

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?

Fully briefed.

Hohenshelt v. Superior Court, 99 Cal. App. 5th 1319 (2024), *review granted*, 321 Cal. Rptr. 3d 633 (Mem) (June 12, 2024); S284498/B327524

Petition for review after the grant of petition for writ of mandate. Does the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*) preempt state statutes prescribing the procedures for paying arbitration fees and providing for forfeiture of the right to arbitrate if timely payment is not made by the party who drafted the arbitration agreement and who is required to pay such fees?

Review granted/brief due.

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.

RETIREMENT

Ventura County Employees’ Retirement Ass’n v. Criminal Justice Attorneys Ass’n of Ventura County, 98 Cal. App. 5th 1119 (2024), *review granted*, 320 Cal. Rptr. 3d 117 (Mem) (Apr. 17, 2024); S283978/B325277

Petition for review after affirmance of judgment. For purposes of calculating

retirement benefits for members of County Employees Retirement Law of 1937 (CAL. GOV'T CODE § 31450 *et seq.*) retirement systems, does CAL. GOV'T CODE § 31461(b)(2) exclude payments for accrued, but unused hours of annual leave that would exceed the maximum amount of leave that was earnable and payable in a calendar year?

Answer brief due.

WAGE AND HOUR

***Accurso v. In-N-Out Burgers (Piplack)*, 94 Cal. App. 5th 1128 (2023), review granted, 2023 WL 8264179 (Mem) (Nov. 29, 2023); S282173/A165320**

Review granted after vacating order denying intervention. Further action in this matter is deferred pending consideration and disposition of related issues in *Turrieta v. Lyft*, S271721 (see Cal. Rules of Court, rule 8.512(d) (2)), or pending further order of the court. Submission of additional briefing, pursuant to California Rules of Court, rule 8.520, is deferred pending further order of the court.

Holding for lead case.

***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?

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.

***Rattagan v. Uber Techs.*, 19 F.4th 1188 (9th Cir. Dec. 6, 2021), cert. granted (Feb. 9, 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 U.S. Court of Appeal for the Ninth Circuit: Under California law, are claims for fraudulent concealment exempted from the economic loss rule?

Submitted/opinion due.

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)?

Fully briefed.

ENDNOTE

- * Phyllis W. Cheng is a neutral at ADR Services, Inc., and is on mediation panels for the California Court of Appeal, Second and Sixth Appellate Districts, and U.S. District Court, Central District of California. In addition to writing this column for 21 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."