



## **California Case Summaries: Monthly™**

Every California Civil & Family Law Case  
Published in June 2019

**By Monty A. McIntyre, Esq.**

**Mediator, Arbitrator & Referee at ADR Services, Inc.**

**Civil Trial Lawyer | National ABOTA Board Member | Ca. Attorney since 1980**

For ADR Services, Inc. scheduling, contact my case manager Christopher Schuster

Phone: (619) 233-1323 Email: [christopher@adrservices.com](mailto:christopher@adrservices.com)

Monty's Web: <http://montymcintyre.com/mcintyre>

Monty's cell: (619) 990-4312 Monty's email: [monty@montymcintyre.com](mailto:monty@montymcintyre.com)

### **Our Other Publications**

**California Case Summaries: Annual™:** Short summaries, organized by legal topic, of every new civil and family law decision published each year for \$900 per person. Discounted multi-user issues are also available. To subscribe, [click here.](#)

**California Case Summaries: Quarterly™:** Short summaries, organized by legal topic, of every new civil and family law decision published each quarter for \$200 per person. Discounted multi-user issues are also available. To subscribe, [click here.](#)

## CALIFORNIA SUPREME COURT

### Taxes

*City and County of S.F. v. The Regents of the University of Cal.* (2019) \_ Cal.5th \_ , 2019 WL 2529253: The California Supreme Court reversed the Court of Appeal decision that had affirmed the trial court's denial of a writ petition seeking to compel respondents to collect and pay to petitioner a tax on drivers who park their cars in paid parking lots. The California Supreme Court ruled that the California Constitution allows petitioner to apply this tax collection requirement to state universities that operate paid parking lots in the city of San Francisco. (June 20, 2019.)

## CALIFORNIA COURTS OF APPEAL

### Attorney Fees

*Guillory v. Hill* (2019) \_ Cal.App.5th \_ , 2019 WL 2316981: The Court of Appeal affirmed the trial court's order denying plaintiffs' motion for attorney fees as prevailing parties. Plaintiffs brought a civil rights claim against defendant Orange County Sheriff's Department Investigator Michele Hill. Plaintiffs originally sought over \$1 million in damages but ultimately obtained an award of less than \$5,400. Plaintiffs then moved for almost \$3.8 million in attorney fees in a 392-page motion containing, in the trial court's words, "bloated, indiscriminate," and sometimes "'cringeworthy'" billing records. In light of plaintiffs' minimal success and inflated fee request, the trial court properly exercised its discretion to deny their 42 U.S.C. section 1988 motion for attorney fees. (C.A. 4th, filed May 31, 2019, published June 25, 2019.)

*Hanna v. Mercedes-Benz USA* (2019) \_ Cal.App.5th \_ , 2019 WL 2511940: The Court of Appeal affirmed the trial court's order, following a settlement for \$60,000 of a Song-Beverly Consumer Warranty Act (Civil Code, section 1790 et seq.) action, awarding plaintiff costs of \$13,409.21. However, it reversed the trial court's order awarding plaintiff attorney fees of only \$60,869 instead of the fees requested of \$259,068.75 using the lodestar method. The Court of Appeal ruled that plaintiff was entitled to recover attorney fees after a January 2016 CCP 998 offer from defendant, the trial court erred in failing to use the lodestar method to determine fees after the January 2016 998 offer, and a fee award under the Song-Beverly Act may not be based on a percentage of plaintiff's recovery. (C.A. 2nd, June 18, 2019.)

*Rudisill v. Cal. Coastal Commission* (2019) \_ Cal.App.5th \_ , 2019 WL 2366469: The Court of Appeal reversed the trial court's award of \$28,795.70 in attorney fees under Code of Civil Procedure 128.5(b)(2) to petitioner after it denied an anti-SLAPP motion to strike filed by real parties in interest and found it to be totally without merit. The Court of Appeal disagreed, holding that a reasonable attorney could have concluded that the petition (filed against the California Coastal Commission and the City of Los Angeles) asserted a claim against Real Parties arising from protected conduct. (C.A. 2nd, June 5, 2019.)

*Sweetwater Union HS Dist. v. Julian Union Elementary Sch.* (2019) \_ Cal.App.5th \_ , 2019 WL 2715542: The Court of Appeal affirmed the trial court's order awarding petitioner attorney fees of \$166,027.05 under Code of Civil Procedure section 1021.5. Petitioner filed a petition for writ of mandate asking the court to order the Julian Union Elementary School District (Julian) to revoke the charter for Diego Plus Education Corporation doing business as Diego Valley Public Charter (Diego Valley). The trial court declined to issue a writ of mandate directing that Julian revoke Diego Valley's charter, essentially concluding this form of relief would unreasonably disrupt students. However, the court declared that Diego Valley's operation at the National City and Chula Vista facilities would be in violation of the Education Code and enjoined Diego Valley from operating both facilities. Although the court ultimately denied the petition for writ of mandate, its denial did not reflect adversely on the merits for such claims. The trial court did not abuse its discretion in awarding the attorney fees. (C.A. 4th, filed June 4, 2019, published June 28, 2019.)

#### Attorneys

*Doe v. Superior Court* (2019) 36 Cal.App.5th 199: The Court of Appeal granted a petition for writ of mandate directing the trial court to vacate its order granting defendant's motion to disqualify plaintiff's attorney and enter a new order denying the motion. Plaintiff brought claims for sexual harassment and sexual assault against defendants Southwestern Community College District (District) and three District employees. The complaint also alleged sexual harassment of two other female District employees which presumably showed that defendant had notice of other similar misconduct. The trial court granted a motion to disqualify plaintiff's counsel because he spoke with a District employee before her deposition was taken. There was no evidence that the employee had accepted the District's offer to represent her or had otherwise retained counsel at the time of the contact. The Court of Appeal ruled that the purpose of California State Bar Rules of Professional Conduct Rule 4.2 is to prevent ex parte contact with employees who engaged in acts or conduct for which the employer might be liable. It is not designed to prevent a plaintiff's lawyer from talking to employees of an organizational defendant who might provide relevant evidence of actionable misconduct by another employee for which the employer may be liable. (C.A. 4th, June 13, 2019.)

#### Business

*Pneuma International, Inc. v. Cho* (2019) \_ Cal.App.5th \_ , 2019 WL 2576366: The Court of Appeal affirmed the trial court's judgment, following a bench trial, against plaintiff on all causes of action except one for trespass to chattel, and in favor of defendant/cross-complainant, in an action alleging multiple business torts and other claims arising from the manufacturing and sale of paper soup cups. Except for trespass to chattel, plaintiff failed to establish any of its other causes of action. The Court of Appeal held that a determination that a party engaged in a trespass to chattel in a business context does not, without more, establish that the party engaged in an unlawful business practice under California's Unfair Competition Law. (Business & Professions Code, section 1700.) (C.A. 1st, June 24, 2019.)

### Civil Code

*Berger v. Varum* (2019) \_ Cal.App.5th \_ , 2019 WL 2335693: The Court of Appeal reversed the trial court's order sustaining a demurrer to a complaint alleging fraudulent transfer under Civil Code section 34393 and conspiracy to defraud. Plaintiff initially alleged defendants fraudulently transferred assets to avoid paying a judgment. While the action was pending, certain defendants paid the judgment. Plaintiff then amended the complaint to allege consequential damages from the delay in payment. The Court of Appeal ruled that the Uniform Voidable Transactions Act (UVTA; Civil Code section 3439 et seq.) does not preclude a common law action for fraudulent transfer and found that plaintiff had sufficiently pled a cause of action alleging specific financial injury caused by the defendants' alleged fraudulent transfer. (C.A. 1st, May 31, 2019.)

*Raney v. Cerqueira* (2019) \_ Cal.App.5th \_ , 2019 WL 2484007: See summary below under Family Law.

### Civil Procedure

*County of Sonoma v. Gustely* (2019) \_ Cal.App.5th \_ , 2019 WL 2315399: The Court of Appeal reversed the trial court's order entering a default judgment that imposed civil penalties at the rate of \$20 per day and directed the court to modify its judgment to require payment of the penalties at the rate of \$45 per day. The Court of Appeal found that the trial court's order, which altered a final administrative order imposing daily penalties, was entirely unexplained, provided defendant with a windfall he did not request, and could not be sustained. (C.A. 1st, filed May 31, 2019, published June 24, 2019.)

*Cuevas-Martinez v. Sun Salt Sand, Inc.* (2019) \_ Cal.App.5th \_ , 2019 WL 2385161: The Court of Appeal reversed the trial court's order granting an anti-SLAPP motion to strike a complaint for malicious prosecution filed by plaintiff against defendants (his former employer and its attorney) after plaintiff had obtained a summary judgment on a lawsuit brought by his former employer. The trial court based its ruling on *Jarrow Formulas, Inc. v. LaMarche* (2003) 31 Cal.4th 728, 742, which held the entry of summary judgment on a prior lawsuit for insufficient evidence does not, by itself, establish a probability of prevailing on the merits of a subsequent malicious prosecution claim. The Court of Appeal reversed, holding that plaintiff did not rely on his summary judgment victory alone. He also submitted evidence that, if credited by a trier of fact, would support a verdict in his favor. (C.A. 4th, June 6, 2019.)

*Jenni Rivera Enterprises v. Latin World Entertainment etc.* (2019) \_ Cal.App.5th \_ , 2019 WL 2602472: The Court of Appeal affirmed in part and reversed in part the trial court's order denying defendants' anti-SLAPP motions to strike in an action arising from a television production based on the life of the Mexican-American celebrity Jenni Rivera, who died in a plane crash in December 2012. Because plaintiff satisfied its burden of making a prima facie case, with reasonable inferences from admissible evidence, that the defendant television producers had knowledge of a nondisclosure agreement between Jenni Rivera and her manager, the trial court's order denying the producers' anti-SLAPP motion to strike was affirmed. However, because it was undisputed that the broadcaster defendant did not know

of the nondisclosure agreement at the time it contracted with the producers to broadcast the series, and plaintiff did not show the broadcaster engaged in sufficiently wrongful or unlawful conduct after it learned of the nondisclosure agreement to preclude First Amendment protection, the Court of Appeal reversed the trial court's order denying the broadcaster's anti-SLAPP motion to strike. (C.A. 2nd, filed May 29, 2019, published June 25, 2019.)

*Lasalle v. Vogel* (2019) \_ Cal.App.5th \_ , 2019 WL 2428668: Concerned about the lack of civility between lawyers and stressing that they need to cooperate as discussed in Code of Civil Procedure section 583.130, the Court of Appeal reversed the trial court's order denying a motion for relief from default under Code of Civil Procedure section 473(b). The Court of Appeal was concerned with the use of email only to warn of a default, the very short-fuse deadline of one day (it was unreasonably short), the lack of prejudice to plaintiff from a set-aside, the unusual malpractice claims in the complaint, the presence of a meritorious defense to part of the default judgment, the trial court taking judicial notice of two previous instances of discipline against the attorney defendant, and disappointment that defendant's explanation of her botched reply was not considered adequate by the trial court. (C.A. 4th, June 11, 2019.)

*Marriage of Benner* (2019) \_ Cal.App.5th \_ , 2019 WL 2442485: See summary below under Family Law.

*Rudisill v. Cal. Coastal Commission* (2019) \_ Cal.App.5th \_ , 2019 WL 2366469: See summary above under Attorney Fees.

*Samsky v. State Farm Mutual Automobile Ins. Co.* (2019) \_ Cal.App.5th \_ , 2019 WL 2610898: The Court of Appeal reversed the trial court's order denying claimant's motion for attorney fees under Code of Civil Procedure section 2033.420 for having to prove during an arbitration matters that respondent denied in its response to requests for admissions. The Court of Appeal ruled that the party opposing the motion for attorney fees has the burden of proving that one of the exceptions in section 2033.420(b) applies, and the trial court erred in requiring the moving party to prove that none of the exceptions applied. Because claimant proved he was entitled to costs under section 2033.420(a), and respondent failed to prove that any of the exceptions to a cost award applied to it, the matter was remanded to determine the amount to be awarded to claimant. (C.A. 2nd, June 26, 2019.)

*Swanson v. County of Riverside* (2019) \_ Cal.App.5th \_ , 2019 WL 2496658: The Court of Appeal affirmed the trial court's denial of an anti-SLAPP motion filed by defendants to a complaint alleging negligence in releasing Brandon M. from an involuntary hold before 72 hours had elapsed, that resulted in his returning home and bludgeoning three people to death with a baseball bat. The Court of Appeal affirmed the trial court's ruling on the basis that the alleged activity was not protected speech and did not give rise to application of the anti-SLAPP statute. (C.A. 4th, June 17, 2019.)

*ValueRock TN Prop. v. PK II Larwin Square* (2019) \_ Cal.App.5th \_ , 2019 WL 2707952: The Court of Appeal affirmed the trial court's order denying defendants' anti-SLAPP motion to strike an amended complaint alleging that a landlord unreasonably withheld consent to the

plaintiffs' lease assignment request. During the litigation, plaintiffs made an amended lease assignment request, which the landlord rejected. In the second amended complaint, plaintiffs asserted the same five causes of action as before, but added allegations about the landlord's refusal to consent to their amended assignment request. The trial court properly denied the anti-SLAPP motion because the amended assignment request was not a settlement communication or litigation-related conduct, but rather an ordinary business decision. (C.A. 4th, June 28, 2019.)

#### Damages

*Lewis v. Ukran* (2019) \_ Cal.App.5th \_ , 2019 WL 2613217: The Court of Appeal affirmed a judgment for plaintiff awarding damages of \$1,651,702.39 for past medical expenses and past lost earnings, loss of future earning capacity, and future medical damages, and the trial court's order denying defendant's motion for new trial on the basis that the future medical expenses and future lost earnings were not reduced to present cash value. The Court of Appeal ruled there was substantial evidence supporting the damages awarded. It also ruled that, in a contested case, a party (typically the defendant) seeking to reduce an award of future damages to present value bears the burden of proving an appropriate method of doing so, including an appropriate discount rate. A party (typically the plaintiff), who seeks an upward adjustment of a future damages award to account for inflation, bears the burden of proving an appropriate method of doing so, including an appropriate inflation rate. A trier of fact should not reduce damages to present value, or adjust for inflation, absent such evidence or a stipulation of the parties. (C.A. 2nd, June 26, 2019.)

#### Education

*Sweetwater Union HS Dist. v. Julian Union Elementary Sch.* (2019) \_ Cal.App.5th \_ , 2019 WL 2715542: See summary above under Attorney Fees.

#### Elder Abuse

*Tanguilig v. Valdez* (2019) \_ Cal.App.5th \_ , 2019 WL 2523524: The Court of Appeal affirmed the trial court's order granting a petition for a restraining order against a neighbor under the Elder Abuse and Dependent Adult Civil Protection Act (Elder Abuse Act; Welfare & Institutions Code, section 15600 et seq.). The Court of Appeal ruled that defendant's arguments had been forfeited for failure to raise them below, lacked merit and/or were insufficient to affirmatively show error. (C.A. 1st, filed May 20, 2019, published June 18, 2019.)

#### Elections

*Howard Jarvis Taxpayers Assn. v. Amador Water Agency* (2019) \_ Cal.App.5th \_ , 2019 WL 2482624: The Court of Appeal affirmed the trial court's denial of a petition for a peremptory writ of mandate seeking to overturn respondents' decision to reject a referendum petition and refuse to place it on an election ballot. The Court of Appeal ruled that, in finding the petition was confusing, respondent's Clerk exceeded the scope of her ministerial duty and should have certified the referendum petition as adequate. However, the Court of Appeal

ruled that the resolution adopting new water service rates was not subject to referendum. (C.A. 3rd, June 14, 2019.)

### Employment

*Conger v. Co. of LA* (2019) \_ Cal.App.5th \_ , 2019 WL 2482400: See summary below under Government.

*Doe v. Superior Court* (2019) 36 Cal.App.5th 199: See summary above under Attorneys.

*Esparza v. Safeway, Inc.* (2019) \_ Cal.App.5th \_ , 2019 WL 2417073: The Court of Appeal affirmed the trial court's orders granting defendants' motion for summary judgment against an Unfair Competition Law (UCL; Business & Professions Code, section 17200 et seq.) claim and granting their motion to strike a Private Attorneys General Act of 2004 (PAGA; Labor Code, section 2698 et seq.) claim that both arose from a former practice of defendants (that had stopped on June 17, 2007) of failing to pay statutorily required premium wages when employee meal periods were not provided. Regarding the UCL claim, the trial court ruled that plaintiffs improperly sought recovery of premium wages without proving the classwide meal period violations necessary for the class members' interest in premium wages to vest. It also found the PAGA claim was barred by the one-year statute of limitations. (C.A. 2nd, June 10, 2019.)

*Pearl v. City of Los Angeles* (2019) \_ Cal.App.5th \_ , 2019 WL 2511941: The Court of Appeal affirmed the trial court's order denying defendant's motion for new trial and entering an amended judgment for \$12,394,972 after plaintiff agreed to a remittitur reducing past noneconomic damages by \$5 million. Plaintiff sued for harassment and failure to prevent harassment and retaliation in violation of the Fair Employment and Housing Act (FEHA; Government Code, section 12940 et seq.). The jury awarded plaintiff \$17,394,972, including \$10 million in past and \$5 million in future noneconomic damages. Finding that at least some of the jury's award for past noneconomic harm was intended to punish defendant rather than to compensate plaintiff, the trial court conditionally granted defendant's new trial motion unless plaintiff agreed to a remittitur reducing past noneconomic damages by \$5 million. It did not abuse its discretion in doing so. (C.A. 2nd, June 18, 2019.)

*Ross v. County of Riverside* (2019) \_ Cal.App.5th \_ , 2019 WL 2417426: The Court of Appeal reversed the trial court's order granting defendant's motion for summary judgment in a case alleging violations of Labor Code section 1102.5 and the Fair Employment and Housing Act (FEHA; Government Code, § 12900 et seq.). Plaintiff was a former deputy district attorney. The Court of Appeal concluded there were triable issues of material fact on the questions of whether plaintiff engaged in protected activity under Labor Code section 1102.5 by reporting information suggesting a homicide defendant was innocent, and whether plaintiff had a physical disability under the FEHA. (C.A. 4th, filed May 20, 2019, published June 10, 2019.)

## Environment

*Center for Biological Diversity v. CA Dept. of Conservation* (2019) \_ Cal.App.5th \_ , 2019 WL 2491585: The Court of Appeal affirmed the trial court's order sustaining a demurrer to the CEQA cause of action in a writ petition and its later denial of remaining claims. The trial court properly sustained the demurrer to the CEQA cause of action finding it was unripe because there was no project before respondent requiring approval. The Court of Appeal ruled that the Environmental Impact Report in question, discussing potential environmental impacts in the state of well stimulation treatments such as hydraulic fracturing and acid well stimulation, complied with Senate Bill No. 4 and the California Environmental Quality Act. (C.A. 3rd, filed May 16, 2019, published June 14, 2019.)

## Family Law

*Greiner v. Keller* (2019) \_ Cal.App.5th \_ , 2019 WL 2484009: The Court of Appeal reversed the trial court's order denying the mother's request for an order awarding her childcare costs under Family Code section 4062. While the mother was able to work, she requested childcare costs to obtain a paralegal certification to increase her income so she could get off of public assistance. The Court of Appeal ruled that section 4062 allows a court to consider a request for childcare costs related to reasonably necessary education for prospective employment to allow a custodial parent to become self-supporting without the need for public assistance. (C.A. 1st, June 14, 2019.)

*Marriage of Ankola* (2019) \_ Cal.App.5th \_ , 2019 WL 2537336: The Court of Appeal reversed the trial court's issuance of a mutual restraining order against husband under the Domestic Violence Protection Act (Family Code, section 6200 et seq.). The trial court erred in issuing a mutual restraining order when the wife had not filed a separate written request for such an order as required by Family Code section 6305(a)(1). (C.A. 6th, June 20, 2019.)

*Marriage of Benner* (2019) \_ Cal.App.5th \_ , 2019 WL 2442485: The Court of Appeal affirmed the trial court's denial of an expert's anti-SLAPP motion to strike filed against a petition to join him as a party to the action. The petition to join the expert did not assert any cause of action against the expert, a threshold requirement under the anti-SLAPP statute. (Code of Civil Procedure section 425.16(b)(1).) The Court of Appeal also ruled that the expert did not have to be joined as a party to the dissolution action in order for the court to determine the reasonableness of his expert fees. It was error for the trial court to require that he be joined in the action. On remand, the trial court was directed to issue an order giving the parties and the expert notice of the court's intent to hold an evidentiary hearing on the issue of whether to order the expert to repay the fees he received pursuant to his appointment under Evidence Code section 730. (C.A. 4th, June 12, 2019.)

*Raney v. Cerkueira* (2019) \_ Cal.App.5th \_ , 2019 WL 2484007: The Court of Appeal affirmed the trial court's order holding that decedent wife's transfer of her interest in real property to her trust violated the Family Code section 2040(b)(3) automatic restraining order prohibition on transferring property, cancelling the transfer and reforming the deed to one severing only the joint tenancy with her husband, and concluding that her son, in his capacity as personal representative of her estate, was the owner of an undivided one-half interest in the real property and was entitled to an order of partition by sale. A party who is

bound by the automatic temporary restraining order must satisfy both the generally-applicable requirements of Civil Code section 683.2(c) and section 2040(b)(3)'s notice requirement before the severance of a joint tenancy with the other party is effective to eliminate the right of survivorship. (C.A. 1st, June 14, 2019.)

#### Government

*City and County of S.F. v. Uber Technologies* (2019) \_ Cal.App.5th \_ , 2019 WL 2436750: The Court of Appeal affirmed the trial court's order granting a petition and directing respondents to comply with administrative subpoenas issued by the City Attorney of San Francisco (City Attorney) for reports and data submitted to the California Public Utility Commission (CPUC). The Court of Appeal found that it was within the City Attorney's investigative powers to issue the administrative subpoenas, that section 1759 of the Public Utilities Code did not deprive the trial court of jurisdiction, and the primary jurisdiction doctrine did not apply to postpone enforcement of the administrative subpoenas. The Court of Appeal also concluded that respondents' confidentiality arguments lacked merit given the protective order stipulated to by respondents and issued by the trial court. (C.A. 1st, filed May 19, 2019, published June 11, 2019.)

*Conger v. Co. of LA* (2019) \_ Cal.App.5th \_ , 2019 WL 2482400: The Court of Appeal affirmed the trial court's denial of a writ petition seeking to compel respondent to provide him with an administrative appeal under Government Code section 3304(b) pursuant to the Public Safety Officers Procedural Bill of Rights Act (POBRA; Government Code section 3300 et seq.). The trial court properly ruled that respondent could consider petitioner's pre-probationary conduct in rescinding his probationary promotion, and the decision to rescind the promotion based on petitioner's failure to report a use of force was merit-based. (C.A. 2nd, June 14, 2019.)

*Kennedy v. Super. Ct.* (2019) \_ Cal.App.5th \_ , 2019 WL 2484008: The Court of Appeal denied a petition for writ of supersedeas filed by a physician seeking to stay the superior court's order compelling him to produce patient records to the Medical Board of California, pending his appeal of that order. The Court of Appeal ruled that the physician was not entitled to an automatic stay of the superior court's order, and it also declined to grant a discretionary stay of the order. (C.A. 1st, June 14, 2019.)

#### Hospitals

*Hoag Memorial Hospital Presbyterian v. Kent* (2019) \_ Cal.App.5th \_ , 2019 WL 2499606: The Court of Appeal affirmed the trial court's order denying a petition for writ of administrative mandate seeking to overturn the dismissal by the California Department of Health Care Services Office of Administrative Hearings and Appeals of an administrative appeal regarding an alleged Medi-Cal audit calculation error because it was untimely. There was no abuse of discretion in the dismissal of the administrative appeal of the alleged calculation error issue. (C.A. 1st, June 17, 2019.)

### Insurance

*McMillin Homes Construction v. Natl. Fire & Marine Ins. Co.* (2019) \_ Cal.App.5th \_ , 2019 WL 2366468: The Court of Appeal reversed the trial court's decision, following a bench trial, holding that defendant did not owe a duty to defend a general contractor covered as an additional insured under a commercial general liability policy due to an endorsement exclusion for damage to "property in the care, custody or control of the additional insured." The Court of Appeal held the exclusion did not apply because it required complete control; but the facts indicated only shared control between the general contractor and its roofing subcontractor. (C.A. 4th, June 5, 2019.)

### Judgments

*Wertheim, LLC v. Currency Corporation* (2019) \_ Cal.App.5th \_ , 2019 WL 2386072: The Court of Appeal reversed the trial court's order denying the judgment creditor's motion for postjudgment enforcement costs under Code of Civil Procedure section 685.080. The trial court denied the motion as untimely on the ground that a bond issuer's deposit of appeal bond funds with the superior court satisfied the judgment long before the motion was filed. The Court of Appeal held that disputed funds on deposit with a superior court do not satisfy a judgment for purposes of a postjudgment motion for costs, so the motion was timely. The matter was remanded to the trial court to determine its merits. (C.A. 2nd, June 6, 2019.)

### Landlord - Tenant

*Hilaly v. Allen* (2019) \_ Cal.App.5th Supp. \_ , 2019 WL 2500495: The Court of Appeal affirmed the trial court's judgment for defendant following a jury trial. Under the Ellis Act, an eligible elderly or disabled tenant can defeat an owner's demand for possession of a residential rental unit by showing that the owner changed a term of the tenancy during the notice period. A residential rental questionnaire was not an "instrument" under Evidence Code section 622, and the tenant was not barred from asserting or proving facts arguably inconsistent with her questionnaire answers. Finally, the jury's verdict was supported by substantial evidence. (Appellate Division of the San Francisco Superior Court, filed May 21, 2019, published June 17, 2019.)

*Orozco v. WPV San Jose, LLC* (2019) \_ Cal.App.5th \_ , 2019 WL 2498402: The Court of Appeal affirmed in part and reversed in part a judgment for plaintiffs, following a jury trial, in an action for intentional misrepresentation and concealment arising from the negotiation of a commercial lease. The landlord did not disclose to plaintiffs, who opened a restaurant selling hot dogs and fries, that it had entered into a lease with a very similar restaurant. Although plaintiffs' restaurant was initially very successful, it failed several months after the competing restaurant opened a few doors away. The Court of Appeal affirmed the damages awarded to plaintiffs of \$872,141 (\$676,967 for lost profits; \$129,462 for operational losses; and \$65,712 for startup costs for opening the restaurant in another location). However, the trial court erred in denying plaintiff Paul Orozco the right to rescind his personal lease guaranty. The Court of Appeal reversed the trial court's order denying attorney fees to any party, finding that Orozco had prevailed in part by obtaining rescission of the guaranty and was therefore entitled to attorney fees. (C.A. 6th, June 17, 2019.)

### Liens

*Lomeli v. State Dept. of Health Care Services* (2019) \_ Cal.App.5th \_ , 2019 WL 2590799: The Court of Appeal affirmed the trial court's order approving a \$267,159.60 Medi-Cal settlement lien on a settlement of \$4 million in an action against medical care providers who caused plaintiff's catastrophic birth injuries. Welfare and Institutions Code sections 14124.72 and 14124.76 do not violate the Supremacy Clause of the federal constitution. The trial court properly computed the lien amount. The gross total of \$367,646.60 was reduced by 25 percent to account for a reasonable share of plaintiff's attorney fees (section 14124.72(d)), then \$8,575.35 was subtracted to account for a reasonable share of plaintiff's total litigation costs of \$93,300, resulting in a lien total of \$267,159.60 (\$367,646.60 - \$91,911.65 - \$8,575.35 = \$267,159.60). (C.A. 2nd, June 25, 2019.)

### Physicians

*Kennedy v. Super. Ct.* (2019) \_ Cal.App.5th \_ , 2019 WL 2484008: See summary above under Government.

### Probate

*Estate of Sapp* (2019) \_ Cal.App.5th \_ , 2019 WL 2427487: The Court of Appeal affirmed the probate court's order removing Edith Rogers as the administrator of the estate of her grandfather because she mismanaged the estate and was incapable of properly executing the duties of the office of administrator. (Probate Code, section 8502(a),(b).) The probate court properly found that Rogers (1) had failed to comply with the court's 2001 instructions that she and her coadministrator (who died in 2003) sell the estate's remaining real estate holdings and distribute the net proceeds to the beneficiaries of the decedent's will; and (2) acted in bad faith toward the beneficiaries by trying to buy them out for much less than they would have received if she had timely sold the properties. (C.A. 4th, June 11, 2019.)

*Gonzalez v. City National Bank* (2019) \_ Cal.App.5th \_ , 2019 WL 2576537: The Court of Appeal affirmed the probate court's denial of plaintiff's request, following the death of their daughter at age 21, that the \$1.6 million remainder of their daughter's special needs trust be distributed to them rather than to the Department of Health Care Services (Department) as reimbursement for Medi-Cal payments for their daughter's medical care. The probate court properly found that, under both California law and the terms of special needs trust, the Department was entitled to reimbursement for Medi-Cal payments of \$3,972,501.21 for medical care provided to the daughter. (C.A. 2nd, June 24, 2019.)

### Professional Malpractice

*Moss v. Duncan* (2019) \_ Cal.App.5th \_ , 2019 WL 2537341: The Court of Appeal reversed the trial court's order granting defendant's motion for summary judgment on the statute of limitations in an action alleging malpractice against a CPA. The Court of Appeal ruled that the two-year statute of limitations did not begin to run until plaintiff settled a tax deficiency claim with the Franchise Tax Board, and the complaint was therefore timely filed. (C.A. 4th, June 20, 2019.)

### Public Utilities

*Ponderosa Telephone Co. v. CAPUC* (2019) \_ Cal.App.5th \_ , 2019 WL 2715513: The Court of Appeal denied a petition for a writ of review seeking to overturn the decision of the California Public Utilities Commission (PUC) establishing petitioners' cost of capital. The Court of Appeal concluded that petitioners had failed to meet their burden of demonstrating that the PUC's cost of capital determination was arbitrary, capricious, lacking in any evidentiary support, or that it otherwise fell short of constitutional standards regarding a reasonable rate of return. (C.A. 5th, filed June 18, 2019, published June 28, 2019.)

### Public Utilities Code

*Amalgamated Transit Union v. San Joaquin Reg. Transit Dist.* (2019) \_ Cal.App.5th \_ , 2019 WL 2022308: The Court of Appeal reversed the trial court's order denying petitioner's writ petition challenging the way respondent wanted to fill a union member representative's vacancy on a retirement board. The Court of Appeal ruled that petitioner had the right to fill by appointment a union member representative vacancy on respondent's retirement board to ensure labor-management parity as is required by Public Utilities Code section 99159. It ruled that Public Utilities Code section 50150 did not authorize an election by all of respondent's employees (union and non-union) to fill the vacancy of a union representative. (C.A. 3rd, filed on May 8, 2019, published on June 6, 2019.)

### Real Property

*Eisen v. Tavangarian* (2019) \_ Cal.App.5th \_ , 2019 WL 2539296: The Court of Appeal reversed the trial court's order, following a bench trial, granting an injunction in favor of plaintiffs and ordering the removal of certain alterations and improvements made by the defendants to their home, and awarding plaintiffs \$39,000 in "interim damages" for their loss of view. The Court of Appeal ruled that neither paragraph 1 nor paragraph 11 of the conditions, covenants and restrictions restricted renovations or alterations to a previously approved residence, and approval for renovations and alterations specified in paragraph 2 was no longer required after December 31, 1980. The Court of Appeal affirmed the portion of the judgment requiring the street-facing hedges to be trimmed to a height of three feet or under. It ruled that the interim damage award had to be reconsidered. (C.A. 2nd, June 20, 2019.)

*Park Management Corp. v. In Defense of Animals* (2019) \_ Cal.App.5th \_ , 2019 WL 2539295: The Court of Appeal reversed the trial court's order granting plaintiff's motion for summary judgment in a trespass action against protesters. The Court of Appeal ruled that defendant Joseph CuvIELLO failed to prove as a matter of law that he had acquired a common law prescriptive right to protest outside of Six Flags Discovery Kingdom. However, as a matter of first impression, it ruled that the exterior, unticketed areas of the amusement park were a public forum for expressive activity under article I, section 2 of the California Constitution, and the trial court erred in granting summary judgment to plaintiff. (C.A. 1st, June 20, 2019.)

*Raney v. Cerkueira* (2019) \_ Cal.App.5th \_ , 2019 WL 2484007: See summary above under Family Law.

*Veiseh v. Stapp* (2019) \_ Cal.App.5th \_ , 2019 WL 2384559: The Court of Appeal reversed the trial court's judgment for defendants, following a bench trial, in an action for trespass to real property. The trial court found that plaintiff did not have lawful possession of the real property because he had transferred the real property in question to a custodian for the benefit of his minor daughter pursuant to the California Uniform Transfers to Minors Act (UTMA; Probate Code, sections 3900–3925), but he did not comply with the statutory requirement that the property be held for the use and benefit of the minor. The Court of Appeal reversed, ruling that failure to comply with the UTMA did not render plaintiff's possession of the real property unlawful for purposes of California trespass law. Nothing in the text of the statute or the record supports the inference that the legislation was enacted to protect trespassers or otherwise define who could pursue a cause of action for trespass. The trial court's explicit findings about plaintiff's possession and control were sufficient to establish the lawful possession element of his trespass claim. (C.A. 5th, June 6, 2019.)

#### Settlement

*Byrd v. State Personnel Bd.* (2019) \_ Cal.App.5th \_ , 2019 WL 2610796: The Court of Appeal affirmed the trial court's order denying a writ petition seeking to compel the California Public Employees' Retirement System (CalPERS) and the State Personnel Board to comply with the terms of a settlement agreement between petitioner and San Diego State University related to a wrongful termination action. The settlement agreement directed that petitioner would be reinstated to a classification with a significantly higher salary, which she had never held, and that she would receive compensation at the higher salary during a period when the California State University system would apply for medical retirement benefits for petitioner. Petitioner asked the trial court to compel CalPERS to process her reinstatement at the higher salary level. The trial court properly denied the writ petition because Government Code section 21198 only authorized petitioner's reinstatement to a job classification she previously held before her termination. (C.A. 4th, June 26, 2019.)

*Lomeli v. State Dept. of Health Care Services* (2019) \_ Cal.App.5th \_ , 2019 WL 2590799: See summary above under Liens.

#### Torts

*LAOSD Asbestos Cases* (2019) \_ Cal.App.5th \_ , 2019 WL 2393611: The Court of Appeal affirmed a judgment for defendants, following a jury trial, in a case alleging wrongful death from asbestos exposure. Because the only viable theory of negligence was that Pep Boys violated its duty of due care as a supplier of Bendix brakes, the trial court properly gave CACI instructions 1220, 1221, and 1222 and properly rejected plaintiffs' request to give CACI 400 and 401. (C.A. 2nd, filed May 14, 2019, published June 6, 2019.)

*Orozco v. WPV San Jose, LLC* (2019) \_ Cal.App.5th \_ , 2019 WL 2498402: See decision above under Landlord - Tenant.

*Swanson v. County of Riverside* (2019) \_ Cal.App.5th \_ , 2019 WL 2496658: See summary above under Civil Procedure.

### Water

*Howard Jarvis Taxpayers Assn. v. Amador Water Agency* (2019) \_ Cal.App.5th \_ , 2019 WL 2482624: See summary above under Elections.

*San Diego Gas & Electric Co. v. San Diego Regional Water etc.* (2019) \_ Cal.App.5th \_ , 2019 WL 2511244: The Court of Appeal affirmed the trial court's order denying a petition for writ of mandate seeking to vacate a cleanup and abatement order to petitioner that found that petitioner caused or permitted waste to be discharged into San Diego Bay (Bay) and thereby created, or threatened to create, pollution and nuisance conditions. The Court of Appeal ruled that the nuisance creation element of Water Code section 13304 does not require application of the common law substantial factor test for causation. It was undisputed on appeal that petitioner directly discharged and thus "caused or permitted" waste to enter the Bay, and the San Diego Regional Water Quality Control Board adequately demonstrated that the waste discharged by petitioner created, or threatened to create, a condition of pollution or nuisance. (C.A. 4th, June 18, 2019.)

### Welfare and Institutions Code

*Rivera v. Kent* (2019) \_ Cal.App.5th \_ , 2019 WL 2706732: The Court of Appeal reversed the trial court's order granting a writ petition compelling the California Department of Health Care Services (DHCS) to make Medi-Cal eligibility determinations within 45 days of the application date. The Court of Appeal concluded that none of the provisions of California law relied on by plaintiffs and by the trial court imposed a clear, ministerial duty on DHCS that supported the trial court's order. (C.A. 1st, June 27, 2019.)

**Copyright © 2019 Monty A. McIntyre, Esq.  
All Rights Reserved**