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## CASES PENDING BEFORE THE CALIFORNIA SUPREME COURT

By Phyllis W. Cheng

### DISCRIMINATION / HARASSMENT / RETALIATION

*Bonni v. St. Joseph Health Sys.*, 13 Cal. App. 5th 851 (2017), *review granted*, 224 Cal. Rptr. 3d 684 (2017); S244148/G052367

Petition for review after reversal granting anti-SLAPP motion. Further action in this matter deferred pending consideration and disposition of a related issue in *Wilson v. Cable News Network, Inc.* S239686 (decided July 22, 2019; 7 Cal. 5th 871), or pending further order of the court. Submission of additional briefing, pursuant to Cal. Rules of Court, rule 8.520, is deferred pending further order of the court. Fully briefed.

### INTENTIONAL INTERFERENCE WITH CONTRACT

*Ixchel Pharma v. Biogen*, 930 F. 3d 1031 (9th Cir. 2019); S256927/9th Cir. No. 18-15258

Request under California Rules of Court, rule 8.548, that the supreme court decide questions of California law presented in a matter pending in the Ninth Circuit. Does § 16600 of the Business and Professions Code void a contract by which a business is restrained from engaging in a lawful trade or business with another business? Is a plaintiff required to plead an independently wrongful act in order to state a claim for intentional interference with a contract that can be terminated by a party at any time, or does that requirement apply only to at-will employment contracts? Submitted/opinion due.

### PUBLIC WORKS

*Busker v. Wabtec Corp.*, 903 F.3d 881 (9th Cir. 2018); S251135/9th Cir. No. 17-55165

Request under Cal. Rules of Court, rule 8.548, that the supreme court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. 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 Labor Code § 1720(a)(1), either (1) as constituting "construction" or "installation" under the statute, or (2) as being integral to other work performed for the PTC project on the wayside (*i.e.*, the "field installation work")? Fully briefed.

*Mendoza v. Fonseca McElroy Grinding Co.*, 913 F.3d 911 (9th Cir. 2019); S253574/9th Cir. No. 17-15221

Request under Cal. Rules of Court, rule 8.548, that the supreme court decide a question of California law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit. 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] contract for public work," (Labor 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 Labor Code § 1771? Fully briefed.

### RETIREMENT / PENSIONS

*Alameda Cnty. Deputy Sheriff's Ass'n v. Alameda Cnty. Employees' Retirement Ass'n*, 19 Cal. App. 5th 61 (2018), *review granted*, 230 Cal. Rptr. 3d 681 (2018); S247095/A141913

Petition for review after affirmance in part and reversal in part of judgment. Did statutory amendments to the County Employees' Retirement Law (Government Code § 31450 *et seq.*) made by the Public Employees' Pension Reform Act of 2013 (Government Code § 7522 *et seq.*) reduce the scope of the pre-existing definition of pensionable compensation and thereby impair employees' vested rights protected by the contracts clauses of the state and federal Constitutions? Submitted/opinion due.

*Hipsher v. Los Angeles Cnty. Employees*, 24 Cal. App. 5th 740 (2018), *review granted*, 237 Cal. Rptr. 3d 791 (2018); S250244/B276486 & B276486M

Petition for review after affirmance and modification of grant of peremptory writ of mandate. Further action deferred pending consideration and disposition of a related issue in *Alameda Cnty. Deputy Sheriffs' Ass'n v. Alameda Cnty. Employees' Retirement Ass'n*, S247095 (see Cal. Rules of Court, rule 8.512(d) (2)), or pending further order of the court. Holding for lead case.

*Marin Ass'n of Public Employees v. Marin Cnty. Employees' Retirement Ass'n*, 2 Cal. App. 5th 674 (2016), *review granted*, 210 Cal. Rptr. 3d 15 (2016); S237460/A139610

Petition for review after affirmance sustaining demurrer without leave to amend. Further action deferred pending the decision of the Court of Appeal, First Appellate District, Division Four, in *Alameda Cnty. Deputy Sheriff's Ass'n v. Alameda Cnty. Employees' Retirement Ass'n*, A141913 (see Cal. Rules of Court, rule 8.512(d)(2)), or pending further order of the court. Submission of additional briefing, pursuant to Cal. Rules of Court, rule 8.520, is deferred pending further order of the court. Holding for lead case.

*McGlynn v. State of Calif.*, 21 Cal. App. 5th 548 (2018), *review granted*, 234 Cal. Rptr. 3d 710 (2018); S248513/A146855

Petition for review after affirmance sustaining demurrer. Further action deferred pending consideration and disposition of a related issue in *Alameda Cnty. Deputy Sheriffs' Ass'n v. Alameda Cnty. Employees' Retirement Ass'n*, S247095. Holding for lead case.

## STAFF PRIVILEGES

*Natarajan v. Dignity Health*, 42 Cal. App. 5th 383 (2019), *review granted*, 259 Cal. Rptr. 3d 195 (2020); S259364/C085906

Petition for review after affirmance of judgment for writ of administrative mandate. 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*, 27 Cal. 4th 1017 (2002)), or must the physician show actual bias? Answer brief due.

## TORT LIABILITY

*Gonzalez v. Mathis*, 20 Cal. App. 5th 257 (2018); *review granted*, 232 Cal. Rptr. 3d 731 (2018); S247677/B272344

Petition for review after reversal of judgment. 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? Fully briefed.

*Sandoval v. Qualcomm Inc.*, 28 Cal. App. 5th 381 (2018); *review granted*, 242 Cal. Rptr. 3d 418 (2019); S252796/D070431

Petition for review after affirmance of judgment. 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*, 27 Cal. 4th 198 (2002)? Fully briefed.

## UNEMPLOYMENT INSURANCE

*Skidgel v. CUIAB*, 24 Cal. App. 5th 574 (2018), *review granted*, 238 Cal. Rptr. 3d 118 (2018); S250149/A151224.

Petition for review after affirmance of judgment. Are In Home Supportive Services workers (Welfare & Institutions Code § 12300 *et seq.*) who are providers for a spouse or a child eligible for unemployment insurance benefits? Fully briefed.

## WAGE AND HOUR

*Donohue v. AMN Services, LLC*, 29 Cal. App. 5th 1068 (2018), *review granted*, 245 Cal. Rptr. 3d 1 (2019), S253677/D071865

Petition for review after affirmance of judgment. Can employers utilize practices upheld in the overtime pay context to round employees' time to shorten or delay meal periods? Fully briefed.

*Ferra v. Loews Hollywood Hotel, LLC*, 40 Cal. App. 5th 1239 (2019), *review granted*, 257 Cal. Rptr. 3d 59 (2020), S259172/B283218

Petition for review after affirmance of judgment. Did the Legislature intend the term "regular rate of compensation" in Labor Code § 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 § 510(a), which requires employers to pay a wage premium for each overtime hour? Answer brief due.

*Golf Offshore Logistics v. Superior Court (Norris)*, 45 Cal. App. 5th 285 (2020), *review granted*, 2020 WL 3456712 (2020); S261881/B298318

Petition for review after grant of petition for peremptory writ of mandate. Briefing deferred pending decision in *Oman v. Delta Airlines* (see 9 Cal. 5th 762 (2020)), and *Ward v. United Airlines, Inc.* (see 9 Cal. 5th 732 (2020)), both on certification from the Ninth Circuit, in which the court addressed questions concerning the application of California's wage and hour statutes to work performed in the state by non-resident employees of out-of-state employers. Holding for lead cases.

*Grande v. Eisenhower Medical Center*, 44 Cal. App. 5th 1147 (2020), *review granted*, 262 Cal. Rptr. 3d 369; S261247/E068730, E068751

Petition for review after affirmance of judgment in a civil action. 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? Opening brief due.

*In re Certified Tire and Service Centers Wage and Hour Cases*, 28 Cal. App. 5th 1 (2018), *review granted*, 242 Cal. Rptr. 3d 417 (2019); S252517/D072265

Petition for review granted after affirmance of judgment. Briefing deferred pending decision in *Oman v. Delta Airlines* (see 9 Cal. 5th 762 (2020)), on certification from the Ninth

Circuit, in which the Court agreed to address the following questions: “(1) Do California Labor Code sections 204 and 226 apply to wage payments and wage statements provided by an out-of-state employer to an employee who, in the relevant pay period, works in California only episodically and for less than a day at a time? (2) Does California minimum wage law apply to all work performed in California for an out-of-state employer by an employee who works in California only episodically and for less than a day at a time? (See Cal. Labor Code, §§ 1182.12, 1194; Cal. Code Regs., § 11090(4).) (3) Does the *Armenta/Gonzalez* bar on averaging wages apply to a pay formula that generally awards credit for all hours on duty, but which, in certain situations resulting in higher pay, does not award credit for all hours on duty? (See *Gonzales v. Downtown LA Motors, LP* (2013) 215 Cal. App. 4th 36, 155 Cal. Rptr. 3d 18; *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 4th 314, 37 Cal. Rptr. 3d 460.)” Holding for lead case.

*Kaanaana v. Barrett Business Services, Inc.*, 29 Cal. App. 5th 778 (2018), *review granted*, 243 Cal. Rptr. 3d 827 (2019); S253458/B276420, B279838

Petition for review after reversal of judgment. Should the phrase “work done for irrigation, utility, reclamation, and improvement districts, and other

districts of this type” in Labor Code § 1720(a)(2) of California’s Prevailing Wage Law (Labor Code §§ 1720–1861) be interpreted to cover any type of work regardless of its nature, funding, purpose, or function, including belt sorting at recycling facilities? Fully briefed.

*Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (2019), *review granted*, 257 Cal. Rptr. 3d 188 (2020), S258966/B256232

Petition for review after part affirmance and part reversal of judgment. (1) Does a violation of Labor Code § 226.7, which requires payment of premium wages for meal and rest period violations, give rise to claims under Labor Code §§ 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 § 226.7? Reply brief due.

*Vazquez v. Jan-Pro Franchising Int’l, Inc.*, 939 F.3d 1045 (9th Cir. 2019); S258191/9th Cir. No. 17-16096

Request under California Rules of Court, rule 8.548, that the supreme 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? Reply brief due. <sup>4/23</sup>

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