

ISSUES PENDING BEFORE THE CALIFORNIA SUPREME COURT IN CIVIL CASES

[These case summaries are made available to inform the public of the general subject matter in cases that the Supreme Court has accepted for review. The statement of the issue or issues in each case set out below does not necessarily reflect the views of the court, or define the specific issues that will be addressed by the court. This compilation is current as of Friday, October 16, 2020.]

In re A.R., S260928. (A158143; nonpublished order; Alameda County Superior Court; JD02839802.) Petition for review after the Court of Appeal dismissed the appeal from an order terminating parental rights. The court limited review to the following issues: (1) Does a parent in a juvenile dependency case have the right to challenge her counsel's failure to file a timely notice of appeal from an order terminating her parental rights under Welfare and Institutions Code section 366.26? (See Welf. & Inst. Code, § 317.5, subd. (a); *In re Kristin H.* (1996) 46 Cal.App.4th 1635 [ineffective assistance of counsel claim in dependency proceeding brought on a petition for writ of habeas corpus].) (2) If so, what are the proper procedures for raising such a claim?

Berroteran v. Superior Court, S259522. (B296639; 41 Cal.App.5th 518; Los Angeles County Superior Court; BC542525.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Does a party against whom former deposition testimony in a different case is sought to be admitted at trial under Evidence Code section 1291, subdivision (a)(2), have a similar interest and motive at both hearings to cross-examine a friendly witness?

Bonni v. St. Joseph Health System, S244148. (G052367; 13 Cal.App.5th 851; Orange County Superior Court; 30-2014-00758655.) Petition for review after the Court of Appeal reversed an order granting a special motion to strike in a civil action. This case presents the following issue: To what extent, if any, is the initiation and conduct of medical peer review proceedings protected activity under the anti-SLAPP statute?

Boermeester v. Carry, S263180. (B290675; 49 Cal.App.5th 682; Los Angeles County Superior Court; BS170473.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Under what circumstances, if any, does the common law right to fair procedure require a private university to afford a student who is the subject of a disciplinary proceeding with the opportunity to utilize certain procedural processes, such as cross-examination of witnesses at a live hearing? (2) Did the student who was the subject of the disciplinary proceeding in this matter waive or forfeit any right he may have had to cross-examine witnesses at a live hearing? (3) Assuming it was error for the university to fail to provide the accused student with the opportunity to cross-examine witnesses at a live hearing in this matter, was the error harmless? (4) What effect, if any, does Senate Bill No. 493 (2019-2020 Reg. Sess.) have on the resolution of the issues presented by this case?

Brown v. USA Taekwondo, S259216. (B280550; 40 Cal.App.5th 1077, mod. 41 Cal.App.5th 567a, mod. 41 Cal.App.5th 567d; Los Angeles County Superior Court; BC599321.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: What is the appropriate test that minor plaintiffs must satisfy to establish a duty by defendants to protect them from sexual abuse by third parties? (See *Rowland v. Christian* (1968) 69 Cal.2d 108; *Nally v. Grace Community Church* (1988) 47 Cal.3d 278; *Regents of the University of California v. Superior Court* (2018) 4 Cal.5th 607; *Doe v. United States Youth Soccer Association* (2017) 8 Cal.App.5th 1118; *Conti v. Watchtower Bible & Tract Society of New York, Inc.* (2015) 235 Cal.App.4th 1214; *Juarez v. Boy Scouts of America, Inc.* (2000) 81 Cal.App.4th 377.)

Busker v. Wabtec Corp., S251135. (9th Cir. No. 17-55165; 903 F.3d 881; Central District of California No. 2:15-cv-08194-ODW-AFM.) 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. The question presented is: “Does work installing electrical equipment on locomotives and rail cars (i.e., the ‘on-board work’ for Metrolink’s [Positive Train Control (PTC)] project) fall within the definition of ‘public works’ under California Labor Code § 1720, subdivision (a)(1), either (a) as constituting ‘construction’ or ‘installation’ under the statute or (b) as being integral to other work performed for the PTC project on the wayside (i.e., the ‘field installation work’)?”

In re Caden C., S255839. (A153925, A154042; 34 Cal.App.5th 87; San Francisco County Superior Court; JD153034.) Petition for review after the Court of Appeal reversed orders in a juvenile dependency proceeding. The court limited review to the following issues: Is a showing that a parent has made progress in addressing the issues that led to dependency necessary to meet the beneficial parental relationship exception to adoption? (1) What standard of review governs appellate review of the beneficial parental relationship exception to adoption? (2) Is a showing that a parent has made progress in addressing the issues that led to dependency necessary to meet the beneficial parental relationship exception?

Coast Community College Dist. v. Commission on State Mandates, S262663. (C080349; 47 Cal.App.5th 415; Sacramento County Superior Court; 34201480001842CUWMGDS.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issues: (1) Is the cost of complying with regulations that establish minimum conditions for community college districts to receive state aid a reimbursable state mandate within the meaning of article XIII B, section 6, of the state Constitution? (2) Does a trial court lack jurisdiction under article XIII B, section 6, to make subvention findings as to statutes that were not specifically identified in an initial test claim? (3) Does a trial court lack jurisdiction to remand a test claim based on a statute that was the subject of a prior final decision by the Commission on State Mandates? The court directed the Reporter of Decisions not to publish the opinion in this matter in the Official Appellate Reports.

Conservatorship of E.B., S261812. (A157280; 45 Cal.App.5th986; Contra Costa County Superior Court; P1801826.) Petition for review after the Court of Appeal affirmed the judgment in a conservatorship proceeding. This case presents the following issue: Does equal protection require that persons subject to a conservatorship under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5350) have the same right to invoke the statutory privilege not to testify as persons subject to involuntary commitments under Penal Code section 1026.5 after a finding of not guilty by reason of insanity?

Conservatorship of K.P., S258212. (B291510; 39 Cal.App.5th 254; Los Angeles County Superior Court; ZE032603.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Must the trier of fact find, beyond a reasonable doubt, that the objector is unwilling or unable voluntarily to accept meaningful treatment before a conservator may be appointed, or reappointed, under the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000 et seq.)?

County of Butte v. Department of Water Resources, S258574. (C071785; 39 Cal.App.5th 708; Yolo County Superior Court; CVCV091258.) Petition for review after the Court of Appeal dismissed an appeal in an action for writ of administrative mandate. This case presents the following issues: (1) To what extent does the Federal Power Act (16 U.S.C. § 791a et seq.) preempt application of the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) when the state is acting on its own behalf and exercising its discretion in deciding to pursue licensing for a hydroelectric dam project? (2) Does the Federal Power Act preempt state court challenges to an environmental impact report prepared under the California Environmental Quality Act in order to comply with the federal water quality certification under the federal Clean Water Act?

Daly v. Board of Supervisors, S260209. (E073730; nonpublished order; San Bernardino County Superior Court; CIVDS1833846.) Petition for review after the Court of Appeal denied a petition for writ of supersedeas. This case includes the following issues: (1) Are a judgment and the enforcement of an accompanying writ of mandate automatically stayed by the perfection of an appeal as a mandatory injunction when they direct a county's board of supervisors to rescind its appointment of a supervisor based on the finding that the process by which the supervisor was appointed violated the Brown Act (Gov. Code, § 54950 et seq.)? (2) Did plaintiffs properly challenge real party in interest's appointment as Third District Supervisor by a petition for writ of mandate under Government Code section 54960.1, subdivision (a), or was an action in quo warranto (Code Civ. Proc., § 803 et seq.) the exclusive procedure for such a challenge?

Doe v. Olson, S258498. (B286105; nonpublished opinion; Los Angeles County Superior Court; SC126806.) Petition for review after the Court of Appeal affirmed and reversed orders in a civil action. This case presents the following issues: (1) Does the litigation privilege of Civil Code section 47, subdivision (b), apply to contract claims, and if so, under what circumstances? (2) Does an agreement following mediation between the parties in an action for a temporary restraining order, in which they agree not to disparage each other, bar a later unlimited civil lawsuit arising from the same alleged sexual violence?

Donohue v. AMN Services, LLC, S253677. (D071865; 29 Cal.App.5th 1968; San Diego County Superior Court; 37-2014-00012605-CU-OE-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Can employers utilize practices upheld in the overtime pay context to round employees' time to shorten or delay meal periods?

Ducksworth v. Tri-Modal Distribution Services, S262699. (B294872; 47 Cal.App.5th 532; Los Angeles County Superior Court; BC676917.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) In a cause of action alleging *quid pro quo* sexual harassment resulting in a failure to promote in violation of the Fair Employment and Housing Act, did the statute of limitations to file an administrative complaint with the Department of Fair Employment and Housing begin to run when the successful candidate was offered and accepted the position, or when that promotion later took effect, if there is no evidence that the plaintiff was aware of the promotion on the earlier date? (2) Was it proper for the Court of Appeal to award costs on appeal under rule 8.278 of the California Rules of Court against an unsuccessful FEHA claimant in the absence of a finding that the underlying claims were objectively frivolous?

Ferra v. Loews Hollywood Hotel, LLC, S259172. (B283218; 40 Cal.App.5th 1239; Los Angeles County Superior Court; BC586176.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Did the Legislature intend the term "regular rate of compensation" in Labor Code section 226.7, which requires employers to pay a wage premium if they fail to provide a legally compliant meal period or rest break, to have the same meaning and require the same calculations as the term "regular rate of pay" in Labor Code section 510(a), which requires employers to pay a wage premium for each overtime hour?

Geiser v. Kuhns, S262032. (B279738; nonpublished opinion; Los Angeles County Superior Court; BS161018, BS161019, BS161020.) Petition for review after the Court of Appeal affirmed an order awarding attorney fees in a civil action. The court limited review to the following issue: How should it be determined what public issue or issue of public interest is implicated by speech within the meaning of the anti-SLAPP statute (Code of Civ. Proc., § 425.16, subd. (e)(4)) and the first step of the two-part test articulated in *FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 149-150, and should deference be granted to a defendant's framing of the public interest issue at this step?

Gonzalez v. Mathis, S247677. (B272344; 20 Cal.App.5th 257; Los Angeles County Superior Court; BC542498.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Can a homeowner who hires an independent contractor be held liable in tort for injury sustained by the contractor's employee when the homeowner does not retain control over the worksite and the hazard causing the injury was known to the contractor?

Grande v. Eisenhower Medical Center, S261247. (E068730, E068751; 44 Cal.App.5th 1147; Riverside County Superior Court; RIC1514281.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: May a class of workers bring a wage and hour class action against a staffing agency, settle that lawsuit with a stipulated judgment that releases all of the staffing agency's agents, and then bring a second class action premised on the same alleged wage and hour violations against the staffing agency's client?

Hill RHF Housing Partners, L.P. v. City of Los Angeles, S263734. (B295181, B295315; 51 Cal.App.5th 621; Los Angeles County Superior Court; BS170127, BS170352.) Petition for review after the Court of Appeal affirmed the judgments in actions for writ of administrative mandate. The court limited review to the following issues: (1) In order to bring a judicial action challenging the validity of an assessment imposed pursuant to article XIII D, section 4 of the California Constitution, must a property owner articulate at the public hearing on the proposed assessment the reason or reasons it alleges the assessment is invalid? (2) If so, should this rule apply only prospectively?

Kaanaana v. Barrett Business Services, Inc., S253458. (B276420, B279838; 29 Cal.App.5th 778; Los Angeles County Superior Court; BC496090, BC594050.) Petition for review after the Court of Appeal reversed a judgment in a civil action. The court limited review to the following issue: Should the phrase "work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type" in Labor Code section 1720, subdivision (a)(2), of California's Prevailing Wage Law (Lab. Code, § 1720 et. seq.) be interpreted to cover any type of work regardless of its nature, funding, purpose or function, including belt sorting at recycling facilities?

Lopez v. Ledesma, S262487. (B284452; 46 Cal.App.5th 980; Los Angeles County Superior Court; BC519180.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Was a physician's assistant who treated a patient without direct physician supervision entitled to invoke the limitations of Civil Code section 3333.2 on noneconomic damages?

McHugh v. Protective Life Ins., S259215. (D072863; 40 Cal.App.5th 1166; San Diego County Superior Court; 37-2014-00019212-CU-IC-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Were the provisions of Insurance Code sections 10113.71 and 10113.72 intended by the Legislature to apply, in whole or in part, to life insurance policies in force as of January 1, 2013, regardless of the original date of issuance of those policies? (2) Did the lower courts in this case properly rely upon private opinions of Department of Insurance staff counsel? (See Ins. Code, § 12921.9; Gov. Code, § 11340.5; *Heckart v. A-1 Self Storage, Inc.* (2018) 4 Cal.5th 749.)

Mendoza v. Fonseca McElroy Grinding Co., Inc., S253574. (9th Cir. No. 17-15221; 913 F.3d 911; Northern District of California No. No. 3:15-cv-05143-WHO.) 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. The question presented is: "Is operating engineers' offsite 'mobilization work' — including the transportation to and from a public works site of roadwork grinding equipment — performed 'in the execution of [a] public work' (Cal. Lab. Code, § 1772), such that it entitles workers to 'not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed' pursuant to section 1771 of the California Labor Code?"

Naranjo v. Spectrum Security Services, Inc., S258966. (B256232; 40 Cal.App.5th 444; Los Angeles County Superior Court; BC372146.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issues: (1) Does a violation of Labor Code section 226.7, which requires payment of premium wages for meal and rest period violations, give rise to claims under Labor Code sections 203 and 226 when the employer does not include the premium wages in the employee's wage statements but does include the wages earned for meal breaks? (2) What is the applicable prejudgment interest rate for unpaid premium wages owed under Labor Code section 226.7?

Natarajan v. Dignity Health, S259364. (C085906; 42 Cal.App.5th 383; San Joaquin County Superior Court; STKCVUWM20164821.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case presents the following issue: Does a physician with privileges at a private hospital have the right to disqualify a hearing officer in a proceeding for revocation of those privileges based on an appearance of bias (see *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017) or must the physician show actual bias?

Orchard Estate Homes, Inc. v. Orchard Homeowner Alliance, S255031. (E068064; 32 Cal.App.5th 471; Riverside County Superior Court; PSC1700644.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: When a trial court rules on a petition to reduce the votes required to pass an amendment to a homeowners association's covenants, conditions, and restrictions, what, if any, role should voter non-participation play in the court's decision?

Presbyterian Camp & Conference Centers, Inc. v. Superior Court, S259850. (B297195; 42 Cal.App.5th 148, mod. 42 Cal.App.5th 1173a; Santa Barbara County Superior Court; 18CV02968.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Can a corporation be held liable under Health and Safety Code sections 13009 and 13009.1 for the costs of suppressing and investigating fires that its agents or employees negligently or illegally set, allowed to be set, or allowed to escape?

Sandoval v. Qualcomm Inc., S252796. (D070431; 28 Cal.App.5th 381; San Diego County Superior Court; 37-2014-00012901-CU-PO-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Can a company that hires an independent contractor be liable in tort for injuries sustained by the contractor's employee based solely on the company's negligent failure to undertake safety measures or is more affirmative action required to implicate *Hooker v. Department of Transportation* (2002) 27 Cal.4th 198?

Sass v. Cohen, S255262. (B283122; 32 Cal.App.5th 1032, mod. 33 Cal.App.5th 942a; Los Angeles County Superior Court; BC554035.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) In a complaint that seeks an accounting of specified assets, is the plaintiff required to plead a specific amount of damages to support a default judgment, or is it sufficient for purposes of Code of Civil Procedure section 580 to identify the assets that are in defendant's possession and request half of their value? (2) Should the comparison of whether a default judgment exceeds the amount of compensatory damages demanded in the operative pleadings examine the aggregate amount of non-duplicative damages or instead proceed on a claim-by-claim or item-by-item basis?

Segal v. ASICS America, S263569. (B299184; 50 Cal.App.5th 659; Los Angeles County Superior Court; BC597769.) Petition for review after the Court of Appeal affirmed a post-judgment order in a civil action. The court limited review to the following issue: May a party recover costs for preparing multiple sets of trial exhibits and closing slides that were not used at trial?

Serova v. Sony Music Entertainment, S260736. (B280526; 44 Cal.App.5th 103; Los Angeles County Superior Court; .) Petition for review after the Court of Appeal affirmed in part and reversed in part an order granting in part and denying in part a special motion to strike in a civil action. This case presents the following issues: (1) Do representations a seller made about a creative product on the product packaging and in advertisements during an ongoing controversy constitute speech in connection with an issue of public interest within the meaning of the anti-SLAPP statute (Code of Civ. Proc., § 425.16)? (2) For purposes of liability under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) and the Consumer Legal Remedies Act (Civ. Code, § 1750 et seq.), do the seller's marketing representations constitute commercial speech, and does it matter if the seller lacked personal knowledge that the representations were false? (See *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939.)

Shalabi v. City of Fontana, S256665. (E069671; 35 Cal.App.5th 639; San Bernardino County Superior Court; CIVDS1314694.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issue: Code of Civil Procedure section 12 provides: "The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded." In cases where the statute of limitations is tolled, is the first day after tolling ends included or excluded in calculating whether an action is timely filed? (See *Ganahl v. Soher* (1884) 2 Cal.Unrep. 415.)

Sheen v. Wells Fargo Bank, N.A., S258019. (B289003; 38 Cal.App.5th 346; Los Angeles County Superior Court; BC631510.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does a mortgage servicer owe a borrower a duty of care to refrain from making material misrepresentations about the status of a foreclosure sale following the borrower's submission of, and the servicer's agreement to review, an application to modify a mortgage loan?

Siry Investment v. Farkhondehpour, S262081. (B27750, B279009, B285904; 45 Cal.App.5th 1098; Los Angeles County Superior Court; BC372362.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) May a party in default file a motion for new trial raising legal error, including the inapplicability of certain remedies under the allegations as pleaded? (2) May a trial court may award treble damages and attorney fees under Penal Code section 496, subdivision (c), in a case involving the fraudulent diversion of business funds rather than trafficking in stolen goods?

Skidgel v. California Unemployment Ins. Appeals Bd., S250149. (A151224; 24 Cal.App.5th 574, mod. 25 Cal.App.5th 277a; Alameda County Superior Court; RG16810609.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Are In Home Supportive Services workers (Welf. & Inst. Code, § 12300 et seq.) who are providers for a spouse or a child eligible for unemployment insurance benefits?

Smith v. Loanme, S260391. (E069752; 43 Cal.App.5th 844; Riverside County Superior Court; RIC1612501.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Does Penal Code section 632.7 prohibit only third-party eavesdroppers from recording calls involving a cellular or cordless telephone, or does it also prohibit participants in calls from recording them without the other participants' consent?

Stancil v. Superior Court, S253783. (A156100; nonpublished order; San Mateo County Superior Court; 18AD000039.) Petition for review after the Court of Appeal denied a petition for writ of mandate. The court issued an order to show cause and limited review to the following issue: Is a motion to quash service of summons the proper remedy to test whether a complaint states a cause of action for unlawful detainer?

Vazquez v. Jan-Pro Franchising International, Inc., S258191. (9th Cir. No. 17-16096; 939 F.3d 1045; Northern District of California No. 3:16-cv-05961-WHA.) 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. The question presented is: Does the decision in *Dynamex Operations West Inc. v. Superior Court* (2018) 4 Cal.5th 903, apply retroactively?

Villanueva v. Fidelity National Title Co., S252035. (H041870; 26 Cal.App.5th 1092; Santa Clara County Superior Court; CV173356.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) Insurance Code section 12414.26 provides: "No act done, action taken, or agreement made pursuant to the authority conferred by Article 5.5 (commencing with Section 12401) or Article 5.7 (commencing with Section 12402) of this chapter shall constitute a violation of or grounds for prosecution or civil proceedings under any other law of this state heretofore or hereafter enacted which does not specifically refer to insurance." Does this statute provide immunity to an underwritten title company for charging consumers for services for which there have been no rate filings with the Insurance Commissioner? Stated otherwise, by charging unfiled rates, did Fidelity act "pursuant to the authority conferred by Article 5.5?" (2) Does the Insurance Commissioner have exclusive jurisdiction over any action against an underwritten title company for services charged to the consumer, but not disclosed to the Department of Insurance?

Yahoo! Inc. v. National Union Fire Ins. Co., S253593. (9th Cir. No. 17-16452; 913 F.3d 923; Northern District of California No. 5:17-cv-00447-NC) 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. As restated by the court, the question presented is: “Does a commercial general liability insurance policy that provides coverage for ‘personal injury,’ defined as ‘injury . . . arising out of . . . [o]ral or written publication, in any manner, of material that violates a person’s right of privacy,’ and that has been modified by endorsement with regard to advertising injuries, trigger the insurer’s duty to defend the insured against a claim that the insured violated the Telephone Consumer Protection Act by sending unsolicited text message advertisements that did not reveal any private information?”

Zolly v. City of Oakland, S262634. (A154986; 47 Cal.App.5th 73; Alameda County Superior Court; RG16821376.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issue: Must city franchise fees that are subject to California Constitution, article XIII C, be reasonably related to the value of the franchise?