

AUTHOR*



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CASES PENDING BEFORE THE CALIFORNIA SUPREME COURT

ARBITRATION

Basith v. Lithia Motors, Inc., 90 Cal. App. 5th 951 (2023); *review granted*, 2023 WL 5114947 (Aug. 9, 2023); S280258/B316098

The petition for review is granted. Further action in this matter is deferred pending consideration and disposition of a related issue in *Fuentes v. Empire Nissan, Inc.*, S280256/B314490 (see Cal. Rules of Ct., rule 8.512(d)(2)), or pending further order of the court. Submission of additional briefing, pursuant to Cal. Rules of Ct., rule 8.520, is deferred pending further order of the court.

Holding for the lead case.

Fuentes v. Empire Nissan, 90 Cal. App. 5th 919 (2023), *review granted*, 2023 WL 5114942 (Aug. 9, 2023); S280256/B314490

Petition for review after reversal of order denying a petition to compel arbitration. Is the form arbitration agreement that the employer here required prospective employees to sign as a condition of employment unenforceable against an employee due to unconscionability?

Review granted/brief due.

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 the right to compel arbitration by engaging in litigation remain valid after the U.S. Supreme Court decision in *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708 (2022)?

Fully briefed.

Ramirez v. Charter Comm., Inc., 75 Cal. App. 5th 365 (2021); *review granted*, 2022 WL 2037698 (Mem) (June 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 that allowed 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.

Zhang v. Superior Court, 85 Cal. App. 5th 167 (2022); *review granted*, 304 Cal. Rptr. 3d 549 (Mem) (Feb. 15, 2023); S277736/B314386

Petition for review after denial of petition for writ of mandate.

1. If an employer files a motion to compel arbitration in a non-California forum pursuant to a contractual forum-selection clause, and an employee raises as a defense CAL. LAB. CODE § 925, which prohibits an employer from requiring a California employee to agree to a provision requiring the employee to adjudicate outside of California a claim arising in California, is the court in the non-California forum one of “competent jurisdiction” (CAL. CODE CIV. PROC. § 1281.4) such that the motion to compel requires a mandatory stay of the California proceedings?
2. Does the presence of a delegation clause in an employment contract delegating issues of arbitrability to an arbitrator prohibit a California court from enforcing CAL. LAB. CODE § 925 in opposition to the employer’s stay motion?

Fully briefed.

DISCRIMINATION | HARASSMENT | RETALIATION

***Bailey v. San Francisco Dist. Att’y’s Off.*, unpublished 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.

WAGE AND HOUR

***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?

Reply brief due.

***Castellanos v. State of California*, 89 Cal. App. 5th 131 (2023); review granted (June 28, 2023); S279622/A163655M**

Petition for review after affirmance in part and reversal in part the judgment in an action for writ of mandate. Is Proposition 22 (Protect App-Based Drivers and Services Act) invalid because it conflicts with article XIV, section 4 of the California Constitution?

Opening brief due.

***Estrada v. Royalty Carpet Mills, Inc.*, 76 Cal. App. 5th 685 (2022) Inc.; review granted, 294 Cal. Rptr. 3d 460 (Mem) (June 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 §§ 2698-2699.8) will be manageable at trial, and to strike or narrow such claims if they cannot be managed?

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 Cal. Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the U.S. Court of Appeal 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 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 California Labor 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 §§ 245-49) in a de novo wage claim trial conducted pursuant to CAL. LAB. CODE § 98.2?

Fully briefed.

***Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93 (2022); review granted (May 31, 2023); S279397/B256232**

Petition for review after affirmance in part and reversal in part of judgment. Does an employer's good faith belief that it complied with CAL. LAB. CODE § 226(a) preclude a finding that its failure to report wages earned was "knowing and intentional" as is necessary to recover penalties under CAL. LAB. CODE § 226(e)(1)?

Reply brief due.

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

Request under Cal. Rules of Court, rule 8.548, that this court decide questions of California law presented in a matter pending in the U.S. Court of Appeal for the Ninth Circuit. Under California law, are claims for fraudulent concealment exempted from the economic loss rule?

Fully briefed.

***Ruelas v. County of Alameda*, 51 F.4th 1187 (9th Cir. Nov. 1, 2022), cert. granted (Jan. 11, 2023) S277120/9th Cir. No. 21-16528**

Request under Cal. Rules of Court, rule 8.548, that this court decide a question of California law presented in a matter pending in the U.S. Court of Appeal for the Ninth Circuit. Do non-convicted incarcerated individuals performing services in county jails for a for-profit company to supply meals within the county jails and related custody facilities have a claim for minimum wages and overtime under CAL. LAB. CODE § 1194 in the absence of any local ordinance prescribing or prohibiting the payment of wages for these individuals?

Fully briefed.

***Stone v. Alameda Health Sys.*, 88 Cal. App. 5th 84 (2023), rev. granted, 2023 WL 3514241 (May 17, 2023); S279137/A164021**

Petition for review after affirmance in part and reversal in part of an order in a civil action.

1. Are all public entities exempt from the obligations in the California Labor Code regarding meal and rest breaks, overtime, and payroll records—or only those public entities that satisfy the "hallmarks of sovereignty" standard adopted by the court of appeal in this case?
2. Does the exemption from the prompt payment statutes in CAL. LAB. CODE § 220(b), for "employees directly employed by any county, incorporated

From the Editors

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city, or town or other municipal corporation” include all public entities that exercise governmental functions?

3. Do the civil penalties available under the Private Attorneys General Act of 2004, codified at CAL. LAB. CODE §§ 2698-2699.8 apply to public entities?

Answer brief due.

***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 §§ 2698-2699.8) 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.

WHISTLEBLOWER

***Brown v. City of Inglewood*, 92 Cal. App. 5th 1256 (2023), review granted 2023 WL 6300304 (Mem) (Sept. 27, 2023), S280773/B320658**

Petition for review after affirmance in part and reversal in part of an anti-SLAPP order. Are elected official employees for purposes of whistleblower protection under CAL. LAB. CODE § 1102.5(b)?

Review granted/brief due.

ENDNOTE

- * Phyllis W. Cheng is a neutral at ADR Services, Inc., and is on mediation panels for the California Court of Appeal, Second Appellate District, and U.S. District Court, Central District of California. In addition to writing this column for 20 years, she also 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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December 5, 2023	Webinar: Are Anti-Discrimination, Harassment & Retaliation Policies & Trainings Working; if Not, What Do We Do	1.0 Hour MCLE	Interactive Webinar
December 5, 2023	2023 Advanced Mediation Conference	6.5 Hours MCLE	In Person Conference San Francisco, CA