

AUTHOR*



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CASES PENDING BEFORE THE CALIFORNIA SUPREME COURT

ARBITRATION

Quach v. Cal. Commerce Club, Inc., 78 Cal. App. 5th 470 (2022), *review granted*, 297 Cal. Rptr. 3d 592 (Mem) (Aug. 24, 2022); S275121/B310458

Petition for review after reversal of order denying petition to compel arbitration. Does California's test for determining whether a party has waived its right to compel arbitration by engaging in litigation remain valid after the United States Supreme Court decision in *Morgan v. Sundance, Inc.*, ___ U.S. ___ [142 S.Ct. 1708] (2022)? Fully briefed.

Ramirez v. Charter Communications, Inc., 75 Cal. App. 5th 365 (2021), *review granted*, 2022 WL 2037698 (Mem) (Jun. 1, 2022); S273802/B309408

Petition for review after affirmance of order denying petition to compel arbitration. Did the Court of Appeal err in holding that a provision of an arbitration agreement allowing for recovery of interim attorney's fees after a successful motion to compel arbitration, was so substantively unconscionable that it rendered the arbitration agreement unenforceable? Fully briefed.

COVID-19

Kuciemba v. Victory Woodworks, 31 F.4th 1268 (9th Cir. 2022); *cert. granted* (Jun. 22, 2022); S274191/9th Cir. No. 21-15963

Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. (1) If an employee contracts COVID-19 at his workplace and brings the virus home to his spouse, does California's derivative injury doctrine bar the spouse's claim against the employer? (2) Under California law, does an

employer owe a duty to the households of its employees to exercise ordinary care to prevent the spread of COVID-19? Fully briefed.

DISCRIMINATION | HARASSMENT | RETALIATION

Bailey v. San Francisco Dist. Attorney's Office, nonpublished opinion, 2020 WL 5542657 (2020), *review granted* (Dec. 30, 2020); S265223/A153520

Petition for review after affirmance of judgment. Did the Court of Appeal properly affirm summary judgment in favor of defendants on plaintiff's claims of hostile work environment based on race, retaliation, and failure to prevent discrimination, harassment and retaliation? Fully briefed.

Raines v. U.S. Healthworks Med. Group, 28 F.4th 968 (mem) (9th Cir. 2022), *cert. granted* (Apr. 27 2022); S273630/9th Cir. 21-55229

Request under California Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. Does California's Fair Employment and Housing Act, which defines "employer" to include "any person acting as an agent of an employer" (CAL. GOV'T CODE § 12926(d)), permit a business entity acting as an agent of an employer to be held directly liable for employment discrimination? Fully briefed.

WAGE AND HOUR

Adolph v. Uber Techs., Inc., nonpublished opinion, 2022 WL 1073583 (2022), *review granted* (Jul. 20, 2022); S274671/G059860, G060198

Petition after affirmance of order denying a petition to compel arbitration. Whether an aggrieved employee who has been compelled

to arbitrate claims under the Private Attorneys General Act (PAGA) that are “premised on Labor Code violations actually sustained by” the aggrieved employee (*Viking River Cruises, Inc. v. Moriana* 596 U.S. __, __ (2022) [142 S.Ct. 1906, 1916] (*Viking River Cruises*); see Lab. Code, §§ 2698, 2699, subd. (a)) maintains statutory standing to pursue “PAGA claims arising out of events involving other employees” (*Viking River Cruises*, at p. __ [142 S.Ct. at p. 1916]) in court or in any other forum the parties agree is suitable. Fully briefed.

Camp v. Home Depot U.S.A., Inc., 84 Cal. App. 5th 638 (2022), review granted (Feb. 1, 2023); S277518/H049033

Petition after reversal of judgment. Under California law, are employers permitted to use neutral time-rounding practices to calculate employees’ work time for payroll purposes? Review granted, brief due.

Estrada v. Royalty Carpet Mills, Inc., 76 Cal. App. 5th 685 (2022) *Inc.*, review granted, 294 Cal. Rptr. 3d 460 (Mem) (Jun. 22, 2022); S274340/G058397, G058969

Petition after the affirmance in part and reversal in part of judgment. Do trial courts have inherent authority to ensure that claims under the Private Attorneys General Act (CAL. LAB. CODE § 2698 *et seq.*) will be manageable at trial, and to strike or narrow such claims if they cannot be managed? Fully briefed.

People ex rel. Garcia-Brower v. Kolla’s Inc., nonpublished opinion, nonpublished opinion, 2021 WL 1851487 (2021), review granted (Sept. 21, 2021); S269456/G057831

Petition after affirmance in part and reversal of judgment. Does CAL. LABOR CODE § 1102.5(b), which protects an employee from retaliation for disclosing unlawful activity, apply when the information is already known to that person or agency? Fully briefed.

Huerta v. CSI Elec. Contractors, Inc., 39 F.4th 1176 (9th Cir. 2022), cert. granted (Aug. 31, 2022); S275431/9th Circ. No. 21-16201

Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. (1) Is time spent on an employer’s premises in a personal vehicle and waiting to scan an identification badge, have security guards peer into the vehicle, and then exit a Security Gate compensable as “hours worked” within the meaning of California Industrial Welfare Commission Wage Order No. 16? (2) Is time spent on the employer’s premises in a personal vehicle, driving between the Security Gate and the employee parking lots, while subject to certain rules from the employer, compensable as ‘hours worked’ or as “employer-mandated travel” within the meaning of California Industrial Welfare Commission Wage Order No. 16? (3) Is time spent on the employer’s premises, when workers are prohibited from

From the Editors

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leaving but not required to engage in employer-mandated activities, compensable as “hours worked” within the meaning of California Industrial Welfare Commission Wage Order No. 16, or under CAL. LAB. CODE § 1194, when that time was designated as an unpaid “meal period” under a qualifying collective bargaining agreement? Fully briefed.

Iloff v. LaPaille, 80 Cal. App. 5th 427 (2022), *review granted*, 299 Cal. Rptr. 3d 770 (Mem) (Oct. 26, 2022); S275848/A163504

Petition for review after affirmance in part and reversal in part. (1) Must an employer demonstrate that it affirmatively took steps to ascertain whether its pay practices comply with CAL. LAB. CODE and Industrial Welfare Commission Wage Orders to establish a good faith defense to liquidated damages under CAL. LAB. CODE § 1194.2(b)? (2) May a wage claimant prosecute a paid sick leave claim under section 248.5(b) of the Healthy Workplaces, Healthy Families Act of 2014 (CAL. LAB. CODE § 245 et seq.) in a de novo wage claim trial conducted pursuant to Cal. Lab. Code § 98.2? Review granted/brief due.

Rattagan v. Uber Techs., 19 F.4th 1188 (9th Cir. Dec. 6, 2021), *cert. granted* (Feb. 29, 2022) S272113/9th Circ. No. 20-16796

Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the United States Court of Appeals

for the Ninth Circuit. Under California law, are claims for fraudulent concealment exempted from the economic loss rule? Fully briefed.

Turrieta v. Lyft, Inc., 284 Cal. Rptr. 3d 767 (2021), *review granted*, 288 Cal. Rptr. 3d 599 (Mem) (Jan. 5, 2022); S271721/B304701

Petition for review after affirmance of judgment. Does a plaintiff in a representative action filed under the Private Attorneys General Act (CAL. LAB. CODE § 2698 et seq.) (PAGA) have the right to intervene, or object to, or move to vacate, a judgment in a related action that purports to settle the claims that plaintiff has brought on behalf of the state? Fully briefed.

* Phyllis W. Cheng is a neutral at ADR Services, Inc., and is on the mediation panels for the California Court of Appeal, Second Appellate District, and U.S. District Court, Central District of California, where she led its Mediation Practice Group for four years. She is Managing Editor of this publication, and prepares the Labor & Employment Case Law Alert, a free “electronic alert service” on new cases for Section members. To subscribe online at <http://www.calbar.ca.gov>, log onto “My State Bar Profile” and follow the instructions under “Change My E-mail Addresses and List Subscriptions.”

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March 23, 2023	3 Year Employment Law Legislative Review	2.0 Hours MCLE	Webinar Replay
April 28, 2023	2023 Public Sector Conference	6.0 Hours MCLE	In-Person Conference Sacramento, CA