PUBLICATION UPDATE

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California Points and Authorities

Publication 186 Release 166 April 2024

HIGHLIGHTS

- **Bankruptcy—Nondischargeable Debts.** 11 U.S.C. § 523(a) has been amended [*see* P.L. 117-347, § 201] to provide that a discharge in any type of bankruptcy proceeding does not discharge an individual debtor for any debt for injury to an individual by the debtor relating to a violation of 18 U.S.C. § 1581 et seq. concerning peonage and human trafficking [*see* 11 U.S.C. § 523[a][20]]. See Ch. 30, *Bankruptcy*, § 30.20.
- **Class Action—Commonality of Interest.** In *Maarten v. Cohanzad* (2023) 95 Cal. App. 5th 596, the court reversed the sustaining of defendants' demurrer to class claims, holding that common issues predominated in a rent-control dispute under the Ellis Act (Gov. Code § 7060 et seq.). See Ch. 41, *Class and Representative Actions*, § 41.39.
- **Civil Procedure—Time to Move to Vacate Default Judgment.** In *Jimenez v. Chavez* (2023) 97 Cal. App. 5th 50, 54, 315 Cal. Rptr. 3d 100, the court of appeal held that the six-month period for filing a motion to vacate a default judgment under Code Civ. Proc. § 473(b), has been construed to mean either 182 days or six calendar months, whichever period is longer. See Ch. 70, *Defaults and Relief From Orders and Judgments: Statutory Remedies*, § 70.10[2][j].
- **Employment—Noncompetition Contracts.** Bus. & Prof. Code § 16600 has been amended to incorporate the opinion in *Edwards v. Arthur Andersen LLP* (2008) 44 Cal. 4th 937, which holds that a noncom-

petition agreement is invalid under Bus. & Prof. Code § 16600, even if narrowly drawn, unless it falls within one of the enumerated statutory exceptions. See Ch. 100, *Employer and Employee: Wrongful Termination and Discipline,* § 100.50.

- **Contract Actions—Statute of Limitations.** In *Piedmont Capital Management, L.L.C. v. McElfish* (2023) 94 Cal. App. 5th 961, the court of appeal held that a borrower's duty to make a payment on a home equity line of credit was divisible from their duty to pay the full amount, so that the statute of limitations to recover the full amount was not necessarily triggered by a missed monthly payment. See Ch. 50A, *Contracts: Performance, Breach, and Defenses*, § 50A.97.
- **Alternative Dispute Resolution—Compelling Arbitration—Signature Authenticity.** *Iyere v. Wise Auto Grp.* (2023) 87 Cal. App. 5th 747, 756, 303 Cal. Rptr. 3d 835, rules that one way for a party resisting arbitration to disprove the authenticity of his or her own signature is for the party to submit admissible evidence creating a question of fact concerning the authenticity of the signature. See Ch. 20, *Arbitration: Compelling*, § 20.85.

ALTERNATIVE DISPUTE RESOLUTION

Compelling Arbitration—PAGA Claims. *Piplack v. In-N-Out Burgers* (2023) 88 Cal. App. 5th 1281, 305 Cal. Rptr. 3d 405 and *Galarsa v. Dolgen Cal., LLC* (2023) 88 Cal. App. 5th 639, 305 Cal. Rptr. 3d 15, hold that representative claims under the PAGA may be tried in court, while individual claims under the Private Attorneys General Act of 2004 (PAGA), Lab. Code § 2698 et seq. are sent to arbitration under the parties' agreement. See Ch. 20, *Arbitration: Compelling*, § 20.51.

Compelling Arbitration—Browsewrap Agreement. *Oberstein v. Live Nation Entm't, Inc.* (9th Cir. 2023) 60 F.4th 505, elucidates the conditions under which an enforceable browsewrap contract will be implied based on an inquiry notice theory. See Ch. 20, *Arbitration: Compelling*, § 20.85.

Compelling Arbitration—Signature Authenticity. *Iyere v. Wise Auto Grp.* (2023) 87 Cal. App. 5th 747, 756, 303 Cal. Rptr. 3d 835, rules that one way for a party resisting arbitration to disprove the authenticity of his or her own signature is for the party to submit admissible evidence creating a question of fact concerning the authenticity of the signature. See Ch. 20, *Arbitration: Compelling*, § 20.85.

Resisting Arbitration—Scope of Agreement. *Duran v. EmployBridge Holding Co.* (2023) 92 Cal. App. 5th 59, 61, 308 Cal. Rptr. 3d 670, held that an arbitration agreement that expressly excludes claims under the PAGA does not provide a basis for compelling arbitration of them. See Ch. 20A, *Arbitration: Resisting*, § 20A.10[3][d1].

Resisting Arbitration—Scope of Agreement. *Vaughn v. Tesla, Inc.* (2023) 87 Cal. App. 5th 208, 303 Cal. Rptr. 3d 457, decided that the arbitration agreement with petitioner did not cover respondent's claims arising from petitioner's conduct while respondent was working for petitioner as an employee of a temporary staffing agency. See Ch. 20A, *Arbitration: Resisting*, § 20A.10[3][d1].

Resisting Arbitration—Implied Agreement. *Doe v. Massage Envy Franchising, LLC* (2022) 87 Cal. App. 5th 23, 303 Cal. Rptr. 3d 269, specified that California law is clear that an offeree, regardless of apparent manifestation of his or her consent, is not bound by inconspicuous contractual provisions of which he or she was unaware, especially when amending an existing agreement. See Ch. 20A, *Arbitration: Resisting*, § 20A.10[3][k1].

Resisting Arbitration—Multiple Agreements. *Johnson v. Walmart Inc.* (9th Cir. 2023) 57 F.4th 677, specified that where two contracts between the parties are separate and concern unrelated transactions, the lack of an arbitration clause in one generally means disputes over that agreement are not subject to arbitration. See Ch. 20A, *Arbitration: Resisting*, § 20A.30.

Resisting Arbitration—Successive Agreements. *Suski v. Coinbase, Inc.* (9th Cir. 2022) 55 F.4th 1227, clarified that a forum selection clause in a later applicable agreement between the parties supersedes the applicability of an arbitration clause in a prior agreement between the parties. See Ch. 20A, *Arbitration: Resisting*, § 20A.30.

Resisting Arbitration—Implied Agreement. *Jackson v. Amazon.com, Inc.* (9th Cir. 2023) 65 F.4th 1093, determined that implied mutual assent requires, at a minimum, that the party relying on the contractual provision establish that the other party had notice of a change of terms, among other things. See Ch. 20A, *Arbitration: Resisting*, § 20A.35.

Resisting Arbitration—Implied Agreement. *Fleming v. Oliphant Fin., LLC* (2023) 88 Cal. App. 5th 13, 23–24, 304 Cal. Rptr. 3d 464, held that establishing an implied-in-fact agreement to arbitrate claims arising from a credit card agreement requires a showing that the card holder received the terms of the agreement. See Ch. 20A, *Arbitration: Resisting*, § 20A.35.

Resisting Arbitration—Implied Agreement. *Beco v. Fast Auto Loans, Inc.* (2022) 86 Cal. App. 5th 292, 302 Cal. Rptr. 3d 168, decided that incorporation by reference of an arbitration provider's rules does not meet the clear and unmistakable test for a delegation clause in an employment-related arbitration agreement to be effective. See Ch. 20A, *Arbitration: Resisting*, § 20A.51.

Resisting Arbitration—Election to Invalidate. For a new form, Respondent Elects to Invalidate Arbitration Clause as Applied to Sexual Harassment or Assault Dispute [9 U.S.C. § 402(a)], see Ch. 20A, *Arbi-*

tration: Resisting, § 20A.52.

Resisting Arbitration—Waiver. *Desert Reg'l Med. Ctr., Inc. v. Miller* (2022) 87 Cal. App. 5th 295, 303 Cal. Rptr. 3d 412, ruled that the employer waived the right to arbitrate by engaging in litigation conduct that was inconsistent with arbitration, including filing a de novo appeal in state court of an administrative decision of the Labor Commission. See Ch. 20A, *Arbitration: Resisting*, § 20A.86B[3][d].

Resisting Arbitration—Unconscionability. *Alberto v. Cambrian Homecare* (2023) 91 Cal. App. 5th 482, 495, 308 Cal. Rptr. 3d 230, affirmed the rule that the trial court may refuse to enforce an arbitration agreement that is permeated by unconscionable provisions. See Ch. 20A, *Arbitration: Resisting*, § 20A.91.

Resisting Arbitration—Unconscionability. *Gostev v. Skillz Platform, Inc.* (2023) 88 Cal. App. 5th 1035, 305 Cal. Rptr. 3d 248, decides that in the employment context, an arbitration clause that is "confusing" and "contradictory" may constitute unfair surprise. See Ch. 20A, *Arbitration: Resisting*, § 20A.91.

Resisting Arbitration—Unconscionability. *Murrey v. Superior Court* (2023) 87 Cal. App. 5th 1223, 304 Cal. Rptr. 3d 439, rules that an employment agreement that specifies that one party may select an arbitration service provider and that fails to specify where any arbitration will be held constitutes surprise. See Ch. 20A, *Arbitration: Resisting*, § 20A.91.

Resisting Arbitration—PAGA Claim Waiver. *Westmoreland v. Kindercare Educ. LLC* (2023) 90 Cal. App. 5th 967, 307 Cal. Rptr. 3d 554, invalidated an arbitration agreement that included a waiver of PAGA claims and a nonseverability clause. See Ch. 20A, *Arbitration: Resisting*, § 20A.98[3][d].

Vacating Arbitration Award—Statutory Rights. *Starr v. Mayhew* (2022) 83 Cal. App. 5th 842, 299 Cal. Rptr. 3d 99, determines that a party's incorrect citation in a brief considered by the arbitrator does not constitute undue means as a ground to vacate a contractual arbitration award. See Ch. 20C, *Arbitration: Confirming, Correcting, or Vacating the Award*, § 20C.70.

ATTORNEYS

Disqualification Not Automatically Required Under Cal. Rules Prof. Conduct, Rule 3.7. In *Geringer v. Blue Rider Finance* (2023) 94 Cal. App. 5th 813, 821–826, 312 Cal. Rptr. 3d 618, the court of appeal held that a trial court's discretion to disqualify a likely advocate-witness under Cal. Rules Prof. Conduct, Rule 3.7, notwithstanding client consent, is permissible only upon a convincing demonstration of detriment to the opponent or injury to the integrity of the judicial process, a trial court has discretion to disqualify an attorney. See Ch. 24, *Attorneys At Law: Substitution, Withdrawal, Disqualification, And Authority To Appear*, § 24.50.

BANKRUPTCY

Bankruptcy—Nondischargeable Debts. 11 U.S.C. § 523(a) has been amended [*see* P.L. 117-347, § 201] to provide that a discharge in any type of bankruptcy proceeding does not discharge an individual debtor for any debt for injury to an individual by the debtor relating to a violation of 18 U.S.C. § 1581 et seq. concerning peonage and human trafficking [*see* 11 U.S.C. § 523[a][20]]. See Ch. 30, *Bankruptcy*, § 30.20.

CIVIL PROCEDURE

Amended Pleadings—Notice. *North Coast Village Condominium Association v. Phillips* (2023) 94 Cal. App. 5th 866, 886, 313 Cal. Rptr. 3d 31, holds that in a case in which a condominium association filed a petition for a workplace violence restraining order in support of its board president against a resident, the trial court abused its discretion by sua sponte, and absent a request to amend the pleadings by either party, amending the cause of action and petitioning party without adequate notice to the resident. See Ch. 16, *Amended and Supplemental Pleadings,* § 16.04.

Amended Pleadings—Denial as Abuse of Discretion. *Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2023) 94 Cal. App. 5th 764, 771, 312 Cal. Rptr. 3d 520, holds that for an original complaint, regardless of whether the plaintiff has requested leave to amend, a trial court's denial of leave to amend constitutes an abuse of discretion unless the complaint shows on its face that it is incapable of amendment. Denial of leave to amend an initial complaint is appropriate only when it conclusively appears that there is no possibility of alleging facts under which recovery can be obtained. See Ch. 16, *Amended and Supplemental Pleadings,* § 16.30[4][a].

Anti-SLAPP—Sanctions. In *Zarate v. McDaniel* (2023) 97 Cal. App. 5th 484, 488–491, 2023 Cal. App. LEXIS 909, the court of appeal held that although Code Civ. Proc. § 425.16(c) authorizes an attorney's fee award to a plaintiff if the court finds the defendant's anti-SLAPP motion was frivolous or was solely intended to cause unnecessary delay, where the motion can be withdrawn or appropriately corrected, a motion for sanctions cannot be filed with the court unless the challenged action has not been withdrawn or corrected 21 days after service of the sanctions motion or within any other period as the court may prescribe. See Ch. 161, *Motions to Strike: Anti-SLAPP*, § 161.41.

Declaratory Relief—Absence of Dispute. In *Rhonda S. v. Kaiser Found. Health Plan, Inc.* (2023) 94 Cal. App. 5th 643, the court held that a conservator was not entitled to a declaration of a health-care provider's obligations to her conservatee adult son under the Lanterman-Petris-Short Act (Welf. & Inst. Code § 5000 et seq.) because the defendant did not dispute the plaintiff's underlying assertion. See Ch. 67, *Declaratory Relief*, § 67.24.

Default—Time to Move to Vacate Default Judgment. In *Jimenez v. Chavez* (2023) 97 Cal. App. 5th 50, 54, 315 Cal. Rptr. 3d 100, the court of appeal held that the six-month period for filing a motion to vacate a default judgment under Code Civ. Proc. § 473(b), has been construed to mean either 182 days or six calendar months, whichever period is longer. See Ch. 70, *Defaults and Relief From Orders and Judgments: Statutory Remedies*, § 70.10[2][j].

Demurrer—Federal Two-Dismissal Rule When Action Filed in California. In *Gray v. La Salle Bank, N.A.* (2023) 95 Cal. App. 5th 932, 948–960, 2023 Cal. App. LEXIS 759, the court of appeal held that the two-dismissal rule of Fed. Rules Civ. Proc., Rule 41(a)(1)(B) applies when there is a voluntary dismissal in state or federal court, a second voluntary dismissal in federal court, and the subsequent filing of an action in the same federal court where the second suit was dismissed, not when the plaintiff subsequently files in state court alleging state law claims. See Ch. 71, *Demurrers and Motions for Judgment on the Pleadings*, § 71.55.

Judges—Error on Question of Law. *Rab v. Weber* (2023) 91 Cal. App. 5th 1337, 1352, 308 Cal. Rptr. 3d 888, holds that erroneous rulings against a litigant, even when numerous and continuous, do not establish a charge of bias and prejudice by a trial judge. That a party disagrees with how the court ruled regarding the County's compliance with requirements to meet and confer prior to bringing a motion for protective order is hardly evidence that the average person could well entertain doubt whether the trial judge was impartial, particularly in light of the extensive thought and care that went into the trial judge's rulings in this matter. See Ch. 130, *Judges,* § 130.72[4][d].

Judgments—Debtor's Principal Place of Residence Not Subject to Sale to Satisfy Consumer Debt. In *Davis Boat Manufacturing-Nordic, Inc. v. Smith* (2023) 95 Cal. App. 5th 660, 672–680, 313 Cal. Rptr. 3d 673, the court of appeal held that under Code Civ. Proc. § 699.730, a judgment debtor's principal place of residence is not subject to sale under execution of a judgment lien based on a consumer debt unless the debt was secured by the debtor's principal place of residence at the time it was incurred. See Ch. 131, *Judgments*, § 131.165.

Jurisdiction, Personal—Operating Out of California. *Impossible Foods Inc. v. Impossible X LLC* (9th Cir. 2023) 80 F.4th 1079, 1087, holds that California federal court in a trademark declaratory judgment suit had specific personal jurisdiction under Code Civ. Proc. § 410.10 over the defendant, a one-person company run by a person who for two years operated his business from California, but who operated from another state at the time the suit was filed, because the defendant had previously operated out of California and built its brand and trademarks

there and thus, its activities in the forum state were sufficiently affiliated with the underlying trademark dispute to satisfy the requirements of due process. See Ch. 132, *Jurisdiction: Personal Jurisdiction and Inconvenient Forum,* § 132.110[4][a].

Jurisdiction, Personal—Minimum Contacts Requirement Not Satisfied. *Briskin v. Shopify, Inc.* (9th Cir. 2023) 87 F.4th 404, holds that defendants' extracting and retaining of consumer data and their tracking of customers did not expose them to personal jurisdiction in California, where a consumer made his online purchase, because defendants did not expressly aim their suit-related conduct at the forum state; when a company operated a nationally available e-commerce payment platform and was indifferent to the location of end-users, the extraction and retention of consumer data, without more, did not subject the defendant to specific jurisdiction in the forum where the online purchase was made. See Ch. 132, *Jurisdiction: Personal Jurisdiction and Inconvenient Forum,* § 132.78[4][a].

Jurisdiction, Subject Matter—Amount in Controversy for Limited Civil Action. Changes to various sections of the Code of Civil Procedure increased the amount in controversy for limited civil actions from $25,000 to $35,000. See Ch. 133, *Jurisdiction: Subject Matter Jurisdiction*, §§ 133.70, 133.90, 133.110, 133.111, 133.130.

Limitation of Actions—Sexual Assault of a Child. Effective January 1, 2024, Code Civ. Proc. § 340.1 provides that there is no time limit for the commencement of actions as described in § 340.1(a)(1)–(3) for recovery of damages suffered as a result of childhood sexual assault that occurred on and after January 1, 2024 [*see* Code Civ. Proc. § 340.1(a), (p)]. Notwithstanding any other law, a claim for damages based on conduct described in § 340.1(a)(1)–(3), in which the childhood sexual assault occurred on or before December 31, 2023 may only be commenced pursuant to the applicable statute of limitations set forth in existing law as it read on December 31, 2023 [*see* Code Civ. Proc. § 340.1(p)]. Effective January 1, 2024, Code Civ. Proc. § 340.11 creates a statute applying the existing statute of limitations applicable to childhood sexual assault previously found in Code Civ. Proc. § 340.1 to only childhood sexual assault that occurred before January 1, 2024; imports and expands on the already existing definition of "childhood sexual assault" in § 340.1 to include any act committed against the plaintiff that occurred when the plaintiff was a child and that would have been proscribed by § 311.1 or § 311.2 of the Penal Code; and provides that notwithstanding the statute of limitations otherwise applied, in an action for recovery of damages suffered as a result of childhood sexual assault related to §§ 311.1 and 311.2 of the Penal Code that occurred before January 1, 2024, the time for commencement of the action shall be within 22 years of the date the plaintiff attains the age of majority or

within 10 years of the date the plaintiff discovers or reasonably should have discovered, after the age of majority, the existence of obscene matter. See Ch. 143, *Limitation of Actions,* §§ 143.24, 143.25, 143.57.

Limitation of Actions—Equitable Estoppel. *State Comp. Ins. Fund v. Dep't of Ins.* (2023) 96 Cal. App. 5th 227, 239, 314 Cal. Rptr. 3d 78, holds that in the statute of limitations context, equitable estoppel may be appropriate where the defendant's act or omission actually and reasonably induced the plaintiff to refrain from filing a timely suit. The requisite act or omission must involve a misrepresentation or nondisclosure of a material fact bearing on the necessity of bringing a timely suit. The estopped party must either misrepresent or conceal material facts with knowledge of the true facts (or gross negligence as to them) and with the intent that another who is ignorant of the facts will rely on the misrepresentation or concealment. Application of the doctrine is justified only if the facts clearly establish that a grave injustice would be done if an equitable estoppel were not applied. See Ch. 143, *Limitation of Actions,* § 143.50[4][a].

Limitation of Actions—Equitable Tolling. *Metabyte, Inc. v. Technicolor S.A.* (2023) 94 Cal. App. 5th 265, 279, 312 Cal. Rptr. 3d 129, holds that one scenario under which equitable tolling may apply is when a plaintiff pursues one of several available legal remedies, causing it to miss the statute of limitations for other remedies it later wishes to pursue. Yet such facts are far from the only circumstances under which the doctrine may apply. To determine whether equitable tolling may extend a statute of limitations, courts must analyze whether a plaintiff has established the doctrine's three elements: timely notice to the defendant, lack of prejudice to the defendant, and reasonable and good faith conduct by the plaintiff. The focus of the prejudice factor is whether the facts of the two claims are at least so similar that the defendant's investigation of the first claim will put him or her in a position to fairly defend the second. The critical question is whether notice of the first claim affords the defendant an opportunity to identify the sources of evidence which might be needed to defend against the second claim. See Ch. 143, *Limitation of Actions,* § 143.46[4][b].

Limitation of Actions—Department of Personnel Administration. *Shah v. Department of Human Resources* (2023) 92 Cal. App. 5th 590, 594, 309 Cal. Rptr. 3d 523, holds that because it applies only to a specific and smaller subset of claims against public entities, Gov. Code § 19815.8 is the more specific statute of limitations and takes precedence over Gov. Code § 945.6. See Ch. 143, *Limitation of Actions,* § 143.21[4][a].

Statement of Decision—Failure to Object to Statement of Decision. In *In re Marriage of Motiska & Ford* (2023) 96 Cal. App. 5th 1291, 1300, 315 Cal. Rptr. 3d 89, the court of

appeal held that, under Code Civ. Proc. § 634, if statement of decision does not resolve a controverted issue or is ambiguous, and the omission or ambiguity was brought to the attention of the trial court, it may not be inferred on appeal that the trial court decided in favor of the prevailing party as to those facts or on that issue. See Ch. 215, *Statement of Decision*, § 215.23.

Statutory Interpretation—Housing Crisis Act. In *Yes In My Back Yard v. City of Culver City* (2023) 96 Cal. App. 5th 1103, the appellate court affirmed the issuance of a writ of mandate against a city and the repeal of a city ordinance that violated the plain meaning Housing Crisis Act of 2019 (Gov. Code § 66300 et seq.) by reducing the intensity of land-use in the residential zone to below what was allowed under the zoning ordinance that was in effect on January 1, 2018. See Ch. 217, *Statutory Interpretation*, § 217.20[4][b].

Statutory Interpretation—Commercial Lessee Required to Pay Rent During COVID-19 Pandemic. In *KB Salt Lake III LLC v. Fitness Int'l, LLC* (2023) 95 Cal. App. 5th 1032, the court affirmed summary judgment for the plaintiff lessor in its unlawful-detainer action against a commercial lessee, over the defendant's arguments that the *force majeure* clause in the lease and impossibility of performance prevented it from paying rent during the COVID-19 pandemic and pursuant to government closure orders. See Ch. 217, *Statutory Interpretation*, § 217.22[4][b].

Statutory Interpretation—Vehicle Code Changes Meaning. In *Allied Premier Ins. v. United Fin. Cas. Co.* (2023) 15 Cal. 5th 20, the California Supreme Court, answering a certified question from the Ninth Circuit, held that Motor Carriers of Property Permit Act (Veh. Code § 34600 et seq.) differs in meaning from its predecessor statute in that it prohibits only cancellation of a certificate of insurance without specified notice, rather than prohibiting cancellation or termination of the underlying policy. See Ch. 217, *Statutory Interpretation*, § 217.85.

CIVIL RIGHTS

ADA Does Not Apply to Stand-Alone Website. In *Martin v. Thi E-Commerce, LLC* (2023) 95 Cal. App. 5th 521, the court held that the ADA does not apply to a stand-alone website; it applies to a website only if there is a sufficient nexus to the goods and services offered at the defendant's physical facilities. Plaintiff's causes of action for discrimination based on the ADA and Unruh Civil Rights Act were therefore properly dismissed on demurrer. See Ch. 35, *Civil Rights: Unruh Civil Rights Act,* § 35.20[4][c].

Violation of Unruh Civil Rights Act. In *Liapes v. Facebook, Inc.* (2023) 95 Cal. App. 5th 910, the court reversed the trial court's sustaining of a demurrer to a 48-year-old woman's class-action complaint against a social-networking service for violations of Civil Code §§ 51(b)

and 51.5; defendant allegedly contributed to the content of insurance ads that targeted certain user characteristics, such as gender and age. See Ch. 35, *Civil Rights: Unruh Civil Rights Act,* § 35.44.

Sexual Harassment Under Civil Code § 51.9. In *Thomas v. The Regents of the Univ. of Cal.* (2023) 97 Cal. App. 5th 587, the court reversed the sustaining of a demurrer to a complaint by a female student athlete against the university and the head coach, holding that the plaintiff stated a cause of action under Civil Code § 51.9 for sexual harassment. See Ch. 35, *Civil Rights: Unruh Civil Rights Act,* § 35.48[4][a].

No Time Limit for Action to Recover Damages for Childhood Sexual Abuse. Code Civ. Proc. § 340.1 was amended, effective January 1, 2024, to eliminate time limits for the commencement of actions for recovery of damages suffered as a result of childhood sexual assault, when the conduct occurred on or after January 1, 2024. See Ch. 210, *Schools: Actions by Students,* § 210.27[3][j].

CLASS ACTIONS

Commonality of Interest. In *Maarten v. Cohanzad* (2023) 95 Cal. App. 5th 596, the court reversed the sustaining of defendants' demurrer to class claims, holding that common issues predominated in a rent-control dispute under the Ellis Act (Gov. Code § 7060 et seq.). See Ch. 41, *Class and Representative Actions*, § 41.39.

CONTRACTS

Contract Actions—Statute of Limitations. In *Piedmont Capital Management, L.L.C. v. McElfish* (2023) 94 Cal. App. 5th 961, the court of appeal held that a borrower's duty to make a payment on a home equity line of credit was divisible from their duty to pay the full amount, so that the statute of limitations to recover the full amount was not necessarily triggered by a missed monthly payment. See Ch. 50A, *Contracts: Performance, Breach, and Defenses*, § 50A.97.

DISCOVERY

Discovery Requests in Public Records Act Case May Not Go Beyond Discovery of Information Necessary to Resolve Whether Agency Had Duty to Disclose. In *County of San Benito v. Superior Court* (2023) 96 Cal. App. 5th 243, 257–264, 314 Cal. Rptr. 3d 269, the court of appeal held that when a party seeks to compel discovery in a Public Records Act proceeding, the trial court must determine whether the discovery was necessary to resolve the narrow issues of whether a duty to disclose existed and whether the discovery was justified. See Ch. 80, *Discovery: Scope, Regulation, And Timing*, § 80.52.

Employer Not Liable for Employee's Deemed Admissions. In *Inzunza v. Naranjo* (2023) 94 Cal. App. 5th 736, 742–746, 312 Cal. Rptr. 3d 596, the court of appeal held that it is unfair to hold an employer liable for deemed admissions of fault resulting from the employee's failure to timely

respond to requests for admissions. See Ch. 86, *Discovery: Requests for Admission*, § 86.61.

EMPLOYMENT LAW

Noncompetition Contracts. Bus. & Prof. Code § 16600 has been amended to incorporate the opinion in *Edwards v. Arthur Andersen LLP* (2008) 44 Cal. 4th 937, which holds that a noncompetition agreement is invalid under Bus. & Prof. Code § 16600, even if narrowly drawn, unless it falls within one of the enumerated statutory exceptions. See Ch. 100, *Employer and Employee: Wrongful Termination and Discipline,* § 100.50.

INJUNCTIONS AND PROVISIONAL REMEDIES

Injunctions—Unavailable as Remedy For Past Acts Not Likely To Recur. In *Oroville Dam Cases* (2023) 96 Cal. App. 5th 173, 184–185, 314 Cal. Rptr. 3d 247, the court of appeal held that an injunction may issue only when the injury at issue is impending and so immediately likely as only to be avoided by issuance of the injunction; a corollary of this rule is that a change in circumstances which renders injunctive relief unnecessary justifies denial of the remedy. See Ch. 116, *Injunctions*, § 116.46.

MANDATE AND PROHIBITION

Writ of Mandate for Performance of Ministerial Duty. In *Santa Paula Animal Rescue Center, Inc. v. County of Los Angeles* (2023) 95 Cal. App. 5th 630, 638–644, 313 Cal. Rptr. 3d 566, the court of appeal held that under Code Civ. Proc. § 1085, a court may issue a writ of mandate to compel the performance of an act which the law specifically enjoins, on a showing that the public official or entity had a ministerial duty to perform, and the petitioner had a clear and beneficial right to performance. See Ch. 150, *Mandate and Prohibition*, § 150.39.

PUBLIC ADMINISTRATIVE LAW

Applicability of Doctrine of Fair Procedure. In *Campbell v. Career Development Institute, Inc.* (2023) 97 Cal. App. 5th 1109, 1113–114, 2023 Cal. App. LEXIS 956, the court of appeal held that the doctrine of fair procedure requires a private organization to comply with its own procedural rules governing the expulsion of individuals from the organization, and it permits courts to evaluate the basic fairness of those procedural rules when the organization seeks to exclude or expel an individual from its membership. See Ch. 195, *Public Administrative Law*, § 195.10.

SALES

Song-Beverly Act—Waivers. In *Rheinhart v. Nissan North America, Inc.* (2023) 92 Cal. App. 5th 1016, the court of appeal held that the Song-Beverly Act's anti-waiver provision is not limited to warranties or any particular timeframe during the purchase process, but encompasses all mandated remedies afforded to buyers. See Ch. 206, *Sales*, § 206.105[3].

TORTS

Employer Owes No Duty to Prevent COVID-19 Spread to Employee's Family. In *Kuciemba v. Victory Woodworks, Inc.* (2023) 14 Cal. 5th 993, the California Supreme Court held that an employer does not owe a duty of care to prevent the spread of COVID-19 to an employee's household. See Ch. 165, *Negligence*, § 165.90.

Public Employee Immunity for Prosecution of Official Proceedings Clarified by Supreme Court. In *Leon v. County of Riverside* (2023) 14 Cal. 5th 910, the California Supreme Court held that public employee immunity under Gov. Code § 821.6 applies to claims of injury arising from a public employee's initiation or prosecution of an official proceeding, whether the act was done with malice and without probable cause, as would be required for an actual malicious prosecution action, or the act was allegedly tortious for other reasons. See Ch. 196, *Public Entities*, §§ 196.10[10], 196.281.

Primary Assumption of Risk Doctrine Does Not Apply to Mandatory Physical Education Class. In *Nigel B. v. Burbank Unified School Dist.* (2023) 93 Cal. App. 5th 64, the court of appeal held that the primary assumption of risk doctrine does not provide a defense if a student at school is injured during a mandatory physical education class when participation by the injured student in the class was not voluntary. See Ch. 210, *Schools: Actions by Students*, § 210.30.

Organizational Expenses May Support Standing to Sue for Unfair Competition. In *California Medical Assn. v. Aetna Health of California Inc.* (2023) 14 Cal. 5th 1075, the California Supreme Court held that the diversion of salaried staff time and other office resources by an organization to respond to perceived unfair competition can be sufficient to establish standing for the organization to sue for unfair competition on its own behalf. See Ch. 235, *Unfair Competition*, § 235.50.

Collateral Source Rule Cannot Be Used to Create Standing in Unfair Competition Lawsuit. In *Williamson v. Genentech, Inc.* (2023) 94 Cal. App. 5th 410, the court of appeal held that a plaintiff who has suffered no injury in fact cannot use the collateral source rule to shift his or her insurer's alleged loss over to the plaintiff in order to meet the requirements for standing under the unfair competition statute. See Ch. 235, *Unfair Competition*, § 235.62.

Lender's Unlicensed Status Did Not Support Unfair Competition Claim by Borrowers. In *Lagrisola v. North American Financial Corp.* (2023) 96 Cal. App. 5th 1178, the court of appeal held that, although plaintiff borrowers alleged that they would not have taken out a home loan with the lender they used if they had known that their lender did not have the proper license as a lender in California, plaintiffs had not established that they suffered any economic injury caused by the lender's unlicensed status and thus had no

standing to sue under the unfair competition statute. See Ch. 235, *Unfair Competition*, § 235.62.

WILLS, TRUSTS, ESTATES

Community and Separate Property. A court of appeals held that the trial court correctly concluded that the ex-spouse could not satisfy his tracing burden simply by showing the total community debts he paid in the five years between separation and trial exceeded the total community assets he held post-separation [*In re Marriage of Simonis* (2023) 95 Cal. App. 5th 1129, 1145, 314 Cal. Rptr. 3d 91]. See Ch. 151, *Married Persons*, § 151.21[3][b].

Free Room and Board Constitutes "Remuneration" for Purpose of Caregiver Presumption in Prob. Code § 21380. In *Robinson v. Gutierrez* (2023) 98 Cal. App. 5th 278, 316 Cal. Rptr. 3d 57, 2023 Cal. App. LEXIS 990, the court held that free room and board constitutes "remuneration" within the meaning of Prob. Code § 21362, which defines the term "care custodian" for purposes of the caregiver presumption in Prob. Code § 21380. Accordingly, a defendant who received free room and board in return for caregiver services came within the statutory definition of "care custodian" and was subject to the statutory presumption that a transfer to a care custodian is the product of fraud or undue influence if the instrument was executed during the period in which the care custodian provided services to the transferor [Robinson v. Gutierrez, *supra*, 2023 Cal. App. LEXIS 990, at pp. *19, *28]. See Ch. 186, *Probate of Wills*, § 186.29B[3][e].

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