Preface to the 2025 through 2026 edition

Several decades ago, the passage by Congress of the Class Action Fairness Act, 28 U.S.C. 1332 (CAFA), required California's state and federal courts to share class-action jurisdiction. As courts and practitioners adjusted, a judicial decision by the United States Supreme Court further provided a seismic jurisdictional impact on California class action and group relief practice.

AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 131 S. Ct. 1740 (2011) (Conception) empowered the Federal Arbitration Act 9 U.S.C.A 16) (FAA) by mandating enforcement of contracts requiring arbitration of disputes, often with prohibitions of group or representative relief.

A decade of arbitration-related jurisprudence deals with issues related to the important role it now plays in cases attempting group relief in California courts. Accordingly, an annual "Arbitration Update" is appropriate.

Decisions certifying or reversing certification warrant annual review, usually from the Ninth Circuit Court of Appeals, also the source of post-CAFA procedural rule making.

The application and procedural interpretation of California's Private Attorney General Act (PAGA) Labor Code 2992 et seq. is important in employment-related group relief claims, and as if the federal and state court interpretations were not complicated enough, the California Legislature amended the statute in 2024, narrowing its prospective application.

Arbitration Update

The impact on California state class action practice by the expansive interpretation of the Federal Arbitration Act (9 U.S.C. §§ 1 to 16) (FAA) of Conception was enormous, as the use of consumer and employment arbitration agreements exploded.

Agreements subject to the FAA are "valid, irrevocable, and enforceable, save upon such grounds as exist in law or in equity for the revocation of any contract." 9 U.S.C. § 2. Therefore, California contract law applies to enforcement analysis.

Enforcement of arbitration under relevant California contract law is often denied, as was the case in *Chabolla v. Classpass Inc.* (9th Cir. 2025) 129 F.4th 1147 and *Kseniya Godun v. JustAnswer LLC* (9th Cir. 2025) 135 F.4th 699.

California's unconscionability doctrine prevented enforcement of arbitration in *Ronderos v. USF Reddaway, Inc.* (9th Cir. 2024)

114 F.4th 1080, *Jenkins v. Dermatology Management, LLC* (2024) 107 Cal.App.5th 633 [328 Cal.Rptr.3d 402], and *Sanchez v. Superior Court* (2025) 108 Cal.App.5th 615 [329 Cal.Rptr.3d 405].

When found unconscionable, delegation to an arbitrator and mass arbitration procedures pose a serious risk of being unfair to claimants. *Heckman v. Live Nation Ent., Inc.* (9th Cir. 2024) 120 F.4th 670.

Quach v. California Commerce Club, Inc. (2024) 16 Cal.5th 562 [323 Cal.Rptr.3d 126, 551 P.3d 1123] follows the federal precedent by not requiring prejudice supporting a waiver of right to arbitration.

Arbitration was deemed waived after a party had agreed to classwide mediation. *Campbell v. Sunshine Behavioral Health, LLC* (2024) 105 Cal.App.5th 419 [325 Cal.Rptr.3d 832].

Gonzalez v. Nowhere Beverly Hills LLC (2024) 107 Cal.App.5th 111 [327 Cal.Rptr.3d 815] found equitable estoppel allowed enforcement of an arbitration agreement against a plaintiff suing multiple entities as defendants.

Jones v. Starz Ent., LLC (9th Cir. 2025) 129 F.4th 1176 denied individual arbitration in a consolidated class arbitration under JAMS rules.

The FAA does not preempt California's statutory arbitration provisions for the timely payment of arbitration fees in California Code of Civil Procedure § 1281.98. Failure to timely pay the arbitration fee prevented enforcement. *Sanders v. Superior Court* (2025) 110 Cal.App.5th 1304.

The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021, 9 U.S.C. §§ 401, 402, amended the FAA and precludes arbitration if at least one sexual harassment claim is subject to the act. *Liu v. Miniso Depot CA, Inc.* (2024) 105 Cal.App.5th 791 [326 Cal.Rptr.3d 286]. Nor can the parties contract around the law with a choice-of-law provision. *Casey v. Superior Court* (2025) 108 Cal.App.5th 575 [329 Cal.Rptr.3d 518].

See discussion in Chapter Federal Arbitration Act 1:17 & Class Arbitrations/Arbitrations Agreements 3:10.

California Class Action Practice and Procedure

In *Royal Canin U.S.A., Inc. v. Wullschleger* (2025) 604 U.S. 22 [145 S.Ct. 41, 220 L.Ed.2d 289], the U.S. Supreme Court clarified that an amendment deleting federal claims required remand to state court.

Class damage issues under Federal Rule 23(b)(3) did not predominate or meet commonality, resulting in reversal of class certifications in *Black Lives Matter L.A. v. City of Los Angeles* (9th Cir. 2024) 113 F.4th 1249 and *Small v. Allianz Life Ins. Co.*

of N. Am. (9th Cir. 2024) 122 F.4th 1182.

The California Supreme Court in *Capito v. San Jose Healthcare System, LP* (2024) 17 Cal.5th 273 [328 Cal.Rptr.3d 373, 561 P.3d 380] found hospitals have no duty under the Unfair Competition Law, Bus. & Prof. Code, § 17200 et seq., or the Consumer Legal Remedies Act, Civ. Code, § 1750 et seq., to disclose in advance the fees for emergency services prior to treatment. The opinion reviews UCL jurisprudence and holds the status of "unfair" competition "unsettled."

Consumer classes have standing for statutory damages under the Fair Debt Buying Practices Act, Cal. Civ. Code 1788.62(a)(2). *Chai v. Velocity Investments, LLC* (2025) 108 Cal.App.5th 1030 [330 Cal.Rptr.3d 11]; *Guracar v. Student Loan Solutions, LLC* (May 20, 2025, No. H051407) ___Cal.App.5th___ [2025 Cal. App. LEXIS 321].

When standing and injury issues are interrelated under the False Advertising Act Business Professions Section 17500 et seq., the trier of fact determines the issue, not the court under Rule 12 dismissal standards. *Bowen v. Energizer Holdings, Inc.* (9th Cir. 2024) 118 F.4th 1134.

Personal jurisdiction extends to a nonresident defendant that purposefully directed sales activities to a California resident. *Briskin v. Shopify, Inc.* (9th Cir. 2025) 135 F.4th 739.

In re Cal. Pizza Kitchen Data Breach Litig. (9th Cir. 2025) 129 F.4th 667 affirmed a data breach settlement while reversing the attorneys' fee award, finding it excessive of the settlement value. Except in extraordinary cases, the attorney's fees awarded should not exceed the value provided in the litigation to the class. *Lowery v. Rhapsody Int'l, Inc.* (9th Cir. 2023) 75 F.4th 985.

PAGA

Employment practitioners' use of California's Private Attorney General Act, Labor Code 2698 et seq. (PAGA) as an alternative to class actions is subject to major 2024 non-retroactive legislative amendments.

The death knell predicate to appealability of class certification denial was not triggered when PAGA claims remained even after voluntary dismissal. *Huff v. Interior Specialists, Inc.* (2024) 107 Cal.App.5th 970 [328 Cal.Rptr.3d 612].

An arbitration agreement that excluded representative PAGA claims was interpreted to prevent arbitration of individual claims in *Mondragon v. Sunrun Inc.* (2024) 101 Cal.App.5th 592 [320 Cal.Rptr.3d 492].

After arbitration resulted in a finding for the defendant regarding claimed wage and hour violations, the employee was

precluded from relitigating those violations in the trial court to prove PAGA standing. *Rodriguez v. Lawrence Equipment, Inc.* (2024) 106 Cal.App.5th 645 [327 Cal.Rptr.3d 188].

Important unresolved issues are now pending before the California Supreme Court, including whether each PAGA action includes individual and representative action and whether an action may be initiated only for a representative claim.

For a chronology of federal and state judicial interpretation of the statute, see **3:14 Private Attorney General Act (PAGA)**.

Artificial intelligence tools applying neural networks loosely modeled on the human brain, drawing from large language models, will, at a minimum, expedite legal research and law practice in ways yet unknown.

The California Judicial Council has been briefed on the Judicial Branch Artificial Intelligence (AI) Task Force's "*Model Policy for Use of Generative Artificial Intelligence*," which followed a 2024 survey of all California trial appellate courts and the Supreme Court.

Key proposals will include generative AI policies in California Rules of Court and Standards of Judicial Administration guides for use by judicial officers.

Lawyers and the courts need to keep up. The California State Bar Rules of Professional Conduct address lawyer competence, including "*the duty to keep abreast of the changes in the law and its practice, including the benefits and risks associated with the relevant technology.*"

Communication technology originating during the pandemic is now incorporated into everyday law practice. Remote depositions, court appearances, and class certification hearings are now common practice.

The creative and ethical use of these new tools challenges advocates, mediators, and judicial personnel to define the appropriate boundaries for their use even as the sophistication of artificial human reasoning accelerates.

The annual update of this work benefits from the dedicated work of Matthew Atlas, paralegal, suggestions from the lawyers at Cohelan Khoury & Singer, as well as interested members of the bar.

It is my great privilege to annually assemble updates to the primary work. It remains my continued hope that these efforts will be of assistance to those seeking to remain current in the shifting environment of California class action and group relief practice.

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