

PUBLICATION UPDATE

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California Forms of Pleading and Practice Annotated

Publication 181

Release 173

July 2008

HIGHLIGHTS

Negligent or Wrongful Conduct Required in Action for Dangerous Condition of Public Property

- In *Metcalf v. County of San Joaquin* (2008) 42 Cal. 4th 1121, the California Supreme Court holds it is not enough that a plaintiff suing a public entity for injury caused by a dangerous condition on public property plead and prove that a dangerous condition existed and that it caused injury to plaintiff, but plaintiff must also plead and prove that the dangerous condition was created through the negligent or wrongful act or omission of an employee of the public entity, or that the public entity had notice of the dangerous condition a sufficient time prior to the injury to take remedial steps. The Court also affirmed that the negligence standard applicable to a finding of liability is the common-law ordinary negligence standard.

Improved Tables and Finding Aids

- This release updates and improves the Table of Affirmative Defense

Forms, the Table of Limitation Periods, and the Table of Liens with new entries, cross references, and improved formats. These tables are an excellent resource for assuring that vital elements are not overlooked in your case, and provide an additional gateway to important analyses and forms throughout the publication.

Latest Legislation, Rules of Court, and Judicial Council Forms

- This release updates various chapters throughout the publication for legislation, rules of court, and Judicial Council Forms effective July 1, 2008.

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

- Alternative Dispute Resolution
- Appeals
- Assemblies, Meetings, and Demonstrations
- Attorneys
- Civil Procedure
- Civil Rights
- Class Actions

- Commercial Law
- Constitutional Law
- Corporations
- Costs and Attorney's Fees
- Discovery
- Elections
- Employment
- Equity
- Federal Courts
- Guardianships and Conservatorships
- Injunctions
- Juvenile Law
- Liens
- Privacy
- Probate
- Relief From Judgments
- Schools
- Torts and Insurance
- Trial
- Unfair Competition

Release 173 of California Forms of Pleading and Practice Annotated updates the publication in many areas noted in more detail below.¹

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ALTERNATIVE DISPUTE RESOLUTION

Private Arbitration—Federal Arbitration Act Preempts Jurisdiction of Labor Commissioner. The United States Supreme Court has considered *Ferrer v. Preston* (2006) 145 Cal. App. 4th 440, and reversed, finding that the Federal Arbitration Act supersedes state laws lodging primary jurisdiction in another forum, whether judicial or administrative. At issue was Lab. Code § 1700.44(a), which purports to vest exclusive jurisdiction in the Labor Commissioner to determine application of the Talent Agency Act to a particular management contract [*Preston v. Ferrer* (2008) — U.S. —, 128 S. Ct. 978]. See **Ch. 32, Contractual Arbitration: Agreements and Compelling Arbitration**, § 32.21[1][c][ii], 32.24[2][b] and [g].

Private Arbitration—Under Federal Arbitration Act Statutory Grounds for Vacating Award Are Exclusive. The United States Supreme Court has addressed the circuit split regarding the parties' ability to expand the scope of judicial review of an arbitration award and held in line with the Ninth Circuit that the grounds enumerated in 9 U.S.C. § 10 are exclusive, and the parties cannot expand the scope of review by contract. A provision for review of the award for legal error is void and unenforceable [*Hall Street Associate v. Mattel, Inc.* (2008) — U.S. —, 128 S. Ct. 1396]. See **Ch. 34, Contractual Arbitration: Judicial Review**, § 34.19[1][b][i].

Private Arbitration—Class Arbitration Waiver in Context of Wage and Hour Laws. The First Appellate District, Division One has considered a class arbitration prohibition in the context of employees' statutory rights regarding hours

and wages, and followed *Gentry v. Superior Court (Circuit City Stores, Inc.)* (2007) 42 Cal. 4th 443, finding the prohibition unconscionable and unenforceable [*Murphy v. Check N' Go of California, Inc.* (2007) 156 Cal. App. 4th 138]. See **Ch. 32, Contractual Arbitration: Agreements and Compelling Arbitration**, § 32.32[2][a], [c].

Private Arbitration—Single Overlapping Issue Requires Stay Under Code Civ. Proc. § 1281.4. A single overlapping issue is sufficient to require imposition of a stay under Code Civ. Proc. § 1281.4. The court has no discretion in the matter [*Heritage Provider Network, Inc. v. Superior Court (Eastland Medical Group)* (2008) 158 Cal. App. 4th 1146]. See **Ch. 32, Contractual Arbitration: Agreements and Compelling Arbitration**, §§ 32.31[2][a], 32.97[2].

Private Arbitration—Spousal Relationship Is Not Enough to Confer Agency. The Fourth Appellate District, Division Three has agreed with the Fourth District, Division One in holding that the spousal relationship alone is not sufficient to empower one spouse, as agent, to bind the other spouse to an arbitration agreement. The case involved elder abuse and other claims against a residential care facility for the elderly. The court was careful to distinguish medical malpractice cases in which the patient can bind the other spouse to arbitrate [*Warfield v. Summerville Senior Living, Inc.* (2007) 158 Cal. App. 4th 443]. See **Ch. 32, Contractual Arbitration: Agreements and Compelling Arbitration**, § 32.21[1][b].

Private Arbitration—Award of Attorney's Fees May Be Proper on Denial of Petition to Compel Arbitration. When an action is brought solely to compel arbitration of contractual disputes between the parties and the merits of the claims sought

to be arbitrated are not at issue in the proceedings to compel arbitration, respondent, if successful in obtaining an order denying the petition to compel arbitration and the contract provides for them, will be entitled to its attorney's fees incurred in responding to the petition [*Otay River Constructors v. San Diego Expressway* (2007) 158 Cal. App. 4th 796]. See **Ch. 32, Contractual Arbitration: Agreements and Compelling Arbitration**, § 32.94[3][vi].

APPEALS

Certain Collateral Orders Such As Sealing Court Records Are Appealable. In *Mercury Interactive Corporation v. Klein* (2007) 158 Cal. App. 4th 60, the court of appeal held that orders concerning the sealing of court records are an exception to the one final judgment rule and are appealable. See **Ch. 42, Appeal: Notice of Appeal**, § 42.12[1][a].

Notice of Entry of Judgment and Time for Appeal. In *Adaimy v. Ruhl* (2008) 160 Cal. App. 4th 583, the court of appeal held that notice of entry of judgment sent to only one of a party's two attorneys constitutes legal notice and starts the time running to file a notice of appeal. See **Ch. 42, Appeal: Notice of Appeal**, § 42.13[2][a].

ASSEMBLIES, MEETINGS, AND DEMONSTRATIONS

Special License Plate Program Created Limited Public Forum. In *Ariz. Life Coalition, Inc. v. Stanton* (9th Cir. 2008) 515 F.3d 956, an action by a nonprofit coalition of pro-life organizations alleging violation of First Amendment rights by a state license plate commission's denial of an application for a special organization license plate that would portray its message, the trial court erred in granting summary judgment to the license plate commission on the grounds that it was state-adopted speech that the state was free to

regulate without First Amendment constraint. By allowing organizations to obtain speciality license plates with their logo and motto, the state provided a forum in which philanthropic organizations could exercise their First Amendment rights in the hopes of raising money to support their cause, supporting a finding of private speech, not government speech. See **Ch. 59, Assemblies, Meetings, and Demonstrations.**

Anonymous Speech on Internet Has First Amendment Protection. In *Krinsky v. Doe 6* (2008) 159 Cal. App. 4th 1154, an action for defamation based on anonymous postings on a financial bulletin board on the Internet, plaintiff's ability to discover the identity of an anonymous poster through a subpoena to the message board host had to be weighed against the poster's long-recognized First Amendment right to speak anonymously. The applicability of the First Amendment to speech on the message board also foreclosed a cause of action for interference with business relationships. See **Ch. 59, Assemblies, Meetings, and Demonstrations.**

ATTORNEYS

Statute of Limitations in Criminal Defense Attorney Malpractice Action Runs Despite Lack of Postconviction Relief; Proposition 51 Applicable to Legal Malpractice Action Seeking Primarily Noneconomic Damages. In *Ovando v. County of Los Angeles* (2008) 159 Cal. App. 4th 42, the court of appeal in an attorney malpractice action brought against a criminal defense attorney held that the lack of postconviction relief for the criminal defendant does not stay the running of the statute of limitations. In addition, the court held that Proposition 51, as codified in Civ. Code § 1431.2, can be applied to an action that seeks primarily noneconomic damages, such as damages for emotional distress caused when a criminal defense attor-

ney's malpractice resulted in his client's criminal conviction. See **Ch. 76, Attorney Professional Liability, §§ 76.10[2], 76.70, 76.92[1]; Ch. 300, Indemnity and Contribution, § 300.63[3][d].**

Contingency Fee Agreements. In *Stroud v. Tunzi* (2008) 160 Cal. App. 4th 377, the court held that modifications to a valid contingency fee agreement must comply with Bus. & Prof. Code § 6147. See **Ch. 72, Attorney Practice, § 72.196[2].**

Court May Revoke Pro Hac Vice Status. In *Sheller v. Superior Court of Los Angeles County* (2008) 158 Cal. App. 4th 1697, the court held that a trial court's inherent powers include the authority to revoke an attorney's pro hac vice status when that attorney has engaged in conduct that would be sufficient to disqualify a California attorney. See **Ch. 72, Attorney Practice, § 72.223[4].**

CIVIL PROCEDURE

Amendment of Complaint—Effect. One defendant's filing of an answer does not divest a plaintiff of the right to amend the complaint with respect to causes of action brought against other demurring defendants [*Barton v. Khan* (2007) 157 Cal. App. 4th 1216]. See **Ch. 21, Amended and Supplemental Pleadings, § 21.12.**

Amendment of Complaint—Delay. Leave to amend a complaint may be denied for undue delay when a plaintiff asserts the right to amendment five weeks after the trial court granted summary judgment and the plaintiff cannot justify the long delay [*O'Brien v. Camisasca Automotive Manufacturing, Inc.* (2008) 161 Cal. App. 4th 388]. See **Ch. 21, Amended and Supplemental Pleadings, § 21.13.**

Answers—Affirmative Defenses. This chapter's Table of Affirmative Defense Forms, which cross references the various affirmative defense forms throughout the

publication, is enhanced with primary law citations to statutes, cases, and rules of court for each subject included in the table. The table works as a check for making sure an applicable affirmative defense is not overlooked when preparing an answer, and provides the primary law citation for further research. See *Ch. 26, Answers, § 26.150 et seq.*

Jurisdiction—Subsequent Events.

Once acquired, jurisdiction is not defeated by subsequent events that might have prevented jurisdiction had they occurred before personal service of the action was made [*Goldman v. Simpson* (2008) 160 Cal. App. 4th 255]. See *Ch. 323, Jurisdiction: Personal Jurisdiction, Inconvenient Forum, and Appearances, § 323.13.*

Limitation of Actions—Single Publication Rule. In a defamation action, for example, the single-publication rule provides that, for any single edition of a newspaper or book, there is but a single potential action for a defamatory statement contained in the newspaper or book, no matter how many copies of the newspaper or the book were distributed, and the accrual of the cause of action in that case is not delayed by the discovery rule when the defamation occurred by means of a book, magazine, or newspaper that was distributed to the public. The single publication rule applies to all publications, including those that receive only limited circulation and, thus, are not generally distributed to the public [*Hebrew Academy of San Francisco v. Goldman* (2007) 42 Cal. 4th 883]. See *Ch. 345, Limitation of Actions, § 345.19[3][a].*

Limitation of Actions—Table of Limitation Periods. This chapter's Table of Limitation Periods, which provides the various periods of limitation organized by types of action, is updated with additional

entries and cross references. The table may be used as a quick reference for researching the limitation period governing a given action or proceeding. Included in the table are convenient cross references, when applicable, to other chapters in this publication that contain related forms, further discussion, or both. See *Ch. 345, Limitation of Actions, § 345.150 et seq.*

Anti-SLAPP Motion—Issue of Public Interest. One court of appeal has adopted a much more expansive interpretation of the phrase “issue of public interest” as “any issue in which the public is interested,” and that the issue need not be significant as long as the public has taken an interest [*Nygaard, Inc. v. Uusi-Kerttula* (2007) 159 Cal. App. 4th 1027]. The court found an employer's defamation action against a former employee, based on an interview the employee gave to a magazine, fell within the statute because there was extensive interest in the plaintiff among the Finnish public. See *Ch. 376, Motions to Strike: Anti-SLAPP, § 376.14[3][c].*

Anti-SLAPP Motion—Definition of Public Forum. There is a split of authority regarding whether a newspaper or magazine is a public forum within the meaning of Code Civ. Proc. § 425.16(e)(3). One line of cases holds newspapers are not public fora because members of the public cannot freely publish their opinions in them [*Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 37 Cal. App. 4th 855]. The other line of cases holds that newspapers and magazines are public fora because the opinions expressed in them are open to the public and their contents contribute to the public debate [*Nygaard, Inc. v. Uusi-Kerttula* (2007) 159 Cal. App. 4th 1027; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal. App. 4th 468]. See *Ch. 376, Motions to Strike: Anti-SLAPP, § 376.14[3][d].*

Anti-SLAPP Motion—Statutory Exceptions. The legislature intended to exempt purely commercial disputes under Code Civ. Proc. § 425.17, and a cause of action arising from lawyer’s advice to prospective clients regarding pending litigation does not fall within the statutory exemptions to anti-SLAPP statute [*Taheri Law Group v. Evans* (2008) 160 Cal. App. 4th 482]. See **Ch. 376, *Motions to Strike: Anti-SLAPP*, § 376.16[3]**.

Res Judicata—Same Cause of Action. Plaintiff’s wrongful death action seeking damages for noneconomic loss arising out of her spouse’s tobacco-related death involved the same primary right as her previously litigated and adjudicated loss of consortium action; the court therefore held the action was barred by res judicata [*Boeken v. Philip Morris USA, Inc.* (2008) 159 Cal. App. 4th 1391]. See **Ch. 491, *Res Judicata*, § 491.23[3][d]**.

Summary Judgment—Evidentiary Basics. An expert doctor’s opinion based solely on his review of medical records had no evidentiary value where records were not authenticated and placed before the court and no foundation for a business record exception to the hearsay rule was established; as a result, defendant’s summary judgment motion had no evidentiary basis and was reversed [*Garibay v. Hemmatt* (2008) (2008) 161 Cal. App. 4th 735]. See **Ch. 537, *Summary Judgment*, §§ 537.24[1][b], [c], 537.25[3][b]**.

Vexatious Litigants—Lifting Prefiling Requirement. A prefiling order is an injunction, and the order may be modified as provided in Code Civ. Proc. § 533 based on a change in the facts, a change in the law, or when a change would serve the ends of justice. The factors for lifting the order include: 1) the litigant must show honesty in the presentation of relevant facts in his or

her application for the lifting of the prefiling order, 2) the litigant must show genuine remorse for the costs of litigation inflicted on defendants in prior lawsuits, 3) the litigant must attempt restitution toward the targets of prior litigation, especially payment of cost orders made by the court, 4) the litigant must give up the “habit of suing people as a way of life,” and 5) the vexatious litigant must file an application to lift a prefiling order in the same forum that originally entered the order [*Luckett v. Panos* (2008) 161 Cal. App. 4th 77]. See **Ch. 573, *Vexatious Litigants*, § 573.14**.

CIVIL RIGHTS

No Absolute Immunity for Social Workers. In *Beltran v. Santa Clara County* (9th Cir. 2008) 514 F.3d 906, the Ninth Circuit held that a social worker who investigated whether a mother was abusing her son and her supervisor who filed a child dependency petition were not entitled to absolute immunity in the mother’s action under 42 U.S.C. § 1983 after the dependency petition was denied, claiming that much of the information in the three-page statement of facts included in the petition was false. Social workers conducting investigations have no absolute immunity, and, although social workers have absolute immunity when they make discretionary, quasi-prosecutorial decisions to institute court dependency proceedings to take custody away from parents, they are not entitled to absolute immunity from claims that they fabricated evidence during the investigation or made false statements in the dependency petition affidavit they signed under penalty of perjury, because those actions are not similar to discretionary decisions about whether to prosecute. See **Ch. 113, *Civil Rights: The Post-Civil War Civil Rights Statutes***.

Police Officers in High-Speed Chases Qualifiedly Immune Unless They Intend

to Harm. In *Bingue v. Prunchak* (9th Cir. 2008) 512 F.3d 1169, the Ninth Circuit found that a police officer involved in a high-speed chase was qualifiedly immune in a § 1983 action by the driver of a car sideswiped by the officer in the course of the chase. The intent to harm standard applies to all high-speed police chases, and the officer did not act with the requisite intent, even though his decision to join the pursuit may have been ill-advised as well as his execution, because poor judgment alone in a high-speed chase did not violate the Fourteenth Amendment. See *Ch. 113, Civil Rights: The Post-Civil War Civil Rights Statutes*.

Private Entity Not Entitled to Sovereign Immunity. In *Del Campo v. Kennedy* (9th Cir. 2008) 517 F.3d 1070, an action under 42 U.S.C. § 1983 based on the behavior of a private corporation contracted with the district attorney to run a bad check diversion program, the Ninth Circuit held that the corporation, as a private entity, was not entitled to sovereign immunity. See *Ch. 113, Civil Rights: The Post-Civil War Civil Rights Statutes*.

No Fair Notice of Summary Judgment Procedure Given to Jail Inmate. In *Solis v. County of Los Angeles* (9th Cir. 2008) 514 F.3d 946, a jail inmate's civil rights action against a city, the sheriff and deputy sheriffs resulting from his placement in the jail's "gang module," the district court erred in granting summary to defendants because neither the court nor defendants provided the inmate with the required fair notice of summary judgment procedure. See *Ch. 114, Civil Rights: Prisoners' Rights*.

Maximum Security Prisoners Entitled to Group Worship. In *Greene v. Solano County Jail* (9th Cir. 2008) 513 F.3d 982, the trial court erred in granting summary

judgment to a sheriff in a civil rights action by a maximum security jail prisoner alleging that the jail's policy of prohibiting maximum security prisoners from participating in group worship was a violation of his rights under the Religious Land Use and Institutionalized Persons Act. The policy substantially burdened his ability to exercise his religion, and there was a genuine issue of material fact as to whether a total ban on group religious worship by maximum security prisoners at the jail was the least restrictive means of maintaining jail security. See *Ch. 114, Civil Rights: Prisoners' Rights*.

Prisoner Should Have Been Allowed to Proceed In Forma Pauperis on Complaint Alleging Imminent Danger of Serious Physical Injury. In *Andrews v. Cervantes* (9th Cir. 2007) 493 F.3d 1047, an action by a prisoner alleging a cause of action under 42 U.S.C. § 1983 for cruel and unusual punishment premised on the danger of contracting various communicable diseases, based on the Department of Corrections and Rehabilitation's alleged ongoing policy of not screening inmates for communicable diseases and housing contagious inmates with others without regard to the risk they posed, the district court erred in finding that the three-strikes rule under the PLRA applied to prisoner, refusing his request to proceed in forma pauperis, and ordering the case closed. The prisoner sufficiently alleged imminent danger of serious physical injury, even though at the time he filed the complaint he already had contracted hepatitis and did not allege that he was presently confined with a prisoner with another contagious disease. See *Ch. 114, Civil Rights: Prisoners' Rights*.

Supreme Court Adopts EEOC's Interpretation of "Charge" Under Age Discrimination in Employment Act. The United States Supreme Court has held that,

to constitute a “charge” that starts the waiting period before an employee may file suit under the Age Discrimination in Employment Act, the employee’s filing with the Equal Employment Opportunity Commission must include a request that the EEOC take remedial action [see 29 U.S.C. § 626(d)]. In so holding, the Supreme Court applied a “measure of respect” for the statutory interpretation embodied in the EEOC’s compliance manual and internal directives [*Federal Express Corp. v. Holowecki* (2008) 170 L. Ed. 2d 10]. See **Ch. 115, Civil Rights: Employment Discrimination**, § 115.51[2][a]; **Ch. 531, Statutes and Ordinances**, § 531.67[1],[2].

CLASS ACTIONS

Local Law May Disallow Use of Class Actions. In *Batt v. City & County of San Francisco* (2007) 155 Cal. App. 4th 65, the court has enforced a local ordinance disallowing the use of class actions to claim refunds of local taxes. See **Ch. 120, Class Actions**, § 120.10[1].

COMMERCIAL LAW

Investigative Consumer Reporting Agencies Act—Report Containing Unlawful Detainer Information. In a case of first impression in California, a court of appeal has held that the Investigative Consumer Reporting Agencies Act [Civ. Code § 1786 et seq.] is unconstitutionally vague as applied to an investigative consumer report containing information about whether any unlawful detainer actions were filed against the subject of the report, because reasonable persons cannot readily determine whether the unlawful detainer information constitutes “character” information—in which case, the agency must comply with requirements prescribed in that Act—or constitutes “creditworthiness” information governed by the Consumer Credit Reporting Agencies Act

[§ 1785.1 et seq.], which imposes somewhat different requirements on the agency [*Ortiz v. Lyon Management Group, Inc.* (2007) 157 Cal. App. 4th 604 (statutory scheme embodied in those two Acts “presents a false dichotomy between creditworthiness and character”)]. See **Ch. 129, Consumer Credit Reporting**, § 129.12.

CONSTITUTIONAL LAW

Amendment Versus Revision. The question of whether an initiative constitutes an amendment or a revision requires analysis of the statute on its face [*Rippon v. Bowen* (2008) 160 Cal. App. 4th 1308]. See **Ch. 126A, Constitutional Law**, § 126A.13[3].

Separation of Powers. A court is without power to interfere with purely legislative action, and when the Legislature has committed to a municipal body the power to legislate on a given subject, the court has no power to command or prohibit the exercise of the legislative function [*County of Orange v. Barratt American, Inc.* (2007) 150 Cal. App. 4th 420]. Additionally, the principle of constitutional separation of power underlies the mental processes principle, which precludes any judicial inquiry into the subjective motives or mental processes of legislators [*Sutter’s Place v. Superior Court* (2008) 161 Cal. App. 4th 1370]. See **Ch. 126A, Constitutional Law**, § 126A.21[4][a].

Federal Preemption. Where the federal law does not expressly preempt or impliedly occupy the field, states may establish their own requirements, including a state-law cause of action, pertaining to the subject of the federal statute so long as the state requirements are identical to those contained in the federal statute [*Farm Raised Salmon Cases* (2008) 42 Cal. 4th 1077 (labeling of artificially colored food under Federal Food, Drug, and Cosmetic

Act, 21 U.S.C. § 343(k)). Additionally, while there is a strong presumption against federal preemption of state law governing historic police powers, the United States Supreme Court has held that the presumption does not apply when a state regulates in an area where there has been a history of significant federal presence [*Silvas v. E*Trade Mortg. Corp.* (9th Cir. 2008) 514 F.3d 1001 (banking)]. See **Ch. 126A, Constitutional Law**, §§ 126A.23[3][a], 126A.23[5].

Police Powers. Among other things, the police power empowers cities to control and organize development within their boundaries as a means of serving the general welfare [*Hernandez v. City of Hanford* (2007) 41 Cal. 4th 279]. Accordingly, a governmental entity may not contract away its right to exercise the police power in the future, and a contract that purports to do so is invalid as against public policy [*Cotta v. City and County of San Francisco* (2007) 157 Cal. App. 4th 1550]. See **Ch. 126A, Constitutional Law**, § 126A.31[2], [4].

Regulatory Fees. Regulatory fees, unlike other types of user fees, often are not easily correlated to a specific, ascertainable cost. This may be due to the complexity of the regulatory scheme and the multifaceted responsibilities of the department or agency charged with implementing or enforcing the applicable regulations, the multifaceted responsibilities of each of the employees who are charged with implementing or enforcing the regulations, the intermingled functions of various departments as well as intermingled funding sources, and expansive accounting systems that are not designed to track specific tasks. A municipality may, under its police powers, spend regulatory fee revenues for the purpose of legitimate regulation so long as those revenues do not exceed the reasonably necessary expense of the regulatory effort [*Col-*

lier v. City and County of San Francisco (2007) 151 Cal. App. 4th 1326]. See **Ch. 126A, Constitutional Law**, § 126A.31[6].

Privacy Rights of Public Employees. California's right to privacy does prevent the release of names and salaries of public employees earning \$100,000 or more per year, including peace officers [*International Fed. of Prof. and Tech. Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal. 4th 319]. See **Ch. 126A, Constitutional Law**, § 126A.42[3][b].

CORPORATIONS

Derivative Actions. The California Supreme Court, in *Grosset v. Wenaas* (2008) 42 Cal. 4th 1100, has elected to follow the majority rule and, applying the basic principles that govern corporation law and shareholder litigation, and has held that Corp. Code § 800(b) is properly construed as containing a continuous ownership requirement in shareholder's derivative actions. That is, California law generally requires a plaintiff in a shareholder's derivative action to maintain continuous stock ownership throughout the pendency of the litigation. Consequently, when the shareholder relationship is terminated, whether voluntarily or involuntarily, the derivative-action plaintiff loses standing. For discussion, as well as new forms for notice of motion for dismissal of a derivative action, and judgment of dismissal, based on the plaintiff's loss of shareholder status, see **Ch. 168, Corporations: Derivative Actions**, §§ 168.74, 168.75.

COSTS AND ATTORNEY'S FEES

Successful Opposition to Petition to Compel Arbitration Entitled Party to Attorney's Fees Under Civ. Code § 1717. In *Otay River Constructors v. San Diego Expressway* (2008) 158 Cal. App. 4th 796, a party that obtained an order denying arbitration in a dispute between parties to

Private Attorney General Statute Does Not Allow for Expert Witness Fees. In *Olson v. Automobile Club of So. Cal.* (2008) 42 Cal. 4th 1142, the California Supreme Court held that under Code Civ. Proc. § 1021.5, a prevailing plaintiff who is awarded attorney's fees is not entitled to recover expert witness fees as well. See *Ch. 174, Costs and Attorney's Fees*.

Individual Employee Is Not Liable Under FEHA for Retaliation Against Fellow Employee. The California Supreme Court has held, in *Jones v. Lodge at Torrey Pines P'ship* (2008) 42 Cal. 4th 1158, that a nonemployer individual is not personally liable for his or her participation in retaliation prohibited by the Fair Employment and Housing Act. See *Ch. 115, Civil Rights: Employment Discrimination, § 115.20[4][a], [b], [I][a]; Ch. 249, Em-*

ployment Law: Termination and Discipline, § 249.12[3][f].

California Family Rights Act Dispute-Resolution Procedure Is Not Mandatory. The California Supreme Court, in *Lonicki v. Sutter Health Central* (2008) 43 Cal. 4th 201, has held that the statutory procedure under California's Moore-Brown-Roberti Family Rights Act to determine whether an employee has a serious health condition entitling him or her to a medical leave of absence [*see* Gov. Code § 12945.2(k)(3)] is not mandatory, and an employer's failure to use that procedure does not bar the employer from contending in subsequent litigation that the employee did not have a serious health condition that made him or her unable to perform the job. See *Ch. 115, Civil Rights: Employment Discrimination*, § 115.32[6][b].

Notice of Disciplinary Action Against Peace Officer Need Not Identify Specific Punishment. The California Supreme Court in *Mays v. City of Los Angeles* (2008) 43 Cal. 4th 313 has held that to satisfy the one-year limitation period for imposing discipline on a peace officer under the Public Safety Officers Procedural Bill of Rights Act [*see* Gov. Code § 3304(d)], an employer's notice of disciplinary action need not identify the specific proposed punishment. Rather, the notice is sufficient if it states that the employing agency, having completed its investigation into the alleged misconduct within the statutory period, has decided that it may take disciplinary action against the officer for specified misconduct. See *Ch. 118, Civil Service*, § 118.72.

EQUITY

Equitable and Promissory Estoppel. This chapter is updated with a new analysis of equitable and promissory estoppel, including the elements for each claim and the

effect of estoppel on government entities. See *Ch. 251, Equity*, § 251.94.

Terminating Sanction as Equitable Defense. This chapter is updated with a new analysis of a terminating sanction as an equitable defense. The decision whether to exercise the inherent power to dismiss as an equitable defense to plaintiff's misconduct requires consideration of all relevant circumstances, including the nature of the misconduct, the strong preference for adjudicating claims on the merits, the integrity of the court as an institution of justice, the effect of the misconduct on a fair resolution of the case, and the availability of other sanctions to cure the harm [*Stephen Slesinger, Inc. v. The Walt Disney Co.* (2007) 155 Cal. App. 4th 736]. See *Ch. 251, Equity*, § 251.153.

No Jury Trial for Legal Defense to Equitable Action. Given that the right to trial pertains to an action at law, there is no right to trial by jury on an affirmative defense at law to an equitable action that can be tried separately and first, because the defense does not constitute an action [*DiPirro v. Bondo Corporation* (2007) 153 Cal. App. 4th 150 (affirmative defense of warning exemption under Health & Saf. Code § 25249.10(c) not subject to jury trial of right)]. See *Ch. 251, Equity*, § 251.222[4].

FEDERAL COURTS

Diversity Jurisdiction. The amount-in-controversy requirement for diversity jurisdiction excludes only "interest and costs" and therefore includes attorneys' fees as well as any other sums that would be paid to a party as a result of judgment [*Guglielmino v. McKee Foods Corp.* (9th Cir. 2007) 506 F.3d 696]. See *Ch. 265, Federal Courts*, § 265.15[1].

Prudential Standing Doctrine. When a plaintiff states an overbreadth claim under

the First Amendment, the court suspends the prudential standing doctrine because of the special nature of the risk to expressive rights. While the prudential standing doctrine typically prevents the court from hearing lawsuits on the basis of injuries to non-parties, the overbreadth doctrine operates as a narrow exception permitting the lawsuit to proceed on the basis of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression [*Get Outdoors II, LLC v. City of San Diego* (9th Cir. 2007) 506 F.3d 886]. See **Ch. 265, Federal Courts, § 265.16[2]**.

Removal. Where a plaintiff moves to remand and it is unclear or ambiguous from the face of a state-court complaint whether the requisite amount in controversy is pled, the removing defendant bears the burden of establishing, by a preponderance of the evidence, that the amount in controversy exceeds the jurisdictional amount. Under this burden, the defendant must provide evidence establishing that it is more likely than not that the amount in controversy exceeds that amount [*Guglielmino v. McKee Foods Corp.* (9th Cir. 2007) 506 F.3d 696]. See **Ch. 265, Federal Courts, § 265.40[2]**.

GUARDIANSHIPS AND CONSERVATORSHIPS

Certification to Qualify as Appointed Counsel. Every attorney appointed or eligible for appointment by a court under Prob. Code §§ 1470 and 1471 now must certify that he or she is qualified before becoming eligible for an appointment, and, beginning January 1, 2009, each appointed counsel must certify to the court before the end of March of each year that he or she has completed the continuing education required for the preceding calendar year [see Cal. Rules of Ct., Rule 7.1101]. The

Judicial Council has issued a new mandatory form for this certification, Form GC-010, which is now illustrated in **Ch. 280, Guardianship and Conservatorship: Appointment of Guardians, § 280.118**. For discussion of the new form, Prob. Code §§ 1470 and 1471, and the relevant Rules of Court, see **Ch. 280, Guardianship and Conservatorship: Appointment of Guardians, § 280.118; Ch. 281, Guardianships and Conservatorships: Appointment of Conservators, § 281.32[5]**.

INJUNCTIONS

Severity of Harm. The likelihood of a plaintiff's ultimate success on the merits affects the showing necessary to a balancing-of-hardships analysis. That is, the more likely it is that the plaintiff will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue. It is the mix of these factors that guides the trial court in its exercise of discretion [*Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160 Cal. App. 4th 336]. See **Ch. 303, Injunctions, § 303.104[15][f]**.

JUVENILE LAW

Referee Findings. Some decisions have suggested the referee's findings and orders become null and void on the granting of a rehearing, but the better rule is that they are entitled to full force and effect until the matter is actually reheard [*Ricardo V. v. Superior Court* (2007) 147 Cal. App. 4th 419, 54 Cal. Rptr. 3d 223]. See **Ch. 327, Juvenile Courts: Jurisdiction and General Procedures**.

Records and Copies of Court Juvenile Files. Prior to January 1, 2008, the language of the statute authorizing juvenile case files to be "inspected" by certain persons did not include that such documents could be "copied" [*In re Gina S.* (2005) 133 Cal. App. 4th 1074, citing

Opinion No. 02-103, 85 Ops. Cal. Atty. Gen. 194 (Sept. 10, 2002)]. Effective January 1, 2008, however, some of the persons entitled to inspect juvenile case files under Welf. & Inst. Code § 827(a)(1) may also receive copies of the documents [Welf. & Inst. Code §§ 827(a)(5)]. Also effective January 1, 2008, it is clear that when considering a request for records concerning a deceased child, “no weighing or balancing of the interests of those other than a child is permitted” [Welf. & Inst. Code §§ 827(a)(2)(C)]. See **Ch. 327, *Juvenile Courts: Jurisdiction and General Procedures***.

Guardian Ad Litem for Minor Parent. This chapter is updated with a review of case authority on the issue of whether the juvenile dependency court must automatically appoint a guardian ad litem for a parent who is a minor, with recommendations for more effective procedures. See **Ch. 328, *Juvenile Courts: Dependency Proceedings***.

Relative Guardianship Versus Adoption. Effective January 1, 2008, a relative caregiver’s preference for legal guardianship over adoption shall not constitute the sole basis for recommending removal of the child from the relative caregiver for purposes of adoptive placement, if the preference is due to circumstances that do not include an unwillingness to accept legal or financial responsibility for the child [Welf. & Inst. Code § 361.5(g)(2)(A)]. Moreover, a relative caregiver is to be given information regarding the alternative permanency options of guardianship and adoption, including the long-term benefits and consequences of each option, prior to establishing legal guardianship or pursuing adoption [Welf. & Inst. Code § 361.5(g)(2)(B)]. See **Ch. 328, *Juvenile Courts: Dependency Proceedings***.

Revised Writ Analysis. This chapter is updated with a revised analysis of writ practice for dependency actions, including writs in general, writs of supersedeas, writs of mandamus, writs of prohibition, and writs of habeas corpus. See **Ch. 328, *Juvenile Courts: Dependency Proceedings***.

Court Security for Delinquency Proceedings. This chapter is updated with a new analysis on court security and that unwarranted shackling of juveniles at jurisdictional hearings apply the same standard used for adult defendants in preliminary hearings, specifically that some showing of necessity is required and the finding stated on the record [*In re DeShaun M.* (2007) 148 Cal. App. 4th 1384]. See **Ch. 329, *Juvenile Courts: Delinquency Proceedings***.

Continuing Conduct and Conspiracies Committed Before and After the Age of 18. A hearing pursuant to Welf. & Inst. Code § 604(a) is not required when criminal conduct is committed before an individual reaches the age of 18 and continues after the individual becomes an adult. When a jury can find that a defendant continues to participate in a criminal conspiracy or criminal conduct after his or her 18th birthday, the trial court may deny a motion to suspend the proceedings and conduct an examination for the purpose of certification to Juvenile Court [*People v. Quiroz* (2007) 155 Cal. App. 4th 1420]. See **Ch. 329, *Juvenile Courts: Delinquency Proceedings***.

Mental Incompetence v. Developmental Incompetence. Under Penal Code § 1367, an adult’s incompetence to stand trial arises from a mental disorder or developmental disability that limits his or her ability to understand the nature of the proceedings and to assist counsel [Penal Code § 1367(a)]. Recent case law suggests

that this is not the sole standard to be applied in delinquency cases and, in fact, prior case law requires that the court make an inquiry to determine developmental disability, including a minor's age, to assess cognitive, psychological, social, and moral development [*Timothy J. v. Superior Court and Dante H. v. Superior Court* (2007) 150 Cal. App. 4th 847]. See **Ch. 329, Juvenile Courts: Delinquency Proceedings.**

Education and Mental Health. This chapter is updated with a new section on education and mental health and the interpretation of the federal Individuals With Disabilities Education Act and the comparable state statutes. See **Ch. 329, Juvenile Courts: Delinquency Proceedings.**

LIENS

Table of Liens. This chapter's Table of Liens is updated with a new format for easier access and cross referencing. This table is an extensive list of California statutes relating to the creation of liens, including both liens discussed in this chapter and those covered in other chapters of the publication. Convenient cross references to the other chapters are included in the table. See **Ch. 342, Liens and Wage Preferences, § 342.250 et seq.**

PRIVACY

Statutory Immunity Precluded Constitutional Invasion of Privacy Action. In *Richardson-Tunnell v. Schools Ins. Program for Employees (SIPE)* (2007) 157 Cal. App. 4th 1056, the Court of Appeal did not need to resolve whether plaintiff stated a cause of action under the California constitutional right of privacy for damages based on a workers' compensation investigation into her private life, because the alleged conduct was within the scope of the immunity provided by Gov. Code § 821.6, and the constitutional right to privacy did not limit the scope of a preexisting statu-

tory immunity. See **Ch. 429, Privacy.**

PROBATE

New Probate Petition Form. The Judicial Council has issued a new version of Form DE-111, Petition for Probate, effective March 1, 2008. For an illustration of the new form, and revised commentary, see **Ch. 442, Probate: Initiating Probate Administration, § 442.140.**

RELIEF FROM JUDGMENTS

No Mandatory Relief for Attorney Acting in Pro Per. In *Esther B. v. City of Los Angeles* (2008) 158 Cal. App. 4th 1093, the Court of Appeal held that an attorney who brought an action both on the attorney's own behalf in pro per and on behalf of others as a taxpayer in a representative capacity was not entitled to mandatory relief under Code Civ. Proc. § 473(b). The mandatory relief provision of § 473(b) only applied in the case of an attorney representing a client, and, as to aspect of bringing the action on behalf of other taxpayers, if the attorney bound other taxpayers by the action, the attorney did so as a fellow taxpayer, not as an attorney for the taxpayers. See **Ch. 489, Relief From Judgments and Orders.**

SCHOOLS

Possible Cause of Action Under § 504 of Rehabilitation Act Regulations. In *Mark H. v. Lemahieu* (9th Cir. 2008) 513 F.3d 922, an action by parents individually and as guardians ad litem for their autistic daughters against a state education department for alleged violations of the IDEA and § 504 of Rehabilitation Act of 1973, the Ninth Circuit would not decide whether the plaintiffs alleged a privately enforceable cause of action for damages. Although injunctive relief was available under the IDEA, monetary damages were not. Although the FAPE requirements in the IDEA and in the § 504 regulations requiring a

FAPE were overlapping but different, the availability of relief under the IDEA did not limit the availability of a damages remedy under § 504 FAPE regulations. However, the parents did not specify which § 504 regulations they believed were violated and which supported a privately enforceable cause of action. See *Ch. 513, Schools: Student Rights and Responsibilities*.

Mother Lacked Standing to Sue Under IDEA Because She Did Not Suffer Injury. In *Levina v. San Luis Coastal Unified School Dist.* (9th Cir. 2007) 514 F.3d 866, after a school district filed an administrative complaint against a mother when she refused to consent to an Individualized Education Plan for her son, and the administrative hearing officer dismissed the complaint without prejudice, the mother lacked standing to pursue an action in federal district court under the IDEA claiming that the hearing officer erred in failing to dismiss with prejudice and in failing to identify her as a prevailing party. The mother did not suffer an injury in fact because her injuries were speculative, and she did not affirmatively request relief because the school district had filed the administrative complaint and when the hearing officer dismissed the matter without prejudice, it merely restored the status quo. See *Ch. 513, Schools: Student Rights and Responsibilities*.

TORTS AND INSURANCE

Statute of Limitations in Criminal Defense Attorney Malpractice Action Runs Despite Lack of Postconviction Relief; Proposition 51 Applicable to Legal Malpractice Action Seeking Primarily Noneconomic Damages. In *Ovando v. County of Los Angeles* (2008) 159 Cal. App. 4th 42, the court of appeal in an attorney malpractice action brought against a criminal defense attorney held that the lack of

postconviction relief for the criminal defendant does not stay the running of the statute of limitations. In addition, the court held that Proposition 51, as codified in Civ. Code § 1431.2, can be applied to an action that seeks primarily noneconomic damages, such as damages for emotional distress caused when a criminal defense attorney's malpractice resulted in his client's criminal conviction. See *Ch. 76, Attorney Professional Liability*, §§ 76.10[2], 76.70, 76.92[1]; *Ch. 300, Indemnity and Contribution*, § 300.63[3][d].

Testimony on Deceitful Concealing of Wealth Can Support Imposition of Higher Amount of Punitive Damages. In *County of San Bernardino v. Walsh* (2007) 158 Cal. App. 4th 533, the court of appeal held that evidence that a defendant has systematically and deceitfully manipulated and concealed assets and net worth and provided evasive or knowingly false testimony on the issue at trial provides a factfinder or trial court with wide latitude to make inferences unfavorable to the defendant when setting an amount of punitive damages. See *Ch. 177, Damages*, § 177.51[16].

MICRA Applicable to EMT Negligence. In *Canister v. Emergency Ambulance Service, Inc.* (2008) 160 Cal. App. 4th 388, the court of appeal held that the Medical Injury Compensation Reform Act of 1975 (MICRA) applies to actions against paramedics and other emergency medical technicians licensed under Health & Safety Code § 1797 et seq., if the cause of action is based on professional negligence; and for these purposes, negligence in the operation of an ambulance when transporting a patient to or from a medical facility is included under the term "professional negligence." See *Ch. 246, Emergency Vehicles*, §§ 246.16.

Public Entity's Recovery of Firefighting Costs Not Affected by Entity's Own Negligence. In *People ex rel. Grijalva v. Superior Court* (2008) 159 Cal. App. 4th 1072, the court of appeal held that a public entity's own negligence in fighting a fire or in failing to minimize its firefighting costs cannot be used to reduce the entity's recovery of firefighting costs under Health & Safety Code § 13009. See *Ch. 267, Fires, § 267.18[2]*.

Liability for Noneconomic Damages May Be Reduced by Fault of Subsequent Negligent Health Care Provider. In *Henry v. Superior Court* (2008) 160 Cal. App. 4th 440, the court of appeal held that a defendant being sued for a personal injury under a theory of premises liability must be allowed to introduce evidence of subsequent negligence by a treating doctor that allegedly exacerbated the injury, in order to limit the defendant's liability for noneconomic damages to that percentage caused by the fault of the premises owner. See *Ch. 300, Indemnity and Contribution, § 300.63[3][d]*.

Single Publication Rule Applicable, Discovery Rule Inapplicable to Defamation Action When Publication Is Not Widely Disseminated to Public. In *Hebrew Academy of San Francisco v. Goldman* (2007) 42 Cal. 4th 883, the California Supreme Court held that in a defamation action, the single publication rule is applicable to a publication available to the public even if the publication is not widely disseminated or mass marketed, although the discovery rule is inapplicable to such a publication when applying the statute of limitations. See *Ch. 340, Libel and Slander, §§ 340.28, 340.30[2]*.

Plaintiff Seeking Identity of Anonymous Internet Poster Must Make Prima Facie Showing of Libel in Order to De-

feat Motion to Quash Subpoena. In *Krinsky v. Doe 6* (2008) 159 Cal. App. 4th 1154, the court of appeal held that if a defendant being sued for defamation because of the content of an anonymous Internet posting has been notified that a plaintiff seeks his or her identity, and the defendant seeks to quash a subpoena issued to the site host or service provider, the plaintiff must make a prima facie showing of the elements of libel in order to defeat the motion to quash. See *Ch. 340, Libel and Slander, § 340.76*.

Cocounsel Joining After Suit Is Filed May Be Liable for Malicious Prosecution When Failing to Take Corrective Steps. In *Sycamore Ridge Apartments LLC v. Naumann* (2008) 157 Cal. App. 4th 1385, the court of appeal held that an attorney joining in as cocounsel for a plaintiff in a case that has already been filed may be held liable for malicious prosecution if failing to take corrective steps immediately after associating in as cocounsel to cease prosecution of claims that lack probable cause and have been brought maliciously. See *Ch. 357, Malicious Prosecution and Abuse of Process, § 357.16[1]*.

Facts Sufficient to State Emotional Distress Claim Against Health Insurer. In *Hailey v. California Physicians' Service* (2007) 158 Cal. App. 4th 452, the court of appeal held that plaintiffs had adequately stated a cause of action for intentional infliction of emotional distress against their health insurer after the insurer sought to rescind their policy after one of the plaintiffs suffered severe injuries in an automobile accident, although the insurer learned of alleged misrepresentations in the original insurance application justifying the rescission a month before the accident. See *Ch. 362, Mental Suffering and Emotional Distress, § 362.10[3][b]*.

Primary Assumption of Risk Applied to Injury Suit Stemming From Skateboard “Product Toss” at Promotional Event. In *McGarry v. Sax* (2008) 158 Cal. App. 4th 983, the court of appeal held that primary assumption of risk was a defense when plaintiff was injured by co-participants in a “product toss” at a skateboarding competition sponsored by a skateboard store. See *Ch. 380, Negligence, § 380.172[4][c]*.

Specific Jury Finding of No Consent Required When Using Special Verdict Form in Medical Battery Action. In *Saxena v. Goffney* (2008) 159 Cal. App. 4th 316, the court of appeal held that because performing a medical procedure without informed consent is not the same thing as performing that procedure with no consent at all, and the latter forms the basis for an action for battery, a party seeking to hold a physician liable for battery must obtain a specific jury finding that no consent was given if a special verdict form is used at trial. A finding that no informed consent was given is insufficient, as such a finding does not preclude the conclusion that uninformed consent was given. See *Ch. 415, Physicians: Medical Malpractice, § 415.20*.

Government Tort Immunities Applicable to Privacy Action Based on California Constitution. In *Richardson-Tunnell v. Schools Ins. Program for Employees (SIPE)* (2007) 157 Cal. App. 4th 1056, the court of appeal held that although the constitutional right to privacy was designed to protect against some forms of governmental intrusion, this right to privacy does not limit the scope of statutory immunities that existed under the California Tort Claims Act when the right to privacy was added in 1972. The court specifically held that Gov. Code § 821.6, which immunizes a governmental em-

ployee for injury caused by instituting or prosecuting any judicial or administrative proceeding within the scope of his or her employment, regardless of malice or lack of probable cause, extends to investigatory activities and may be used to defeat a claim for damages for violation of the constitutional right to privacy. See *Ch. 429, Privacy, § 429.16[20]*.

Prosecutorial Immunity Provides Complete Defense to Statutory Intrusion Claim. In *Richardson-Tunnell v. Schools Ins. Program for Employees (SIPE)* (2007) 157 Cal. App. 4th 1056, the court of appeal held that Civ. Code § 1708.8, the so-called anti-paparazzi statute, cannot be used to impose liability on a public entity, or employee acting within the scope of his or her employment with a public entity, when a public employee is immune from liability for injury caused by instituting or prosecuting any judicial or administrative proceeding within the scope of his or her employment pursuant to Gov. Code § 821.6. See *Ch. 429, Privacy, § 429.34A[1]*.

Negligent or Wrongful Conduct Required in Action for Dangerous Condition of Public Property. In *Metcalf v. County of San Joaquin* (2008) 42 Cal. 4th 1121, the California Supreme Court held that, under the plain language of Gov. Code § 835, it is not enough that a plaintiff suing a public entity for injury caused by a dangerous condition on public property plead and prove that a dangerous condition existed and that it caused injury to plaintiff, but plaintiff must also plead and prove that the dangerous condition was created through the negligent or wrongful act or omission of an employee of the public entity, or that the public entity had notice of the dangerous condition a sufficient time prior to the injury to take remedial steps. The Court noted that while the fact that a dangerous condition was created by a pub-

lic entity employee, even created deliberately, may be used to support a finding that the dangerous condition was created negligently, such facts do not necessitate a factual finding that the dangerous condition was created negligently or wrongfully. The Court also affirmed that the negligence standard applicable to a finding of liability under this statute is the common-law ordinary negligence standard, which measures the reasonableness of a defendant's conduct in light of the foreseeable risk of harm. See **Ch. 464, Public Entities and Officers: California Tort Claims Act, § 464.81[1], [4][a]**.

TRIAL

Court Had Jurisdiction to Grant Partial New Trial Even Though Judge Not in California. In *Dell'Oca v. The Bank of New York Trust Co., N.A.* (2008) 159 Cal. App. 4th 531, a judge other than the judge who presided at trial and heard arguments on a new trial motion telephonically while out of state pursuant to the agreement of the parties could appoint another judge to sign the order conditionally granting a new trial. The superior court had territorial and subject matter jurisdiction over posttrial motions irrespective of the original judge's location, and appointing another judge to sign for the presiding judge in her absence

was a proper exercise of the presiding judge's authority. See **Ch. 371, Motions After Trial**.

UNFAIR COMPETITION

Covenant Not to Solicit Customers Enforceable as Part of Employment Agreement. In *Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal. App. 4th 1292, the court of appeal held that if the seller of a business goes to work for the buyer as an employee after selling the company, a covenant prohibiting that employee from soliciting the buying company's customers in the event of termination of employment may be enforceable if necessary to protect the buyer's trade secrets, which may include confidential client information. See **Ch. 565, Unfair Competition, § 565.73[2]**.

Claim for Misappropriation of Patents and Trademarks Does Not Support Award of Attorney's Fees Under UTSA. In *CytoDyn of New Mexico, Inc. v. Amerimmune Pharmaceuticals, Inc.* (2008) 160 Cal. App. 4th 288, the court of appeal held that an award of attorney's fees was not authorized under the Uniform Trade Secrets Act because the complaint alleged only misappropriation of patents and trademarks, which, by their very nature, are not trade secrets. See **Ch. 565, Unfair Competition, § 565.103[7][d]**.

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VOLUME 15

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	174-73	174-73 thru 174-74.1
<input type="checkbox"/>	174-99 thru 174-107.	174-99 thru 174-107
<input type="checkbox"/>	174-175 thru 174-176.1	174-175 thru 174-176.1
<input type="checkbox"/>	174-199	174-199 thru 174-200.1
<input type="checkbox"/>	174-207	174-207
<input type="checkbox"/>	177-83 thru 177-93	177-83 thru 177-93

Check
As
Done

Remove Old
Pages Numbered

Insert New
Pages Numbered

VOLUME 16

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	190-11 thru 190-19	190-11 thru 190-19
<input type="checkbox"/>	190-45 thru 190-47	190-45 thru 190-47
<input type="checkbox"/>	191-57 thru 191-58.1	191-57 thru 191-58.1
<input type="checkbox"/>	191-105 thru 191-111	191-105 thru 191-111
<input type="checkbox"/>	198-33 thru 198-35	198-33 thru 198-35
<input type="checkbox"/>	200-1 thru 200-3	200-1 thru 200-3
<input type="checkbox"/>	200-11	200-11 thru 200-12.1
<input type="checkbox"/>	200-21	200-21

VOLUME 17

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	205-37 thru 205-47	205-37 thru 205-47
<input type="checkbox"/>	206-60.1 thru 206-61	206-61 thru 206-62.1

VOLUME 20

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	242-13	242-13
<input type="checkbox"/>	242-25 thru 242-31	242-25 thru 242-31
<input type="checkbox"/>	242-44.1 thru 242-47	242-45 thru 242-47
<input type="checkbox"/>	242-60.5	242-60.5
<input type="checkbox"/>	243-1 thru 243-4.1	243-1 thru 243-4.1
<input type="checkbox"/>	243-15 thru 243-30.1	243-15 thru 243-30.1
<input type="checkbox"/>	243-51	243-51
<input type="checkbox"/>	243-65 thru 243-67	243-65 thru 243-68.1
<input type="checkbox"/>	243-89 thru 243-93	243-89 thru 243-93
<input type="checkbox"/>	243-111 thru 243-114.3	243-111 thru 243-114.1
<input type="checkbox"/>	246-1.	246-1 thru 246-2.1
<input type="checkbox"/>	246-19	246-19
<input type="checkbox"/>	247-175	247-175 thru 247-176.1

VOLUME 21

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	249-25 thru 249-31	249-25 thru 249-32.1

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	251-5 thru 251-9	251-5 thru 251-9
<input type="checkbox"/>	251-49	251-49
<input type="checkbox"/>	251-59 thru 251-81	251-59 thru 251-81
<input type="checkbox"/>	251-97 thru 251-101.	251-97 thru 251-101
<input type="checkbox"/>	254-161 thru 254-163	254-161 thru 254-163

VOLUME 22

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	257-23 thru 257-25	257-23 thru 257-25
<input type="checkbox"/>	258-94.1 thru 258-97	258-95 thru 258-97
<input type="checkbox"/>	265-25	265-25 thru 265-26.1
<input type="checkbox"/>	265-33 thru 265-47	265-33 thru 265-47
<input type="checkbox"/>	265-65 thru 265-79	265-65 thru 265-79
<input type="checkbox"/>	265-87 thru 265-88.3	265-87 thru 265-88.3
<input type="checkbox"/>	267-23	267-23

VOLUME 23

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	269-23	269-23
<input type="checkbox"/>	269-73	269-73

VOLUME 24

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	280-7.	280-7
<input type="checkbox"/>	280-29	280-29 thru 280-30.1
<input type="checkbox"/>	280-107	280-107 thru 280-113
<input type="checkbox"/>	281-1.	281-1 thru 281-2.1
<input type="checkbox"/>	281-19	281-19 thru 281-20.1

VOLUME 25

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	300-49 thru 300-58.1	300-49 thru 300-57
<input type="checkbox"/>	302-11 thru 302-12.1	302-11

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	302-70.1 thru 302-88.1	302-71 thru 302-88.7
<input type="checkbox"/>	302-97	302-97
<input type="checkbox"/>	302-109 thru 302-118.13.	302-109 thru 302-118.9

VOLUME 26

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	303-39	303-39
<input type="checkbox"/>	303-55	303-55
<input type="checkbox"/>	303-80.5	303-80.5
<input type="checkbox"/>	303-94.1 thru 303-95	303-94.1
<input type="checkbox"/>	303-113	303-113
<input type="checkbox"/>	308-207	308-207 thru 308-208.1
<input type="checkbox"/>	308-271	308-271
<input type="checkbox"/>	308-325	308-325

VOLUME 27

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	322-87	322-87 thru 322-88.1

VOLUME 28

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	323-27 thru 323-28.1	323-27 thru 323-28.1
<input type="checkbox"/>	323-61	323-61
<input type="checkbox"/>	323-105 thru 323-106.1	323-105 thru 323-106.1
<input type="checkbox"/>	323-139	323-139
<input type="checkbox"/>	326A-37 thru 326A-38.1.	326A-37
<input type="checkbox"/>	327-3.	327-3
<input type="checkbox"/>	327-23 thru 327-41	327-23 thru 327-41
<input type="checkbox"/>	327-53 thru 327-69	327-53 thru 327-69
<input type="checkbox"/>	327-83 thru 327-97	327-83 thru 327-95
<input type="checkbox"/>	328-7 thru 328-17.	328-7 thru 328-18.1
<input type="checkbox"/>	328-51 thru 328-57	328-51 thru 328-57
<input type="checkbox"/>	328-67	328-67
<input type="checkbox"/>	328-81 thru 328-121.	328-81 thru 328-117
<input type="checkbox"/>	328-145	328-145
<input type="checkbox"/>	328-159 thru 328-181	328-159 thru 328-182.1

Check As Done	<u>Remove Old Pages Numbered</u>	<u>Insert New Pages Numbered</u>
<input type="checkbox"/>	328-193	328-193
<input type="checkbox"/>	328-219 thru 328-225	328-219 thru 328-225
<input type="checkbox"/>	328-245 thru 328-263	328-245 thru 328-263
<input type="checkbox"/>	328-275 thru 328-291	328-275 thru 328-291
<input type="checkbox"/>	328-315	328-315 thru 328-316.1
<input type="checkbox"/>	328-343	328-343
<input type="checkbox"/>	328-355 thru 328-367	328-355 thru 328-367
<input type="checkbox"/>	328-399	328-399 thru 328-400.1
<input type="checkbox"/>	328-419 thru 328-565	328-419 thru 328-563
<input type="checkbox"/>	328-591 thru 328-595	328-591 thru 328-595
<input type="checkbox"/>	328-613 thru 328-615	328-613 thru 328-615
<input type="checkbox"/>	329-3 thru 329-25	329-3 thru 329-26.1
<input type="checkbox"/>	329-37 thru 329-45	329-37 thru 329-45
<input type="checkbox"/>	329-123	329-123
<input type="checkbox"/>	329-133	329-133 thru 329-134.1
<input type="checkbox"/>	329-157 thru 329-221	329-157 thru 329-219
<input type="checkbox"/>	329-239 thru 329-263	329-239 thru 329-261
<input type="checkbox"/>	329-295 thru 329-299	329-295

VOLUME 29

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	334-43 thru 334-44.1	334-43 thru 334-44.1

VOLUME 30

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	340-4.1 thru 340-5	340-5 thru 340-6.1
<input type="checkbox"/>	340-71 thru 340-73	340-71 thru 340-73
<input type="checkbox"/>	340-85 thru 340-89	340-85 thru 340-89
<input type="checkbox"/>	340-113 thru 340-114.1	340-113 thru 340-114.1
<input type="checkbox"/>	340-147 thru 340-148.1	340-147 thru 340-148.1
<input type="checkbox"/>	342-1.	342-1
<input type="checkbox"/>	342-11 thru 342-13	342-11 thru 342-13
<input type="checkbox"/>	342-115	342-115

Tab card

<input type="checkbox"/>	No Material Removed	New Tab Card "Table of Liens" (following 342-115)
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Check As Done	<i><u>Remove Old Pages Numbered</u></i>	<i><u>Insert New Pages Numbered</u></i>
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Revision

<input type="checkbox"/>	342-117 thru 342-125	342-117 thru 342-127
<input type="checkbox"/>	345-1 thru 345-2.1	345-1 thru 345-2.1
<input type="checkbox"/>	345-15 thru 345-37	345-15 thru 345-37
<input type="checkbox"/>	345-137 thru 345-138.7	345-137 thru 345-138.7
<input type="checkbox"/>	345-187	345-187
<input type="checkbox"/>	345APP-1 thru 345APP-79.	345APP-1 thru 345APP-73

VOLUME 31

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	349-26.1 thru 349-32.1	349-27 thru 349-32.1
<input type="checkbox"/>	349-56.1 thru 349-58.1	349-57 thru 349-58.3
<input type="checkbox"/>	357-29 thru 357-32.1	357-29 thru 357-32.1
<input type="checkbox"/>	357-71	357-71
<input type="checkbox"/>	358-31	358-31
<input type="checkbox"/>	358-67 thru 358-71	358-67 thru 358-71
<input type="checkbox"/>	358-83	358-83

VOLUME 32

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	361-9 thru 361-10.1	361-9 thru 361-10.1
<input type="checkbox"/>	361-91	361-91
<input type="checkbox"/>	362-11	362-11
<input type="checkbox"/>	370-7 thru 370-13.	370-7 thru 370-13

VOLUME 33

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	371-47 thru 371-48.1	371-47 thru 371-48.1
<input type="checkbox"/>	371-79	371-79
<input type="checkbox"/>	371-86.1 thru 371-91	371-87 thru 371-91
<input type="checkbox"/>	373-1 thru 373-7	373-1 thru 373-7
<input type="checkbox"/>	376-1.	376-1
<input type="checkbox"/>	376-17 thru 376-43	376-17 thru 376-43
<input type="checkbox"/>	376-53 thru 376-55	376-53 thru 376-55
<input type="checkbox"/>	380-111	380-111
<input type="checkbox"/>	380-133 thru 380-134.1	380-133 thru 380-134.1
<input type="checkbox"/>	380-181	380-181

Check
As
Done

Remove Old
Pages Numbered

Insert New
Pages Numbered

VOLUME 34

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	390-29	390-29 thru 390-30.1
<input type="checkbox"/>	395-23 thru 395-24.1	395-23 thru 395-24.1

VOLUME 35

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	401-29 thru 401-31	401-29 thru 401-31

VOLUME 36

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	415-17	415-17
<input type="checkbox"/>	415-43	415-43
<input type="checkbox"/>	418-85	418-85 thru 418-86.1

VOLUME 37

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	429-3 thru 429-4.1	429-3 thru 429-4.1
<input type="checkbox"/>	429-57	429-57 thru 429-58.1
<input type="checkbox"/>	429-66.1 thru 429-67	429-67 thru 429-68.1
<input type="checkbox"/>	429-191	429-191
<input type="checkbox"/>	429-261	429-261

VOLUME 38

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	442-5.	442-5
<input type="checkbox"/>	442-39	442-39
<input type="checkbox"/>	442-69 thru 442-95	442-69 thru 442-91

Check
As
Done

Remove Old
Pages Numbered

Insert New
Pages Numbered

VOLUME 39

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	458B-11	458B-11

VOLUME 40

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	464-125	464-125 thru 464-126.1
<input type="checkbox"/>	464-223	464-223 thru 464-224.1
<input type="checkbox"/>	469-19	469-19
<input type="checkbox"/>	469-33 thru 469-37	469-33 thru 469-37
<input type="checkbox"/>	469-49 thru 469-51	469-49 thru 469-51

VOLUME 42

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	485-33 thru 485-34.1	485-33

VOLUME 43

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	489-5.	489-5
<input type="checkbox"/>	489-70.1 thru 489-73	489-71 thru 489-74.1
<input type="checkbox"/>	489-183 thru 489-189	489-183 thru 489-190.1
<input type="checkbox"/>	490-1.	490-1 thru 490-2.1
<input type="checkbox"/>	490-33	490-33 thru 490-34.1
<input type="checkbox"/>	491-19 thru 491-26.1	491-19 thru 491-25
<input type="checkbox"/>	491-39	491-39
<input type="checkbox"/>	491-49 thru 491-50.3	491-49 thru 491-50.3
<input type="checkbox"/>	491-63 thru 491-64.3	491-63 thru 491-64.1
<input type="checkbox"/>	491-73	491-73

VOLUME 44

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	500-55	500-55 thru 500-56.1

Check
As
Done

Remove Old
Pages Numbered

Insert New
Pages Numbered

VOLUME 45

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	513-3.	513-3 thru 513-4.1
<input type="checkbox"/>	513-27	513-27 thru 513-28.1
<input type="checkbox"/>	513-41 thru 513-43	513-41 thru 513-44.1
<input type="checkbox"/>	513-105 thru 513-107	513-105 thru 513-107
<input type="checkbox"/>	515-69 thru 515-82.1	515-69 thru 515-79
<input type="checkbox"/>	515-195	515-195
<input type="checkbox"/>	515-253 thru 515-255	515-253 thru 515-256.1

VOLUME 46

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	520-69	520-69
<input type="checkbox"/>	530-16.1 thru 530-17	530-17 thru 530-18.1
<input type="checkbox"/>	531-35 thru 531-36.1	531-35 thru 531-36.1
<input type="checkbox"/>	531-67	531-67

VOLUME 47

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	537-41 thru 537-43	537-41 thru 537-43
<input type="checkbox"/>	537-53	537-53
<input type="checkbox"/>	537-61	537-61
<input type="checkbox"/>	537-91	537-91 thru 537-92.1
<input type="checkbox"/>	537-141	537-141

VOLUME 48

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	549-35	549-35 thru 549-36.1
<input type="checkbox"/>	549-47 thru 549-49	549-47 thru 549-50.1
<input type="checkbox"/>	551-139	551-139

Check
As
Done

Remove Old
Pages Numbered

Insert New
Pages Numbered

VOLUME 49

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	565-27 thru 565-33	565-27 thru 565-33
<input type="checkbox"/>	565-65 thru 565-66.1	565-65 thru 565-66.1
<input type="checkbox"/>	565-101	565-101
<input type="checkbox"/>	565-109 thru 565-110.1	565-109 thru 565-110.1

VOLUME 51

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	573-9.	573-9 thru 573-10.1
<input type="checkbox"/>	579-57 thru 579-58.1	579-57 thru 579-58.1
<input type="checkbox"/>	579-189 thru 579-190.1	579-189 thru 579-190.1

VOLUME 52

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	I-131 thru I-169.	I-131 thru I-167
<input type="checkbox"/>	I-347 thru I-393.	I-347 thru I-393
<input type="checkbox"/>	I-461 thru I-521.	I-461 thru I-515
<input type="checkbox"/>	I-575 thru I-601.	I-575 thru I-597

VOLUME 53

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	I-1019 thru I-1119.	I-1019 thru I-1109
<input type="checkbox"/>	I-1285 thru I-1325.	I-1285 thru I-1326.1
<input type="checkbox"/>	I-1475 thru I-1515.	I-1475 thru I-1511

VOLUME 54

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	TS-1 thru TS-1083	TS-1 thru TS-1031

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