

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, June 5, 2015.]

In re Abigail A., S220187. (C074264; 226 Cal.App.4th 1450; Sacramento County Superior Court; JD232871.) Petition for review after the Court of Appeal reversed orders in a dependency proceeding. This case presents the following issue: Do rules 5.482(c) and 5.484(c)(2) of the California Rules of Court conflict with Welfare and Institutions Code section 224.1, subdivision (a), by requiring the juvenile court to apply the provision of the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) to a child found by a tribe to be eligible for tribal membership if the child has not yet obtained formal enrollment?

Ardon v. City of Los Angeles, S223876. (B252476; 232 Cal.App.4th 175; Los Angeles County Superior Court; BC363959.) Petition for review after the Court of Appeal affirmed an order in a civil action. This case presents the following issues: (1) Does inadvertent disclosure of attorney work product and privileged documents in response to a Public Records Act request waive those privileges and protections? (2) Should the attorney who received the documents be disqualified because she examined them and refused to return them?

Augustus v. ABM Security Services, Inc., S224853. (B243788; 233 Cal.App.4th 1065; Los Angeles County Superior Court; BC336416, BC345918, CG5444421.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Do Labor Code, § 226.7, and Industrial Welfare Commission wage order No. 4-2001 require that employees be relieved of all duties during rest breaks? (2) Are security guards who remain on call during rest breaks performing work during that time under the analysis of *Mendiola v. GPS Security Solutions, Inc.* (2015) 60 Cal.4th 833?

B.H. v. County of San Bernardino, S213066. (E054516; nonpublished opinion; San Bernardino County Superior Court; CIVDS913403.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Does Penal Code section 11166, subdivision (k), create a mandatory duty requiring a law enforcement agency to cross-report to the relevant social services agency whenever it receives a report of known or suspected child abuse? (2) If so, when is that duty triggered? (3) Does Penal Code section 11166, subdivision (a), apply to law enforcement agencies that receive initial reports of child abuse? (4) If so, what standard should be applied to determine whether a follow-up report is required?

Baltazar v. Forever 21, Inc., S208345. (B237173; 212 Cal.App.4th 221; Los Angeles County Superior Court; VC059254.) Petition for review after the Court of Appeal reversed an order denying a petition to compel arbitration in a civil action. This case presents the following issue: Is an employment arbitration agreement unconscionable for lack of mutuality if it contains a clause providing that either party may seek provisional injunctive relief in the courts and the employer is more likely to seek such relief?

Baral v Schnitt, S225090. (B253620; 233 Cal.App.4th 1423; Los Angeles County Superior Court; BC475350.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike in a civil action. This case presents the following issue: Does a special motion to strike under Code of Civil Procedure section 425.16 authorize a trial court to excise allegations of activity protected under the statute when the cause of action also includes meritorious allegations based on activity that is not protected under the statute?

Barry v. State Bar of California, S214058. (B242054; 218 Cal.App.4th 1435; Los Angeles County Superior Court; BC452239.) Petition for review after the Court of Appeal reversed an order awarding attorney fees in a civil action. This case presents the following issue: If the trial court grants a special motion to strike under Code of Civil Procedure section 425.16 on the ground that the plaintiff has no probability of prevailing on the merits because the court lacks subject matter jurisdiction over the underlying dispute, does the court have the authority to award the prevailing party the attorney fees mandated by section 425.16, subdivision (c)?

Bristol-Myers Squibb Co. v. Superior Court, S221038. (A140035; 228 Cal.App.4th 605; San Francisco County Superior Court; JCCP 4748.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case includes the following issues: (1) Did the plaintiffs in this action who are not residents of California establish specific jurisdiction over their claims against the nonresident pharmaceutical drug manufacturer? (2) Does general jurisdiction exist in light of *Daimler AG v. Bauman* (2014) 571 U.S. ___ [134 S.Ct. 746, 187 L.Ed.2d 624]?

California Building Industry Assn. v. Bay Area Air Quality Management Dist., S213478. (A135335, A136212; 218 Cal.App.4th 1171; Alameda County Superior Court; RG10548693.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. The court limited review to the following issue: Under what circumstances, if any, does the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?

California Building Industry Assn. v. City of San Jose, S212072. (H038563; 216 Cal.App.4th 1373; Santa Clara County Superior Court; 1-10-CV167289.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: What standard of judicial review applies to a facial constitutional challenge to inclusionary housing ordinances that require set asides or in-lieu fees as a condition of approving a development permit? (See *San Remo Hotel L.P. v. City & County of San Francisco* (2002) 27 Cal.4th 643, 670.)

Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc., S218497. (B238867; 225 Cal.App.4th 237; Los Angeles County Superior Court; BC449056.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Does the delegation — by a health care service plan (HMO) to an independent physicians association (IPA), under Health and Safety Code section 1371.4, subdivision (e) — of the HMO’s responsibility to reimburse emergency medical service providers for emergency care provided to the HMO’s enrollees relieve the HMO of the ultimate obligation to pay for emergency medical care provided to its enrollees by non-contracting emergency medical service providers, if the IPA becomes insolvent and is unable to pay? (2) Does an HMO have a duty to emergency medical service providers to protect them from financial harm resulting from the insolvency of an IPA which is otherwise financially responsible for the emergency medical care provided to its enrollees?

Center for Biological Diversity v. Department of Fish & Wildlife, S217763. (B245131; 224 Cal.App.4th 1105; Los Angeles County Superior Court; BS131347.) 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) Does the California Endangered Species Act (Fish & Game Code, § 2050 et seq.) supersede other California statutes that prohibit the taking of “fully protected” species, and allow such a taking if it is incidental to a mitigation plan under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)? (2) Does the California Environmental Quality Act restrict judicial review to the claims presented to an agency before the close of the public comment period on a draft environmental impact report? (3) May an agency deviate from the Act’s existing conditions baseline and instead determine the significance of a project’s greenhouse gas emissions by reference to a hypothetical higher “business as usual” baseline?

Central Coast Forest Assn. v. Fish & Game Com., S208181. (C060569; 211 Cal.App.4th 1433; Sacramento County Superior Court; 07CS00851.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. The court limited review to the following issues: (1) Under the California Endangered Species Act, Fish and Game Code section 2050 et seq., may the Fish and Game Commission consider a petition to delist a species on the ground that the original listing was in error? (2) If so, does the petition at issue here contain sufficient information to warrant the Commission’s further consideration?

Citizens for Fair REU Rates v. City of Redding, S224779. (C071906; 233 Cal.App.4th 402, mod. 233 Cal.App.4th 1479a; Shasta County Superior Court; 171377.) Petition for review after the Court of Appeal reversed the judgment in a civil action. The court limited review to the following issues: (1) Is a payment in lieu of taxes (PILOT) transferred from the city utility to the city general fund a “tax” under Proposition 26 (Cal. Const., art. XIII C, § 1, subd. (1)(e))? (2) Does the exception for “reasonable costs to the local government of providing the service or product” apply to the PILOT (Cal. Const., art. XIII C, § 1, subd. (1)(e)(2))? (3) Does the PILOT predate Proposition 26?

City of Montebello v. Vasquez, S219052. (B245959; 226 Cal.App.4th 1084; Los Angeles County Superior Court; BC488767.) Petition for review after the Court of Appeal affirmed an order denying a special motion to strike in a civil action. This case presents the following issue: Did votes by city officials to approve a contract constitute conduct protected under Code of Civil Procedure section 425.16 despite the allegation that they had a financial interest in the contract?

City of Perris v. Stamper, S213468. (E053395; 218 Cal.App.4th 1104; Riverside County Superior Court; RIC524291.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) In this eminent domain case, was the constitutionality of the dedication requirement — that the city claimed it would have required in order to grant the property owner permission to put the property to a higher use — a question that had to be resolved by the jury pursuant to article I, section 19, of the California Constitution? (2) Was the dedication requirement a “project effect” that the eminent domain law required to be ignored in determining just compensation?

City of San Diego v. Trustees of the California State University, S199557. (D057446; 201 Cal.App.4th 1134; San Diego County Superior Court; GIC855643, GIC855701, 37-2007-00083692-CU-WM-CTL, 37-2007-00083773-CU-MC-CTL, 37-2007-00083768-CU-TT-CTL.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case includes the following issue: Does a state agency that may have an obligation to make “fair-share” payments for the mitigation of off-site impacts of a proposed project satisfy its duty to mitigate under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) by stating that it has sought funding from the Legislature to pay for such mitigation and that, if the requested funds are not appropriated, it may proceed with the project on the ground that mitigation is infeasible?

City of San Jose v. Superior Court, S218066. (H039498; 225 Cal.App.4th 75, mod. 225 Cal.App.4th 568c; Santa Clara County Superior Court; CV150427.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Are written communications pertaining to city business, including email and text messages, which (a) are sent or received by public officials and employees on their private electronic devices using their private accounts, (b) are not stored on city servers, and (c) are not directly accessible by the city, “public records” within the meaning of the California Public Records Act?

Cleveland National Forest Foundation v. San Diego Assn. of Governments, S223603. (D063288; 231 Cal.App.4th 1056, mod. 231 Cal.App.4th 1437a; San Diego County Superior Court; 37-2011-00101593-CU-TT-CTL, 37-2011-00101660-CU-TT-CTL.) 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 environmental impact report for a regional transportation plan include an analysis of the plan’s consistency with the greenhouse gas emission reduction goals reflected in Executive Order No. S-3-05, so as to comply with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)?

Coker v. JP Morgan Chase Bank, N.A., S213137. (D061720; 218 Cal.App.4th 1; San Diego County Superior Court; 37-2011-00087958-CU-MC-CTL.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Do the anti-deficiency protections in Code of Civil Procedure section 580b apply to a borrower who engages in a “short sale” of real property when the lender approved the sale and reconveyed its deed of trust to facilitate the sale on the condition that the borrower remain liable for any outstanding balance on the loan following the sale? (2) Does a borrower’s request that the creditor release its security interest in real property to facilitate a short sale result in a waiver of the protection of the “security first” rule set forth in Code of Civil Procedure section 726?

Gordova v. City of Los Angeles, S208130. (B236195; 212 Cal.App.4th 243; Los Angeles County Superior Court; BC442048, BC443948, BC444004.) 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 government entity be held liable if a dangerous condition of public property existed and caused the injuries plaintiffs suffered in an accident, but did not cause the third party conduct that led to the accident?

Department of Finance v. Commission on State Mandates, S214855. (B237153; 220 Cal.App.4th 740, mod. 221 Cal.App.4th 166d; Los Angeles County Superior Court; BS130730.) 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: Are the requirements in the National Pollutant Discharge Elimination System (NPDES) permits issued to real parties in interest by the regional water quality control board state mandates subject to reimbursement under article XIII B, section 6, subdivision (b), of the state Constitution?

deSaulles v. Community Hospital of the Monterey Peninsula, S219236. (H038184; 225 Cal.App.4th 1427; Monterey County Superior Court; M85528.) Petition for review after the Court of Appeal reversed an order awarding costs in a civil action. This case presents the following issue: When plaintiff dismissed her action in exchange for the defendant's payment of a monetary settlement, was she the prevailing party for purposes of an award of costs under Code of Civil Procedure section 1032, subdivision (a)(4), because she was "the party with a net monetary recovery," or was defendant the prevailing party because it was "a defendant in whose favor a dismissal is entered"?

Dhillon v. John Muir Health, S224472. (A143195; nonpublished opinion; Contra Costa County Superior Court; .) Petition for review after the Court of Appeal dismissed an appeal from an order on a petition for writ of administrative mandate. This case presents the following issue: Is a trial court order granting in part and denying in part a physician's petition for writ of administrative mandate regarding a hospital's disciplinary action and remanding the matter to the hospital for further administrative proceedings an appealable order?

DKN Holdings LLC v. Faerber, S218597. (E055732, E056294; 225 Cal.App.4th 1115; Riverside County Superior Court; RIC1109512.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issues: (1) Can parties who are jointly and severally liable on an obligation be sued in separate actions? (2) Does the opinion of the Court of Appeal in this case conflict with the opinion of this court in *Williams v. Reed* (1957) 48 Cal.2d 57?

Dynamex Operations West, Inc. v. Superior Court, S222732. (B249546; 230 Cal.App.4th 718; Los Angeles County Superior Court; C332016.) Petition for review after the Court of Appeal granted in part and denied in part a petition for peremptory writ of mandate. This case presents the following issue: In a wage and hour class action involving claims that the plaintiffs were misclassified as independent contractors, may a class be certified based on the Industrial Welfare Commission definition of employee as construed in *Martinez v. Combs* (2010) 49 Cal.4th 35, or should the common law test for distinguishing between employees and independent contractors discussed in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341 control?

Estate of Duke, S199435. (B227954; 201 Cal.App.4th 599; Los Angeles County Superior Court; BP108971.) Petition for review after the Court of Appeal affirmed the judgment in a probate proceeding. This case presents the following issue: Should the “four corners” rule (see *Estate of Barnes* (1965) 63 Cal.2d 580) be reconsidered in order to permit drafting errors in a will to be reformed consistent with clear and convincing extrinsic evidence of the decedent’s intent?

Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC, S210804. (B239928; 215 Cal.App.4th 277; Los Angeles County Superior Court; BC458347.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Do the requirements of Code of Civil Procedure section 1008, subdivision (b), which govern motions to renew previously denied motions, apply to renewed motions under Code of Civil Procedure section 473, subdivision (b), for relief from default judgment?

F.P. v. Monier, S216566. (C062329; 222 Cal.App.4th 1087; Sacramento County Superior Court; 06AS00671.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Is a trial court’s error in failing to issue a statement of decision upon a timely request reversible per se?

Flores v. Presbyterian Intercommunity Hospital, S209836. (B235409; 213 Cal.App.4th 1386; Los Angeles County Superior Court; VC058225.) Petition for review after the Court of Appeal reversed an order of dismissal of a civil action. This case presents the following issues: (1) Does the one-year statute of limitations for claims under the Medical Injury Compensation Act (Code Civil Proc., § 340.5) or the two-year statute of limitations for ordinary negligence (Code Civil Proc., § 335.1) govern an action for premises liability against a hospital based on negligent maintenance of hospital equipment? (2) Did the injury in this case arise out of “professional negligence,” as that term is used in section 340.5, or ordinary negligence?

Fluor Corp. v. Superior Court, S205889. (G045579; 208 Cal.App.4th 1506; Orange County Superior Court; 06CC00016.) Petition for review after the Court of Appeal denied a petition for peremptory writ of mandate. This case presents the following issue: Are the limitations on assignment of third party liability insurance policy benefits recognized in *Henkel Corp. v. Hartford Accident & Indemnity Co.* (2003) 29 Cal.4th 934 inconsistent with the provisions of Insurance Code section 520?

Frealy v. Reynolds, S224985. (9th Cir. No. 12-60068; 779 F.3d 1028; Central District of California; BAP No. 11-1433, Bankr. Case No. 09-14039-MJ, Adversary Case No. 09-01205-MJ.) 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 section 15306.5 of the California Probate Code impose an absolute cap of 25 percent on a bankruptcy estate’s access to a beneficiary’s interest in a spendthrift trust that consists entirely of payments from principal, or may the bankruptcy estate reach more than 25 percent under other sections of the Probate Code?”

Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist., S214061. (A135892, A139235; nonpublished opinion; San Mateo County Superior Court; CIV508656.) 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: When a lead agency performs a subsequent environmental review and prepares a subsequent environmental impact report, a subsequent negative declaration, or an addendum, is the agency’s decision reviewed under a substantial evidence standard of review (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385), or is the agency’s decision subject to a threshold determination whether the modification of the project constitutes a “new project altogether,” as a matter of law (*Save our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288)?

Friends of the Eel River v. North Coast Railroad Authority, S222472. (A139222; 230 Cal.App.4th 85; Marin County Superior Court; CV1103591, CV1103605.) Petition for review after the Court of Appeal affirmed the judgments in actions for writ of administrative mandate. This case includes the following issues: (1) Does the Interstate Commerce Commission Termination Act [ICCTA] (49 U.S.C. § 10101 et seq.) preempt the application of the California Environmental Quality Act [CEQA] (Pub. Res. Code, § 21050 et seq.) to a state agency’s proprietary acts with respect to a state-owned and funded rail line or is CEQA not preempted in such circumstances under the market participant doctrine (see *Town of Atherton v. California High Speed Rail Authority* (2014) 228 Cal.App.4th 314)? (2) Does the ICCTA preempt a state agency’s voluntary commitments to comply with CEQA as a condition of receiving state funds for a state-owned rail line and/or leasing state-owned property?

Gaines v. Fidelity National Title Ins. Co., S215990. (B244961; 222 Cal.App.4th 25; Los Angeles County Superior Court; BC361768.) 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: Was this action properly dismissed for the failure to bring it to trial within five years or should the period during which the action was stayed for purposes of mediation have been excluded under Code of Civil Procedure section 583.340, subdivision (b) or (c)?

Gerard v. Orange Coast Memorial Medical Center, S225205. (G048039; 234 Cal.App.4th 285; Orange County Superior Court; 30-2008-00096591.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Is the health care industry meal period waiver provision in section 11(D) of Industrial Wage Commission Order No. 5-2001 invalid under Labor Code section 512, subdivision (a)? (2) Should the decision of the Court of Appeal partially invalidating the Wage Order be applied retroactively?

The Gillette Co. v. Franchise Tax Bd., S206587. (A130803; 209 Cal.App.4th 938; San Francisco County Superior Court; CGC-10-495911.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issue: Were multistate taxpayers required to apportion business income according to the formula set forth in Revenue and Taxation Code section 25128 as amended in 1993 or could they elect to apportion income according to the formula set forth in former Revenue and Taxation Code section 38006 pursuant to the adoption of the Multistate Tax Compact in 1974?

Hampton v. County of San Diego, S213132. (D061509; 218 Cal.App.4th 286; San Diego County Superior Court; 37-2010-00101299-CU-PA-CTL.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does a public entity establish the second element of design immunity under Government Code section 830.6 — discretionary approval of design plans — as a matter of law by presenting evidence that its design plans were approved by an employee with the discretion to do so, even if the plaintiff presents evidence that the design at issue violated the public entity's own standards?

Haver v. BNSF Railway Co., S219919. (B246527; 226 Cal.App.4th 1104, mod. 226 Cal.App.4th 1376b; Los Angeles County Superior Court; BC435551.) Petition for review after the Court of Appeal affirmed the judgment in a civil action.

Kesner v. Superior Court, S219534. (A136378, A136416; 226 Cal.App.4th 251; Alameda County Superior Court; RG11578906.) Petition for review after the Court of Appeal reversed the judgment in a civil action.

Haver and *Kesner* present the following issue: If an employer's business involves either the use or the manufacture of asbestos-containing products, does the employer owe a duty of care to members of an employee's household who could be affected by asbestos brought home on the employee's clothing?

Horiike v. Coldwell Banker Residential Brokerage Co., S218734. (B246606; 225 Cal.App.4th 427; Los Angeles County Superior Court; SC110477.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: When the buyer and the seller in a residential real estate transaction are each independently represented by a different salesperson from the same brokerage firm, does Civil Code section 2079.13, subdivision (b), make each salesperson the fiduciary to both the buyer and the seller with the duty to provide undivided loyalty, confidentiality and counseling to both?

Howard Jarvis Taxpayers Assn. v. Bowen, S220289. Original proceedings. The court issued an order to show cause directing the parties to show cause why the relief prayed for in the petition for writ of mandate should not be granted. This case involves the validity of proposed Proposition 49 for the November 2014 General Election — specifically, whether the Legislature had the authority to place a non-binding measure on the ballot seeking the views of the electorate.

In re Isiah W., S221263. (B250231; 228 Cal.App.4th 981; Los Angeles County Superior Court; CK91018.) Petition for review after the Court of Appeal affirmed an order terminating parental rights. This case presents the following issue: Does a parent's failure to appeal from a juvenile court order finding that notice under the Indian Child Welfare Act was unnecessary preclude the parent from subsequently challenging that finding more than a year later in the course of appealing an order terminating parental rights?

J.R. Marketing, L.L.C. v. Hartford Casualty Ins. Co., S211645. (A133750; 216 Cal.App.4th 1444; San Francisco County Superior Court; CGC-06-449220.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: After an insured has secured a judgment requiring an insurer to provide independent counsel to the insured (see *San Diego Fed. Credit Union v. Cumis Ins. Society Inc.* (1984) 162 Cal.App.3d 358), can the insurer seek reimbursement of defense fees and costs it considers unreasonable and unnecessary by pursuing a reimbursement action against independent counsel or can the insurer seek reimbursement only from its insured?

John v. Superior Court, S222726. (B256604; 231 Cal.App.4th 347; Los Angeles County Superior Court; BV030258.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issue: Must a defendant who has been declared a vexatious litigant and is subject to a pre-filing order (Code Civ. Proc., § 391.7, subd. (a)) obtain leave of the presiding judge or justice before filing an appeal from an adverse judgment?

Kilby v. CVS Pharmacy, Inc./Henderson v. JPMorgan Chase Bank NA, S215614. (9th Cir. Nos. 12-56130, 13-56095; 739 F.3d 1192, Southern District of California, 3:09-cv-02051-MMA-KSC; Central District of California, 2:11-cv-03428-PSG-PLA.) Request under California Rules of Court, rule 8.548, that this court decide questions of California law presented in consolidated appeals pending in the United States Court of Appeals for the Ninth Circuit. The questions presented are: For purposes of IWC Wage Order 4-2001 § 14(A) and IWC Wage Order 7-2001 § 14(A), “(1) Does the phrase ‘nature of the work’ refer to an individual task or duty that an employee performs during the course of his or her workday, or should courts construe ‘nature of the work’ holistically and evaluate the entire range of an employee’s duties? (a) If the courts should construe ‘nature of the work’ holistically, should the courts consider the entire range of an employee’s duties if more than half of an employee’s time is spent performing tasks that reasonably allow the use of a seat? (2) When determining whether the nature of the work ‘reasonably permits’ the use of a seat, should courts consider any or all of the following: the employer’s business judgment as to whether the employee should stand, the physical layout of the workplace, or the physical characteristics of the employee? (3) If an employer has not provided any seat, does a plaintiff need to prove what would constitute ‘suitable seats’ to show the employer has violated Section 14(A)?”

Lafitte v. Robert Half Internat., Inc., S222996. (B249253; 231 Cal.App.4th 860; Los Angeles County Superior Court; BC321317. Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does *Serrano v. Priest* (1977) 20 Cal.3d 25 permit a trial court to anchor its calculation of a reasonable attorney’s fees award in a class action on a percentage of the common fund recovered?

Larkin v. Workers’ Comp. Appeals Bd., S216986. (C065891; 223 Cal.App.4th 538.) Petition for review after the Court of Appeal affirmed a decision of the Board. This case presents the following issue: Do the benefits provided under Labor Code section 4458.2 extend both to volunteer peace officers and to regularly sworn, salaried officers?

Lee v. Hanley, S220775. (G048501; 227 Cal.App.4th 1295, mod. 228 Cal.App.4th 793a; Orange County Superior Court; 30-2011-00532352.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Does the one-year statute of limitations for actions against attorneys set forth in California Code of Civil Procedure section 340.6 apply to a former client’s claim against an attorney for reimbursement of unearned attorney fees advanced in connection with a lawsuit?

Lewis v. Superior Court, S219811. (B252032; 226 Cal.App.4th 933; Los Angeles County Superior Court; BS139289.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case includes the following issues: (1) Do a physician's patients have a protected privacy interest in the controlled substance prescription data collected and submitted to the California Department of Justice under Health and Safety Code section 11165? (2) If so, is disclosure of such data to the Medical Board of California justified by a compelling state interest?

Lynch v. California Coastal Com., S221980. (D064120; 229 Cal.App.4th 658; San Diego County Superior Court; 37-2011-00058666-CU-WM-NC.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case includes the following issues: (1) Did plaintiffs, who objected in writing and orally to certain conditions contained within a coastal development permit approved by defendant California Coastal Commission and who filed a petition for writ of mandate (Code Civ. Proc., § 1094.5) challenging those conditions, waive their right to challenge the conditions by subsequently executing and recording deed restrictions recognizing the existence of the conditions and constructing the project as approved? (2) Did the permit condition allowing plaintiffs to construct a seawall on their property, but requiring them to apply for a new permit in 20 years or to remove the seawall, violate Public Resources Code section 30235 or the federal Constitution? (3) Were plaintiffs required to obtain a permit to reconstruct the bottom portion of a bluff-to-beach staircase that had been destroyed by a series of winter storms, or was that portion of the project exempt from permitting requirements pursuant to Public Resources Code section 30610, subdivision (g)(1)?

In re Marriage of Davis, S215050. (A136858; 220 Cal.App.4th 1109; Alameda County Superior Court; RF08428441.) Petition for review after the Court of Appeal affirmed an order in a marital dissolution proceeding. The court limited review to the following issue: For the purpose of establishing the date of separation under Family Code section 771, may a couple be "living separate and apart" when they reside in the same residence?

McLean v. State of California, S221554. (C074515; 228 Cal.App.4th 1500; Sacramento County Superior Court; 34201200119161CUOEGDS.) 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) When bringing a putative class action to recover penalties against an "employer" under Labor Code section 203, may a former state employee sue the "State of California" instead of the specific agency for which the employee previously worked? (2) Do Labor Code section 202 and 203, which provide a right of action for an employee who "quits" his or her employment, authorize a suit by an employee who retires?

Mendoza v. Nordstrom, S224611. (9th Cir., No. 12-57130; 778 F.3d 834, Central District of California; 8:10-cv-00109-CJC-MLG.) 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. The questions presented are: “(A) California Labor Code section 551 provides that ‘[e]very person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.’ Is the required day of rest calculated by the workweek, or is it calculated on a rolling basis for any consecutive seven-day period? (B) California Labor Code section 556 exempts employers from providing such a day of rest ‘when the total hours of employment do not exceed 30 hours in any week *or six hours in any one day thereof.*’ (Emphasis added.) Does that exemption apply when an employee works less than six hours in any one day of the applicable week, or does it apply only when an employee works less than six hours in each day of the week? (C) California Labor Code section 552 provides that an employer may not ‘cause his employees to work more than six days in seven.’ What does it mean for an employer to ‘cause’ an employee to work more than six days in seven: force, coerce, pressure, schedule, encourage, reward, permit, or something else?”

Monterey Peninsula Water Dist. v. Public Utilities Com., S208838. Original proceeding. This case presents the following issue: Does the Public Utilities Commission have the authority to review and regulate a user fee imposed by a local government entity that is collected through the bills of a regulated public utility?

Mountain Air Enterprises, LLC v. Sundowner Towers, LLC, S223536. (A138306; 231 Cal.App.4th 805; Marin County Superior Court; CIV081957.) Petition for review after the Court of Appeal reversed an order denying attorney fees in a civil action. This case includes the following issues: (1) Does the assertion of an agreement as an affirmative defense implicate the attorney fee provision in that agreement? (2) Does the term “action” or “proceeding” in Civil Code section 1717 and in attorney fee provisions encompass the assertion of an affirmative defense?

Nickerson v. Stonebridge Life Ins. Co., S213873. (B234271; 219 Cal.App.4th 188; Los Angeles County Superior Court; BC405280.) Petition for review after the Court of Appeal modified and affirmed the judgment in a civil action. The court limited review to the following issue: Is an award of attorney fees under *Brandt v. Superior Court* (1985) 37 Cal.3d 813 properly included as compensatory damages where the fees are awarded by the jury, but excluded from compensatory damages when they are awarded by the trial court after the jury has rendered its verdict?

926 North Ardmore Avenue v. County of Los Angeles, S222329. (B248536; 229 Cal.App.4th 1335; Los Angeles County Superior Court; BC476670.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Does Revenue and Taxation Code section 11911 authorize a county to impose a documentary transfer tax based on a change in ownership or control of a legal entity that directly or indirectly holds title to real property?

Orange Citizens for Parks & Recreation v. Superior Court, S212800. (G047013, G047219; 217 Cal.App.4th 1005; Orange County Superior Court; 30-2011-00494437.) Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in an action for writ of administrative mandate. This case presents the following issue: Is the proposed development project of low density housing at issue in this case consistent with the city's general plan?

Parker v. State of California, S215265. (F062490; 221 Cal.App.4th 340; Fresno County Superior Court ; 10CECG02116.) Petition for review after the Court of Appeal granted a permanent injunction in a civil action. This case presents the following issue: Are the Penal Code sections that regulate "ammunition principally for use in pistols, revolvers, and other firearms capable of being concealed upon the person, notwithstanding that the ammunition may also be used in some rifles" (Pen. Code, § 16650, subd. (a)) unconstitutional on their face for failure to afford adequate notice of the regulated conduct and/or failure to provide sufficient guidelines to prevent arbitrary enforcement?

People v. Grewal, S217896. (F065450, F065451, F065689; 224 Cal.App.4th 527; Kern County Superior Court; CV-276959, CV-276961, CV-276958.) Petitions for review after the Court of Appeal affirmed the issuance of preliminary injunctions in a civil action.

People v. Nasser, S217979. (F066645, F066646; nonpublished opinion; Kern County Superior Court; CV-276603, CV-276962.) Petition for review after the Court of Appeal affirmed the issuance of preliminary injunctions in a civil action.

Grewal and *Nasser* include the following issue: Are the internet café games at issue in these cases "slot machine[s] or device[s]" under Penal Code section 330b, subdivision (d)?

People v. Miami National Enterprises, S216878. (B242644; 223 Cal.App.4th 21; Los Angeles County Superior Court; BC373536.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Is a payday loan company owned by a federally recognized Indian tribe entitled to tribal sovereign immunity, and thus exempt from state regulation, if the day-to-day management of the business is handled by a third party management company that is not affiliated with the tribe and pays the tribe a small percentage of the gross revenues?

People v. Safety National Casualty Ins. Co., S218712. (B243773; 225 Cal.App.4th 438, mod. 225 Cal.App.4th 1411a; Los Angeles County Superior Court; LA066432.) Petition for review after the Court of Appeal reversed an order denying a motion to vacate the forfeiture of a bail bond in a criminal case. This case presents the following issue: May Penal Code section 977, subdivision (b)(1), be utilized to determine whether a proceeding at which a defendant charged with a felony failed to appear was a proceeding at which the defendant was "lawfully required" to appear for purposes of forfeiting bail under Penal Code section 1305, subdivision (a)(4)?

Poole v. Orange County Fire Authority, S215300. (G047691, G047850; 221 Cal.App.4th 155; Orange County Superior Court; 30-2011-00463651.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issue: Did a daily log about firefighters, which was maintained by a supervisor and used by the supervisor to prepare annual performance evaluations, qualify under the Firefighters Procedural Bill of Rights Act (Gov. Code, § 3250 et seq.) as a personnel file and/or as a file used for personnel purposes?

Ramos v. Brenntag Specialties, Inc., S218176. (B248038; 224 Cal.App.4th 1239; Los Angeles County Superior Court; BC449958.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Are negligence and strict liability claims by an employee of a processing company against a supplier of raw materials for injuries allegedly suffered in the course of processing those materials barred by the component parts doctrine?

Reserve v. Superior Court, S217738. (C067758, C067765, C068469; 224 Cal.App.4th 828; San Joaquin County Superior Court; 4594.) Petition for review after the Court of Appeal affirmed in part and reversed in part an order granting a petition for precondemnation entry. The court limited review to the following issues: (1) Do the geological testing activities proposed by the Department of Water Resources constitute a taking? (2) Do the environmental testing activities set forth in the February 22, 2011, entry order constitute a taking? (3) If so, do the precondemnation entry statutes (Code Civ. Proc., §§ 1245.010-1245.060) provide a constitutionally valid eminent domain proceeding for the taking?

Quesada v. Herb Thyme Farms, Inc., S216305. (B239602; 222 Cal.App.4th 642; Los Angeles County Superior Court; BC436557.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Does the Organic Foods Production Act of 1990 (7 U.S.C. § 6501 et seq.) preempt state consumer lawsuits alleging that a food product was falsely labeled “100% Organic” when it contained ingredients that were not certified organic under the California Organic Products Act of 2003 (Food & Agr. Code, § 46000 et seq.; Health & Saf. Code, § 110810 et seq.)?

Raceway Ford Cases, S222211. (E054517, E056595; 229 Cal.App.4th 1119; Riverside County Superior Court; JCCP4476.) 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 the inclusion of inapplicable smog check and smog certification fees in an automobile purchase contract violate the Automobile Sales Finance Act (Civ. Code, § 2981 et seq.)? (2) Does backdating a second or subsequent finance agreement to the date of the first finance agreement for purchase of a vehicle violate the Act?

Sanchez v. Valencia Holding Co. LLC, S199119. (B228027; 201 Cal.App.4th 74; Los Angeles County Superior Court; BC433634.) Petition for review after the Court of Appeal affirmed an order denying a petition to compel arbitration. This case includes the following issue: Does the Federal Arbitration Act (9 U.S.C. § 2), as interpreted in *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. ___ [131 S. Ct. 1740, 179 L.Ed.2d 742], preempt state law rules invalidating mandatory arbitration provisions in a consumer contract as procedurally and substantively unconscionable?

Sandquist v. Lebo Automotive, Inc., S220812. (B244412; 228 Cal.App.4th 65; Los Angeles County Superior Court; BC476523.) Petition for review after the Court of Appeal reversed an order in a civil action. This case presents the following issue: Does the trial court or the arbitrator decide whether an arbitration agreement provides for class arbitration if the agreement itself is silent on the issue?

Shaw v. Superior Court, S221530. (B254958; 229 Cal.App.4th 12; Los Angeles County Superior Court; BC493928.) Petition for review after the Court of Appeal granted a petition for peremptory writ of mandate. This case presents the following issues: (1) Did the Court of Appeal err by reviewing plaintiff's right to a jury by writ of mandate rather than appeal? (See *Nessbit v. Superior Court* (1931) 214 Cal. 1.) (2) Is there a right to jury trial on a retaliation cause of action under Health and Safety Code section 1278.5?

Sierra Club v. County of Fresno, S219783. (F066798; 226 Cal.App.4th 704; Fresno County Superior Court; 11CECG00706, 11CECG00709, 11CECG00726.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents issues concerning the standard and scope of judicial review under the California Environmental Quality Act. (CEQA; Pub. Resources Code, § 21000 et seq.)

Solus Industrial Innovations, LLC v. Superior Court, S222314. (G047661; 229 Cal.App.4th 1291; Orange County Superior Court; 30-2012-00581868.) Petition for review after the Court of Appeal granted a petition for writ of peremptory mandate. This case presents the following issue: Does federal law preempt a district attorney's attempt to recover civil penalties under California's unfair competition law based on an employer's violation of workplace safety standards that resulted in the deaths of two employees?

In re Transient Occupancy Tax Cases, S218400. (B243800; 225 Cal.App.4th 56; Los Angeles County Superior Court; JCCP 4472.) Petition for review after the Court of Appeal affirmed the judgment in an action for writ of administrative mandate. This case includes the following issue: When a customer books a hotel room through an online travel company, should the occupancy tax levied on the rent charged by the hotel be calculated based on the retail rate paid by the customer to obtain the right to use the room or on the wholesale amount that the hotel receives from the online travel company after that company has deducted its markup and fees?

Webb v. Special Electric Co., Inc., S209927. (B233189; 214 Cal.App.4th 595, mod. 214 Cal.App.4th 1386d; Los Angeles County Superior Court; BC436063.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issues: (1) Should a defendant that supplied raw asbestos to a manufacturer of products be found liable to the plaintiffs on a failure to warn theory? (2) Was the trial court's decision to treat defendant's pre-trial motions for nonsuit and for a directed verdict as a post-trial motion for judgment notwithstanding the verdict procedurally improper, and if so, was it sufficiently prejudicial to warrant reversal?

Wheatherford v. City of San Rafael, S219567. (A138949; 226 Cal.App.4th 460; Marin County Superior Court; CIV1300112.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issue: Must a plaintiff have paid or be liable to pay a property tax to a government entity in order to bring a taxpayer waste action against that entity under Code of Civil Procedure section 526a, or can the payment of other taxes confer standing?

Williams & Fickett v. County of Fresno, S224476. (F068652; 232 Cal.App.4th 1250; Fresno County Superior Court; 13CECG00461.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case includes the following issues: (1) Must a taxpayer against whom an escape assessment on personal property has been made exhaust administrative remedies by filing an application with the county's board of equalization to reduce the assessment if the taxpayer claims that it does not own and has no interest in the assessed property, or does the taxpayer fall within the "nullity" exception to the exhaustion requirement? (2) Is a taxpayer who files an application for changed assessment with the county's board of equalization subject to a one-year limitations period for paying the assessment and filing an action challenging the assessment, or does the period within which the taxpayer may file such an action begin to run only after the taxpayer has paid the disputed taxes?

Winn v. Pioneer Medical Group, Inc., S211793. (B237712; 216 Cal.App.4th 875; Los Angeles County Superior Court; BC455808.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Does “neglect” within the meaning of the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15657) include a health care provider’s failure to refer an elder patient to a specialist if the care took place on an outpatient basis, or must an action for neglect under the Act allege that the defendant health care provider had a custodial relationship with the elder patient?

Yvanova v. New Century Mortgage Corp., S218973. (B247188; 226 Cal.App.4th 495; Los Angeles County Superior Court; LC097218.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: In an action for wrongful foreclosure on a deed of trust securing a home loan, does the borrower have standing to challenge an assignment of the note and deed of trust on the basis of defects allegedly rendering the assignment void?