

CALIFORNIA PRACTICE GUIDE CIVIL PROCEDURE BEFORE TRIAL 2026 UPDATE

This 2026 softbound Update completely replaces the 2025 Update.

These Highlights summarize the most significant developments over the past year. References are to chapters and paragraph numbers of the 2026 edition of the Practice Guide re the material is discussed in greater detail.

Check for Case/Statutory/Rules Developments: Except for a few late developments, our cut-off for this Update was March 30, 2026. Some of the new cases may not have been final at that time and may be affected by later developments. In addition, unless specifically noted, this Update does not include case, legislative, or rules developments taking effect after the cut-off date. Counsel should check subsequent case histories and independently verify the current state of the law, including any developments that may affect the analysis in this Practice Guide.

Thank You! We encourage your comments and suggestions regarding this Practice Guide. *Please keep them coming!*

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2026 UPDATE HIGHLIGHTS

CHAPTER 1

PRELAWSUIT CONSIDERATIONS

Confidential Communications—Duty to Prospective Client

[1:35] **Disqualification where prospective client discloses information material to the dispute:** Whether the information received from the potential client was “material to the dispute” is evaluated as of the time of disqualification. [*Winter v. Menlo* (2025) 110 CA5th 299, 317-319, 331 CR3d 377, 392-393]

Fee Considerations

[1:197.6] **Determining prevailing party for fee recovery pursuant to contract:** Because contract fee provisions covered fees incurred on a petition to appoint an arbitrator, fees were awarded to the petitioner who prevailed in that discrete matter, even though it did not resolve all disputes arising under the contract. [*Barbanell v. Lodge* (2025) 117 CA5th 1003, 1014, 341 CR3d 21, 29]

[1:197.8a] **Lodestar approach to calculate fee award:** Where venue was proper in either of two counties, the trial court erred in applying rates from the county other than where the action was filed. [*Tidrick v. FCA US LLC* (2025) 112 CA5th 1147, 1157, 335 CR3d 9, 16-17]

[1:197.16] **“Private attorney general” fee awards (CCP §1021.5):** Plaintiffs did not prevail where the appellate opinion in their favor was ultimately reversed by the California Supreme Court due to amended legislation that abrogated the original decision. [*Make UC A Good Neighbor v. Regents of Univ. of Calif.* (2025) 117 CA5th 282, 289-290, 340 CR3d 264, 270-271]

[1:197.27a] **Limitation to fee recovery under “catalyst” theory:** The catalyst theory is not available if the relief sought in the underlying litigation was voluntarily provided only after the merits of the claims have been fully litigated to a final judgment against plaintiffs. [*Physicians for Social Responsibility - Los Angeles v. Department of Toxic Substances Control* (2026) 118 CA5th 1071, 1080, 342 CR3d 150, 156]

[1:421; 1:445.1] **Discharged attorney’s claim to contingency fee:** Where a client voluntarily accepts a settlement negotiated by a lawyer later discharged by the client, the lawyer is entitled to the full contingency fee under the original retainer agreement. [*Chong v. Mardirossian Akaragian LLP* (2026) 117 CA5th 1017, 1028, 340 CR3d 813, 822]

[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]

Actions for “Professional Negligence”

[1:856.12-856.12a] **MICRA and negligence claims:** The Medical Injury Compensation Reform Act applies to acts by healthcare providers that are within the scope of services for which the providers are licensed (i.e., the provision of medical care to patients). MICRA covers only injuries resulting directly from the negligent rendering of medical care and not all injuries that might occur during the provision of medical care. The fundamental question is whether the claim for negligence involves a violation of professional obligations as opposed to the breach of a duty owed to the public generally. [*Gutierrez v. Tostado* (2025) 18 C5th 222, 235, 239, 335 CR3d 36, 44, 47]

Prior Court Order Required for Actions by Vexatious Litigants

[1:932.9a] **Prefiling order not stayed while on appeal:** A prefiling order is not automatically stayed pending appeal of the action in which it was issued. Because a prefiling order functions as a prohibitory injunction, barring new litigation without prior court approval, it is not automatically stayed and remains enforceable during the appellate process. [*Steshenko v. Board of Trustees of Foothill-DeAnza Comm. College Dist.* (2025) 112 CA5th 1300, 1312-1313, 335 CR3d 132, 141-142]

CHAPTER 2

PARTIES TO THE ACTION

Real Party in Interest

[2:2] **Standing absent concrete harm:** State standing is not precisely the same as that required by Article III. “[T]he [California] Legislature may authorize consumers and others whose rights have been violated to recover statutory damages or penalties absent the concrete harm required in federal court by Article III.” [*Yeh v. Barrington Pac., LLC* (2026) 117 CA5th 1303, 1313, 341 CR3d 311, 318 & fn. 2]

[2:4] **Challenge to standing can be raised at any time:** Lack of standing is a jurisdictional challenge and may be raised at any time in the proceeding, including for the first time on appeal. [*Taking Offense v. State of Calif.* (2025) 18 C5th 891, 910, 338 CR3d 326, 338]

Statutory Claims

[2:39.14b] **Song-Beverly Act:** Only the car buyer, and not a driver or “de facto buyer,” has standing to sue for violations of the Song-Beverly Consumer Warranty Act. [*Towns v. Hyundai Motor America* (2025) 117 CA5th 958, 969-970, 341 CR3d 37, 45-46]

[2:39.14c] **Fair Debt Buying Practices Act:** Under the FDBPA, consumers who receive noncompliant collection letters have standing to sue for statutory damages even absent actual damages or injury in fact. [*Chai v. Velocity Investments, LLC* (2025) 108 CA5th 1030, 1036, 1040-1041, 330 CR3d 11, 12-13, 16; *Guracar v. Student*

Loan Solutions, LLC (2025) 111 CA5th 330, 344-345, 332 CR3d 742, 752-753]

[2:39.14d] **Private Student Loan Collections Reform Act:** The PSLCRA confers standing to recover statutory damages absent a showing of concrete harm. [*Guracar v. Student Loan Solutions, LLC* (2025) 111 CA5th 330, 347, 332 CR3d 742, 754]

[2:39.14e] **Rosenthal Fair Debt Collection Practices Act:** No actual injury is required to establish standing to seek statutory damages under the Rosenthal Act. [*Guracar v. Student Loan Solutions, LLC* (2025) 111 CA5th 330, 348, 332 CR3d 742, 755]

[2:39.14f] **Federal Fair Debt Collection Practices Act:** Consumers have standing to bring statutory damages claims directly under the FDCPA in California courts absent evidence of any concrete harm. [*Guracar v. Student Loan Solutions, LLC* (2025) 111 CA5th 330, 349, 332 CR3d 742, 755-756; compare *Six v. IQ Data Int'l, Inc.* (9th Cir. 2025) 129 F4th 630, 635-636—plaintiff in federal court was required to show concrete injury from receipt of single letter from debt collector to establish standing under Article III]

[2:39.14g] **Investigative Consumer Reporting Agencies Act:** Plaintiffs have standing to pursue claims for violation of ICRAA and recover statutory damages without proving concrete injuries. [*Yeh v. Barrington Pac., LLC* (2026) 117 CA5th 1303, 1317, 341 CR3d 311, 321, 323; *Parsonage v. Wal-Mart Assocs., Inc.* (2026) 118 CA5th 399, 406, 341 CR3d 447, 449]

[2:39.14h] **Violation of Automated License Plate Recognition Law:** Because the statute allows for liquidated damages, no measure of economic harm is needed for a party who has been harmed by a violation of the ALPR Law to have standing to bring a civil action against one who knowingly caused the harm. [*Bartholomew v. Parking Concepts, Inc.* (2026) 118 CA5th 438, 447, 341 CR3d 554, 559]

Mandamus Actions

[2:69] **Representative actions—nonprofit religious corporations:** In nonprofit religious corporations, only individuals explicitly authorized by the corporation's articles or bylaws have the power to bring a representative lawsuit on behalf of the nonprofit. [*Wimber v. Scott* (2025) 113 CA5th 349, 360, 335 CR3d 383, 391]

Taxpayer Actions

[2:70.3; 2:70.8] **CCP §526a does not afford standing to sue the state:** CCP §526a confers standing to sue only local governmental officers and entities, not the state or its officers and entities. [*Taking Offense v. State of Calif.* (2025) 18 C5th 891, 919, 338 CR3d 326, 345-346, & fn. 12]

CHAPTER 3 JURISDICTION AND VENUE

Subject Matter Jurisdiction

[3:107.1] **Consolidation of actions:** When two actions are consolidated “for all purposes,” the two actions are merged under one case number, resulting in one judgment. When a limited civil case is consolidated with an unlimited case, the limited case is no longer a separate action, and the requirements of the reclassification statutes (e.g., requiring an amended pleading, stipulation or motion for reclassification) do not apply to the consolidated action. [*Villa Zinfandel, LLC v. Bearman* (2025) 116 CA5th 848, 866, 868, 339 CR3d 605, 619-621]

Personal Jurisdiction

[3:185, 3:446.5] **Forum selection clause—public policy:** Even where enforcement of a forum selection clause will effectively deprive a plaintiff of the right to a trial by jury, that alone will not provide a basis to avoid its enforcement. [*EpicentRx, Inc. v. Sup.Ct. (EpiRx, L.P.)* (2025) 18 C5th 58, 78-80, 334 CR3d 702, 717-718—California Constitution guarantees right to jury trial in California but does not reflect public policy regarding that right in other forums, and right may be waived]

[3:307] **Acts committed outside California “causing effect” within—internet activities:** Conduct “expressly aimed” at the forum supports personal jurisdiction. “Express aiming” means the contacts are the choice of the defendant and not isolated, random, or fortuitous, even if the e-commerce platform reaches a nationwide audience. [*Briskin v. Shopify* (9th Cir. 2025) 135 F4th 739, 758-759]

Forum Non Conveniens

[3:424.3; 3:430.2] **Balancing of private and public factors:** The court has the discretion to focus on the factors it deems relevant in deciding the forum non conveniens motion. No express findings need to be made on every private and public interest factor suggested by *Stangvik v. Shiley Inc.* (1991) 54 C3d 744, 1 CR2d 556. [*Kiely v. HYPH (USA), Inc.* (2025) 113 CA5th 95, 107-108, 353 CR3d 201, 211]

[3:426] **Plaintiff’s local residence as factor:** A California resident’s choice to file suit in California “should rarely be disturbed unless the balance is strongly in favor of the defendant.” [*EpicentRx, Inc. v. Sup.Ct. (EpiRx, L.P.)* (2025) 18 C5th 58, 73, 334 CR3d 702, 713]

“Exclusive” Federal Jurisdiction

[3:611.7a] **Claims involving activities regulated by the Federal Aviation Administration Authorization Act:** The FAAAA preempts a plaintiff’s state common law claims relating to accidents arising from motor carrier transportation of property. [*Casarez v. Irigoyen Farms, Inc.* (2025) 114 CA5th 873, 881-885, 337 CR3d 262, 268-271]

Federal vs. State Court Procedural Rules

[3:639] **Anti-SLAPP:** See ¶7:1191.5 of the Highlights Summaries.

CHAPTER 4

SUMMONS

Service of Summons on Corporation

[4:150] **When service effective through Secretary of State:** Service upon the corporation is deemed complete 10 days after delivery to the Secretary of State regardless of whether the Secretary forwards notice of service to the corporation. [*SoCal Lien Solutions, LLC v. BDB Properties* (2025) 117 CA5th 788, 793-794, 340 CR3d 606, 609-610]

Manner of Service

[4:183.1] **Service by other methods:** Except in cases against a government entity or an agent or executive of a government entity sued in an official or individual capacity, when no provision is made for service in the service laws or where a plaintiff is unable to effect service despite exercising reasonable diligence, established by declaration, the court, upon motion, can order that summons “be served in a manner that is reasonably calculated to give actual notice to the party to be served, including by electronic mail or electronic technology” and the proof of service is to be made as directed by the court. [Amended CCP §413.30]

Substitute Service

[4:198] **“Reasonable diligence” attempting personal service on defendant required:** Effective January 1, 2027, a party shows reasonable diligence by “attempting personal delivery of the summons and complaint, in good faith, on at least three occasions on three different days at three different times.” In an action to collect “consumer debt,” at least one of those attempts must be at the dwelling place or usual abode of the defendant, where the address is known or could be determined with reasonable effort. [New CCP §415.20(b)(2), (3) (operative 1/1/27)]

[4:206] **Procedure for substitute service on individual defendant—mailing other copies:** Effective January 1, 2027, mail a copy of the summons and complaint by United States Postal Service first-class mail, Priority Mail with tracking, or Certified Mail with return receipt requested, with postage prepaid to the person to be served at the place where the copies were left. [New CCP §415.20(b) (operative 1/1/27)]

[4:214] **“Person apparently in charge of office or place of business”:** A person subserved at a business location or residence must have a reasonable connection to the individual to be served or hold a close enough relationship to that individual to ensure the likelihood the documents will be passed on. [*Chinese Theater, LLC v. Starline Tours USA, Inc.* (2025) 115 CA5th 1048, 1057-1060, 338 CR3d 690, 696-698]

[4:218.1-218.2] **Procedure for substitute service on entity defendant—mailing other copies:** Effective January 1, 2027, mail a copy of the summons and complaint by United States Postal Service, first class mail, Priority Mail with tracking, or Certified

Mail with return receipt requested, postage prepaid to the person to be served at the place where the copies were left. [New CCP §415.20(a) (operative 1/1/27)]

Service by Posting (Unlawful Detainer Actions)

[4:281] **“Reasonable diligence” before service by posting:** Effective January 1, 2027, a party shows the “reasonable diligence” necessary to justify service by posting “by attempting personal delivery of the summons and complaint, in good faith, and on at least three occasions on three different days at three different times.” [New CCP §415.45(d)(1) (operative 1/1/27)]

Service by Other Methods

[4:285] **“Reasonable diligence” before service by other means:** Under CCP §413.30, “if a plaintiff, despite exercising reasonable diligence, has been unable to effect service of the summons by any of the methods authorized under this chapter, the court in which the action is pending may, upon motion, direct that summons be served in a manner that is reasonably calculated to give actual notice to the party to be served, including by electronic mail or other electronic technology, and that proof of such service be made as prescribed by the court.” [Amended CCP §413.30]

To establish “reasonable diligence,” plaintiff must include a declaration describing all attempts to serve the defendant by the methods set forth in the service statutes, including facts demonstrating why each methodology was unsuccessful at each address defendant was likely to be found. [Amended CCP §413.30(a)(2)]

[4:286-286.1] **Service under CCP §527.6:** An application for an alternative method of service under CCP §527.6 must be supported by declarations stating “probative facts based on personal knowledge and demonstrating a thorough investigation designed to learn the respondent’s whereabouts.” [*Yu v. Pozniak-Rice* (2025) 112 CA5th 1135, 1144, 334 CR3d 886, 894]

Proof of Service of Summons

[4:393] **Photographic evidence of attempted service:** Effective January 1, 2027, proof of personal service, substitute service, and service in unlawful detainer actions under CCP §§415.10, 415.20, 415.30, or 415.45, must include one or more photographs, as detailed, of the site of each effected or attempted service of the summons and complaint, taken as closely as practicable to the time of effecting or attempting service. [New CCP §417.10 (operative 1/1/27)]

Procedures for Challenging Service of Summons

[4:429] **Motion to set aside default judgment:** Effective January 1, 2027, when service of summons was lawfully effected but has not resulted in actual notice to defendant in time to defend the action (e.g., service by publication), defendant may move the court to set aside the default and any judgment thereon and for leave to defend the action. [New CCP §473.5 (operative 1/1/27)]

CHAPTER 5

DEFAULTS

Entry of Default

[5:66] **After plaintiff amends complaint—no substantive changes:** See *Ammari v. Ammari* (2025) 117 CA5th 483, 487-488, 340 CR3d 323, 326-327—where plaintiff amended complaint to add new causes of action but relied on same factual allegations as initial complaint and sought same relief, although in greater amount, original answer sufficed to deny material allegations, and it was error to enter defendant’s default and default judgment.

[5:89.7] **Notice of statement of damages form:** The Judicial Council adopted an official form for use as a statement of damages (“mandatory” form CIV-050; see ¶5:82) for use in personal injury cases, but failure to use the mandatory form is not jurisdictional. [*Backlund v. Stone* (2025) 115 CA5th 580, 591-592, 338 CR3d 251, 258-259]

[5:91] **“Appearance” for service of notice by mail:** See *Backlund v. Stone* (2025) 115 CA5th 580, 594-595, 338 CR3d 251, 261-262—defendant “appeared” when he agreed to his counsel’s withdrawal and listed his own address on the substitution of attorney form, which constituted consent to appear on his own behalf.

Relief from Default

[5:281; 5:491] **Relief for lack of proper service:** Effective January 1, 2027, notwithstanding other requirements of CCP §473, a party to an action may move to vacate a default judgment that is void for lack of proper service at any time after entry of the judgment. [New CCP §473(e) (operative 1/1/27)]

[5:295.2b; 5:299.2] **Mandatory relief under CCP §473(b)—tactical decisions:** See *Rodriguez v. WNT, Inc.* (2025) 116 CA5th 791, 808, 339 CR3d 657, 671—denying CCP §473(b) relief was appropriate where counsel’s failure to respond to discovery requests, motions, and orders was knowing, intentional conduct intended to buy additional time.

[5:420] **Relief under CCP §473.5 for “lack of actual notice”:** Effective January 1, 2027, where service of summons was lawfully effected but has not resulted in actual notice to a party in time to defend the action, the court is empowered to grant relief from a default or default judgment. [New CCP §473.5 (operative 1/1/27)]

CHAPTER 6

PLEADINGS

Role of Pleadings at Trial and Dispositive Motions

[6:13] **Judicial admissions:** A pleading does not constitute a judicial admission where the adverse party disputes it or litigates a contrary position. The admission removes an issue (and bars other evidence on the matter from the case) only when both parties

agree to it. [*In re Marriage of Starr* (2026) 118 CA5th 52, 62-64, 341 CR3d 328, 336-338—trial court should have permitted Wife to present evidence on separation date where date alleged by Wife in amended petition was contested in trial briefs and settlement statements and thus was not judicial admission]

Amended Pleadings

[6:755] **Adding new plaintiffs after statute of limitations has run:** See *1215 Fell SF Owner LLC v. Fell Street Automotive Clinic* (2025) 110 CA5th 739, 750, 332 CR3d 64, 72-73—naming discrepancy in complaint identifying plaintiffs as California, rather than Delaware, limited liability companies, could be corrected by trial court on remand under CCP §473 if error was misnomer but not if correction would require addition of another entity against which no viable cause of action was stated.

CHAPTER 7, PART I

ATTACKING THE PLEADINGS

General Demurrer

[7:60.9] **Claim preclusion/issue preclusion (res judicata/collateral estoppel):** Claim and issue preclusion only apply after final adjudication of the first action; i.e., a final judgment that completes the disposition of all the causes of action between the parties following appeal (or expiration of time to appeal). [*640 Octavia LLC v. Walston* (2025) 111 CA5th 861, 872-873, 333 CR3d 183, 192—court erred in applying claim or issue preclusion where no final judgment disposed of all causes of action between parties in prior action because unresolved cross-complaint precluded right to appeal]

Special Demurrer

[7:97.9] **Failure to file certificates of merit on complaint for childhood sexual assault—plaintiffs 40 years of age or older:** A plaintiff should be permitted to amend the complaint and the certificate of merit to correct mistakes in dates of alleged abuse where the defendant is not misled or prejudiced by the amendment and allowing plaintiff to file an amended certificate relates back to date of filing of complaint. [*S.C. v. Doe 1* (2025) 115 CA5th 365, 386-387, 338 CR3d 127, 143]

CHAPTER 7, PART II

ANTI-SLAPP MOTIONS

Activities Protected by Anti-SLAPP Statute

[7:571.1] **Malicious prosecution actions—statute of limitations:** CCP §340.6's one-year statute of limitations applies to claims against lawyers brought by their clients or their clients' intended beneficiaries (e.g., legal malpractice). However, CCP §335.1's two-year limitations period applies to malicious prosecution claims against lawyers by parties who were neither their clients or their clients' intended beneficiaries. [*Escamilla v. Vannucci*

(2025) 17 C5th 571, 575-576, 331 CR3d 1, 2-3—malicious prosecution complaint brought by formerly adverse party (not client) was timely under 2-year limitations period and thus anti-SLAPP motion should have been denied]

Exemptions

[7:876] **Actions to enforce statutes:** An action has been held to be for the public benefit (and thus that the public benefit exception applies) where plaintiffs sought to enforce the Brown Act closed session confidentiality provision (Gov.C. §54963). Whether the public interest exception applies is a “threshold, pleading-based determination—not a contested evidentiary proceeding.” [*Byrne v. Rule* (2025) 113 CA5th 708, 718, 336 CR3d 249, 255]

Procedure

[7:951] **Timing of motion:** A supporting memorandum of points and authorities must be filed within the anti-SLAPP 60-day deadline for the motion to be considered timely. [*Mora v. Menjivar* (2025) 111 CA5th 1237, 1250-1251, 333 CR3d 586, 594-595—motion was untimely where defendant filed notice and motion within 60-day deadline but filed supporting memorandum of points and authorities beyond 60-day deadline]

Appellate Review

[7:1191.5] **Compare—federal practice:** A federal district court’s order denying a motion to strike under CCP §425.16 is not immediately appealable to the Ninth Circuit; rather, it is reviewable on appeal from the final judgment. [*Gopher Media LLC v. Melone* (9th Cir. 2025) 154 F4th 696, 699 (en banc)]

CHAPTER 8

DISCOVERY

Discovery Motions

[8:810.1] **Attempt to resolve informally (“meet and confer”) requirement:** A meet and confer declaration in support of a discovery motion must state facts showing “a reasonable and good faith attempt, either in person, by telephone, or by videoconference to informally resolve each issue presented by the motion” as well as whether the parties conferred on the need for a court reporter. [Amended CCP §2016.040; *see also* ¶8:715, 8:811, 8:1126, 8:1158, 8:1161, 8:1304, 8:1454, 8:1494, 8:1545.6, 8:1607.1, 8:1617.1, 8:1656, 8:1704.1, 1744.6]

Limitations on Right to Discovery

[8:39.6] **Discovery “hold” at outset of action:** Plaintiffs (but not defendants) must obtain a court order to initiate various forms of discovery during the first 10 days in unlawful detainer cases. [Amended CCP §§2030.020(c) (interrogatories), 2031.020(c) (demands for documents, etc.), 2033.020(c) (requests for admission)]

Attorney Fees Recoverable by Statute

[8:108.6] **“Reasonableness” of attorney fees:** The hours worked

by the side resisting a claim of attorney fees may be relevant. [*Bronshiteyn v. Department of Consumer Affairs* (2025) 114 CA5th 537, 546-547, 337 CR3d 113, 121-122]

Whose Deposition May Be Taken

[8:467.1] **Opposing counsel:** See *People v. Sup.Ct. (Credit One Bank, N.A.)* (2025) 112 CA5th 804, 820, 334 CR3d 627, 639—deposition of person most qualified to testify on behalf of “People” in civil enforcement action is tantamount to deposition of counsel, even if non-lawyer testifies.

Foreign Subpoenas

[8:620.21] **Issuance of subpoena by California lawyer:** A California attorney cannot issue a subpoena under CCP §2029.350(a) if it is based on a violation of another state’s laws that interfere with a person’s “right to seek or obtain gender-affirming health care or gender-affirming mental health care or to allow a child to receive gender-affirming health care or gender-affirming mental health care” as defined in Welf. & Inst.C. §16010.2. [Amended CCP §2029.350(b)]

Conduct of Deposition

[8:736.1; 8:1900] **Coaching deponent during deposition:** See *Agnone v. Agnone* (2025) 111 CA5th 758, 766-767, 333 CR3d 119, 126—counsel’s refusal to turn on web camera during remote deposition, making it impossible to tell if lawyer was coaching deponent, was discovery misuse.

Enforcing Requests for Admissions

[8:1404] **Costs imposed for denials proved false:** “Costs of proof” fees may be awarded against plaintiff even if plaintiffs benefit generally from a unilateral attorney fees provision, such as those available only to prevailing plaintiffs under Welf. & Inst.C. §15657.5(a) (financial elder abuse). [See *Gamo v. Merrell* (2025) 113 CA5th 656, 668-669, 335 CR3d 772, 780-781—“costs of proof” fees intended to encourage efficient trials]

Exclusion of Expert Testimony

[8:1718.1] **Expert opinions withheld at deposition:** See *Jogani v. Jogani* (2026) 118 CA5th 823,885-886, 342 CR3d 68, 121—opinion undisclosed at deposition should have been excluded even if expert declaration included possibility of this opinion.

Appointment of Referee in Aid of Discovery

[8:1803.3] **Review of referee’s decisions:** Orders of referees appointed by agreement, if the subject of a general reference under CCP §638(a), are reviewed by the court of appeal, similarly to trial court orders. [*Honchariw v. PMF CA REIT, LLC* (2025) 117 CA5th 827, 834, 340 CR3d 593, 598 (rev.grntd. 3/25/26 (Case No. 295127) (cited pursuant to CRC 8.1115(e))]

Discovery Misuses

[8:1900] **Discovery misuses generally:** Discovery misuses

include failing to “confer or to attempt to confer in person, by telephone or by videoconference with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery,” where so required by the particular discovery method involved. [Amended CCP §2023.010(i)]

Sanctions for Inadequate Responses

[8:1956] **Ordering new trial as remedy for discovery abuse:** Where usual sanctions like money sanctions, orders to compel, or evidence exclusion are ineffective, such as where discovery abuse is discovered during trial, the court may order a new trial. [*Higginson v. Kia Motors America, Inc.* (2026) 118 CA5th 316, 351-352, 341 CR3d 732, 762—new trial was ordered pursuant to CCP §657 for “irregularity in the proceedings” where discovery responses falsely stated documents did not exist, documents were never produced, and there was reasonable probability of different result had jury seen documents]

CHAPTER 9, PART I

LAW AND MOTION

Rules Governing Motions

[9:7; 9:13.1f] **Local court rules:** See *CFP BDA, LLC v. Sup.Ct. (Bedford)* (2025) 112 CA5th 1006, 1010, 335 CR3d 1, 4—reversing application of local rule that blocked consideration of timely-filed summary judgment motion.

[9:28.1] **Effect of incomplete papers:** See ¶7:951 of the *Highlights Summaries*.

Preparing Motions

[9:80.2] **Citing legal authorities:** See *Noland v. Land of the Free, L.P.* (2025) 114 CA5th 426, 445, 336 CR3d 897, 912—sanctions imposed where brief included fabricated cites generated by artificial intelligence.

Prehearing Procedures

[9:110.8] **Accommodations for persons who are lactating:** Courts must provide accommodations for persons who are lactating. Accommodations may include making reasonable modifications in policies, practices, and procedures and, where available, providing access to a lactation room. [CRC 2.40(a)]

Procedures at Law and Motion Hearing

[9:157; 9:597.1] **Appearance by telephone:** The suspension of provisions of CRC 3.670(c) to (i) has been extended, and the provisions of CRC 3.672 apply in their place, until January 1, 2027. [CRC 3.760(b)]

Judge’s Ruling

[9:180.1] **Grounds not raised by parties:** The court may decide a motion should be decided on grounds not raised by either side. Parties receive adequate notice where the tentative ruling states

the new ground and the parties have an opportunity to comment. Parties do not have a right in every case to supplemental briefing. [*Quilala v. Securitas Security Services USA, Inc.* (2025) 117 CA5th 75, 85, 340 CR3d 89, 96]

[9:182] **Nunc pro tunc orders:** A judge may only sign an order “nunc pro tunc” if the judge actually previously made the order; the judge may not backdate an order to a date before which it was in fact made. Nunc pro tunc orders may correct clerical, not judicial, errors. [*Stop C-19, LLC v. Tooling Express, Inc.* (2025) 111 CA5th 803, 815-816, 333 CR3d 127, 137-138]

Motion for Reconsideration

[9:324.2f] **Compare—motion for relief under CCP §473(b):** It is improper to seek relief available under CCP §473(b) in a CCP §1008 motion for reconsideration. [*Craddock v. Hilton Domestic Operating Co., Inc.* (2025) 112 CA5th 284, 304, 334 CR3d 129, 146]

Motion to Recuse (Disqualify) Opposing Counsel

[9:406.8c] **Proof required for violation of ethical duty:** Counsel may be disqualified for failure to honor the obligation to return (and not use) privileged documents. [*Johnson v. Department of Transp.* (2025) 109 CA5th 917, 944, 330 CR3d 811, 835—attorney was disqualified after attorney received privileged communication, refused to destroy it, and shared it with experts]

Motion (Petition) to Compel Arbitration

[9:407.5b] **Existence of agreement to arbitrate:** Under current state law, ordinary rules of contract interpretation (e.g., resolve doubts against the drafter, especially with contracts of adhesion) apply. There is no policy favoring arbitration. [*Fuentes v. Empire Nissan, Inc.* (2026) 19 C5th 93, 110, 341 CR3d 186, 199-200; see additional discussion at ¶9:407.6i, 9:407.12]

[9:407.9] **Unconscionability defense:** Unconscionability is “evaluated on a sliding scale: the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to find it unenforceable.” [*Gurganus v. IGS Solutions LLC* (2025) 115 CA5th 327, 334, 338 CR3d 36, 42 (internal quotes omitted)]

[9:408.16] **Waiver shown by litigation:** See *Hofer v. Boladian* (2025) 111 CA5th 1, 13, 332 CR3d 506, 518—right to arbitrate waived where party filed complaint that did not mention arbitration, engaged in over 4 months of litigation in court, sued for injunctive relief, propounded 100s of discovery requests, set depositions, and posted jury fees among other acts indicating intent to waive arbitration.

Statement of Decision Following Ruling on Motion

[9:408.31] **Request for statement of decision:** Effective January 1, 2027, requests for a statement of decision must be made in writing, or orally where an official record of the proceeding is being transcribed, prior to the submission of the matter for decision. [New CCP §632(a) (operative 1/1/27)]

Arbitration Fees

[9:408.47] **Failure to pay arbitration fees:** CCP §1291.98 allows for routine contract defenses, such that it extinguishes the other party's contractual duties to arbitrate only when nonperformance by the party to pay the arbitral fees is willful, grossly negligent, or fraudulent. A party may also seek relief from an order that arbitration is not available (as a result of a missed fee deadline) via CCP §473(b). Accordingly, CCP §1291.98 is not preempted by the Federal Arbitration Act, which requires arbitration contracts to be treated no differently from other contracts. [*Hohenshelt v. Sup.Ct. (Golden State Foods Corp.)* (2025) 18 C5th 310, 323, 334-335, 346, 335 CR3d 532, 538, 547-548, 557]

CHAPTER 9, PART II PROVISIONAL REMEDIES

Injunctions

[9:513] **Constitutional rights:** Preliminary injunctions may also issue when a governmental requirement violates due process in that it is “unconstitutionally vague on its face,” failing to “provide fair notice of the conduct proscribed and lacks sufficiently definite standards of application,” which leads to “arbitrary and discriminatory enforcement.” [*Mae M. v. Komrosky* (2025) 111 CA5th 198, 203, 332 CR3d 682, 688 (internal quotes omitted)]

[9:639.1] **Proper scope of injunction:** A preliminary injunction should be tailored to the demonstrated likelihood of harm and employ the “least disruptive remedy adequate to the task.” [*Kings County Farm Bureau v. State Water Resources Control Bd.* (2025) 115 CA5th 782, 819, 338 CR3d 499, 526]

[9:642.1] **Defense costs:** See *Kings County Farm Bureau v. State Water Resources Control Bd.*, supra, 115 CA5th at 823, 338 CR3d at 529 & fn.12—fees may be considered in setting bond unless they would be recovered in full in separate statutory proceeding after injunction is set aside.

[9:682.20] **Violence or credible threat of violence suffered by college student:** Forms and procedures similar to those used to prevent workplace violence may be used where a student at a college (“an institution of vocational, professional, or postsecondary education”) suffered unlawful violence or a credible threat of violence. [See new CCP §527.85]

[9:683] **Domestic violence restraining order renewal:** If a domestic violence restraining order is renewed, the court must renew it for at least five years under Fam.C. §6345. [*Hart v. Hart* (2025) 115 CA5th 571, 577, 338 CR3d 231, 235]

[9:699.2] **Service and filing of petition:** The petition is served as is a complaint and summons so that diligent efforts must be made before a court is authorized to permit alternative service under CCP §527.6(m)(2). [*Yu v. Pozniak-Rice* (2025) 112 CA5th 1135, 1143-1145, 334 CR3d 886, 893-894—server's declaration was conclusory and failed to explain why respondent might

be found at locations where service was attempted]

Effective January 1, 2027, petitions and any filings related to those petitions may be submitted electronically, and based on the time of receipt, the court will act on the electronic filings consistent with CCP §527.6(e). [New CCP §527.6(y)(1)(A) (operative 1/1/27)]

[9:701.1] **Remote appearance permitted:** Effective January 1, 2027, parties and witnesses may appear at the hearing on a petition remotely. No fees may be charged. [New CCP §527.6(i)(2) (operative 1/1/27)]

Writ of Possession

[9:847] **Counterbonding—effect on plaintiff’s rights:** Even if defendant posts a bond to stay enforcement of a “turnover order” or writ of possession, plaintiff may nevertheless thereafter apply for a preliminary injunction for the same relief. [*Santa Clara Valley Water Dist. v. Eisenberg* (2025) 117 CA5th 714, 740-741, 340 CR3d 611, 633]

CHAPTER 9, PART III

NONDISCOVERY SANCTIONS

Sanctions Under CCP §128.7

[9:1196] **Waiting period on sanctions motion (21-day “safe harbor” provision):** Even if a court’s motion reservation system does not permit the reservation of a date 21 days out, that will not relieve the moving party from the obligation to file a motion with the noticed date. If necessary, the party must seek an ex parte order to waive the reservations system’s constraints. [*J.N. v. Goldberg* (2026) — CA5th —, —, — CR3d —, —, 2026 WL 1283680, *3]

[9:1222.1] **Causal relationship required for expenses incurred:** Sanctions are properly imposed for fees incurred in replying to a frivolous opposition. [*Plantations at Haywood 1, LLC v. Plantations at Haywood, LLC* (2025) 108 CA5th 803, 815, 329 CR3d 751, 760-761]

Artificial Intelligence

[9:1284.12] **Sanctions based on use of artificial intelligence tools:** It is a “fundamental duty” of officers of the court that every case cited in a brief be read and verified. The reliance on fabricated authority permits the striking of the brief or dismissing the appeal. [*Noland v. Land of the Free, L.P.* (2025) 114 CA5th 426, 445, 336 CR3d 897, 912; see *People v. Alvarez* (2025) 114 CA5th 1115, 1118, 337 CR3d 585, 587-588; *Schlichter v. Kennedy* (2025) 116 CA5th 24, 26, 32-33, 339 CR3d 262, 263-264, 269-270; *Shayan v. Shakib* (2025) 116 CA5th 619, 625-626, 339 CR3d 354, 359-360]

Self-represented litigants are held to the same standard as lawyers and may be sanctioned, including money sanctions and the court’s disregard of briefs, for using AI tools that generate fake case citations. [*Sheerer v. Panas* (2026) 119 CA5th 367, 370-371, 342 CR3d 629, 631-632]

CHAPTER 10
SUMMARY JUDGMENT AND SUMMARY ADJUDICATION [CCP §437c]

Evidence Required to Support Motion

[10:132.2] **Testimony given in another case:** Testimony from a deposition transcript that would be barred at trial by the hearsay rule is not admissible to raise a triable issue of fact in opposition to a summary judgment motion. [*Murphy v. Pina* (2025) 115 CA5th 305, 314-318, 338 CR3d 93, 100-103]

[10:147] **Admissions in pleadings:** See ¶6:13 of the *Highlights Summaries*.

Procedural Requirements—Opposing Party

[10:186.2] **Opposition may be filed by any adverse party:** Any adverse party may oppose a defendant’s motion for summary judgment as to plaintiff’s complaint, even if the adverse party has not filed a cross-complaint against the defendant and plaintiff does not oppose the summary judgment motion. Parties are “deemed adverse to one another if their competing interests in the outcome of the litigation are at odds.” [*RND Contractors, Inc. v. Sup.Ct. (Wiseman & Rohy Structural Engineers)* (2025) 112 CA5th 697, 699, 705, 334 CR3d 582, 584, 589; *Bean v. City of Thousand Oaks* (2025) 114 CA5th 775, 779, 337 CR3d 339, 341-342]

[10:205.2] **Opposing declarations liberally construed:** Law firm filed motion for summary judgment against former client for fees, arguing client had ratified a settlement agreement by accepting its benefits. Client claimed acceptance was not “truly voluntary” in that client “was left with no choice” and had “no realistic alternative.” Client’s statements were conclusory and failed to raise a triable issue of fact. [*Chong v. Mardirossian Akaragian LLP* (2025) 117 CA5th 1017, 1030, 340 CR3d 813, 824]

Ruling on Motion

[10:269.2] **Right to hearing:** A trial court must consider a motion for summary judgment that is timely served and filed. [*CFP BDA, LLC v. Sup.Ct. (Bedford)* (2025) 112 CA5th 1006, 1010, 335 CR3d 1, 3-4—court was required to permit hearing on defendant’s motion that was timely served and filed under CCP §437c, having previously taken motion off calendar because defendant failed to comply with local rule requiring motion be filed within 10 days after reserving hearing date]

[10:271a] **What constitutes “material” fact:** Plaintiffs moved for summary adjudication of defendant’s affirmative defense that plaintiff’s claims were extinguished by prior compromise and settlement. The acceptance or rejection of a prior settlement offer was a question of fact, and evidence of outward manifestation of acceptance was sufficient to raise triable issue of material fact regarding whether the parties had consented to settlement. [*Birdsall v. Helfet* (2025) 113 CA5th 558, 568-571, 335 CR3d 500, 507-509]

[10:301.2; 10:316.1] **Sustaining objection based on curable**

technical defect improper: It is an abuse of discretion to sustain an objection to evidence based on a technical defect that can be corrected so that motion can be heard on the merits. [*Walton v. Victor Valley Comm. College Dist.* (2026) 119 CA5th 1164, 1170-1171, 343 CR3d 317, 322-323—sustaining objection to plaintiff’s counsel’s declaration, which was not made under penalty of perjury but authenticated much of opposition evidence, without giving counsel opportunity to cure defect, was an abuse of discretion]

Challenging Judgment or Order in Trial Court

[10:373.4] **Where successive motion expressly permitted by court:** The trial court has inherent discretionary authority to reconsider its prior ruling on a motion for summary judgment, either sua sponte or after suggestion of a party. [*Le Francois v. Goel* (2005) 35 C4th 1094, 1096-1097, 29 CR3d 249, 251-252; *Noland v. Land of the Free, L.P.* (2025) 114 CA5th 426, 437-438, 336 CR3d 897, 905-906—court had inherent power to reconsider its prior order, including by granting defendants’ successive summary judgment motion based on same grounds as prior motion]

However, the court must allow the parties to brief the issue if it considers changing its prior ruling. [*Noland v. Land of the Free, L.P.*, supra, 114 CA5th at 437, 336 CR3d at 906 & fn. 5]

CHAPTER 11

DISMISSALS

Mandatory Dismissal for Delay in Bringing Action to Trial

[11:202] **Enlargement of 5-year period by stipulation:** See *Randolph v. Trustees of Calif. State Univ.* (2025) 117 CA5th 1228, 1233-1234, 340 CR3d 808, 811-812—dismissal was proper where trial court at case management conference set trial date beyond 5-year deadline and minute order was silent as to any discussion of trial date.

Grounds for Involuntary Dismissal

[11:280.6] **Plaintiff’s failure to appear for trial:** See *Cradduck v. Hilton Domestic Operating Co., Inc.* (2025) 112 CA5th 284, 301-303, 334 CR3d 129, 143-145—case was properly dismissed at defendants’ request where plaintiff and counsel failed to appear during trial due to counsel’s alleged medical emergency, failed to provide admissible evidence of medical issue, failed to request continuance in writing, and failed to appear on new date as ordered; compare *Park v. Guisti* (2025) 116 CA5th 197, 202-205, 339 CR3d 124, 129-131—court was required to, at minimum, issue order to show cause before dismissing case where civil litigant was actively participating but failed to appear for trial due to incarceration.

CHAPTER 12, PART I

CASE MANAGEMENT AND TRIAL SETTING

Case Management System

[12:18.5] **Compare—(limited jurisdiction) default collection**

actions: “Collection case” means a claim for a sum certain up to \$35,000, exclusive of interest and attorney fees, based on a credit transaction (i.e., goods, services or money acquired on credit, and not involving tort damages, punitive damages, recovery of property, recovery of personal property, or prejudgment writ of attachment). [CRC 3.740(a)]

Appearance at Case Management Conference

[12:82.10] **Appearance by telephone or other remote technology:** See ¶9:157 of the Highlights Summaries.

Demand for Jury Trial and Waiver

[12:310.3] **Compare—forum selection clause providing for trial in forum outside California with no right to jury:** See ¶3:185 of the Highlights Summaries.

Consolidation

[12:341.1] **Complete consolidation:** Two actions consolidated “for all purposes” cannot be classified as both “limited” and “unlimited.” Rather, the cases will be treated as if the cases had been united originally and designated as “unlimited.” [*Villa Zinfandel, LLC v. Bearman* (2025) 116 CA5th 848, 862-868, 339 CR3d 605, 616-620]

CHAPTER 12, PART II

SETTLEMENT PROCEDURES

Statutory Offer to Compromise (CCP §998)

[12:611.4] **Offer may be conditioned on acceptance by defendant’s insurer:** Where a defendant is defended by an insurer, the insurer must consent to the settlement in order to be bound by it, so conditioning the CCP §998 offer on insurer consent is unnecessary but valid. [*Matthews v. Ryan* (2026) 118 CA5th 155, 170, 341 CR3d 218, 228-229]

[12:644.2] **Where offer silent regarding costs and fees:** Where a prevailing party has a statutory or contractual right to attorney fees, a prevailing plaintiff who rejects a reasonable CCP §998 settlement offer, even when the offer is silent as to costs and fees, and then fails to obtain a more favorable judgment, cannot recover post-offer costs, including attorney fees. [*Maneri v. FCA US LLC* (2025) 116 CA5th 897, 908-909, 339 CR3d 679, 688]

[12:653] **“Costs” include attorney fees:** See *Alvarado v. Wal-Mart Assocs., Inc.* (9th Cir. 2025) 156 F4th 917, 923—CCP §998 did not grant right to attorney fees not otherwise obtainable under contract or statutory provisions.

Nonsettling Defendants Entitled to Setoff Against Judgment

[12:941] **Credit for workers’ compensation benefits:** If the employee is a peace officer or a firefighter whose damages exceed the net recovery after satisfaction of the employer’s lien and exhaustion of the third-party’s liability insurance limits, the employer may receive no more than 1/3 of the third-party defendant’s liability insurance in reimbursement and the employer has no right to assert any

credit or offset against future worker's compensation benefits. [New Lab.C. §§3860(a)(2), (b)(2), 3852(b)]

Motion to Enforce Settlement (CCP §664.6)

[12:974.1] **Limitation—shareholder derivative actions:** A shareholder may bring a derivative action for the benefit of a corporation where the complaint alleges injury to the corporation or its stock. A party may not enforce a settlement of a shareholder derivative action unless the settlement has been reviewed and approved by the court. [*Norman v. Stratemen* (2025) 112 CA5th 92, 104-106, 333 CR3d 706, 715-717—even if agreed to by all shareholders, settlement may not be enforced until evaluated and approved by court]

CHAPTER 13

JUDICIAL ARBITRATION AND MEDIATION

Civil Action Mediation Program

[13:11.5-11.37] **New eligibility requirements and procedures:** Effective January 1, 2027, a court may order mediation only if the amount in controversy does not exceed \$75,000 (any stipulation regarding the amount in controversy is without prejudice as to any finding on the value of the case), at least one party notified the court of its interest in mediation, the case has been set for trial, there are no ongoing discovery disputes affecting the case, and the mediation will not delay the trial date. The parties must also be notified of their option to stipulate to a mutually agreeable mediator. The court must select a mediator, at no cost to the parties, if the parties do not stipulate to a mediator within 15 days of the date the case is submitted to mediation. The parties may use remote technology upon stipulation of all parties to attend mediation sessions. Mediation under CCP §1775.5(a) must end in the form of a mutually acceptable agreement or statement of nonagreement (see CCP §1775.9), no later than 120 days before the trial date. [New CCP §1775.5 (operative 1/1/27)]

CHAPTER 14

REPRESENTATIVE AND CLASS ACTIONS

Class Action Requirements

[14:11.7] **“Predominant” common question—liability vs. damage issues:** See *Leeds v. City of Los Angeles* (2025) 115 CA5th 537, 548-549, 338 CR3d 170, 179-180—certification denied where, in claim for refund of allegedly unlawful taxes, individual issue was not simply how much class members may be owed but also eligibility; *Ambrosio v. Progressive Preferred Ins. Co.* (9th Cir. 2025) 154 F4th 1107, 1111—certification was precluded where some class members may not have had any damages at all, showing individual query on liability.

[14:29.1; 14:30.5] **Identical claims not required:** The test of typicality is not demanding and sets a relatively low threshold.

Thus, it is not necessary that the class representative have personally incurred the very same damages suffered by each of the other class members. [*Martinez v. Sierra Lifestar, Inc.* (2026) 119 CA5th 1303, —, 343 CR3d 526, 535]

Communicating with Class Members Before Certification Hearing

[14:84.1] **Caution re “coercive or potentially abusive” precertification communications:** See *Avery v. TEKsystems, Inc.* (9th Cir. 2026) 165 F4th 1219, 1228, 1231-1233—under FRCP 23(d), federal courts have broad authority to review parties’ communications with putative class members and may refuse to order arbitration where employer uses confusing, conflicting, or misleading communications to promote arbitration in order to discourage class participation.

Certification Proceedings

[14:98.10] **Notice requirements:** Notice requirements for motions related to class certification, oppositions to such motions, and replies to the opposition have increased. [CRC 3.764(c)(1)]

Shareholder Derivative Suits

[14:241] **Compare—nonprofit religious corporations:** Religious corporations do not have shareholders; but members, and in some instances, former members, have various types of standing to bring representative actions to remedy breaches of trust, against officers and directors for violations of duty, for misuse of property, to remedy self-dealing, or unlawful distributions. [*Wimber v. Scott* (2025) 113 CA5th 349, 358-359, 335 CR3d 383, 390-391]

Private Attorneys General Act (PAGA)

[14:246.1] **Effect of arbitration finding on employee’s standing to pursue PAGA claim:** See *Prime Healthcare Mgmt., Inc. v. Sup.Ct. (Gavriiloglou)* (2025) 117 CA5th 127, 141, 340 CR3d 61, 72—“any determination by the arbitrator that employee is not aggrieved would have no binding effect on the court in adjudicating the PAGA claim.”

[14:246.20] **Multiple actions involving same employees and claims (“overlapping actions”):** A settled PAGA case may have claim preclusion effect on an overlapping case where the Labor Code violations listed in the LWDA notices and complaints are the same, even if in the first case plaintiff failed to wait the required time period to file suit after sending pre-suit notice to the LWDA. [*Brown v. Dave & Buster’s of Calif., Inc.* (2025) 116 CA5th 164, 172, 339 CR3d 270, 276—“failure to wait 65 days was a harmless defect”]