CALIFORNIA PRACTICE GUIDE
CIVIL PROCEDURE BEFORE TRIAL
2025 UPDATE

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These Highlights summarize some of the important developments over the past year. Paragraph numbers refer to the 2025 edition of the Practice Guide where the topics are discussed in greater detail. Except for a few late developments, our cut-off for this Update was March 30, 2025. Some cases cited were not final as of that date, so be sure to check the subsequent

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Your comments invited: We appreciate your comments and suggestions regarding this Practice Guide. *Please keep them coming!*

HON. LEE SMALLEY EDMON **HON. CURTIS E.A. KARNOW (Ret.)**

2025 Update Contributing Editors*:* The authors gratefully acknowledge the invaluable contributions to this year's Update from our contributing editors:

Thomas R. Burke
Davis Wright Tremaine LLP
San Francisco

Richard B. Goetz
O'Melveny & Myers LLP
Los Angeles

Matthew D. Powers
O'Melveny & Myers LLP
San Francisco

2025 UPDATE HIGHLIGHTS

CHAPTER 1

PRELAWSUIT CONSIDERATIONS

Ethical Considerations—Conflict of Interest Limitations

[1:87.4] **Counsel properly disqualified for use of privileged material:** Trial court properly disqualified counsel and three expert witnesses when counsel used and shared privileged material after opposing side unequivocally asserted privilege, and after the court issued protective order. [*Johnson v. Department of Transp.* (2025) 109 CA5th 917, __, 330 CR3d 811, 833-836]

Fee Considerations

[1:197.2] **Reciprocal fee recovery available in action to invalidate contract:** Where fees are available to *enforce* a contract, Civ.C. §1717 allows fees in an action to *invalidate* the contract. [*Andrade v. Western Riverside Council of Governments* (2024) 99 CA5th 1020, 1025-1026, 318 CR3d 396, 400]

[1:198] **Attorney fees recoverable as tort damages—waiver of attorney-client privilege:** A party seeking "*Brandt*" fees "impliedly waives the attorney-client privilege with respect to its attorney fees agreements, invoices, fees statements, billing records, receipts, and proof of payments." [*Byers v. Sup.Ct. (USAA Gen. Indemnity Co.)* (2024) 101 CA5th 1003, 1006, 320 CR3d 748, 750]

Causes of Action Requiring Notice Before Suit

[1:855.20] **Action by auto purchaser before commencement of action for civil penalties:** At least 30 days before a consumer files an action seeking civil penalties in connection with restitution or replacement of a motor vehicle under the Song-Beverly Consumer Warranty Act (Civ.C. §1794(c)), the consumer must send written notice to the manufacturer providing specified information and (among other things) demanding the manufacturer's restitution or replacement of the consumer's vehicle. The prefiling requirements do not apply if the action is solely for restitution or replacement. Prelitigation disputes re attorney fees and costs must be resolved by neutral binding arbitration. [New CCP §871.24] Certain presuit notification requirements also apply to car manufacturers that elect to be governed by them. [See new CCP §§871.29, 871.30]

Exhaustion of Administrative Remedies

[1:906.9a] **Exhaustion doctrine cannot immunize state officials:** The exhaustion doctrine cannot be used in a civil rights case under 42 USC §1983 to in effect immunize state officials who delay the administrative process. [*Williams v. Reed* (2025) __ US __, __, 145 S.Ct. 465, 470]

CHAPTER 2

PARTIES TO THE ACTION

Standing

[2:70.7] **Taxpayer actions—property taxes must be paid first:** A taxpayer challenging a property tax must first pay the tax and then may sue for a refund. [*Hovannisian v. City of Fresno* (2024) 107 CA5th 833, 840, 843, 328 CR3d 517, 522, 525]

Capacity to Sue or Defend

[2:132.7] **Building contractors—reinstating expired license:** Where the delay in reinstating a building contractor's expired license is within the contractor's control, the contractor cannot retrospectively reinstate the license under Bus. & Prof.C. §7125.2 where reinstatement is sought more than 90 days after its workers' compensation insurance certificate expires. [*American Building Innovation LP v. Balfour Beatty Const., LLC* (2024) 104 CA5th 954, 963-964, 325 CR3d 136, 143]

CHAPTER 3

JURISDICTION AND VENUE

Subject Matter Jurisdiction

[3:123.2] **Workers' compensation claim:** When an employer knew the worker contracted a disease from the workplace and concealed that fact, aggravating the worker's illness, the worker's claim for fraudulent concealment could be maintained in court. [*Chavez v. Alco Harvesting, LLC* (2024) 102 CA5th 866, 871-873, 322 CR3d 209, 214-215]

[3:123.22] **Employment disputes regarding clergy:** See *Behrend v. San Francisco Zen Ctr.* (9th Cir. 2024) 108 F4th 765, 769—ministerial exception barred suit by Zen center's Work Practice Apprentice program applicant as even assertedly menial work "is an essential component of Zen training"; *Markel v. Union of Orthodox Jewish Congregations of America* (9th Cir. 2024) 124 F4th 796, 802-803—organization may be "religious institution" for purposes of ministerial exception even if it makes profit.

Personal Jurisdiction

[3:189.3] **Forum selection clause—Song-Beverly Act:** A forum selection clause in an agreement with a vehicle manufacturer required suit in Indiana. In the suit under California's Song-Beverly Act "lemon law" statute, the manufacturer did not sustain its burden of showing the statute's unwaivable rights would control, simply because the manufacturer offered to not oppose the California statute's use in Indiana. The offered stipulation would rewrite the parties' agreement and accepting it would encourage manufacturers to include such unconscionable terms with the expectation that most plaintiffs would not challenge them. [*Hardy v. Forest River, Inc.* (2025) 108 CA5th 450, 458-460, 329 CR3d 275, 281-283]

[3:277.3] **Defamation action—acts committed outside California:** Plaintiff sued out-of-state Arabic news distributors for

defamation based on a news story that was rebroadcast in the United States, including California, via DISH network. Personal jurisdiction was not established where "defendants did not direct DISH to retransmit into California. As such, DISH's forum contacts are those of a third party and cannot be attributed to defendants." [*Safieddine v. MBC FZ, LLC* (2024) 103 CA5th 1086, 1104-1107, 324 CR3d 13, 28-31]

[3:380] **Continuance for jurisdictional discovery properly denied:** See *Safieddine v. MBC FZ, LLC* (2024) 103 CA5th 1086, 1108-1109, 324 CR3d 13, 32—motion for continuance for discovery properly denied where "even with all the jurisdictional discovery [plaintiff] might ever take," he could not contradict basic facts that defendant lived outside jurisdiction and "the brunt of any harm he might have suffered" was *not* in California.

Forum Non Conveniens

[3:425.2] **Public interest factors:** A California plaintiff's choice of California forum was entitled to some deference but public interest factors showed that the alternative forum was more convenient, thus supporting stay of the California case in favor of the alternative forum. [*Doe WHBE 3 v. Uber Technologies, Inc.* (2024) 102 CA5th 1135, 1161-1162, 322 CR3d 505, 526-527—alleged assaults of customers occurred outside California, drivers resided outside California and customers were not California residents at time of alleged assaults]

"Exclusive" Federal Jurisdiction

[3:620.1] **Remand when federal claims dismissed:** See *Royal Canin U.S.A., Inc v. Wullschleger* (2025) 604 US 22, 39, 145 S.Ct. 41, 54-55.

CHAPTER 4

SUMMONS

Content of Summons

[4:81] **Unlawful detainer proceedings:** The time period for unlawful detainer defendants to respond is extended to *10 days* (excluding Saturdays, Sundays, and other judicial holidays). [Amended CCP §1167; *see also* ¶*5:22, 6:386.1*]

CHAPTER 5

DEFAULTS

Relief from Default

[5:295.2c] **Mandatory relief under CCP §473(b)—tactical decisions:** See *Talbott v. Ghadimi* (2025) 109 CA5th 967, —, —, 331 CR3d 84, 85, 91-95—client entitled to mandatory relief under CCP §473(b) because default was caused by counsel's calculated delay, not fault of client (disagreeing with *Jerry's Shell v. Equilon Enterprises, LLC* (2005) 134 CA4th 1058, 1073, 36 CR3d 637, 648 (¶*5:295.2b*)).

[5:437.1] **Motions under CCP §473(d) must be brought within "reasonable time":** Motions under CCP §473(d) to vacate a judgment allegedly void for lack of service, based on extrinsic evidence, must

be brought within a "reasonable time" after entry of default. [*California Capital Ins. Co. v. Hoehn* (2024) 17 C5th 207, 212, 225-226, 327 CR3d 172, 175-176, 186 (disapproving prior authority that applied 2-year time limit to §473(d) motions to vacate); *see also* ¶*5:491*]

[5:455.3] **Equitable relief—attorney's positive misconduct:** P sued the wrong defendant, who was never served with the summons and complaint. D's lawyer failed to advise his client to take any action and P took no action to enforce the judgment for eight years, suggesting nothing "was amiss." D was entitled to equitable relief in the court's inherent discretion. [*Politsch v. Metroplaza Partners, LLC* (2025) 109 CA5th 397, ___, 330 CR3d 449, 456-458 (internal quotes omitted); *see also* ¶*5:436, 5:440*]

[5:471.1] **Hearing:** Judges have discretion to try the matter "on affidavits or declarations alone" or allow oral testimony. When deciding if to permit oral testimony, judges should consider "the additional burden the defendant will face if required to file an independent equitable action" instead of pursuing the motion. [*California Capital Ins. Co. v. Hoehn*, supra, 17 C5th at 225, 327 CR3d at 185-186 & fn. 9] It is not clear if moving parties must proceed with "reasonable diligence" in bringing a motion to vacate the default judgment after learning of the judgment. [*California Capital Ins. Co. v. Hoehn*, supra, 17 C5th at 225, 327 CR3d at 186, fn. 11]

CHAPTER 6

PLEADINGS

Affirmative Defenses

[6:456.7] **Judicial estoppel:** A party first successfully moved to enforce a settlement agreement which was granted, even though the court did not enforce it the way the party sought. The party later moved to vacate the settlement as unenforceable. Judicial estoppel precluded the party from vacating the judgment. [*Vaghasia v. Vaghasia* (2024) 106 CA5th 188, 196-197, 326 CR3d 715, 722-723]

Amended Pleadings

[6:715] **Amended complaint that omits cause of action has effect of dismissing cause of action:** See *Tuli v. Specialty Surgical Ctr. of Thousand Oaks, LLC* (2024) 105 CA5th 997, 1014, 326 CR3d 357, 371; *see also* ¶*11:27.4*.

CHAPTER 7, PART I

ATTACKING THE PLEADINGS

Demurrer as Pleading

[7:7a] **Unlawful detainer cases:** A defendant in an unlawful detainer action may "answer, demur, or move to strike any portion of the complaint." [Amended CCP §1170(a)] Oppositions and replies may be made orally at the time of the hearing. Written oppositions are to be filed and served not later than one court day before the hearing, but the court in its discretion may consider written oppositions filed later. [Amended CCP §1170(b)(2)]

General Demurrer—Failure to State Cause of Action

[7:42.12a] **Compare—declaratory relief as duplicative of other claim:** A request for declaratory relief is not "proper" under CCP §§1060 and 1061 and may be dismissed on demurrer when it would provide no more relief than that sought by other claims, such as breach of contract. [*Fox Paine & Co., LLC v. Twin City Fire Ins. Co.* (2024) 104 CA5th 1034, 1052-1053, 325 CR3d 173, 189-190, rev.grntd. 12/11/24 (Case No. S287404) (cited pursuant to CRC 8.1115(e))]

CHAPTER 7, PART II

ANTI-SLAPP MOTIONS

Activities Protected by Anti-SLAPP Statute

[7:647.1] **Omissions as protected speech?** New cases created conflicting authority whether omissions are protected under anti-SLAPP law. [See *Taylor v. Tesla, Inc.* (2024) 104 CA5th 75, 84, 324 CR3d 208, 214-215—omissions are not written or oral statements within meaning of CCP §425.16(e)(1), (2), but might be covered by CCP §425.16(e)(4); *Callister v. James B. Church & Assocs., P.C.* (2025) 108 CA5th 185, 198, 329 CR3d 180, 190-191—law firm's *failure* to act or speak not protected conduct under CCP §425.16(e)(1) or (e)(2)]

Exemptions

[7:882] **Public interest exemption inapplicable:** The public interest exception is not applicable "when individual members of an official government body are sued for relief only the government body can provide." [*Howard Jarvis Taxpayers Ass'n v. Powell* (2024) 105 CA5th 955, 966-967, 326 CR3d 328, 339-340—exemption would have applied if only government *agency* was sued by taxpayer organization, not Water Board individual members and general manager]

[7:886; 7:896] **"Commercial speech" exemption:** The "commercial speech" exemption is narrowly construed, and the burden is on the party seeking to enforce it. The burden is on plaintiff to plead and prove four specified elements. [*WasteXperts, Inc. v. Arakelian Enterprises, Inc.* (2024) 103 CA5th 652, 664, 323 CR3d 264, 272-273 (*also discussed at ¶7:896*)]

Discovery Stayed

[7:1096.5] **"Good cause" requirement for discovery:** To satisfy the "good cause" requirement for discovery while an anti-SLAPP motion is pending, plaintiff must explain what additional facts it expects to uncover and why the discovery is necessary to carry its burden on the anti-SLAPP motion. [*Six4Three, LLC v. Facebook, Inc.* (2025) 109 CA5th 635, ___, 330 CR3d 661, 681]

Fees and Costs

[7:1121] **All related fees awardable:** Fees may include related activity, such as fees incurred in prior appeals, motions for reconsideration which lead to the grant of the anti-SLAPP motion, related motions, including sealing motions. [*Six4Three, LLC v. Facebook, Inc.*, supra, 109 CA5th at ___, 330 CR3d at 682 (approving $683,417.50 fee based on request for "2.9 million lodestar for over 5,000 attorney hours"]

CHAPTER 8

DISCOVERY

Discovery in Nonjudicial Proceedings

[8:21] **Contractual arbitration proceedings:** Except in limited civil cases, parties to an arbitration agreement have the same discovery rights and obligations as in civil actions, *except* that depositions may not be taken without prior leave of the arbitrator. [Amended CCP §1283.05]

Protection of News Media

[8:342.2] **First Amendment privilege:** See *Wentworth v. Regents of Univ. of Calif.* (2024) 105 CA5th 580, 612-613, 326 CR3d 62, 87-89—where 1st Amend. reporters' privilege applied to request to journalism school for documents provided to reporter for newspaper article on student complaints about plaintiff/former professor, discovery was properly denied because plaintiff did not exhaust efforts to secure information from alternative sources.

Subpoena to Nonparty Deponent

[8:609.1] **Motion to compel nonparty to comply with deposition subpoena:** See *Marriage of Moore* (2024) 102 CA5th 1275, 1288-1289, 322 CR3d 249, 261—60-day period within which to comply with subpoena runs from service of objections to validly served subpoena, not from date of objections to earlier subpoena that was not personally served and thus could not have compelled compliance.

Use of Interrogatories at Trial

[8:1246.1] **Admissible whether or not party was "qualified" to make admission:** A party's verified interrogatory response "is admissible even if the person might be said to be incompetent or unqualified to make it." Admissions contained in interrogatory responses are admissible in evidence to establish any material fact. [*Watts v. Pneumo Abex, LLC* (2024) 106 CA5th 248, 268-269, 326 CR3d 786, 802-803]

Evidentiary Effect of Admissions

[8:1390.6] **RFA process abused:** See *LCPFV, LLC v. Somatdary, Inc.* (2024) 106 CA5th 743, 756-757, 327 CR3d 307, 317-318—in context of entering default judgment, trial court properly found defendant's admissions had no evidentiary value where RFAs were used to "manufacture a fraud case for which there was no other proof" and RFAs were propounded when plaintiff knew defendant was in default, had no counsel, and was unable to respond (*also discussed at* ¶*5:201*).

Discovery Sanctions

[8:1901] **Independent authority to award sanctions:** Courts have independent authority under CCP §§2023.010 and 2023.030 of the Discovery Act to award sanctions "when confronted with an unusual form of discovery abuse or a pattern of abuse, not already addressed by a relevant sanctions provision." However, a trial court may not use §§2023.010 and 2030.030 to "override the limitations prescribed by any other applicable sanctions provision in the Act." [*City of Los Angeles v. PricewaterhouseCoopers, LLP* (2024) 17 C5th 46, 71, 74-75, 324 CR3d 410, 429, 432]

Monetary Sanctions on Motion to Compel

[8:1927] **Sanctions denied:** See *LCPFV, LLC v. Somatdary, Inc.*, supra, 106 CA5th at 762-763, 327 CR3d at 321-322—sanctions properly denied where defendant announced it would no longer participate in litigation; at that time, "the proper task was to move efficiently to a default judgment, not to begin blasting out a barrage of law and motion work against a missing opponent."

[8:1947] **Need not be counsel of record to be liable for sanctions:** See *Masimo Corp. v. The Vanderpool Law Firm, Inc.* (2024) 101 CA5th 902, 905, 909, 320 CR3d 704, 707, 711.

Sanctions for Failure to Make Reasonable Attempt to Resolve Informally

[8:2109] **Reasonable expenses incurred:** Reasonable expenses incurred in meeting and conferring to resolve the matter informally are compensable. However, after the motion to compel is filed, further expenses incurred in meeting and conferring on the discovery dispute "whether it be through private mediation or normal channels of communication" are not compensable as discovery sanctions. [*Marriage of Moore* (2024) 102 CA5th 1275, 1298-1301, 322 CR3d 249, 269-271 (reversing award of fees incurred to mediate discovery dispute after motion to compel filed)]

Contempt Sanction

[8:2446] **Awardable against person not party to underlying post-judgment enforcement proceedings:** CCP §1218 authorizes the trial court to find a person guilty of contempt for non-compliance with a court order in post-judgment enforcement proceedings even if that person was not a party to the underlying litigation giving rise to the judgment, and the court may also order payment of the attorney fees incurred by the party initiating the contempt proceeding. [*Ofek Rachel, Ltd. v. Zion* (2024) 106 CA5th 1119, 1124, 327 CR3d 500, 503-504]

CHAPTER 9, PART I

LAW AND MOTION

Electronic Service

[9:86.35; 9:91] **Service by court:** As of July 1, 2025, the court must comply with mandatory electronic service requirements. [Amended CCP §1010.6(d)]

[9:86.42] **Extension of filing period following electronic service inapplicable to remittitur:** See *Wash v. Banda-Wash* (2025) 108 CA5th 561, 565-566, 573, 329 CR3d 529, 530-531, 536.

Opposing the Motion and Rebutting the Opposition

[9:104] **Filing deadline for papers opposing summary judgment extended:** Papers opposing a summary judgment motion must be served not less than 20 days before the hearing. [Amended CCP §437c(b)(2)]

[9:106] **No new evidence in reply in support of summary judgment/adjudication motion:** See amended CCP §437c(b)(4); *and ¶10:222, 10:222.3 of these Highlights Summaries*.

[9:108] **Filing deadline for reply in support of motion for summary judgment/adjudication:** A reply filed in support of a motion for summary judgment/adjudication must be filed *11 days* before the hearing date. [Amended CCP §437c(b)(4)]

Peremptory Challenges to Judge (CCP §170.6)

[9:124.1] **Trial assignment by direct calendar judge compared:** See *Lorch v. Sup.Ct. (Kia Motors America, Inc.)* (2024) 101 CA5th 1266, 1274-1278, 320 CR3d 897, 902-906—party's CCP §170.6 challenge to new trial judge timely where parties had no notice that direct calendar judge was acting as master calendar judge when notified by clerk's phone call of new trial judge and had no opportunity to present peremptory challenge to master calendar judge.

[9:145] **Writ of mandate—orders after challenge should have been accepted are null and void:** If a writ of mandate issues based on a finding that the CCP §170.6 challenge was proper, any orders made by the challenged judge after the challenge should have been accepted are null and void. [*Lorch v. Sup.Ct. (Kia Motors America)* (2024) 101 CA5th 1266, 1278, 320 CR3d 897, 906]

Motions Relating to Contractual Arbitration

[9:407.2a] **Court decides which contract applies:** A court rather than an arbitrator should decide whether a subsequent contract supersedes an earlier arbitration agreement with a delegation clause. [*Coinbase, Inc. v. Suski* (2024) 602 US 143, 150-152, 144 S.Ct. 1186, 1193-1195]

Motion (Petition) to Compel Arbitration

[9:407.5a] **Signatures:** If a party (usually plaintiff) denies signing the agreement, the party seeking arbitration has the burden of showing that the other party signed. [*Garcia v. Stoneledge Furniture LLC* (2024) 102 CA5th 41, 52, 321 CR3d 181, 190-191 (collecting cases)] But if plaintiff *does not recall* signing the agreement, there is a split of authority, depending on whether the putative signature is electronic or handwritten. [See *Ramirez v. Golden Queen Mining Co., LLC* (2024) 102 CA5th 821, 825-826, 322 CR3d 30, 32-33 (agreeing with *Iyere v. Wise Auto Group* that inability to recall signing document does not create dispute as to authenticity of handwritten signature)]

[9:407.6] **Arbitration-specific procedural rules—California now in line with federal policy:** See *Quach v. California Commerce Club, Inc.* (2024) 16 C5th 562, 572, 323 CR3d 126, 133 (overruling prior Calif. cases requiring party seeking to establish waiver to show prejudice); *see also ¶9:408.15 ff. and ¶14:7.14a of these Highlights Summaries*]

[9:407.12a] **Severing unconscionable terms and enforcing remainder of contract:** A court has discretion to sever any unconscionable portions of the contract and enforce the remainder under the following circumstances: (1) the illegality is collateral to the contract's main purpose; (2) it is possible to cure the illegality by means of severance; and (3) enforcing the balance of the contract would be in the interests of justice. [*Ramirez v. Charter Communications, Inc.* (2024) 16 C5th 478, 517, 322 CR3d 825, 858; see *Jenkins v. Dermatology Management, LLC* (2024) 107 CA5th 633, 648, 328 CR3d 402, 416]

[9:408.15] **Waiver of contractual right to arbitrate—prejudice need not be shown:** To establish waiver of the right to arbitrate, the party opposing enforcement of an arbitration agreement must prove by clear and convincing evidence that the waiving party knew of the contractual right to arbitrate and intentionally relinquished or abandoned it. That can be proved either by evidence of words expressing an intent to relinquish it or of conduct that is so inconsistent with an intent to enforce as to lead a reasonable factfinder to conclude the party had abandoned it. The party opposing enforcement of the contractual right need not show prejudice or harm resulting from the waiving party's conduct. [*Quach v. California Commerce Club, Inc.*, supra, 16 C5th at 584-585, 323 CR3d at 143-144; *also discussed at ¶6:456.11*]

[9:408.16] **Waiver shown by litigation:** Evidence that a party knew of its right to arbitrate but chose to actively participate in litigation, including requesting a jury, posting jury fees, engaging in discovery, and waiting for 13 months before seeking arbitration, is inconsistent with an intent to arbitrate and can support a finding that the party waived its right to arbitrate the dispute. [*Quach v. California Commerce Club, Inc.*, supra, 16 C5th at 585-587, 323 CR3d at 144-145; *see Caution at ¶9:408.17 re former case law and detailed discussion at ¶9:408.17a*]

[9:408.18] **Example of waiver of right to arbitrate:** In a putative class action, defendant employer agreed to mediate on a classwide basis, engaged in substantial negotiations of the terms of a joint stipulation and order to mediate, but waited for months until after the court signed the order, and just before mediation, to inform named plaintiff it had "just discovered" the arbitration agreement in his personnel file so it would not mediate. Months later, it sought an order compelling arbitration. The record contained clear and convincing evidence that defendant chose not to exercise its right to compel arbitration and to defend itself in court, thus waiving its right to arbitrate. [*Campbell v. Sunshine Behavioral Health, LLC* (2024) 105 CA5th 419, 429-432, 325 CR3d 832, 840-843]

Preemption of Arbitration Agreements

[9:408.42a] **Preemption under EFAA (Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021):** See *Casey v. Sup.Ct. of Contra Costa County (D.R. Horton, Inc.)* (2025) 108 CA5th 575, 580-586, 329 CR3d 518, 522-526—"the EFAA preempts attempts under state law to compel arbitration of cases relating to a sexual harassment dispute, and parties cannot contract around the law by way of a choice-of-law provision."

[9:408.44a] **Review granted re whether FAA preempts statutes providing for forfeiture of right to arbitrate:** The California Supreme Court has granted review on whether the FAA preempts state statutes prescribing the procedures for paying arbitration fees and providing for forfeiture of the right to arbitrate if timely payment is not made by the party who drafted the arbitration agreement and who is required to pay such fees (*Hohenshelt v. Sup.Ct. (Golden State Foods Corp.)* (2024) 99 CA5th 1319, 318 CR3d 475, rev. grntd. 6/12/24 (Case No. S284498); *Hernandez v. Sohnen Enterprises, Inc.* (2024) 102 CA5th 222, 321 CR3d 283, rev.grntd. 8/21/24 (Case No. S285696); *and see ¶9:408.47 of these Highlights Summaries*).

Arbitration Fees

[9:408.47] **Failure to pay arbitration fees:** Relief is not available under CCP §473(b) from an order vacating an order to arbitrate for failure to timely pay arbitration fees. [*Colon-Perez v. Security Industry Specialists, Inc.* (2025) 108 CA5th 403, 414-421, 329 CR3d 342, 349-354—neither discretionary relief under CCP §473(b) nor mandatory §473(b) relief is available to set aside order vacating order to arbitrate under CCP §1281.98 (discussing conflict in case law)] Moreover, CCP §1281.98 only applies to *pre*dispute agreements. It does not permit a party to withdraw from arbitration for the failure to pay arbitration fees where the parties entered into a *post*dispute stipulation to arbitrate. [*Trujillo v. J-M Mfg. Co., Inc.* (2024) 107 CA5th 56, 60, 69-70, 328 CR3d 1, 3, 10-11]

Motion to Expunge Lis Pendens

[9:432.9] **Probate action challenging validity of trust amendments:** In an action challenging trust amendments that changed the trustee and trust beneficiary, and the trustee had used trust assets to purchase real property, the petition, if successful, would affect a change in title to the property, so a lis pendens could be filed against the trust property. [*Newell v. Sup.Ct. (Rollins)* (2024) 107 CA5th 728, 735-738, 328 CR3d 322, 327-329]

[9:456] **Refiling after expungement:** See *DeMartini v. Sup.Ct. (Gupta)* (2024) 98 CA5th 1269, 1277-1278, 317 CR3d 441, 448—after expungement in first action, leave of court required for second lis pendens even though it was in subsequent action, because lis pendens was by same claimant against same property based on suit involving same parties.

CHAPTER 9, PART II

PROVISIONAL REMEDIES

Injunctions

[9:517.4] **Balancing factors:** Ps, former professors at a public university, sought injunctive relief to prevent disclosure of their personnel records in response to a CPRA request regarding the University's investigation of their misconduct. Ps did not address the weighing of their individual privacy rights against the public's right to know of the alleged wrongdoing for purposes of the CPRA personnel records exemption. Nor did they address why substantial and apparently well-founded complaints of wrongdoing and disciplinary investigation should not be disclosed. Injunctive relief was properly denied where, although Ps established they would be harmed by the disclosure, they failed to show any possibility of prevailing on the merits. [*Doe v. Regents of Univ. of Calif.* (2024) 102 CA5th 766, 775-777, 321 CR3d 751, 758-759]

[9:644] **Preliminary injunction procedure—exceptions to bonding requirement:** The bonding requirement does not apply: where plaintiff is a public entity or officer (as described); to a plaintiff in an action seeking injunctive relief against distribution of sexually explicit materials under Civ.C. §1708.85; to online harassment ("doxing") under Civ.C. §1708.89; and to actions by either spouse in a legal separation or marriage dissolution proceeding. [Amended CCP §529(b)]

[9:679; 9:697.6] **Harassment under CCP §527.6 compared:** A person need not be a resident of California to seek an order seeking to enjoin violence or threats thereof as "harassment" under CCP §527.6 so long as the California court has jurisdiction over the parties or the subject matter of the case. [New CCP §527.6(a)(2)]

[9:683] **Domestic violence—whether reasonable person would fear repetition of abuse if order expired:** See *G.G. v. G.S.* (2024) 102 CA5th 413, 427, 321 CR3d 519, 531 (reversing trial court's denial of renewal of order due to absence of intentional violations, and directing trial court on remand to determine if reasonable person would have reasonable apprehension abusive behavior would continue after order expired).

[9:697.5] **Harassment:** See *Luo v. Volokh* (2024) 102 CA5th 1312, 1323, 322 CR3d 323, 332—law professor's mention of plaintiff's real name in law review article and blog about use of pseudonyms in litigation served legitimate purpose and was not unlawful violence or credible threat of violence (affirming grant of professor's anti-SLAPP motion to strike for plaintiff's failure to demonstrate her petition for restraining order had minimal merit).

CHAPTER 9, PART III

NONDISCOVERY SANCTIONS

Sanctions Under CCP §128.7

[9:1159.5] **Objective standard:** P's lawyer opposed D's petition to confirm an arbitration award, claiming the arbitrator exceeded his powers by admitting all evidence P had submitted but did so only as a pretext to allow the arbitrator to refuse to actually consider this evidence. The opposition filed by P's lawyer was unsupported by any evidence or by the cases it cited, and in fact P's lawyer knew one of the primary cited authorities had been disapproved by the California Supreme Court. The trial court did not abuse its discretion by sanctioning the lawyer for filing and for refusing to withdraw a frivolous and factually unsupported opposition. [*Plantations at Haywood 1, LLC v. Plantations at Haywood, LLC* (2025) 108 CA5th 803, 806-808, 813-815, 329 CR3d 751, 753-754, 758-762 (*also discussed at ¶9:1179, 9:1284.11*)]

CHAPTER 10

SUMMARY JUDGMENT AND SUMMARY ADJUDICATION [CCP §437c]

Function of Summary Judgment Procedure

[10:5; 10:54] **Limited to single summary judgment motion:** Parties have the right to bring only one summary judgment motion against another party, although the court may allow a second motion for good cause. The restriction does not apply to summary adjudication motions. [New CCP §437c(a)(4), (5)]

Procedural Requirements—Moving Party

[10:77; 10:81] **Period to file notice, supporting papers extended:** The period in which to file notice of motion for summary

judgment and supporting papers is extended to *81 days* before hearing, increased to *86 days* if mailed to an address within California; *91 days* if the address is elsewhere in the U.S.; and *101 days* if the address is outside the country. [Amended CCP §437c(a)]

Procedural Requirements—Opposing Party

[10:189] **Separate statement of facts—split of opinion where failure to file separate statement:** See *Mandell-Brown v. Novo Nordisk Inc.* (2025) 109 CA5th 478, 484-485, 330 CR3d 504, 508-509—summary judgment was properly granted, even where trial court did not determine defendant's initial burden was met, after plaintiff failed to file opposition or counter separate statement, was granted 2 continuances, failed to request another continuance or appear at scheduled hearing; motion "not deficient on its face" (expressly disagreeing with *Thatcher v. Lucky Stores, Inc.* and creating split of opinion)]

[10:217] **Period to serve and file opposition papers extended:** The period in which all opposition papers must be served on the moving party and filed with the court is extended to at least *20 days* before the date set for hearing on the motion (unless the court shortens the time for good cause shown). [Amended CCP §437c(b)(2)]

Procedural Requirements—Reply Papers

[10:220] **Period to serve and file reply papers extended:** The period in which the moving party's declarations or points and authorities in reply to the opposition must be served and filed is extended to at least *11 days* before the date set for the hearing (unless the court shortens the period for good cause shown). [Amended CCP §437c(b)(4)]

[10:220.6] **Reply separate statement barred by statute:** See amended CCP §437c(b)(4).

[10:222; 10:222.3] **No new evidence in reply papers:** The reply must "not include any new evidentiary matter." [Amended CCP §437c(b)(4)] *Note:* It is not clear if this amendment to CCP §437c codifies the former rule of generally barring new evidence but with exceptions, or is meant to eliminate those exceptions.

CHAPTER 11

DISMISSALS

Limitations on Right to Dismiss

[11:19.2a] **Effect of omitting defendant after demurrer with leave to amend:** Where the trial court sustains a demurrer with leave to amend with respect to a defendant, and plaintiff opts not to amend its claims against that defendant and instead to proceed only against others, plaintiff may not then seek to voluntarily dismiss that defendant. [*Haidet v. Del Mar Woods Homeowners Ass'n* (2024) 106 CA5th 530, 533, 538, 327 CR3d 202, 204, 208-209]

Voluntary Dismissal Procedure

[11:27.4] **Effect of omitting claims in amended pleading:** Filing of an amended complaint that omits claims in effect abandons those claims. [See *Tuli v. Specialty Surgical Ctr. of Thousand Oaks, LLC*

(2024) 105 CA5th 997, 1014, 326 CR3d 357, 371-372—amended pleading supersedes original, operating to extinguish original complaint; *see also* ¶*6:715*]

CHAPTER 12, PART I

CASE MANAGEMENT AND TRIAL SETTING

Motions to Continue Trial

[12:462.1] **Abuse of discretion to deny continuance:** The trial court abused its discretion by denying a father's application for continuance when the court permitted his attorney to withdraw on the eve of trial. The court erroneously relied on a blanket policy of denying any continuance in this case and failed to account for changed circumstances. [*Marriage of Tara & Robert D.* (2024) 99 CA5th 871, 882-883, 318 CR3d 255, 264-265—court failed to inquire whether father's new attorney agreed to take case or how long attorney needed for trial preparation, but error was harmless]

CHAPTER 12, PART II

SETTLEMENT PROCEDURES

Statutory Offer to Compromise (CCP §998)

[12:596] **Limitation—terms not capable of valuation:** See *Gorobets v. Jaguar Land Rover North America, LLC* (2024) 105 CA5th 913, 931, 326 CR3d 309, 322, rev.grntd. 1/15/25 (Case No. S287946) (cited pursuant to CRC 8.1115(e))—"an offer to pay amounts to which an offeree is statutorily entitled and to shunt any disputes over entitlement to those amounts to a third-party arbiter is not sufficiently certain to be valid under section 998"; *Zavala v. Hyundai Motor America* (2024) 107 CA5th 458, 471, 328 CR3d 147, 157, rev.grntd. 3/19/25 (Case No. S289000) (cited pursuant to CRC 8.1115(e))—offer to pay statutory damages according to proof was too vague.

[12:627.5] **Review granted re validity of simultaneous offers:** The California Supreme Court has granted review in cases examining the validity of simultaneous offers under CCP §998. [See *Gorobets v. Jaguar Land Rover North America, LLC*, supra, 105 CA5th at 928, 326 CR3d at 319-320, rev.grntd. 1/15/25 (Case No. S287946) (cited pursuant to CRC 8.1115(e))—simultaneous offers not valid because court cannot determine whether judgment is more favorable than offer; compare *Zavala v. Hyundai Motor America*, supra, 107 CA5th at 477-478, 328 CR3d at 163, rev.grntd. 3/19/25 (Case No. S289000) (cited pursuant to CRC 8.1115(e)) (disagreeing with *Gorobets*)—"When faced with two simultaneous offers, a trial court can simply look at each offer *separately* to determine whether *either* of them exceeded the amount of the verdict" (emphasis in original)] If one simultaneous offer is invalid, then there's no uncertainty stemming from simultaneity and the other offer may be effective. [*Gorobets v. Jaguar Land Rover North America, LLC*, supra, 105 CA5th at 934, 326 CR3d at 325]

[12:648.5d] **Post-judgment costs and fees not recoverable under §998**: See *Elmi v. Related Management Co., L.P.* (2025) 108 CA5th 683, 686, 329 CR3d 697, 699.

[12:664] **Contractual attorney fees awardable as costs?** Where a contract has an attorney fee provision, fees may be awarded to the prevailing party pursuant to CCP §998. But where the case is voluntarily dismissed or dismissed on settlement, there is no prevailing party under CCP §1717(b)(2), thus attorney fees are not awardable under §998. [*Riverside Mining Limited v. Quality Aggregates* (2024) 104 CA5th 269, 276-279, 324 CR3d 567, 572-574]

[12:689.2] **Penalties for defendant's failure to accept plaintiff's offer includes settlements pursuant to CCP §664.6:** See *Madrigal v. Hyundai Motor America* (2025) 17 C5th 592, 599, 606-607, 331 CR3d 15, 20, 26—CCP §998 provides default for cost shifting including after settlement, but parties are free to fashion their own allocation of costs and fees]

Motion to Enforce Settlement (CCP §664.6)

[12:952.5] **Retention of jurisdiction:** If stipulated by the parties or their counsel, the court "may dismiss the case as to the settling parties without prejudice and retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." [Amended CCP §664.6(a); *see also* ¶*12:981*] To enforce the parties' agreement, the court also may enter a dismissal with prejudice after having dismissed the case without prejudice. [New CCP §664.6(g); *see also* ¶*12:979.5*]

After the parties file a notice of conditional settlement, the court may on its own motion set an order to show cause why the case should not be dismissed "without prejudice and retain jurisdiction to enforce the settlement." [New CCP §664.6(e)(1)]

[12:958; 12:961-962] **Enforceability of agreement entered into orally by counsel alone?** Creating a split of authority, one case has held that an agreement entered into orally by counsel alone is enforceable under CCP §664.6. [*Greisman v. FCA US, LLC* (2024) 103 CA5th 1310, 1322, 1326, 324 CR3d 182, 191, 194]

[12:979.5] **Court's power to modify judgment entered pursuant to §664.6:** The court has statutory authority to modify a judgment entered under CCP §664.6 to account for, e.g., good faith settlements, liens, and other matters. [New CCP §664.6(f); *see* ¶*12:981.1*]

CHAPTER 13

JUDICIAL ARBITRATION AND MEDIATION

Judicial Arbitration Discovery

[13:19.3] **Same discovery rights as in civil actions:** Except in limited civil cases, the parties to an arbitration agreement have the same discovery rights and obligations as in civil actions, *except* that depositions may not be taken without prior leave of the arbitrator. [Amended CCP §1283.05]

Caution: These broad discovery provisions for arbitration are new as of January 1, 2025. It is unclear the extent to which specific provisions limiting rights to discovery agreed to by the parties in the arbitration agreement (including any ADR provider's rules incorporated by the agreement) will be enforceable.

CHAPTER 14

REPRESENTATIVE AND CLASS ACTIONS

Claims Subject to Mandatory Arbitration

[14:7.14a] **Waiver of class action arbitration right by conduct:** The California Supreme Court brought the California Arbitration Act (CCP §1281 et seq.) in line with the FAA. [*Quach v. California Commerce Club, Inc.* (2024) 16 C5th 562, 576-583, 323 CR3d 126, 135-142 (*discussed at ¶9:408.15 ff.*)] To establish waiver under generally applicable contract law, the party opposing enforcement of a contract agreement must prove by clear and convincing evidence that the waiving party knew of the contractual right and intentionally relinquished or abandoned it. A showing of prejudice is no longer required. [*Quach v. California Commerce Club, Inc.*, supra, 16 C5th at 572, 582, 323 CR3d at 133, 143; *see also ¶9:407.6, 9:408.15 and 9:408.16 of these Highlights Summaries*]

Class Action Requirements

[14:27.8] **Nationwide class action—grant of class certification reversed:** A nationwide class of P tort victims who had settled their claims in structured settlements asserted later damage when D wrongfully induced them to cash out their annuities, giving up the right to periodic payments in return for discounted lump sums. Grant of class certification was reversed where certification would result in "2,000 mini-trials" on causation, requiring examination of multiple states' proceedings in which courts reviewed and approved each P's factoring arrangements (finding them to be in compliance with law and in P's best interests). Each state's laws regarding the effect of anti-assignment provisions in the settlement agreements were "complex"; and Ps failed to demonstrate how the class could be certified without "nuanced consideration of different states' laws." [*White v. Symetra Assigned Benefits Service Co.* (9th Cir. 2024) 104 F4th 1182, 1195, 1198-1201]

[14:57.1] **Employment claims—admissibility of expert opinion:** There is no requirement that the evidence on the merits to be relied upon by plaintiffs at trial will necessarily be admissible at the class certification stage. For example, if an expert witness establishes that a reliable damages model shows the court can calculate damages on a classwide basis through common proof at trial, the expert is not required to have actually applied the test to the proposed class at the time of the class certification motion. [*Lytle v. Nutramax Laboratories, Inc.* (9th Cir. 2024) 114 F4th 1011, 1019, 1025; *also discussed at ¶14:98a*]

Certification Proceedings

[14:98.6] **Dismissal proper before class discovery:** See *Gonzalez v. American Honda Motor Co., Inc.* (CD CA 2024) 720 F.Supp.3d 833, 846 (denying plaintiff's request to wait until discovery and class certification to assess viability of nationwide claims, noting that no factual development could impact decisive choice-of-law analysis issue).

[14:106] **No appellate jurisdiction by voluntarily dismissing PAGA claims:** See *Chavez v. Hi-Grade Materials Co.* (2025) ___ CA5th ___, ___, ___, ___ CR3d ___, ___, ___ (2025 WL 1231999, *1, 7-8)—plaintiff could

not manufacture appellate jurisdiction by voluntarily dismissing remaining PAGA claims after class certification was denied.

[14:116.2] **Tolling of statute of limitations when class definition is narrowed:** See *DeFries v. Union Pac. R.R. Co.* (9th Cir. 2024) 104 F4th 1091, 1107—where narrowed class definition approved by district court was ambiguous as to whether it included individual plaintiff's claims, tolling of individual claims did not end until class was decertified by Eighth Circuit on appeal.

Settlement

[14:139.18a] **Standing to object by nonsettling class members and nonclass members:** See *Sweet v. Cardona* (9th Cir. 2024) 121 F4th 32, 44-46—under federal law, objectors may include nonsettling class members and nonclass members, provided they can demonstrate they will "sustain some formal legal prejudice as a result of the settlement" such as when settlement "*formally* strips a non-settling party of a legal claim or cause of action" (internal quotes omitted; emphasis in original).

Res Judicata/Claim Preclusion

[14:165.7] **Effect of private class action settlement on right to restitution for criminal acts:** Restitution orders under Cal.Const. Art. I, §28(b)(13)(B) and Pen.C. §1202.4(b) serve a different purpose than settlement of a private class action. Thus, where a crime victim suffers economic losses, that victim is entitled to both civil judgments and criminal restitution. [*People v. Plains All American Pipeline, L.P.* (2024) 101 CA5th 872, 885, 893, 320 CR3d 680, 692, 698]

"Unfair Competition" Actions

[14:226.1c] **Economic injury required:** See *Campbell v. FPI Mgmt., Inc.* (2024) 98 CA5th 1151, 1169-1171, 317 CR3d 391, 406-408—low-income tenants had UCL standing when they suffered injury in fact by receiving 3 days' notice to quit, rather than legally-required 30 days' notice; although they did not pay rent or immediately move out, they lost "right" to possess property as holdover tenants, and faced immediate threat of eviction and risk of financial liability for damages in addition to rent; compare *Suchard v. Sonoma Academy* (2025) 109 CA5th 1089, 1096-1101, 331 CR3d 154, 159-163—Ps could not allege economic injury and so lacked UCL standing in suit against D school district where Ps paid tuition while unaware of certain sexual abuse claims, because those claims did not affect value of education.

[14:227.1a] **Civil penalty award affirmed:** See *People v. Ashford Univ., LLC* (2024) 100 CA5th 485, 508, 512-514, 319 CR3d 132, 154, 157-159 (affirming award of more than $20 million in penalties against online university that made misleading admissions calls to potential students nationwide, calculated statistically by People's expert based on random sample to extrapolate total number of misleading calls, which methodology was adopted by court).

Private Attorneys General Act of 2024 (PAGA)

[14:245.1a] **Statute of limitations:** PAGA actions have a one-year statute of limitations—the employee must have "personally suffered

each of the violations alleged during the period prescribed under" CCP §340. [Amended Lab.C. §2699(c)(1); see *Williams v. Alacrity Solutions Group, LLC* (2025) __ CA5th __, __, __ CR3d __, __ (2025 WL 1165248, *1, 4-5)—at least 1 of P's individual labor claims must be timely filed within 1-year statute of limitations for P to have standing to pursue PAGA action]

[14:246.1] **New definition of "aggrieved employee":** In PAGA actions brought on or after June 19, 2024, "aggrieved employee" means "any person who was employed by the alleged violator and personally suffered each of the violations alleged during the period prescribed under CCP §340." Thus, in order to sue, the employee must now have personally suffered each of the violations. [Amended Lab.C. §2699(c)(1) (effectively overruling prior case authority)]

[14:246.4] **Managing PAGA actions:** The court may limit evidence presented at trial or otherwise limit the scope of any PAGA claim to ensure that the claim can be "effectively tried." [New Lab.C. §2699(p)]

[14:246.5-246.6] **Cure provisions and procedures:** Amendments to the PAGA expand the ability of employers to cure certain Labor Code violations. For notices filed with the LWDA after October 1, 2024, small employers (those less than 100 employees in total during the affected period) may submit a confidential cure proposal. Larger employers may request an early evaluation conference presided over by a "neutral evaluator." Specified procedures and time limits apply. [Amended Lab.C. §§2699.3]

[14:246.10-246.12] **Penalties:** In civil actions brought on or after June 19, 2024, a civil penalty of $100 may be imposed for each aggrieved employee per pay period, with certain exceptions. The penalty may be reduced or increased under specified circumstances. When the Labor Code gives the Labor Commissioner discretion to assess a civil penalty or injunctive relief, the court has the same discretion. [Amended Lab.C. §2699(e), (f), (g)]

Public entity employers are not subject to PAGA suits for civil penalties. [*Stone v. Alameda Health System* (2024) 16 C5th 1040, 1085-1086, 324 CR3d 220, 258]

[14:246.15] **Sharing of recovery:** For actions filed on or after June 19, 2024, 65% of the recovery on the PAGA claims goes to the State and 35% to the aggrieved employees. [Amended Lab.C. §2699(m)]

[14:249.2a] **Compelled arbitration of individual claim?** There is a split of authority regarding compelled arbitration of individual claims. [See *Leeper v. Shipt, Inc.* (2024) 107 CA5th 1001, 1010, 328 CR3d 632, 637, rev.grntd. 4/16/25 (Case No. S289305) (cited pursuant to CRC 8.1115(e))—trial court erred in denying employer's motion to compel arbitration of employee's individual claims based on erroneous view that PAGA action did not allege any individual claims subject to arbitration; *Williams v. Alacrity Solutions Group, LLC* (2025) __ CA5th __, __, __ CR3d __, __ (2025 WL 1165248, *4-5) (agreeing with *Leeper*, supra, that every PAGA action necessarily includes both individual labor claims and representative claims and hold that at least one of individual claims must be timely filed within 1-year statute of

limitations for P to have standing to pursue action); compare *Rodriguez v. Packers Sanitation Services, Ltd., LLC* (2025) 109 CA5th 69, 78-81, 330 CR3d 256, 263-265—if on motion to compel arbitration court examines complaint and determines it does not allege individual PAGA claim, then court should decline to compel arbitration (disagreeing with *Leeper*)]

[14:250.1] **No right to intervene in "overlapping" PAGA action:** In an "overlapping" PAGA action arising from the same facts and theories as another pending PAGA action, the plaintiff's status as an aggrieved employee "does not give that employee the right to seek intervention in the PAGA action of another employee, to move to vacate a judgment entered in the other employee's action, or to *require* a court to receive and consider objections to a proposed settlement of that action." [*Turrieta v. Lyft, Inc.* (2024) 16 C5th 664, 706, 715-716, 323 CR3d 615, 655, 662-663 (emphasis in original)—since each P in PAGA action is proxy for state, allowing related parties to intervene unduly complicates litigation, but court has discretion to consider views of Ps in related cases (*also discussed at ¶2:432.3*); *Moniz v. Adecco USA, Inc.* (2025) 109 CA5th 317, 322-323, 330 CR3d 421, 425—P in overlapping PAGA case against same D had no PAGA standing to move to vacate settlement judgment and then appeal denial of that motion]