature; the lender's contention that the equities favored enforcement of the forum selection clause had to be rejected because the equities were not weighed in considering whether enforcing a forum selection clause would deprive a California resident of the protections of a fundamental public policy. See Ch. 323, *Jurisdiction: Personal Jurisdiction, Inconvenient Forum, and Appearances*, § 323.102[8].

Limitation of Actions—Health Care Provider’s Professional Negligence—Notice of Intent to Sue Letter. *Lopez v. American Medical Response West* (2023) 89 Cal. App. 5th 336, 305 Cal. Rptr. 3d 811, holds that a notice of intent to sue letter sent within the last 90 days of the statute of limitations did not toll the statute because plaintiffs sent an earlier demand letter that constituted a notice of intent to sue, even though it did not specifically refer to negligence or medical malpractice. See Ch. 345, *Limitation of Actions*, § 345.20[16][b].

Limitation of Actions—Agreement Shortening Period of Limitations. *Gostev v. Skillz Platform, Inc.* (2023) 88 Cal. App. 5th 1035, 305 Cal. Rptr. 3d 248, holds that parties may contract to a shortened limitations period so long as the limitation is reasonable. However, contractually shortened limitations periods have not been recognized outside the context of straightforward transactions in which the triggering event for either a breach of a contract or for the accrual of a right is immediate and obvious. An arbitral limitations period that is shorter than the otherwise applicable period is one factor that supports a finding of substantive unconscionability. See Ch. 345, *Limitation of Actions*, § 345.53[1].

Limitation of Actions—Delayed Discovery. *Lauckhart v. El Macero Homeowners Association* (2023) 92 Cal. App. 5th 889, ___ Cal. Rptr. 3d ___, holds that in order to rely on the

discovery rule for delayed accrual of a cause of action, a plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery and (2) the inability to have made earlier discovery despite reasonable diligence. In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to show diligence; conclusory allegations will not withstand demurrer. See Ch. 345, *Limitation of Actions*, § 345.53[25][b].

Limitation of Actions—Arbitration—Petition to Vacate or Correct an Award. *Law Finance Group, LLC v. Key* (2023) 14 Cal. 5th 932, 309 Cal. Rptr. 3d 796, holds that the Code Civ. Proc. § 1288.2 deadline neither is jurisdictional nor otherwise precludes equitable tolling or estoppel. See Ch. 345, *Limitation of Actions*, § 345.162.1.

Limitation of Actions—Investigative Consumer Reporting Agencies Act Claim. *Bernuy v. Bridge Property Management Co.* (2023) 89 Cal. App. 5th 1174, 306 Cal. Rptr. 3d 539, holds that ICRAA claim was time-barred under Civ. Code § 1786.52 in a putative class action because the class action tolling doctrine was inapplicable to potential plaintiffs who could not prove actual damages exceeding the statutory threshold in Civ. Code § 1786.50(a)(1), and because the named plaintiff acknowledged incurring no out-of-pocket damages and

cited no authority to support an award of emotional distress damages above the statutory amount. See Ch. 345, *Limitation of Actions*, § 345.183.

Limitation of Actions—Action for Injury or Death Based on Alleged Professional Negligence. *Carillo v. County of Santa Clara* (2023) 89 Cal. App. 5th 227, 305 Cal. Rptr. 3d 701, holds that plaintiff’s medical negligence claim against the County of Santa Clara was barred by the one-year statute of limitation in Code Civ. Proc. § 340.5, because it was filed more than a year after his foot was amputated while in the custody of the Department of Corrections; a reasonable person would necessarily be on inquiry notice after a nurse popped a blister on his foot over his objection while he was restrained, resulting in an open wound that became infected and led to gangrene, septic shock, and amputation. See Ch. 345, *Limitation of Actions*, § 345.227.

Limitation of Actions—Sexual Assault of a Minor—Revival of Time Barred Claims. *Doe v. Marysville Joint Unified School District* (2023) 89 Cal. App. 5th 910, 306 Cal. Rptr. 3d 105, holds that claims alleging sexual abuse by a school counselor could not be revived by Code Civ. Proc. § 340.1 because the claims had been litigated to finality long ago, and § 340.1 exempts from revival all claims that have been litigated to finality, irrespective of the basis for the court’s final determination; no violation of equal protection

resulted from allowing revival of non-final judgments but not final judgments because there was a rational basis for differentiating between the two classes of litigants, and permitting revival of claims litigated to finality would have violated the separation of powers. See Ch. 345, *Limitation of Actions*, § 345.301.

Parties—Intervention in Action. In *Friends of Oceano Dunes v. California Coastal Com.* (2023) 90 Cal. App. 5th 836, 843–844, 307 Cal. Rptr. 3d 495, the court of appeal held that nonparties did not have the right to intervene under Code Civ. Proc. § 387(d)(1)(B) in proceedings brought to challenge amendments to a coastal development permit because the existing parties had the same interests in defending the amendments and the nonparties did not establish that the agencies would not adequately represent those interests. See Ch. 395, *Parties*, § 395.35.

Statutory Interpretation—Title 8 Provision. The United States Supreme Court, in *Pugin v. Garland* (2023) 143 S. Ct. 1833, construed an immigration statute (8 U.S.C. § 1101(a)(43)(S)), which holds that noncitizens convicted of an “aggravated felony,” including offenses relating to the obstruction of justice, are removable from the United States, holding that an offense may relate to obstruction of justice under the statute even if the offense does not require that an investigation or proceeding be pending.” See Ch. 531, *Statutes and Ordinances*, § 531.51.

Statutory Interpretation—

California Supreme Court Creates Exception to Scope of Kidnapping Statute. In *People v. Lewis* (2023) 14 Cal. 5th 876, the California Supreme Court created an exception to the scope of the kidnapping statute (Penal Code § 207(a)), establishing a relaxed force requirement with regard to an adult victim impaired by intoxication or other mental condition. See Ch. 531, *Statutes and Ordinances*, § 531.69.

Statutory Interpretation—Interpreting Costa-Hawkins Act and Local Ordinance and Resolution. In *NCR Props., LLC v. City of Berkeley* (2023) 89 Cal. App. 5th 39, the court affirmed the trial court’s holding that under the Costa-Hawkins Act and *Burien LLC v. Wiley* (2014) 230 Cal. App. 4th 1039, some units in landlords’ conversion of single-family homes to triplexes were subject to rent control. See Ch. 531, *Statutes and Ordinances*, § 531.54.

Statutory Interpretation—Rape Conviction Upheld after Construction of Penal Code Statutes. In *People v. Middleton* (2023) 91 Cal. App. 5th 749, an appellate court has upheld convictions for human trafficking of a minor and rape after construing the relevant Penal Code statutes. See Ch. 531, *Statutes and Ordinances*, § 531.59.

CIVIL RIGHTS

Exclusion from Association Membership. In *Flaa v. Hollywood Foreign Press Ass’n* (2022) 55 F.4th 680, the Ninth Circuit affirmed dismissal of a suit for wrongful exclu-

sion brought by entertainment journalists against an entertainment-press association, holding, among other things, that evidence of professional or economic harm is insufficient to support a claim for the common-law right to fair procedure. See Ch. 61, *Associations and Clubs*, § 61.13.

Affirmative Action. In *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (2023), 143 S. Ct. 2141, the court effectively overruled precedent allowing limited use of the consideration of race in higher-education admissions practices stemming from *Regents of the University of California v. Bakke*; and prohibited the use of race in higher-education admissions practices on Fourteenth Amendment equal-protection grounds (public institutions) and pursuant to Title VI (private institutions). See Ch. 112, *Civil Rights: Government-Funded Programs and Activities*, § 112.14[1][a].

First Amendment Challenge to Anti-Discrimination Law. In *303 Creative v. Elenis* (2023), 143 S. Ct. 2298, a case in which a website designer alleged that “she decided to expand her offerings to include services for couples seeking websites for their weddings,” the U.S. Supreme Court, citing free-speech guarantees under the First Amendment, reversed the Tenth Circuit’s ruling that she was not entitled to an injunction to prevent Colorado from “forcing her to create wedding websites celebrating marriages that defy her beliefs.” See Ch. 116, *Civil Rights:*

Discrimination In Business Establishments, § 116.54.

Federal Preemption of Unruh Claim. In *Prager Univ. v. Google LLC* (2022) 85 Cal. App. 5th 1022, the court held that state-law claims, including those under the Unruh Act (Civil Code § 51, et seq.), alleging wrongful restriction of internet access and advertising by a company that posts videos online, are preempted by federal law under 47 U.S.C. § 230. See Ch. 116, *Civil Rights: Discrimination In Business Establishments*, § 116.16.

CLASS ACTIONS

Commonality of Issues. In *Vigil v. Muir Med. Group IPA, Inc.* (2022) 84 Cal. App. 5th 197, the appellate court affirmed denial of the plaintiff's motion for class certification, holding that the determination whether the defendant violated provisions of the Confidentiality of Medical Information Act (Civil Code § 56, et seq.), requires that each individual bringing a private cause of action to establish that the confidential nature of his or her information was breached because of the health care provider's negligence. See Ch. 120, *Class Actions*, § 120.12[2][e].

CONTRACTS AND COMMERCIAL LAW

Fictitious Business Name Statement—Failure to File. In *Villareal v. LAD-T, LLC* (2022) 84 Cal. App. 5th 446, the court of appeal concluded that Bus. & Prof. Code § 17918 applies to bar a party from maintaining a motion to compel arbitration because the motion is in es-

sence a suit in equity to compel performance of a contract—the arbitration agreement. See Ch. 60, *Assignments*, § 60.20[5].

Bankruptcy—Fraud. In *Bartenwerfer v. Buckey* (2022) 143 S. Ct. 665, the U.S. Supreme Court held that when a debtor and her partner were found jointly responsible for a state court judgment, her debt was not dischargeable in bankruptcy pursuant to 11 U.S.C. 523(a)(2)(A) when the fraud was committed by her partner; the section turns on how money was obtained, not who committed fraud to obtain it. See Ch. 94, *Bankruptcy*, § 94.53[2][g].

Contracts—Unconscionability. In *Gostev v. Skillz Platform, Inc.* (2023) 88 Cal. App. 5th 1035, the court of appeal held that the trial court did not abuse its discretion in refusing to enforce an arbitration provision that was one-sided, unfair, and designed to discourage players from bringing claims against a mobile platform hosting games. See Ch. 140, *Contracts*, § 140.25[2][a].

Usury—Public Policy. In *G. Companies Management, LLC v. LREP Arizona, LLC* (2023) 88 Cal. App. 5th 342, the court of appeal found that California's usury law reflects a significant public policy designed to protect its citizens, even while recognizing exceptions to rate limitations; thus the law precludes enforcement of a forum selection clause that deprives residents of that protection. See Ch. 568, *Usury*, § 568.70.

CORPORATIONS AND BUSINESS ENTITIES

Inspection of Corporate Records—Expenses. In *Farnum v. Iris Biotechnologies Inc.* (2022) 86 Cal. App. 5th 602, the court of appeal held that a shareholder’s assertions did not establish that the trial court abused its discretion in finding he was not entitled to an award of expenses under Corp. Code § 1604, the language of which is permissive rather than mandatory. See Ch. 165, *Corporations: Corporate Records and Reports*, §§ 165.24[4], 165.70[7].

COSTS AND ATTORNEY’S FEES

Code Civ. Proc. § 998 Applies When Case Ends in Settlement. In *Madrigal v. Hyundai Motor America* (2023) 90 Cal. App. 5th 385, 397, 307 Cal. Rptr. 3d 144, the court of appeal held that Code Civ. Proc. § 998 does not exclude cases that end in a stipulated settlement under Code Civ. Proc. § 664.6, or limit its cost-shifting provisions to cases that end in a judgment after trial. See Ch. 174, *Costs and Attorney’s Fees*, § 174.17[1].

Catalyst Theory for Fees Under Code Civ. Proc. § 1021.5. In *The Kennedy Commission v. City of Huntington Beach* (2023) 91 Cal. App. 5th 436, 458, 308 Cal. Rptr. 3d 461, the court of appeal held that awarding attorney’s fees under Code Civ. Proc. § 1021.5 was proper when the plaintiff’s litigation goal to ensure that the defendant met its state law requirement to provide low-income housing was achieved. See Ch. 174, *Costs and Attorney’s Fees*, § 174.56[8].

DISCOVERY

When Duty to Preserve Evidence Triggered. In *Victor Valley Union High School Dist. v. Superior Court* (2023) 91 Cal. App. 5th 1121, 1133, 309 Cal. Rptr. 3d 258, the court of appeal held that the duty to preserve relevant evidence is triggered when the party is objectively on notice that litigation is reasonably foreseeable, meaning that litigation is probable and likely to arise from an incident or dispute and not a mere possibility. See Ch. 195A, *Discovery: Discovery of Electronically Stored Evidence (E-Discovery)*, § 195A.13.

Exclusion of Expert Testimony. In *Wong v. Stillwater Ins. Co.* (2023) 92 Cal. App. 5th 1297, 1323, 2023 Cal. App. LEXIS 496, the court of appeal held that a party that failed to disclose its expert witness could not use the witness’s deposition from a different lawsuit to oppose a summary judgment motion. See Ch. 198, *Discovery: Exchange of Expert Information*, § 198.19[1].

EMPLOYMENT LAW

Clarification of “Undue Hardship” Standard under Title VII. In *Groff v. Dejoy* (2023) 2023 U.S. LEXIS 2790, the U.S. Supreme Court held that “undue hardship” under Title VII requires a showing of substantial burden in the overall context of an employer’s business, and more than a *de minimis* cost. See Ch. 115, *Civil Rights: Employment Discrimination*, § 115.35[2][d].

Release in Employment-Separation Agreement Bars FEHA Claims. In *Castelo v. Xceed Fin.*

Credit Union (2023) 91 Cal. App. 5th 777, the court upheld an arbitrator's ruling that a former employee's release in an employment-separation agreement barred her claims against the employer, including claims for wrongful discharge, violation of public policy, and violation of the FEHA. See Ch. 115, *Civil Rights: Employment Discrimination*, § 115.54[8].

Ministerial Exception Not Applicable. In *Atkins v. St. Cecilia Catholic Sch.* (2023) 90 Cal. App. 5th 1328, an appellate court reversed summary judgment for the defendant in a suit alleging FEHA violations and termination based age discrimination, brought by a former part-time art teacher and office administrator against her employer, a Catholic elementary school, finding that her duties did not include the teaching of religion. See Ch. 115, *Civil Rights: Employment Discrimination*, § 115.20[2][d].

Pregnancy Accommodation. In *Lopez v. La Casa del Las Madres* (2023) 89 Cal. App. 5th 365, an appellate court held that a former employee failed to prove a claim for discrimination under the FEHA (Gov. Code § 12945(a)(3)(A)) based on lack of accommodation for her pregnancy-related condition. See Ch. 115, *Civil Rights: Employment Discrimination*, § 115.35[3].

Sexual Harassment Not Proved. In *Atalla v. Rite Aid Corp.* (2023) 89 Cal. App. 5th 294, the court upheld judgment for the defendant in a suit against the former employer for sexual harassment based on texts that

the plaintiff's manager sent in his capacity as a social acquaintance, rather than as a supervisor. See Ch. 115, *Civil Rights: Employment Discrimination*, § 115.36[2][a].

Arbitration Agreements. In *Beco v. Fast Auto Loans, Inc.* (2022) 86 Cal. App. 5th 292, an action asserting FEHA and wage-and-hour claims, the court found unconscionable an electronically delivered arbitration agreement, and held that the objectionable sections of the employment contract could not be severed from the rest of its provisions. See Ch. 115, *Civil Rights: Employment Discrimination*, § 115.55[3].

RPI Can Seek Anonymity in DFEH Complaint. In *DFEH v. Superior Court* (2022) 82 Cal. App. 5th 105, an appellate court held that although there is no statutory authority therefor, the DFEH may present a real party in interest under a fictitious name in its civil complaint if the DFEH properly establishes grounds for the real party in interest's request to do so. See Ch. 115, *Civil Rights: Employment Discrimination*, § 115.51[1][e].

Peace Officers' Bill of Rights. In *Garcia v. State Dept. of Development Svcs.* (2023) 88 Cal. App. 5th 460, the court held that when a law-enforcement agency investigates an officer for multiple incidents of misconduct, the statute of limitations under Gov. Code § 3304(d)(1) begins to run from the time the agency initiates an investigation into unrelated misconduct, even if an investigation into one type of misconduct

ultimately leads to the discovery of unrelated types of misconduct. *See* Ch. 118, *Civil Service*, § 118.72.

Whistleblower Protection. In *People ex rel. Garcia-Brower v. Kolla's, Inc.* (2023) 14 Cal. 5th 719, the California Supreme Court held that a “protected disclosure” under Labor Code § 1102.5(b) encompasses a report or complaints of a violation made to an employer or agency even if the recipient already knows of the violation. *See* Ch. 249, *Employment Law: Termination and Discipline*, § 249.12[1][a].

Wrongful Discharge in Violation of Public Policy. In *Killgore v. SpecPro Professional Svcs., LLC* (9th Cir. 2022) 51 F.4th 973, the Ninth Circuit reversed the grant of summary judgment for the employer in a former environmental-services company manager’s suit for whistleblower discrimination (Labor Code § 1102.5) based on his disclosures of violations of the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321, et seq.). *See* Ch. 249, *Employment Law: Termination and Discipline*, § 249.12[1][a].

Proposition 22 Statute Governing Amendments Is Unconstitutional. In *Castellanos v. State of Cal.* (2023) 89 Cal. App. 5th 131, the court found that Bus. & Prof. Code § 7465(c)(3) and (4) (Proposition 22) violate the separation-of-powers doctrine under Cal. Const., Art. II, § 10(c). (Caution: This opinion has been granted review by the Supreme Court and the ability to cite this case or its binding or precedential effect

depends on the Supreme Court’s rulings per Cal. Rules of Ct., Rule 8.1105(e).) *See* Ch. 250, *Employment Law: Wage and Hour Disputes*, § 250.27[1].

FAMILY LAW

Indian Child Welfare Act. In *Haaland v. Brackeen* the Supreme Court held that it was within Congress’s constitutional authority to enact the ICWA. The Court held that “Congress’s power to legislate with respect to Indians is well established and broad”, citing cases that regulated areas such as criminal law, domestic violence, employment, property, tax, and trade, but also acknowledged that the precedent in this area was “unwieldy, because it rarely ties a challenged statute to a specific source of constitutional authority, . . . mak[ing] it difficult to categorize cases and even harder to discern the limits on Congress’s power”. The Court rejected the petitioners’ argument that domestic relations have traditionally been governed by state law, and while it acknowledged that Congress has “limited application of federal law in the field of domestic relations generally”, the Constitution “does not erect a fire wall around family law” and concluded Congress’ power is broad enough to encompass what the ICWA regulates [*Haaland v. Brackeen*, ___ U.S. ___, 143 S. Ct. 1609, 216 L. Ed. 2d 254 (2023)]. *See* Ch 12B, *Adoption: Unmarried Minors*, § 12B.270.

Child Custody; Costs Associated with Custody Evaluator Fees.

When apportioning cost of a mental health expert, a court of appeals has held that, “[b]efore allocating any portion of a custody evaluator’s fees to a litigant who objects that he or she cannot afford to pay them, the court must thoroughly assess that litigant’s ability to pay, taking into account not only income and assets but also indebtedness, ongoing basic expenses and other obligations, including those previously imposed by the court itself earlier in the litigation” [Peterson v. Thompson (2023) 89 Cal. App. 5th 988, 1003, 306 Cal. Rptr. 3d 516 (Evid. Code §§ 730 and 731(c), at least in the context of custody proceedings, must be construed in a manner consistent with Fam. Code §§ 3112 and rule 5.220(d)(1)(D) and (e)(1)(E) of the California Rules of Court, to mandate an ability to pay determination when allocating between the parties the costs of such an expert)]. See Ch 223, *Dissolution of Marriage: Child Custody*, § 223.23.

INJUNCTIONS AND PROVISIONAL REMEDIES

Amount Securable by Attachment. In *Rreef America Reit II Corp, YYYY v. Samsara Inc.* (2023) 91 Cal. App. 5th 609, 618, 308 Cal. Rptr. 3d 525, the court of appeal held that in the attachment order for the landlord, Code Civ. Proc. § 483.015(b)(4) did not reduce the amount to be secured by the attachment because the landlord’s interest in a letter of credit provided to it by its tenant was not a security interest in the tenant’s property. See Ch. 62, *Attachment*, § 62.12[1].

Balancing of Equities in CEQA Injunction Proceedings. In *Tulare Lake Canal Co. v. Stratford Public Utility Dist.* (2023) 92 Cal. App. 5th 380, 398, 309 Cal. Rptr. 3d 493, the court of appeal held that in a CEQA proceeding, the balancing of the interim harms likely to result from granting or denying a preliminary injunction requires the court to consider harms to public interests, not just harms to the parties’ interests. See Ch. 303, *Injunctions*, § 303.43[2][c].

INSURANCE

Uninsured Motorist Proceedings. In *Glassman v. Safeco Ins. Co. of America* (2023) 90 Cal. App. 5th 1281, the court held that Civil Code § 3291, which applies the cost-shifting mechanisms of Code Civ. Proc. § 998 to prejudgment interest in personal-injury actions from the date of the offer, does not apply in an uninsured-motorist proceeding. See Ch. 88A, *Automobiles: Uninsured Motorist Claims*, § 88A.19[3B].

Insurer’s Duty to Defend. In *Dua v. Stillwater Ins. Co.* (2023) 91 Cal.App.5th 127, the court held that the insurer owed the insured a duty under a homeowner’s policy to defend the underlying suit, which alleged that the insured’s dogs bit the plaintiff’s dogs, when the policy contained an exclusion for animal liability but covered frivolous suits, and the insured had asserted that she neither owned nor controlled the attacking dogs. See Ch. 308, *Insurance*, § 308.308.22[3].

Coverage of Pandemic-Related

Business Losses. In *Coast Restaurant Group, Inc. v. Amguard Ins. Co.* (2023) 90 Cal. App. 5th 332 (4th App. Dist., Div. 3), the court found that two policy exclusions precluded coverage under a “business interruption” policy for losses related to the COVID-19 pandemic. See Ch. 308, *Insurance*, § 308.61[2]. In *Santa Ynez Band of Chumash Mission Indians v. Lexington Ins. Co.* (2023) 90 Cal. App. 5th 1064 (2d App. Dist., Div. 6), the court found that the plaintiff, a Native American tribe’s business enterprise, did not sufficiently plead a claim for “business interruption” coverage because it failed to specify what property was damaged and failed to submit a claim for the dollar amount of that loss. See Ch. 308, *Insurance*, § 308.61[2].

INTELLECTUAL PROPERTY

Copyright; Registration of Derivative Works. The Ninth Circuit has held, as a matter of first impression, that by registering a derivative work, an author registers all of the material included in the derivative work, including that which previously appeared in an unregistered, original work created by the author. Because the owner can register the original work at any time and the registration applies to all “the material deposited [that] constitutes copyrightable subject matter,” the court concluded that when a derivative work includes copyrightable elements of the unregistered original work, the owner’s registration of the derivative work also registers the included elements of the original work. It noted that other circuits have ruled

in the same way [*Enter. Mgmt. Ltd., Inc. v. Construx Software Builders, Inc.* (9th Cir. 2023) 73 F.4th 1048, 2023 U.S. App. LEXIS 18060,*3,*14–*17 (issue of material fact as to whether registration occurred)]. See Ch 349, *Literary Property and Copyright*, § 349.26.

Copyright Infringement; The Server Test. Plaintiff photographers sued Instagram for copyright infringement, alleging that the social media cite violated their exclusive display right under 17 U.S.C. § 106(5) by permitting third-party sites to embed the photographers’ Instagram content. The Ninth Circuit held that Instagram could not be liable for secondary infringement because embedding a photo does not “display a copy” of the underlying images under the standard in *Perfect 10 v. Amazon* [*Hunley v. Instagram, LLC* (9th Cir. 2023) 73 F.4th 1060, 2023 U.S. App. LEXIS 18059,*38–*39]. See Ch. 349, *Literary Property and Copyright*, § 349.27.

JUDGEMENTS AND ENFORCEMENT OF JUDGEMENTS

Code Civ. Proc. § 473(d) Six-Month Deadline For Bringing Motion To Set Aside Default Judgment Inapplicable When Judgment Void On Its Face. In *Braugh v. Dow* (2023) 2023 Cal. App. LEXIS 504,*12–13, the court of appeal held that when a judgment was void on its face because the plaintiff personally served the defendant with the summons and complaint, the six-month deadline in Code Civ. Proc. § 473(d)

for bringing a motion to set aside the default judgment was inapplicable. See Ch. 489, *Relief From Judgments and Orders*, § 489.141.

MANDATE AND PROHIBITION

Mandate Not Proper to Control Discretion. In *Crestwood Behavioral Health, Inc. v. Baass* (2023) 91 Cal. App. 5th 1, 18–19, 308 Cal. Rptr. 3d 15, the court of appeal held that a court may issue a writ of mandate to compel a public agency or officer to perform a ministerial, mandatory duty, but not to control its discretion. See Ch. 358, *Mandate and Prohibition*, § 358.33[1].

PROBATE

Elder Abuse—Absolute Immunity for Mandated Reporters. In *Valero v. Spread Your Wings, LLC*, (2023) 88 Cal. App. 5th 243, 264, 304 Cal. Rptr. 3d 326, the court held that the absolute and broad immunity granted to *mandated* reporters of elder abuse under Prob. Code § 15634(a), as opposed to the qualified immunity extended to *nonmandated* reporters under that section, extends even to knowingly false reports. See Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, § 5.32[5].

Elder Abuse—Arbitration. In *Kinder v. Capistrano Beach Care Center, LLC* (2023) 91 Cal. App. 5th 804, 815–816, 308 Cal. Rptr. 3d 631, the court held that a defendant seeking to compel arbitration must submit evidence that the plaintiff took some affirmative action that would support a finding of a purported agent’s ac-

tual or ostensible authority, and cannot rely on the purported agent’s representations alone in order to meet that burden. Allowing the moving party to meet this initial burden by presenting an agreement signed by a third party, without more, is not *prima facie* evidence that the *plaintiff* agreed to arbitrate. In another case, *Algo-Heyres v. Oxnard Manor LP* (2023) 88 Cal. App. 5th 1064, 305 Cal. Rptr. 3d 296, the court, in holding an arbitration agreement unenforceable, held that the mental state of the patient or resident, including the lack of functional independence in the areas of comprehension, verbal and nonverbal expression, memory, and problem solving, may indicate that at the time the patient signed the arbitration agreement, the patient had a mental deficit that significantly impaired the ability to understand and appreciate the consequences of entering into the agreement. Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, § 5.41[4].

Elder Abuse—EARO Forms and Discussion Updated. Updated version of Judicial Council Form EA-100, for use in requesting an adult abuse protective order, has been updated, and discussion of the form has been enhanced. See Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, § 5.71. Judicial Council Forms EA-109, EA-110, EA-120, EA-130, and EA-200 also have been updated. See Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, § 5.71A–5.73, 5.76, 5.77.

Objection to Appointment of

Guardian—Judicial Council Form Added. Judicial Council Form GC-215, an optional form for an objection to a petition for appointment of a guardian, has been added to Ch. 280, *Guardianship and Conservatorship, Appointment of Guardians*, § 280.113A, as an alternative to the attorney-drafted form previously appearing in § 280.113.

Conservatorships—Capacity of Conservatee to Consent to Conflict of Interest; Jurisdiction. In *Conservatorship of Tedesco* (2023) 91 Cal. App. 5th 285, 311, 308 Cal. Rptr. 3d 296, the court held that when a conflict of interest existed between the conservatee and his wife, the conservatee’s nonappointed counsel was disqualified from also representing the wife; the conservatee would have been required to give his informed written consent for the counsel to represent the wife in light of the conflict of interest, and the conservatee lacked legal capacity to give such informed written consent. See Ch 282, *Guardianship and Conservatorship: Temporary Guardians and Conservators*, § 282.33; Ch. 287, *Guardianship and Conservatorship: General Management Powers*, § 287.20. The also court held that under the doctrine of exclusive concurrent jurisdiction, a probate court hearing a conservatorship termination case had the power to disqualify nonappointed counsel from representing the conservatee or a family member because the representation impacted the conservatorship. See Ch. 560, *Trusts: Jurisdiction, Venue, Notice, and General Court Proce-*

dures, § 560.21[2].

Probate—Gross Value of Property. Judicial Council Forms DE-305 and DE-310 (441.271 and 441.273) in Ch. 441, *Probate: Disposition Without Administration*, have been updated with newer versions reflecting the most recent revised adjusted values in accordance with Prob. Code § 13050.

Wills and Trusts—Remote Appearances. The wills and trusts chapters have been updated to reflect urgency legislation extended the effective date of Code Civ. Proc. § 367.75, the prospective repeal date of which was extended from July 1, 2023 to January 1, 2026. See Ch. 442, *Initiating Probate Administration*, § 442.11A[3]; Ch. 560, *Trusts: Jurisdiction, Venue, Notice, and General Court Procedures*, § 560.10A[3].

Probate—Limitations on Federal Jurisdiction Over Probate Matters. Discussion of the “probate exception,” under which specified probate and estate related matters may not be brought in federal court and are instead reserved to state courts, has been added to this release. The discussion includes both the basic rules regarding what is excluded from federal diversity jurisdiction, and case law limiting applicability of the exclusion. See Ch. 442, *Initiating Probate Administration*; § 442.13[3]; Ch. 560, *Trusts: Jurisdiction, Venue, Notice, and General Court Procedures*, § 560.27.

Probate—What Constitutes a Will. In *Estate of Berger* (2023) 91

Cal. App. 5th 1293, 1305, 309 Cal. Rptr. 3d 194, the court held that a probate court, in considering whether an unwitnessed instrument is intended to be a will, always may consider extrinsic evidence of the circumstances surrounding the document's execution, even if the intent expressed by the document is unambiguous. The court also held that the words in the instrument at issue, together with the circumstances surrounding its creation, compelled the finding that the author of the letter intended it to have testamentary effect. See Ch. 442, *Initiating Probate Administration*; § 442.147[4]; Ch. 444, *Probate: Will Contests*, § 444.13[6][3].

Heirship—Marital Presumption.

In *Estate of Franco* (2023) 87 CA5th 1270, 1278, 1282, 304 Cal. Rptr. 3d 414, the court, relying on *Estate of Cornelious* (1984) 35 Cal. 3d 461, 198 Cal. Rptr. 543, 674 P.2d 245, held that if a person is deemed to be a child of a marriage under the Fam. Code § 7540 marital presumption (providing that a child of spouses who are cohabiting at the time of conception and birth is conclusively presumed to be a child of the marriage), that person is thereby barred from proving a parent-child relationship with a deceased third person for purposes of inheritance under the intestate succession statutes. See Ch. 458D, *Probate: Accounts, Final Distribution, and Compensation*, § 458D.78[4][a].

Probate—Compensation of Attorney or Personal Representative.

In *Estate of Kempton* (2023) 91 Cal. App. 5th 189, 205, 308 Cal. Rptr. 3d 249, the court held that since the court has discretion to reduce or deny compensation to an attorney or personal representative under Prob. Code § 12205 in the absence of manifest abuse of discretion, it also has discretion to approve payment of such fees to a third party who is legally entitled to the money in payment of a debt owed by the attorney on a judgment lien. See Ch. 458D, *Probate: Accounts, Final Distribution, and Compensation*, § 458D.123.

Wills, Trusts, and Elder Abuse

Actions—Anti-SLAPP Motions. In *Starr v. Ashbrook* (2023) 87 Cal. App. 5th 999, 1021, 304 Cal. Rptr. 3d 275, the court denied an anti-SLAPP motion brought in an action alleging that a trustee had wasted and misused trust assets by pursuing a meritless petition for instructions and using trust assets to fund litigation, on the ground that misconduct in the administration of a trust and preservation of trust assets is not action “in furtherance of the person’s right of petition or free speech under the United States Constitution or the California Constitution.” Similarly, in *White v. Davis* (2023) 87 Cal. App. 5th 270, 290, 303 Cal. Rptr. 3d 480, the court rejected an anti-SLAPP motion filed in response to a request for an elder abuse restraining order (EARO) on grounds of undue influence, holding that the EARO application did not arise out of defendants’ protected activity (probate litigation), but rather out of their actions to unduly influence the elder regarding his es-

tate plan. See Ch. 560, *Trusts: Jurisdiction, Venue, Notice, and General Court Procedures*, § 560.96A[3]; Ch. 5, *Abuse of Minors, Elders, and Dependent Adults*, §§ 5.35, 5.44[4].

Trusts—Surcharge for Failure to Take Neutral Position in Trust Litigation. In *Zahnleuter v. Mueller* (2023) 88 Cal. App. 5th 1294, 1307, 305 Cal. Rptr. 3d 474, the court held that in the absence of express trust language directing the trustee to defend any trust contest to an amendment at the trust’s expense, a trustee who did not take a neutral position in defending a trust amendment favorable to his interests was properly surcharged for \$200,000 in attorney fees spent litigating the dispute. See Ch. 560A, *Trusts: Creation, Validity, and Trust Contests*, § 560A.50; Ch. 560G, *Trusts: Trustee Fees and Attorney Fees*, § 560F.31[2]; Ch. 560F, *Trusts: Removal or Replacement of Trustee*, § 560F.41[10].

Trust Contests—Requirements for Valid Modification of Agreement. Ch. 560A, *Trusts: Creation, Validity, and Trust Contests*, § 560A.65[4][b], and Ch. 560J, *Trusts: Modification or Termination of Trusts*, § 560J.12, have been updated to reflect the currently uncertain state of the law regarding whether or not a trust instrument that does not specifically distinguish between procedures for revocation and modification can be modified by following any valid method of revocation, including reference to *Haggerty v. Thornton* (2021) 68 Cal. App. 5th 1003, 1012, 284 Cal. Rptr. 3d 32,

currently on review before the California Supreme Court [see *Haggerty v. Thornton* (December 22, 2021), 287 Cal. Rptr. 3d 721, 500 P.3d 994, 2021 Cal. LEXIS 8899, at 1], as interpreted by *Diaz v. Zuniga* (2023) 91 Cal. App. 5th 916, 923–924, 308 Cal. Rptr. 3d 762, in which the court held that the settlor’s failure to comply with a trust requirement essentially requiring that any amendment be sent to himself as trustee by certified mail invalidated a purported amendment to the trust.

Trusts—Impermissible Deposit into Joint Account. In *Pool-O’Connor v. Guadarrama* (2023) 90 Cal. App. 5th 1014, 1026, 308 Cal. Rptr. 3d 1, the court held that an agent/trustee’s deposits of trust funds into a joint account created an impermissible survivorship interest and amounted to an attempted change in the trust’s beneficiary in violation of Prob. Code § 4264(e) and (f). See Ch. 560J, *Trusts: Modification or Termination of Trusts*, § 560J.12.

PUBLIC ADMINISTRATIVE LAW

Dormant Commerce Clause. This chapter is updated with *South Lake Tahoe Property Owners Group v. City of South Lake Tahoe* (2023) 92 Cal. App. 5th 735, which holds that a city municipal ordinance prohibiting short term or vacation rental housing discriminated against interstate commerce in violation of the dormant commerce clause because it banned vacation rentals while also allowing city residents to rent out their homes in the residential zones

for periods of less than 30 days. The prohibition on vacation rentals applied only to homeowners in South Lake Tahoe that were not residents of the city. This group included homeowners that were residents of states other than California, including residents of the state of Nevada. Both groups of homeowners shared the same economic interests which satisfied the dormant commerce clause requirements. Thus, the ordinance was unconstitutional. See Ch.470, *Overview of Public Administrative Law*, § 470.16[1].

First Amendment. This chapter is updated with *Southern California Gas Company v. Public Utilities Commission* (2023) 87 Cal. App. 5th 324, which holds that data requests sought by the Public Advocates Office of the California Public Utility Commission that were designed to discover whether the utility's political activities were funded by the utility's shareholders or rate payers (customers) violated the utility's First Amendment Associational rights. The court granted a petition for a writ of mandate against the Commission that required the rescission of the data requests. See Ch.470, *Overview of Public Administrative Law*, § 470.16[2].

Impartial Decision Maker. This chapter is updated with *Coalition for Historical Integrity v. City of San Buenaventura* (2023) 92 Cal. App. 5th 430, which holds that a city decision to remove a statue of a Spanish missionary priest because the statue was offensive to some

members of the community was a quasi-legislative act, making policy, and not a quasi-judicial act because there was no fact finding and thus members of the city council were not constrained by the requirement of acting without bias or prejudice. See Ch. 470A, *Due Process Restrictions*, § 470A.46[4].

Financial Bias. This chapter is updated with *Atlantic Richfield Company v. California Regional Water Quality Control Board, Central Valley Region* (2022) 85 Cal. App. 5th 338, which holds that the remediation responsibilities of a regional water quality control board did not provide a financial bias in violation of due process of law. The funds used by that board for remediation activities were provided by the California State Water Quality Control Board and not by the regional water quality control board. The regional board had no control of those funds. The appellate court affirmed the judgment of the superior court that imposed liability for remediation of water pollution from an abandoned mine on the successor in interest of the mining subsidiary's parent company. See Ch. 470A, *Due Process Restrictions*, § 470A.46[4].

Public Interest Exemption. This chapter is updated with *Iloh v. Regents of University of California* (2023) 87 Cal. App. 5th 513, which holds that post publication communications between a professor who was an employee of a public university, the public university employer, and four academic journals that related to

four articles written by that professor that were retracted (or corrected) by those journals were subject to disclosure under the California Public Records Act. The court of Appeal held that those communications were public records under former Government code Section 6250 [now Government Code Section 7921.000], and that the records were subject to disclosure. After the university decided to disclose these records, the professor filed a lawsuit against the university to block disclosure. The court of appeal affirmed the denial of a preliminary injunction motion by the superior court that had been sought by the professor. The court of appeal held that the personnel files exemption [Gov. Code § 7927.700] did not apply because the records requested were correspondence not personal records, and if correspondence was placed into the personnel file of the professor privacy concerns were outweighed by the public interest in disclosure. Finally the court of appeal held that the public interest exemption [Government Code Section 7922.000] did not prevent disclosure of those records because the interest in public disclosure outweighed the [public interest in non-disclosure. See Ch. 470C, *Public Records Act*, § 470C.13[61].

Personnel or Medical Files Exemption. This chapter is updated with *Edais v. Superior Court of San Mateo County* (2023) 87 Cal. App. 5th 530, which holds that the county coroner's office investigation report that related to a police officer's alleged suicide death was disclosable

under the California Public Records Act. The court of appeal granted a writ of mandate requiring disclosure of that report. The court held that the personnel or medical files exemption [Government Code Section 7927.700] did not preclude disclosure of these records because there was a significant public interest in disclosure of these records and that interest outweighed the privacy interest of the officer's family. The court also held that the public interest in disclosure of the coroner's investigation report outweighed the public interest in non-disclosure for purposes of the public interest exemption under Government Code Section 7922.000. See Ch. 470C, *Public Records Act*, § 470C.13[6].

Collective Bargaining Records and Activities. This chapter is updated with *Freedom Foundation v. Superior Court of Sacramento County* (2022) 87 Cal. App. 5th 47, which holds he petition for a writ of mandate sought by a workers' rights advocacy organization to challenge the judgment of the Superior court that had denied the organization's petition for a writ of mandate and complaint for declaratory and injunctive relief under the California Public Records Act was properly denied. The organization sought disclosure of records related to collective bargaining by state employee unions from the California Department of Human Resources, the state agency responsible for representing the state of California in labor negotiations with state employee unions. The state agency invoked the exemption from

disclosure under former Government code Section 6254(p)(1) [now Gov. Code § 7928.405] that exempted collective bargaining records and activities under the Dills Act [Gov. Code § 3512 et. seq.]. The organization argued that the exemption should be narrowly interpreted to exempt only records revealing deliberative processes. The court of appeal rejected that interpretation and held that the exemption was broader. The court also held that the agency was not required to redact records. The court also held that the agency did not have a duty to search the State controller's Office database for responsive records. This was because the agency did not have constructive possession of those database records. See Ch. 470C, *Public Records Act*, § 470C.13[19].

Economic Impact Analysis. This chapter is updated with *American Chemistry Council v. Department of Toxic Substances Control* (2022) 86 Cal. App. 5th 146, which holds that the Department of Toxic Substance Control conducted an adequate economic impact analysis under the provisions of the California administrative Procedures act [Gov. Code § 11346.5(a)(7)(B), (9)], in the process of adopting regulations governing spray foam systems containing certain chemicals (MDI) as priority products under California law. See Ch. 472A, *Agency Rulemaking Procedures*, § 472A.16[3].

Office of Administrative Law Approval of Rules. This chapter is updated with *American Chemistry*

Council v. Department of Toxic Substances Control (2022) 86 Cal. App. 5th 146, which holds that the California Environmental Quality Act (CEQA) based challenge brought by a chemical company and a chemical industry association to the adoption by the Department of regulations governing spray foam systems was untimely because it was not brought within 180 days of the date [Pub. Resources Code Section 21167(d)] when the Office of Administrative Law (OAL) endorsed, approved, and filed the regulatory package brought by the Department for OAL review. The court of appeal affirmed the superior court judgment that the Department acted within its authority in adopting these regulations and also complied with the requirements of the California Administrative Procedure Act (APA). The court of Appeal reversed the judgment of the superior court that the Department had violated CEQA because the challengers failed to bring the CEQA challenge within the 180 day time period. See Ch. 472B, *Review of Agency Rulemaking*, § 472B.11.

Telephone Hearings. This chapter is updated with *Ramirez v. Superior Court of Kern County* (2023). 88 Cal. App. 5th 1313, which the Fifth District California Court of Appeal affirmed the grant of a writ of mandate (CCP Section 1094.5) by the Superior Court that ordered the California DMV to set aside a driver's license suspension order following the arrest of a motorist for driving under the influence because the DMV hearing officer allowed the arresting officer to

testify by telephone over the objections of the motorist's lawyer [Ramirez v. Superior Court of Kern County (5th Dist., 2023) 88 Cal. App. 5th 1313, 1323, 305 Cal. Rptr. 3d 488]. Under the relevant provisions of the California APA, former Government Code Section 11440.30, telephone hearings (or other electronic hearings) could not be held when a party objected. The appellate court held that these provisions of the California Administrative Procedure Act were mandatory, and applied to DMV drive license suspension hearings. The appellate court noted that with the telephone hearing the officer's demeanor could not be observed nor could the officer's ability to access remote documents be observed. The lawyer for the motorist could not effectively cross-examine the officer nor would the lawyer be able to show the officer documents in person. See Ch. 473, *Public Agency Adjudication*, § 473.16[2].

Debarment of Public Works Contractor. This chapter is updated with *GRFCO, Inc. v. Superior Court of Riverside County* (2023) 89 Cal. App. 5th 1295, which the Fourth District Division 2 California Court of Appeal affirmed the denial of a petition for a writ of administrative mandate (CCP Section 1094.5) by the Superior Court that upheld a decision of the Department of Industrial Relations, Division of Labor Standards Enforcement, debarring contractors and principals from acting as public works contractors for three years based on apprenticeship requirement and other violations. See

Ch. 473G, *Agency Adjudication Decisions*, § 473G.35[2].

One Year Suspension. This chapter is updated with *O'Brien v. Regents of University of California* (2023) 92 Cal. App. 5th 1099, which The First District Division 3 California Court of Appeal affirmed the denial of a petition for a writ of administrative mandate by the superior court in a lawsuit brought by a professor against his employer, the University of California. The professor was suspended for one year and had a written censure letter placed in his university personnel file. The professor was found to have violated the faculty code of conduct by directing unwanted sexualized conduct at a graduate student from another university when both were attending an academic conference in Singapore. The court of appeal held that the sanction was not excessive. See Ch. 473G, *Agency Adjudication Decisions*, § 473G.35[2].

Attorneys' Fees. This chapter is updated with *Council for Education and Research on Toxics v. Starbucks Corporation* (2022) 84 Cal. App. 5th 879, which The Second District, Division 4 California Court of appeal affirmed the denial of attorneys' fees under Code Civ. Proc. § 1021.5 by the superior court that were sought by an organization that filed a lawsuit against coffee companies for an alleged failure to provide cancer warnings about acrylamide, an alleged known carcinogen produced in the coffee roasting and brewing process. Attorneys' fees were denied because

the organization's lawsuit did not provide any significant benefit to the general public. See Ch. 473G, *Agency Adjudication Decisions*, § 473G.35[9].

Trial Court Jurisdiction in PUC Matters. In *Truconnect Communs. v. Maximus, Inc.* (2023) 91 Cal. App. 5th 497, 308 Cal. Rptr. 3d 365, the court of appeal held that Pub. Util. Code § 1759 did not bar an action by a regulated public utility providing telephone service under the LifeLine program against a third-party administrator because the suit would not conflict with a previous PUC order denying the utility's administrative claim for reimbursement of the claimed losses or interfere with PUC regulation of the LifeLine program. See Ch. 480, *Public Utilities*, § 480.141.

Medicare Preemption of State Plans. In *Quishenberry v. United-Healthcare, Inc.* (2023) 2023 Cal. LEXIS 3807, *2, the California Supreme Court held that Medicare Part C preempted state law claims with respect to Medicare Advantage plans, regardless of whether the claims were based in statutory or common law. See Ch. 527, *Social Services*, § 527.76[1][d].

TORTS

Exemplary Damages May Be Recovered from Veterinarian Under Statutory Provision for Willful Injury to Animals. In *Berry v. Frazier* (2023) 90 Cal. App. 5th 1258, the court of appeal held that while Civ. Code § 3340 does not provide an independent cause of action for ex-

emplary damages for wrongful injuries to animals, it does provide a basis for seeking exemplary damages as a remedy in conjunction with other causes of action, so long as plaintiff proves in those claims the statutory requirements of Civ. Code § 3340. The court also held that this statute may be applied to the intentional misconduct of a veterinarian if the statutory requirements are met. See Ch. 23, *Animals: Civil Liability*, § 23.15[4].

Supreme Court Overrules “Simply or Solely Punitive” Standard for Public Entity Immunity From Paying Punitive Damages. In *Los Angeles Unified School Dist. v. Superior Court* (2023) 14 Cal. 5th 758, in ruling that a public entity could not be held liable for statutory treble damages for covering up childhood sexual assault committed by a third party, the California Supreme Court held that a public entity is immune from liability for punitive damages under Civ. Code § 3294 or when the damages would otherwise be imposed primarily for the sake of example and by way of punishing the defendant such that they would function, in essence, as punitive or exemplary damages. See Ch. 464, *Public Entities and Officers: California Government Claims Act*, § 464.62[1].

Supreme Court Reaffirms Design Immunity for Public Entity Does Not Defeat Failure to Warn Claim. In *Tansavatdi v. City of Rancho Palos Verdes* (2023) 14 Cal. 5th 639, the California Supreme Court reaffirmed that a public entity may be

liable for the failure to warn of a dangerous condition of public property even if the entity has design immunity for creating the dangerous condition. The Court also cautioned that a plaintiff seeking to recover for a failure to warn of a condition that is otherwise subject to design immunity must prove that the public entity had notice that its design resulted in a dangerous condition and, in order to overcome the “signage” immunity of Gov. Code § 830.8, must establish that the accident-causing condition constituted a concealed trap. See Ch. 464, *Public Entities and Officers: California Government Claims Act*, § 464.85[2][a].

Standard for Opposing Expert Medical Causation Testimony Clarified. Under new Evid. Code § 801.1, expert testimony regarding medical causation proffered by the party bearing the burden of proof, when that opinion must include a statement that causation exists to a reasonable medical probability, may only be rebutted by a contrary expert if that expert is also able to opine that the offered alternative cause or causes each exists to a reasonable medical probability, with an exception allowing testimony that a matter cannot meet a reasonable degree of probability in the applicable field. See Ch. 380, *Negligence*, § 380.72[1].

Scope of Maritime Limitation of Liability Act Reduced. Under an

amendment to 46 U.S.C.S. § 30502, the Federal Limitation of Liability Act applicable in maritime actions does not generally apply to “covered small passenger vessels,” as defined. See Ch. 522, *Ships and Shipping*, § 522.12[1], [2].

Jones Act Definition of “Seaman” Narrowed to Exclude “Aquaculture” Workers. Under an amendment to 46 U.S.C.S. § 30104, the Federal Jones Act specifically excludes from the term “seaman” aquaculture workers, as defined, who have state workers’ compensation benefits available and who were, at the time of injury, engaged in aquaculture in a place where such person had lawful access. See Ch. 522, *Ships and Shipping*, § 522.31[5].

TRIAL

Directed Verdict Reversed When Plaintiff Made Prima Facie Showing of Causation. In *Camacho v. JLG Industries Inc.* (2023) 2023 Cal. App. LEXIS 547, *7, the court of appeal held that when reviewing a directed verdict, the court must accept as true the evidence of the opposing party and disregard conflicting evidence; a court is not justified in taking a case from a jury and itself rendering the decision unless it can be said that, as a matter of law, no other reasonable conclusion is legally deducible from the evidence. See Ch. 326A, *Jury Verdicts*, § 326A.33.

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November 2023

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Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	303-3.	303-3
<input type="checkbox"/>	303-55 thru 303-56.1	303-55 thru 303-56.1
<input type="checkbox"/>	303-113 thru 303-114.1	303-113 thru 303-114.1
<input type="checkbox"/>	308-5.	308-5

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	308-13 thru 308-17	308-13 thru 308-17
<input type="checkbox"/>	308-51 thru 308-64.1	308-51 thru 308-64.1
<input type="checkbox"/>	308-81 thru 308-82.19	308-81 thru 308-82.19
<input type="checkbox"/>	308-111	308-111 thru 308-112.1
<input type="checkbox"/>	308-122.1 thru 308-123	308-123 thru 308-124.5
<input type="checkbox"/>	308-153 thru 308-171	308-153 thru 308-172.1
<input type="checkbox"/>	308-208.1 thru 308-209	308-209 thru 308-210.1
<input type="checkbox"/>	308-217	308-217 thru 308-218.1
<input type="checkbox"/>	308-235 thru 308-236.1	308-235 thru 308-236.1
<input type="checkbox"/>	308-251 thru 308-252.1	308-251 thru 308-252.1
<input type="checkbox"/>	308-276.1	308-276.1
<input type="checkbox"/>	308-313	308-313 thru 308-314.1
<input type="checkbox"/>	308-499 thru 308-508.1	308-499 thru 308-507

VOLUME 27

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	317-99 thru 317-101.	317-99 thru 317-101
<input type="checkbox"/>	318-41 thru 318-42.1	318-41 thru 318-42.1
<input type="checkbox"/>	318-129	318-129 thru 318-130.1
<input type="checkbox"/>	321-29 thru 321-33	321-29 thru 321-34.1
<input type="checkbox"/>	322-49	322-49
<input type="checkbox"/>	322-77	322-77 thru 322-78.1

VOLUME 28

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	323-49 thru 323-50.1	323-49 thru 323-50.1
<input type="checkbox"/>	323-95	323-95 thru 323-96.1
<input type="checkbox"/>	323-130.1 thru 323-130.3	323-130.1 thru 323-130.3
<input type="checkbox"/>	323-147 thru 323-148.1	323-147 thru 323-148.1
<input type="checkbox"/>	326-9 thru 326-21	326-9 thru 326-22.1
<input type="checkbox"/>	326-35	326-35 thru 326-36.1
<input type="checkbox"/>	326-47 thru 326-49	326-47 thru 326-49
<input type="checkbox"/>	326A-27 thru 326A-29	326A-27 thru 326A-29
<input type="checkbox"/>	326A-39 thru 326A-45	326A-39 thru 326A-45

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As
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*Remove Old
Pages Numbered*

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Pages Numbered*

VOLUME 29

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	332-65 thru 332-68.2(1)	332-65 thru 332-68.2(1)
<input type="checkbox"/>	332-74.1 thru 332-77	332-75 thru 332-77
<input type="checkbox"/>	333-39	333-39 thru 333-40.1
<input type="checkbox"/>	335-5.	335-5
<input type="checkbox"/>	335-54.1 thru 335-54.5	335-54.1 thru 335-54.5

VOLUME 30

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	340-51 thru 340-52.1	340-51 thru 340-52.1
<input type="checkbox"/>	340-81 thru 340-82.1	340-81 thru 340-82.1
<input type="checkbox"/>	345-15	345-15
<input type="checkbox"/>	345-65 thru 345-66.1	345-65 thru 345-66.1
<input type="checkbox"/>	345-105	345-105 thru 345-106.1
<input type="checkbox"/>	345-151	345-151 thru 345-152.1
<input type="checkbox"/>	345APP-1 thru 345APP-17.	345APP-1 thru 345APP-18.1
<input type="checkbox"/>	345APP-37 thru 345APP-38.1	345APP-37 thru 345APP-38.1
<input type="checkbox"/>	345APP-64.1 thru 345APP-66.1	345APP-65 thru 345APP-66.1
<input type="checkbox"/>	346-75 thru 346-86.1	346-75 thru 346-86.1

VOLUME 31

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	349-29 thru 349-30.1	349-29 thru 349-30.1
<input type="checkbox"/>	349-40.1 thru 349-55	349-41 thru 349-56.1
<input type="checkbox"/>	357-38.1 thru 357-38.3	357-38.1 thru 357-38.3
<input type="checkbox"/>	357-63	357-63
<input type="checkbox"/>	358-21 thru 358-24.1	358-21 thru 358-24.1
<input type="checkbox"/>	358-37 thru 358-40.1	358-37 thru 358-40.1
<input type="checkbox"/>	358-65 thru 358-66.1	358-65 thru 358-66.1
<input type="checkbox"/>	358-105	358-105 thru 358-106.1

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As
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Remove Old
Pages Numbered

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Pages Numbered

VOLUME 32

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	361A-73	361A-73 thru 361A-74.1
<input type="checkbox"/>	362-13	362-13 thru 362-14.1
<input type="checkbox"/>	362-27 thru 362-29	362-27 thru 362-30.1

VOLUME 33

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	372-29	372-29 thru 372-30.1
<input type="checkbox"/>	372-47 thru 372-51	372-47 thru 372-51
<input type="checkbox"/>	374-25 thru 374-30.1	374-25 thru 374-30.1
<input type="checkbox"/>	376-17 thru 376-29	376-17 thru 376-30.1
<input type="checkbox"/>	376-60.1	376-60.1
<input type="checkbox"/>	376-68.7 thru 376-68.8(1)	376-68.7 thru 376-68.8(1)
<input type="checkbox"/>	376-68.18(1) thru 376-68.18(3).	376-68.18(1) thru 376-68.18(3)
<input type="checkbox"/>	380-72.1 thru 380-72.7	380-72.1 thru 380-72.7
<input type="checkbox"/>	380-134.3 thru 380-134.5	380-134.3 thru 380-134.5
<input type="checkbox"/>	380-159	380-159 thru 380-160.1

VOLUME 34

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	391-35	391-35 thru 391-36.1
<input type="checkbox"/>	395-17 thru 395-18.1	395-17 thru 395-18.1
<input type="checkbox"/>	395-39	395-39 thru 395-40.1
<input type="checkbox"/>	395-69 thru 395-71	395-69 thru 395-71

VOLUME 35

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	402-9.	402-9 thru 402-10.1

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*Remove Old
Pages Numbered*

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Pages Numbered*

VOLUME 36

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	415-56.1 thru 415-60.1	415-57 thru 415-60.1
<input type="checkbox"/>	415-81 thru 415-83	415-81 thru 415-84.1
<input type="checkbox"/>	421-17 thru 421-18.1	421-17 thru 421-18.1
<input type="checkbox"/>	421-29 thru 421-30.1	421-29 thru 421-30.1

VOLUME 37

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	427-27	427-27 thru 427-28.1
<input type="checkbox"/>	427-153	427-153
<input type="checkbox"/>	429-59 thru 429-61	429-59 thru 429-62.1

VOLUME 38

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	441-77 thru 441-85	441-77 thru 441-85
<input type="checkbox"/>	442-1 thru 442-2.1	442-1 thru 442-2.1
<input type="checkbox"/>	442-14.1 thru 442-16.1	442-15 thru 442-16.3
<input type="checkbox"/>	442-109 thru 442-111	442-109 thru 442-112.1
<input type="checkbox"/>	444-21	444-21 thru 444-22.1
<input type="checkbox"/>	444-64.5	444-64.5 thru 444-64.6(1)

VOLUME 39

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	458D-47	458D-47 thru 458D-48.1
<input type="checkbox"/>	458D-95	458D-95 thru 458D-96.1
<input type="checkbox"/>	458D-138.1 thru 458D-140.1	458D-139 thru 458D-140.1

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Pages Numbered*

VOLUME 40

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	464-71 thru 464-76.3	464-71 thru 464-76.5
<input type="checkbox"/>	464-105 thru 464-106.1	464-105 thru 464-106.1
<input type="checkbox"/>	464-133 thru 464-140.1	464-133 thru 464-140.1
<input type="checkbox"/>	464-172.1 thru 464-172.5	464-172.1 thru 464-172.7
<input type="checkbox"/>	464-207 thru 464-212.1	464-207 thru 464-211
<input type="checkbox"/>	466-8.1 thru 466-9	466-9 thru 466-10.1
<input type="checkbox"/>	468-10.1 thru 468-11	468-11 thru 468-12.1
<input type="checkbox"/>	468-19 thru 468-29	468-19 thru 468-29

VOLUME 41

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	470-3.	470-3 thru 470-4.1
<input type="checkbox"/>	470-74.1 thru 470-78.3	470-75 thru 470-78.3
<input type="checkbox"/>	470A-13 thru 470A-14.1.	470A-13 thru 470A-14.1
<input type="checkbox"/>	470A-61	470A-61 thru 470A-62.1
<input type="checkbox"/>	470C-63	470C-63 thru 470C-64.1
<input type="checkbox"/>	470C-93	470C-93 thru 470C-94.1
<input type="checkbox"/>	470C-127.	470C-127 thru 470C-128.1
<input type="checkbox"/>	472A-41 thru 472A-42.1.	472A-41 thru 472A-42.1
<input type="checkbox"/>	472B-9.	472B-9 thru 472B-10.1
<input type="checkbox"/>	472B-21 thru 472B-22.1.	472B-21 thru 472B-22.1

VOLUME 41A

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	473-33	473-33 thru 473-34.1
<input type="checkbox"/>	473F-76.1 thru 473F-76.5	473F-76.1 thru 473F-76.5
<input type="checkbox"/>	473G-46.1	473G-46.1 thru 473G-46.3
<input type="checkbox"/>	473G-58.1 thru 473G-58.3	473G-58.1 thru 473G-58.3
<input type="checkbox"/>	474-15 thru 474-16.1	474-15 thru 474-16.1
<input type="checkbox"/>	474-28.1 thru 474-29	474-29 thru 474-30.1
<input type="checkbox"/>	474-44.6(9) thru 474-44.6(13)	474-44.6(9) thru 474-44.6(13)
<input type="checkbox"/>	474A-29	474A-29 thru 474A-30.1
<input type="checkbox"/>	474A-40.13 thru 474A-40.15.	474A-40.13 thru 474A-40.16(1)

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	474A-40.25 thru 474A-40.26(3)	474A-40.25 thru 474A-40.26(3)
<input type="checkbox"/>	474B-42.2(4)(a) thru 474B-42.2(5)	474B-42.2(5) thru 474B-42.2(6)(a)

VOLUME 42

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	480-63	480-63 thru 480-64.1
<input type="checkbox"/>	480-66.14(1) thru 480-67	480-67 thru 480-68.5
<input type="checkbox"/>	482-17 thru 482-18.1	482-17 thru 482-18.1

VOLUME 43

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	489-109 thru 489-115	489-109 thru 489-116.1
<input type="checkbox"/>	489-187 thru 489-188.1	489-187 thru 489-188.1
<input type="checkbox"/>	489-200.1.	489-200.1

VOLUME 44

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	504-11 thru 504-12.1	504-11 thru 504-12.1

VOLUME 45

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	512-21 thru 512-24.1	512-21 thru 512-24.1
<input type="checkbox"/>	515-213	515-213 thru 515-214.1
<input type="checkbox"/>	518-25 thru 518-26.1	518-25 thru 518-26.1

VOLUME 46

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	522-5 thru 522-23	522-5 thru 522-23
<input type="checkbox"/>	522-40.1 thru 522-47	522-41 thru 522-47
<input type="checkbox"/>	522-87 thru 522-97	522-87 thru 522-97

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	522-109	522-109
<input type="checkbox"/>	522-159 thru 522-164.1	522-159 thru 522-163
<input type="checkbox"/>	525-9 thru 525-10.1	525-9 thru 525-10.1
<input type="checkbox"/>	527-39	527-39 thru 527-40.1
<input type="checkbox"/>	531-15	531-15 thru 531-16.1
<input type="checkbox"/>	531-23	531-23 thru 531-24.1
<input type="checkbox"/>	531-33 thru 531-35	531-33 thru 531-36.1
<input type="checkbox"/>	531-40.7 thru 531-44.3	531-41 thru 531-44.7
<input type="checkbox"/>	531-67 thru 531-76.13	531-67 thru 531-76.14(1)

VOLUME 47

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	537-97 thru 537-100.1	537-97 thru 537-100.1
<input type="checkbox"/>	537-197 thru 537-198.1	537-197 thru 537-198.1
<input type="checkbox"/>	540-93	540-93 thru 540-94.1

VOLUME 48

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	549-13 thru 549-15	549-13 thru 549-16.1
<input type="checkbox"/>	549-51 thru 549-52.3	549-51 thru 549-52.3
<input type="checkbox"/>	549-64.4(1) thru 549-64.5	549-64.5 thru 549-64.6(1)
<input type="checkbox"/>	549-95 thru 549-97	549-95 thru 549-97
<input type="checkbox"/>	549-113 thru 549-116.1	549-113 thru 549-116.1
<input type="checkbox"/>	551-55 thru 551-58.1	551-55 thru 551-58.1
<input type="checkbox"/>	551-114.3.	551-114.3
<input type="checkbox"/>	551-147 thru 551-152.8(1)	551-147 thru 551-152.8(1)

VOLUME 49

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	560-2.1	560-2.1
<input type="checkbox"/>	560-11 thru 560-18.1	560-11 thru 560-18.1
<input type="checkbox"/>	560-29 thru 560-36.5	560-29 thru 560-36.5
<input type="checkbox"/>	560-57	560-57
<input type="checkbox"/>	560-70.1 thru 560-70.5	560-70.1 thru 560-70.5
<input type="checkbox"/>	560-81 thru 560-84.1	560-81 thru 560-84.1

Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
<input type="checkbox"/>	560A-27 thru 560A-29	560A-27 thru 560A-30.1
<input type="checkbox"/>	560A-70.1	560A-70.1 thru 560A-70.2(1)
<input type="checkbox"/>	560A-84.1	560A-84.1
<input type="checkbox"/>	560F-25 thru 560F-26.1	560F-25 thru 560F-26.1
<input type="checkbox"/>	560G-3 thru 560G-5.	560G-3 thru 560G-5
<input type="checkbox"/>	560G-24.1 thru 560G-27.	560G-25 thru 560G-28.1
<input type="checkbox"/>	560G-37	560G-37 thru 560G-38.1
<input type="checkbox"/>	560J-11 thru 560J-15	560J-11 thru 560J-16.1
<input type="checkbox"/>	560J-28.3 thru 560J-28.9.	560J-28.3 thru 560J-28.9
<input type="checkbox"/>	563-41	563-41 thru 563-42.1
<input type="checkbox"/>	564-53 thru 564-55	564-53 thru 564-56.1
<input type="checkbox"/>	564-65	564-65 thru 564-66.1
<input type="checkbox"/>	564-107 thru 564-109	564-107 thru 564-110.1
<input type="checkbox"/>	565-27 thru 565-28.1	565-27 thru 565-28.1

VOLUME 50

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	568-25	568-25 thru 568-26.1

VOLUME 52

Revision

<input type="checkbox"/>	Title page thru I-903	Title page thru I-949
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VOLUME 53

Revision

<input type="checkbox"/>	Title page thru I-1667	Title page thru I-1737
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