



California Case Summaries Civil™
Every New Published California Civil Case
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CALIFORNIA COURTS OF APPEAL

Arbitration

San Francisco Police Officers' Association v. San Francisco Police Commission (2018) _ Cal.App.5th _ , 2018 WL 4611595: The Court of Appeal affirmed the trial court's order denying petitioner's petition to compel arbitration action after the City of San Francisco (City) denied petitioner's grievance challenging the City's refusal to further meet and confer before adopting and implementing a revised use of force policy for the San Francisco Police Department. The trial court properly found that the parties had not agreed in a Memorandum of Understanding (MOU) to subject the City's determinations regarding the revised use of force policy to arbitration for these reasons: First, there is a provision in the MOU that arbitrability is to be determined by the court when a grievance is filed as to actions the City has reasonably determined to be necessary to ensure compliance with state law. Second, petitioner's amended grievance, alleging that the City failed to negotiate in good faith before deciding on and implementing the revisions to its use of force policy, was not arbitrable under the provisions of the MOU. Instead, the policy was a matter the City had reasonably determined to be mandated by or necessary to ensure compliance with state law, which was not subject to the MOU's grievance procedure. (C.A. 1st, September 26, 2018.)

Uber Technologies v. Google (2018) _ Cal.App.5th _ , 2018 WL 4658745: The Court of Appeal reversed the superior court's discovery order (in favor of Uber) that overruled an arbitration panel's discovery order (in favor of Google). The case arose from an arbitration proceeding by Google against its former employees who had started a self-driving vehicle company, Ottomotto LLC, that was acquired by Uber. The Court of Appeal overruled Uber's motion to dismiss the appeal. Because the superior court's order determined all pending issues in the special proceeding between Google and Uber, it was a final appealable order. The Court of Appeal reversed the trial court's discovery order. Due diligence-related documents prepared by the law firm Stroz Friedberg LLC were not protected attorney-client communications, nor were they entitled to absolute protection from disclosure under the attorney work product doctrine. While the materials had qualified protection as work product, denial of the materials would unfairly prejudice Google's preparation of its claims. (C.A. 1st, September 28, 2018.)

Attorney Fees

Atempa v. Pedrazzani (2018) _ Cal.App.5th _ , 2018 WL 4657860: See summary below under Employment.

Findleton v. Coyote Valley Band of Pomo Indians (2018) _ Cal.App.5th _ , 2018 WL 4572158: The Court of Appeal affirmed the trial court's order granting plaintiff attorney fees of \$28,148.75 and costs of \$4,591.79. This was the third appeal in the case. In the first appeal, the Court of Appeal ruled the defendant tribe waived its sovereign immunity for purposes of arbitrating the contract disputes and that the waiver extended to judicial enforcement of the right to arbitrate and of any arbitration award. In the second appeal, the Court of Appeal reversed the superior court's grant of defendant's motion for prevailing party attorney fees and costs because defendant was not the prevailing party. In this

appeal, the Court of Appeal ruled that the trial court properly awarded plaintiff attorney fees of \$28,148.75 and costs of \$4,591.79. (C.A. 1st, September 25, 2018.)

Lofton v. Wells Fargo Home Mortgage (2018) _ Cal.App.5th _ , 2018 WL 4659692: See summary above under Attorneys.

Schulz v. Jeppesen Sanderson, Inc. (2018) _ Cal.App.5th _ , 2018 WL 4718836: The Court of Appeal reversed the trial court's order awarding plaintiff attorneys only 10% attorney fees on a settlement they obtained of \$18,125,000 in a wrongful death action. The contingent fee agreement provided for a fee of 40%, and the plaintiff attorneys requested a fee of 31%. The Court of Appeal ruled the trial court gave too little consideration to California Rules of Court, rule 7.955(a)(2), which required it to take into account the terms of the engagement agreement with the clients from the perspective of when the agreement was signed. In addition, the court did not acknowledge the factors listed in California Rules of Court, rule 7.955(b). Instead of balancing the relevant factors, the court gave overwhelming weight to a single concern: the expense of the plaintiff children's extensive medical needs. The Court of Appeal agreed that a child's needs are a relevant and important factor in determining a reasonable attorney fee, but this single factor cannot overwhelm all other considerations. Considering the difficulties in the case at the beginning, the fact that other attorneys would not take the case on a contingent fee basis, and the significant costs advanced by the lawyers, the trial court abused its discretion in awarding fees of only 10% percent. (C.A. 2nd, filed September 5, 2018, published October 2, 2018.)

Attorneys

Lofton v. Wells Fargo Home Mortgage (2018) _ Cal.App.5th _ , 2018 WL 4659692: The Court of Appeal affirmed the trial court's order denying approximately \$5.5 million of attorney fees to Initiative Legal Group, APC (ILG) and instead directing the payment of this amount to class members in *Lofton v. Wells Fargo Home Mortgage* (*Lofton*). The trial court properly issued this order as the result of ILG concealing from the *Lofton* court and its class member clients a \$6 million settlement with Wells Fargo for payment of ILG's attorney fees in violation of California Rules of Court, Rule 3.769(b). The Court of Appeal also directed that a copy of its opinion be sent to the State Bar of California. (C.A. 1st, September 28, 2018.)

Uber Technologies v. Google (2018) _ Cal.App.5th _ , 2018 WL 4658745: See summary above under Arbitration.

Civil Code

Ruiz v. Musclewood Investment Properties (2018) _ Cal.App.5th _ , 2018 WL 4846336: The Court of Appeal reversed the trial court's order sustaining a demurrer, without leave to amend, and granting a motion to strike a cause of action in a complaint alleging that defendants violated the Disabled Persons Act (DPA; Civil Code, section 54 et seq.) by allowing their guard dog to interfere with and attack his guide dog. To maintain his independence, plaintiff (a blind person) had been trained to use a guide dog and a route that passed in front of defendants' business when he travelled to the market or bus stop. It is not easy for a blind person to learn alternate routes. The Court of Appeal ruled that

plaintiff's allegations that his guide dog was attacked or growled at by defendants' guard dog when he walked past defendants' premises stated a valid claim for relief under section 54.3. (C.A. 2nd, October 5, 2018.)

Civil Procedure

Cheveldave v. Tri Palms Unified Owners Assn. (2018) _ Cal.App.5th _ , 2018 WL 4770919: The Court of Appeal reversed the trial court's order granting defendant's anti-SLAPP motion under Code of Civil Procedure section 425.16. Plaintiffs sued defendants claiming that defendants did not have standing to enter into an agreement with the new owner of a recreational facility that resulted in an increase of fees for homeowner association members to use the facility. The Court of Appeal ruled that, because the agreement regarding the facility affected a number of issues before the courts, entering into the agreement was a protected activity. However, the anti-SLAPP motion should have been denied because plaintiff established a probability of prevailing on the merits. (C.A. 4th, October 3, 2018.)

Martinez v. Eatlite One, Inc. (2018) _ Cal.App.5th _ , 2018 WL 4765268: The Court of Appeal reversed the trial court's award of pre-998 and post-998 attorney fees of \$60,000 and costs of \$4,905.07 to plaintiff after a jury found in her favor on her employment discrimination claim and awarded her damages of \$11,490. Before trial, defendant had made a Code of Civil Procedure section 998 offer for \$12,001 which plaintiff did not accept. The Court of Appeal ruled that the trial court should have compared the jury's award plus plaintiff's pre-offer costs and fees, with the amount of the 998 offer, plus plaintiff's pre-offer costs and fees. Had it done this, it would have concluded that plaintiff did not obtain a better recovery. The Court of Appeal therefore reversed the portions of the postjudgment orders awarding post-offer costs and fees to plaintiff and denying post-offer costs to defendant. (C.A. 4th, October 3, 2018.)

The Inland Oversight Committee v. City of San Bernardino (2018) _ Cal.App.5th _ , 2018 WL 4376997: See summary below under Environment.

Turner v. Seterus, Inc. (2018) _ Cal.App.5th _ , 2018 WL 4561270: The Court of Appeal reversed in part the trial court's order sustaining a demurrer, without leave to amend, to a complaint alleging numerous causes of action against the loan servicer defendant arising from non-judicial foreclosure proceedings. The trial court erred its rulings on several causes of action. The Court of Appeal directed the trial court to enter a new order sustaining the demurrer without leave to amend as to the causes of action for intentional infliction of emotional distress and breach of contract, but overruling the demurrer as to the causes of action for intentional and negligent misrepresentation, negligence, wrongful foreclosure, and unlawful business practices. (C.A. 3rd, September 24, 2018.)

Williams v. The Pep Boys etc. (2018) _ Cal.App.5th _ , 2018 WL 4019876: On September 24, 2018, the Court of Appeal added the following sentence to the introductory paragraph on pages 1-2 of the decision that was originally published on August 23, 2018: "We hold further that a settlement offer under Code of Civil Procedure section 998 in a case in which plaintiffs assert both wrongful death and survival causes of action must be apportioned among such distinct claims." (C.A. 1st, September 24, 2018.)

Class Actions

Certified Tire and Service Centers Wage and Hour Cases (2018) _ Cal.App.5th _ , 2018 WL 4443940: See summary below under Employment.

Payton v. CSI Electrical Contractors (2018) _ Cal.App.5th _ , 2018 WL 4659500: The Court of Appeal affirmed the trial court's order denying class certification in a putative class action alleging wage and hour violations. The Court of Appeal ruled there was substantial evidence supporting the trial court's conclusion that individual questions would predominate in determining which class members actually had a claim for missed rest breaks. The trial court acted within its discretion in finding that plaintiff was not an adequate class representative due to his prior criminal convictions and the fact that he was also pursuing a personal wrongful discharge claim, and also acted within its discretion in denying leave to substitute another representative in light of the age of the case and the futility of doing so. (C.A. 2nd, September 28, 2018.)

Constitution

Sumner v. Simpson University (2018) _ Cal.App.5th _ , 2018 WL 4579765: The Court of Appeal affirmed in part and reversed in part the trial court's order granting defendant's motion for summary judgment in an action by plaintiff arising from her termination as the dean of a seminary. Plaintiff alleged breach of contract, defamation, invasion of privacy, and intentional infliction of emotional distress. The trial court granted summary judgment for defendant as to all causes of action based upon the ministerial exception, which provides that the First Amendment guarantees to a religious institution the right to decide matters affecting its ministers' employment, free from the scrutiny and second-guessing of the civil courts. While the United States Supreme Court has concluded that the ministerial exception bars a minister's employment discrimination suit based on a church's decision to fire her (*HosannaTabor Evangelical Lutheran Church & Sch. v. EEOC* (2012) 565 U.S. 171, 196 [181 L.Ed.2d 650]), it has not yet decided whether the exception bars a breach of contract or tort claim. The Court of Appeal ruled that the trial court correctly concluded that defendant is a religious organization and that plaintiff is a minister for purposes of the ministerial exception. The tort causes of action were barred by the ministerial exception, but plaintiff's contract cause of action was not foreclosed by the ministerial exception. (C.A. 3rd, September 25, 2018.)

Corporations

North Valley Mall v. Longs Drug Stores etc. (2018) _ Cal.App.5th _ , 2018 WL 4579856: The Court of Appeal affirmed the trial court's order granting summary judgment to defendants. The Court of Appeal ruled that, where the form of reorganization was not chosen to disadvantage creditors or shareholders, the court will not ignore the form of reorganization chosen by the corporation. In this case, summary judgment for defendant was proper because defendant was part of a reverse triangular merger. While defendant's parent company became CVS Caremark Corporation, defendant did not transfer its interest in two written agreements regarding a shopping center and therefore no additional common area maintenance charges were owed by defendant to plaintiff. (C.A. 3rd, September 25, 2018.)

Employment

Atempa v. Pedrazzani (2018) _ Cal.App.5th _ , 2018 WL 4657860: The Court of Appeal modified part of the trial court's judgment but otherwise affirmed it in a wage and hour action. Defendant Paolo Pedrazzani (Pedrazzani) was the owner, president, secretary, and director of Pama, Inc. (Pama), which did business as Via Italia Trattoria, a restaurant in Encinitas, California. Following a bench trial, the trial court entered judgment against Pama and Pedrazzani for wage and hour violations. Pama filed a bankruptcy proceeding after the entry of judgment. The trial court properly assessed civil penalties, under Labor Code sections 558(a) and 1197.1(a), individually against Pedrazzani because he qualified as a person other than the corporate employer who either violated the overtime pay and minimum wage laws or caused the statutory violations. However, because plaintiffs sought to recover the civil penalties under the Labor Code Private Attorneys General Act of 2004 (PAGA; Labor Code sections 2698 et seq.), the Court of Appeal ruled that the penalties had to be distributed 75 percent to the Labor and Workforce Development Agency and 25 percent to the aggrieved employees according to section 2699(i). The trial court's judgment was modified to do this. The Court of Appeal also affirmed the trial court's award of attorney fees (\$315,014) and costs against Pedrazzani. (C.A. 4th, September 28, 2018.)

Certified Tire and Service Centers Wage and Hour Cases (2018) _ Cal.App.5th _ , 2018 WL 4443940: The Court of Appeal affirmed the judgment for defendant following a bench trial in a class action alleging wage and hour violations. The Court of Appeal ruled that, under the technician compensation program, defendant made payments to its technicians on an hourly basis at an hourly rate above the minimum wage for all hours worked, and it provided paid rest periods on the clock as required by law. Plaintiff failed to establish any violation of the minimum wage requirement and rest period requirement in Wage Order 4. (C.A. 4th, filed September 18, 2018, published October 4, 2018.)

Payton v. CSI Electrical Contractors (2018) _ Cal.App.5th _ , 2018 WL 4659500: See summary above under Class Actions.

Sumner v. Simpson University (2018) _ Cal.App.5th _ , 2018 WL 4579765: See summary above under Constitution.

Environment

Golden Door Properties v. Co. of San Diego (2018) _ Cal.App.5th _ , 2018 WL 4659357: The Court of Appeal affirmed the trial court's order granting a writ petition and injunction and a judgment directing respondent to set aside and vacate the "2016 Climate Change Analysis Guidance Recommended Content and Format for Climate Change Analysis Reports in Support of CEQA Document" (Guidance Document) and prohibiting it from using the Guidance Document or the "Efficiency Metric" defined in it as part of its California Environmental Quality Act (CEQA) review of greenhouse gas impacts for development proposals in unincorporated areas of San Diego County. The Court of Appeal ruled that the Guidance Document violated CEQA, County of San Diego Guidelines, and a previous writ. (C.A. 4th, September 28, 2018.)

The Inland Oversight Committee v. City of San Bernardino (2018) _ Cal.App.5th _ , 2018 WL 4376997: The Court of Appeal affirmed the trial court's order sustaining, without leave to amend, the demurrers of respondents to a petition for writ of mandate challenging approved changes to a development project. The trial court properly sustained the demurrers because the doctrines of res judicata and collateral estoppel barred petitioner's California Environmental Quality Act claims as a result of an earlier lawsuit filed by the Highland Hills Homeowners Association. (C.A. 4th, filed September 14, 2018, published September 27, 2018.)

Family Law

Marriage of Morton (2018) _ Cal.App.5th _ , 2018 WL 4624913: The Court of Appeal reversed in part the judgment of the trial court and remanded the matter for further proceedings regarding child support, spousal support and attorney fees. The Court of Appeal ruled that the trial court erred in excluding respondent husband's income tax refunds from his income available for child support. The trial court also erred in excluding the husband's voluntary contributions to a 401(k) retirement savings plan from his net income available for child support, unless on remand the trial court provides findings that justify the exclusion of all or part of those contributions from his income. (See Family Code section 4059(c).) The trial court also erred in not awarding attorney fees to the wife because they were mandatory under Family Code section 2030(a)(2). The Court of Appeal also ruled that a trial court must make explicit findings on the issues listed in section 2030(a)(2). (C.A. 5th, September 26, 2018.)

Government

Atwell v. City of Rohnert Park (2018) _ Cal.App.5th _ , 2018 WL 4621745: The Court of Appeal affirmed the trial court's order denying a writ petition challenging the approval in 2010 and reapproval in 2015 by respondent of an expansion for an existing Wal-Mart store, which would include a full grocery component. The trial court properly concluded that appellants' petition was barred by res judicata because a prior petition (by a different party) challenging respondent's approval had also asserted a claim the approval was inconsistent with respondent's General Plan. The trial court also properly ruled that substantial evidence supported respondent's determination that the expansion complied with the General Plan. (C.A. 1st, filed September 18, 2018, published September 26, 2018.)

National Lawyers Guild v. City of Hayward (2018) _ Cal.App.5th _ , 2018 WL 4658744: The Court of Appeal reversed the trial court's order granting petitioner's writ petition seeking a refund of costs petitioner had paid (under protest) to respondent for costs incurred by respondent in complying with petitioner's requests for production under the California Public Records Act (CPRA; Government Code, section 6250 et seq.). The Court of Appeal ruled that the costs allowable under section 6253.9(b)(2) include respondent's actual expenditures to produce a copy of the police body camera video recordings, including the cost of extracting exempt material from these video recordings with the aid of special computer programming in the form of the Windows Movie Maker software. (C.A. 1st, September 28, 2018.)

Paradise Irrigation Dist. v. Commission on State Mandates (2018) _ Cal.App.5th _ , 2018 WL 4691078: The Court of Appeal affirmed the trial court's order denying a writ petition

challenging the consolidated test claims for subvention (claims by local governments and agencies in California for reimbursement from the state for costs of complying with state mandates for which the mandate does not concomitantly provide funds to the local agency) by several water districts that were denied by respondent on the basis the water districts had sufficient legal authority to levy fees to pay for any water service improvements mandated by the Water Conservation Act of 2009 (Stats. 2009-2010, 7th. Ex. Sess., ch. 4, § 1 (Conservation Act)). The Court of Appeal ruled that Proposition 218 does not undermine the holding in *Connell v. Superior Court* (1997) 59 Cal.App.4th 382, which addressed the authority of water districts to levy fees, thus respondent properly denied the reimbursement claims at issue because the water districts continue to have legal authority to levy fees even if that authority is subject to majority protest of water district customers. (C.A. 3rd, October 1, 2018.)

San Diego Unified Port District v. Cal. Coastal Commission (2018) _ Cal.App.5th _ , 2018 WL 4267218: The Court of Appeal overruled the trial court's postjudgment ruling concluding that respondent exceeded its jurisdiction or acted contrary to law in denying certification of petitioner's proposed master plan amendment to authorize a hotel development in the East Harbor Island subarea including construction of a 175-room hotel. The trial court erred by relying in part on provisions of the California Coastal Act of 1976 (Act; Public Resources Code, section 30000 et seq.) governing a local government's authority and imposing limits on the Commission's jurisdiction with respect to local coastal programs, which do not pertain to port master plans or master plan amendments. The trial court also engaged in an impermissibly broad interpretation of a provision of the Act barring respondent from modifying a master plan amendment as a condition of certification. (Section 30714.) (C.A. 4th, filed September 7, 2018, published October 1, 2018.)

Westside Opposed etc. v. City of Los Angeles (2018) _ Cal.App.5th _ , 2018 WL 4691426: The Court of Appeal affirmed the trial court's order denying a writ petition challenging an amendment to respondent's general plan. Respondent amended the general plan to change the land use designation of a five-acre development site from Light Industrial to General Commercial. The project at issue involved a mixed-use development close to a new light rail station. The Court of Appeal rejected petitioner's arguments that respondent's Charter barred the amendment of the general plan for a single project site; that the Charter barred respondent from allowing a member of the public to initiate an amendment; that respondent failed to make required findings; and that the amendment constituted impermissible spot zoning. (C.A. 2nd, October 1, 2018.)

Insurance

Jones v. IDS Property Casualty Ins. Co. (2018) _ Cal.App.5th _ , 2018 WL 4579767: The Court of Appeal affirmed the trial court's order granting summary judgment for defendant in an action for loss of consortium by a wife whose husband was seriously injured by a driver insured by defendant. The Court of Appeal ruled that policy language stating that the "bodily injury liability limits for each person is the maximum we will pay as damages for bodily injury, including damages for care and loss of service, to one person per occurrence" clearly provided that the damages for bodily injury included loss of consortium. (C.A. 4th, September 25, 2018.)

Probate

Estate of Fusae Obata (2018) _ Cal.App.5th _ , 2018 WL 4625340: The Court of Appeal affirmed the trial court's ruling holding that California law recognizes that the Japanese yōshi-engumi in 1911 of decedents' father, Tomejiro Obata, was a legal adoption. Decedents Fusae Obata and Emi Obata were sisters who died intestate in June 2013, having never been married and with no descendants. Under the Probate Code, the adoption of their father, Tomejiro Obata, by Minejiro Obata and Kiku Obata in 1911 severed the relationship of parent and child between Tomejiro Obata and his natural parents, Hikozaemon Nakano and Haru Nakano, and thereby precluded intestate inheritance by the descendants of his biological parents. (C.A. 1st, September 26, 2018.)

Real Property

Turner v. Seterus, Inc. (2018) _ Cal.App.5th _ , 2018 WL 4561270: See summary above under Civil Procedure.

Taxes

Bunzl Distribution v. Franchise Tax Board (2018) _ Cal.App.5th _ , 2018 WL 4660180: The Court of Appeal affirmed the trial court's order granting summary judgment for defendant against plaintiff's claims seeking a refund of taxes paid as a result of defendant's determination that plaintiff owed \$1,403,595 in taxes to the State of California for the year 2005 under the Uniform Division of Income for Tax Purposes Act (UDITPA; Revenue & Taxation Code, section 25120 et seq.). (C.A. 1st, September 28, 2018.)

Torts

Jabo v. YMCA of San Diego Co. (2018) _ Cal.App.5th _ , 2018 WL 4659507: The Court of Appeal affirmed the trial court's order granting summary judgment for defendant in a wrongful death action arising from the alleged misconduct of defendant in not having its trained staff member supply an automatic external defibrillator (AED) when an adult had an on-site medical emergency that appeared to be sudden cardiac arrest while he was a permissive user of the defendant's soccer field. The Court of Appeal ruled that defendant was not a health studio as defined in Health and Safety Code section 104113, and was not required to supply an AED, because defendant was renting a field to a nonmember league that did not choose to accept its membership and regulatory policies. As a matter of law the Court of Appeal ruled that Health and Safety Code section 1797.196 and Civil Code section 1714.21 did not impose a duty on defendant to have a facility operator's employee apply and activate an AED at any location on the premises upon the occurrence of a medical emergency, even if defendant had acquired and made generally available such devices to promote the safety of its members and other patrons. The Court of Appeal declined to extend a common law duty, based on factors of public policy and foreseeability, to cover this category of circumstances. The Court of Appeal finally ruled that the trial court properly held that a release signed by decedent was unenforceable. (C.A. 4th, September 28, 2018.)

Martine v. Heavenly Valley L.P. (2018) _ Cal.App.5th _ , 2018 WL 4612649: The Court of Appeal affirmed the trial court's order granting defendant summary judgment in an action

by plaintiff alleging negligence in the way a ski patrolman brought her down the hill in a rescue sled that went out of control and hit a tree. The Court of Appeal ruled that plaintiff's claim was barred by the doctrine of assumption of risk because her injury was due to a risk inherent in the sport of skiing. It also ruled that plaintiff's common carrier argument failed. (C.A. 3rd, filed September 4, 2018, published September 26, 2018.)

Schulz v. Jeppesen Sanderson, Inc. (2018) _ Cal.App.5th _ , 2018 WL 4718836: See summary above under Attorney Fees.

Williams v. The Pep Boys etc. (2018) _ Cal.App.5th _ , 2018 WL 4019876: See summary above under Civil Procedure.

Water

Paradise Irrigation Dist. v. Commission on State Mandates (2018) _ Cal.App.5th _ , 2018 WL 4691078: See summary above under Government.

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