Preface to the 2026-2027 edition

California's state and federal courts enter a third decade sharing class action practice and procedure after enactment of the Class Action Fairness Act (CAFA) 28 USC 1332 in 2005. The law's passage marked a seismic change in California class action practice. Procedural ambiguities were presented by jurisdictional provisions including removal and remand procedure. Much not addressed in the original law is clarified by decades of federal appellate decisions. These continuing judicial interpretations have resulted in most significant putative class actions, as a general rule, being filed in or removed to California federal district courts.

Procedural differences between state and federal civil procedure may lead to contrasting outcomes, particularly with respect to standing to sue. Federal courts adhere to the constitutional requirements of Article lll standing, which generally require actual harm or injury as a part of a "case or controversy." California state laws, by contrasts, often provide statutory standing without requiring allegations of actual harm. This update provides recent examples.

Fifteen years ago, the United States Supreme Court's preemptive interpretation of the Federal Arbitration Act (9 U.S.C. §§ 1 to 16) (FAA) in *Concepcion*, 563 U.S. 333, 131 S. Ct. 1740 (2011) (Concepcion), provided another inflection point in California class action practice. As businesses and employers now routinely require consumer and employment arbitration agreements containing class action waivers, an early analysis of the enforceability of such arbitration agreements is essential, as they may pose an existential threat to class-wide relief. California principles of contract law generally determine enforceability.

On the horizon is an important interpretation of California's Private Attorney General Act (PAGA), Labor Code 2992 et seq., by the California Supreme Court concerning the status of the representative claim of a PAGA action following arbitration of the individual claim of the "aggrieved employee" —the so-called "Headless PAGA" issue.

Arbitration Update

Cases interpreting and applying the FAA continue to be decided each year, providing additional context and meaning to its provisions. The FAA's exemption for workers "engaged in foreign or interstate commerce" was addressed in *Flowers Foods, Inc. v. Brock* (2026) ___U.S.___ [146 S.Ct. 1358, ___L.Ed.2d___].

The case extends the reach of the FAA's interstate-commerce exemption by treating an intrastate delivery driver—commonly referred to as a "last-mile" driver—as engaged in interstate commerce for purposes of the exemption.

A detailed trial court evidentiary record determined a "rail car repairman" employed by a contractor was not a "railroad employee" exempt under the provisions of the FAA. *Vela v. Harbor Rail Services of California, Inc.* (2026) 120 Cal.App.5th 353.

Jules v. Andre Balazs Props. (2026) ___U.S.___ [146 S.Ct. 1209, 224 L.Ed.2d 708] holds that a federal court retains jurisdiction, after staying claims in a pending action, to confirm or vacate an arbitration award.

In *O'Dell v. Aya Healthcare Servs.* (9th Cir. 2026) 171 F.4th 1173, the Ninth Circuit reversed a district court's denial of a motion to compel arbitration, finding that the court had improperly applied the doctrine of "non-mutual offensive collateral estoppel" to preclude enforcement of 255 arbitration agreements based solely on two prior arbitral awards that found similar agreements unconscionable, while disregarding two other arbitral awards that upheld the agreements.

The California Supreme Court relaxed California's strict deadline to post arbitration fees in *Hohenshelt v. Superior Court* (2025) 18 Cal.5th 310 [335 Cal.Rptr.3d 532, 573 P.3d 944], finding that a late payment may be excusable unless it is willful, fraudulent, or the result of gross negligence. Shortly thereafter, the court in *Wilson v. TAP Worldwide, LLC* (2025) 114 Cal.App.5th 1077 [337 Cal.Rptr.3d 765], expressly followed this decision.

An employer's attempt to enforce arbitration based on a prior temporary employment agency agreement was denied, with the court finding that the employer was not a party to the arbitration agreement between the worker and the employment agency. *Toothman v. Redwood Toxicology Laboratory, Inc.* (2026) 120 Cal.App.5th 412.

Multiple, sometimes conflicting, arbitration agreements relating to the same parties and subject matter are to be construed together in a manner that gives effect to the parties' mutual intent, with a preference for enforcing arbitration. *Santana v. Studebaker Health Care Center, LLC* (2026) 120 Cal.App.5th 1.

The court held that no enforceable arbitration agreement was formed between the consumer and the seller in connection with online purchases because the website failed to provide reasonably conspicuous notice that, by clicking the order submission button, the consumer was assenting to an arbitration provision contained in the website's Terms of Use. *Cruz v. Tapestry, Inc.* (2025) 113 Cal.App.5th 943, 335 Cal.Rptr.3d 906.

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

California Class Action Practice and Procedure

California Rules of Court, rule 3.764(c), now provides revised deadlines for filing and for the length of moving and opposition papers.

The Supreme Court, in *Trump v. CASA, Inc.* (2025) 606 U.S. 831 [145 S.Ct. 2540, 222 L.Ed.2d 930], addressed the issue of "universal injunctions" issued by several district courts that enjoined enforcement of a presidential executive order concerning birthright citizenship. The decision was grounded in a detailed analysis of court powers of equity and procedural powers, which determined that such universal injunctions were not authorized by either the Judiciary Act of 1789, nor by traditional common law or equity. Upon remand, the relief requested by plaintiffs was restyled as a Rule 23 class action.

A class of university researchers who lost grant funding due to federal agency terminations suffered a concrete injury — specifically, the loss of multi-year research grants. The court addressed the merits of their claims, including granting a preliminary injunction for the class whose grants were terminated based on viewpoint discrimination, which further indicates that Article III standing was established. *Thakur v. Trump* (9th Cir. May 26, 2026, No. 25-4249) 2026 LX 270059.) The Court in *Satanic Temple v. Labrador* (9th Cir. 2025) 149 F.4th 1047 denied associational standing to Plaintiff for its failure to establish that any individual members would have standing to sue in their own right.

The Ninth Circuit reversed the district court's grant of summary judgment based on circumstantial evidence of mismatched class members' Social Security numbers and records. *Healy v. Milliman, Inc.* (9th Cir. 2026) 164 F.4th 701.

Askins v. CRST Expedited, Inc. 120 Cal. App. 5th 1190, 345 Cal. Rptr. 3d 130 (1st Dist. 2026) reversed a trial court's grant of decertification for lack of "concrete injury" under Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.), contrary to *Limon v. Circle K Stores Inc.* (2022) 84 Cal.App.5th 671 [300 Cal.Rptr.3d 572], which held a plaintiff must allege a concrete injury for standing under the FCRA in California courts. *Askins* now holds that no concrete injury under the FCRA is required in California.

In *Kashanian v. National Enterprise Systems, Inc.* (2025) 114 Cal.App.5th 1037 [337 Cal.Rptr.3d 18], summary judgment for lack of individual standing was reversed; the court determined that the deficient type size used on a Consumer Debt Notice sent to plaintiff, even without other actual injury, constituted a statutory violation sufficient to confer standing on a consumer.

Standing and potential recovery of statutory damages under the Investigative Consumer Reporting Agencies Act require only a statutory violation—some invasion of the plaintiff's legally protected interests—and not concrete injury. *Parsonage v. Wal-Mart Associates, Inc.* (2026) 118 Cal.App.5th 399 [341 Cal.Rptr.3d 447].

A complaint alleging violations of privacy by recording personally identifiable information after visits to a website requires an allegation of concrete harm to satisfy Article III constitutional standing. A proposed class of website visitors did not allege the type of private information historically protected; instead, the class must allege concrete injury that bears a close relationship to a harm traditionally recognized at common law, thus the case was dismissed for lack of subject matter jurisdiction. *Popa v. Microsoft Corp.* (9th Cir. 2025) 153 F.4th 784.

Notably, a class action alleging violations of the California Invasion of Privacy Act (CIPA), Cal. Penal Code § 630 et seq., based on stored information collected via a tracking Pixel after visiting a website survived a motion to dismiss for lack of Article III and statutory standing. The Court found that a violation of privacy rights under CIPA is an injury in itself, and no additional harm beyond the invasion of the private right conferred by the statute is required for standing. *Camplisson v. Adidas Am., Inc.* (S.D.Cal. 2025) 809 F. Supp. 3d 1095.

With a class certification motion pending, an employer entered into settlement agreements and made payments to hundreds of individuals who signed individual settlement agreements. The Court found these settlement agreements were voidable and ordered curative notice be sent to affected employees, informing them of their rights to void the settlement agreements and rejoin the pending class, explaining that under California rescission statutes, the settlement payments could be treated as an offset against any recovery, and that the issue of repayment would be addressed at the time of judgment. *The Merchant of Tennis, Inc. v. Superior Court* (2026) 117 Cal.App.5th 1141 [340 Cal.Rptr.3d 873].

The denial of class certification was reversed on the basis that a common determination of liability is feasible and appropriate over individual issues of liability. *Cobos v. National General Ins. Co.* (2025) 112 Cal.App.5th 1272 [335 Cal.Rptr.3d 90].

A trial verdict based in part on a masters findings after a nonconsensual judicial reference required reversal of the judgment in favor of the certified class. Absent the parties' consent, such delegation to a master is strictly circumscribed by the California Constitution and Code of Civil Procedure. *Cortina v. North American Title Co.* 120 Cal. App. 5th 1030, 345 Cal. Rptr. 3d 361 (5th Dist. 2026).

Federal Jurisdiction

The Supreme Court of the United States, in *Enbridge Energy, LP v. Nessel* (2026) ___U.S.___ [146 S.Ct. 1074, 224 L.Ed.2d 587], held that equitable tolling does not apply to the 30-day deadline for remand to state court.

Amendment to the Class Action Complaint after removal to eliminate the class action allegations—which had provided the sole basis for federal jurisdiction under the Class Action Fairness Act (CAFA)—resulted in the loss of subject matter jurisdiction and the remand of the case to state court. *Faulk v. Jeld-Wen, Inc.* (9th Cir. 2025) 159 F.4th 618. Remand was granted after the State of California narrowed its claims to non-federal matters. *California v. Express Scripts, Inc.* (9th Cir. 2025) 154 F.4th 1069.

An overly broad protective order was reversed in *Cordero v. Stemilt AG Servs., LLC* (9th Cir. 2025) 142 F.4th 1201, as plaintiff counsel, a legal services nonprofit, is "aggrieved" and has Article 111 standing.

PAGA

Under California's Private Attorney General Act, Labor Code 2698 et seq. (PAGA), every claim has two components: an individual claim the employee personally suffered and a representative claim on behalf of other aggrieved employees. The California Supreme Court has agreed to resolve a major dispute over "headless" PAGA claims—representative-only Private Attorneys General Act actions that omit any individual component—in *Leeper v. Shipt, Inc.* (S289305).

MISCELLANEOUS

As of January 1, 2026, under Cal. Bus. & Prof. Code § 6156, California lawyers are subject to additional state bar rules on litigation funding, preventing fee sharing with an out-of-state "alternative business structure."

Remote hearings are among the significant changes to legal practice that emerged during the pandemic. According to the Judicial Council of California, California's 58 superior courts conducted nearly 1.75 million remote proceedings between September 2024 and August of 2025.

In addition to these practical advantages, practitioners now benefit from the expanding body of intellectual research available through various artificial intelligence resources. The Judicial

Council's Task Force on Generative Artificial Intelligence has, among other initiatives, proposed a Rule of Court governing GenAI Model Use Policies as well as a new Standard of Judicial Administration.

I gratefully acknowledge the contributions of my colleague, paralegal Matthew Atlas, whose annual efforts in organizing and updating this work are invaluable. I also extend my appreciation to the attorneys of Cohelan Khoury & Singer for their thoughtful insights and recommendations that strengthen each yearly revision.

Now, in my fifth decade of law practice—and marking the 30th anniversary of this publication—we remain committed to supporting practitioners as they navigate the rapidly evolving landscape of California class action practice.

TIMOTHY D. COHELAN
Cohelan Khoury and Singer
San Diego, California
September 2026