

SIGNATURE

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HON. HALIM DHANIDINA CASE LIST

TORT

Gonzalez v. Lew

2/1/2018

20 Cal.App.5th 155

Heirs sued landlords after two family members were killed in a fire that engulfed their rented home. After the landlords rejected a \$1.5 million settlement offer under Code of Civil Procedure section 998, a jury awarded heirs for \$2.5 million. The court awarded heirs their costs and the landlords appealed. Court affirmed the award, rejecting landlord's argument that joint settlement offer was invalid as it did not allow landlords to evaluate each claim independently. Court held that if plaintiffs with disparate claims want to make a global settlement offer that would put an end to the litigation at hand (and work out the details among themselves), they should be encouraged to do so.

Delgado v. Television Center, Inc.

2/2/2018

20 Cal.App.5th 1078

Plaintiff heirs sued defendant after family member fell to his death while washing windows on defendant's building. Plaintiffs alleged causes of action for negligence and negligence per se, claiming that decedent was fatally injured because defendant failed to install structural roof anchors, as required by statute, to which decedent could attach a descent apparatus. The trial court granted summary judgment in favor of defendant and plaintiffs appealed. Court affirmed judgment, holding that *Privette v. Superior Court* (1993) 5 Cal.4th 689 and its progeny barred plaintiffs' claims because it was undisputed that defendant did not direct how the window washing should be done nor otherwise interfere with the means or methods of accomplishing the work.

Petersons v. Cooper

4/19/2018

2018 WL 1870723

Defendant retained neurosurgeon to serve as a medical expert in a wrongful death lawsuit. Neurosurgeon sued defendant, alleging that defendant breached the retainer agreement by failing to pay the neurosurgeon his fees. Trial court found in favor of neurosurgeon after a bench trial and defendant appealed. Court affirmed the judgment, holding substantial evidence supported finding that neurosurgeon was not negligent in performing his professional services, trial court did not abuse its discretion in limiting defendant's examination regarding neurosurgeon's research, the trial court properly rejected defendant's claim for an offset under the parol evidence rule, and the trial court reasonably rejected defendant's unconscionability defense.

SIGNATURE

RESOLUTION

B.B. v. County of Los Angeles

7/10/2018

25 Cal.App.5th 115

Wife and five children brought wrongful death action against the county after husband and father suffered brain death from lack of oxygen due to a cardiac arrest. The jury awarded the family \$8 million in damages and county appealed, arguing insufficient evidence, attorney misconduct, instructional error, and allocation of fault given. Court reversed in part and affirmed in part, holding that Civil Code section 1431.2 mandates allocation of noneconomic damages in proportion to each defendant's comparative fault, notwithstanding jury's finding of intentional misconduct. Further, on family's cross-appeal, court found that family brought sufficient evidence to raise a triable issue of fact as to whether defendant's actions interfered with father's right to be free from unreasonable seizure in support of the family's claim for civil rights violations under Civil Code section 52.1.

Batchelder v. Smith

8/20/2018

2018 WL 3968888

Plaintiff appealed summary judgment in favor of defendants in medical malpractice action. Court affirmed summary judgment, finding that plaintiff's Doe amendments were invalid because he knew the identity of defendants at the time he filed his action, and was aware of his potential claim against them for failing to diagnose a kidney stone which was the cause of his back pain.

Jackson v. America's Servicing Company

9/19/2018

2018 WL 4474667

Plaintiff lost her home in a nonjudicial foreclosure sale and sued defendant for negligence. Trial court granted summary judgment in favor of defendant and plaintiff appealed. Court affirmed judgment, holding plaintiff failed to meet her burden on appeal because she failed to provide several critical documents in the record, mainly, defendant's separate statement and supporting declarations, as well as plaintiff's declaration in support of her opposition papers.

Kivorkian v. Star Insurance Company

10/26/2018

2018 WL 5306921

Plaintiff suffered personal injuries in an automobile accident and made a claim to his insurer. Plaintiff then demanded arbitration under the uninsured motorist provision of his policy and claimed his damages exceeded \$1,000,000. The arbitrator awarded plaintiff \$70,000 and plaintiff petitioned to vacate the award on the ground that the insurer engaged in misconduct to procure it. After trial court dismissed the petition, plaintiff filed a bad faith action against

SIGNATURE

RESOLUTION

insurer, which was dismissed. Court affirmed the dismissal, holding the finality of judgments doctrine precluded plaintiff's claims based on insurer's misconduct in connection with the arbitration and constituted an impermissible collateral attack on the arbitration award.

Geselowitz v. Allstate Insurance Company

11/9/2018

2018 WL 5861556

Cross-plaintiff appealed court's order granting cross-defendant's special motion to strike under Code of Civil Procedure section 425.16 (anti-SLAPP) after cross-plaintiff sued cross-defendant for abuse of process and unfair business practices under Business and Professions Code section 17200. Court affirmed order, holding serving subpoenas to compel depositions and production of documents in ongoing litigation was protected activity and abuse of process and unfair business practices causes of action were barred by the litigation privilege.

Omidi v. Schunke

11/27/2018

2018 WL 6178195

Plaintiff appealed an order of dismissal and an order granting defendant medical board's special motion to strike under Code of Civil Procedure section 425.16 (anti-SLAPP). Plaintiff sued medical board alleging causes of action for violation of civil rights under 42 U.S.C. section 1983, (2) violation of the Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1681 et seq.), (3) sexual harassment based on a hostile work environment, pursuant to the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.), (4) state civil rights violations (Civ. Code, §§ 51, 52.1), (5) intentional interference with prospective economic advantage, (6) negligent interference with prospective economic advantage, (7) intentional infliction of emotional distress, and (8) negligent infliction of emotional distress. Court affirmed the dismissal and motion to strike, holding plaintiff had not stated a cause of action under FCRA because medical board was not a consumer reporting agency and the newspaper articles forwarded to university were not consumer reports; plaintiff's sexual harassment claim failed because he could not allege a hostile work environment; plaintiff's civil rights claims failed because his termination was insufficient to state a claim under the Bain Act; plaintiff's 1983 claims were undeveloped and thus forfeited; and the trial court properly found that plaintiff failed to establish a probability of prevailing on the merits of his claims.

Omidi v. National Resident Matching Program

11/27/2018

2018 WL 6178016

Trial court sustained demurrer and granted summary judgment in favor of defendant medical residency matching program. Court affirmed judgment, holding that university did not delegate any official state power to matching program, therefore, matching program's policies were not developed and enforced under the color of state law, which was fatal to plaintiff's 1983 claims.

SIGNATURE

RESOLUTION

Further, plaintiff failed to raise a triable issue of fact that university dean, who was also a volunteer member of matching program's board, was acting in a dual capacity as a state actor.

Marte v. County of Los Angeles

3/25/2019

2019 WL 1325035

Plaintiffs sued county for wrongful death after family member was killed while walking in a negligently designed crosswalk. The trial court granted the county's motion to disqualify plaintiffs' counsel, who had represented the county on numerous matters, and plaintiffs appealed. Court affirmed the order, finding that substantial evidence supported plaintiffs' counsel represented the county in more than 21 matters, including one case involving the same legal theories at issue in the present case, which gave plaintiffs' counsel a well-developed, specialized understanding of the county's litigation and settlement strategy which disqualified her.

Kensington Caterers, Inc. v. Iwuchuku

3/26/2019

2019 WL 1349474

Plaintiffs sued defendants, alleging wrongful termination in violation of public policy, as well as statutory claims under the Labor Code and under the Fair Employment and Housing Act (FEHA). Plaintiffs obtained default judgments against each defendant. Plaintiffs assigned their judgments to a collections company that obtained writs of execution. The collections company levied on defendants' accounts and then assigned and transferred all rights, title, and interest in judgments back to plaintiffs. Subsequently, defendants moved to set aside the default judgments, alleging the judgments were obtained by fraud. Plaintiffs and their counsel filed a special motion to strike, contending the cross-complaint was barred by the litigation privilege. Court denied the motion and plaintiffs appealed. Court affirmed the order, holding defendants' attempts to restore the seized funds after the default judgments were vacated and after the trial court ordered the funds returned did not arise from protected activity, and the allegations of the initial litigation merely provided context to defendants' claims for conversion and unjust enrichment.

Deleon v. Fregoso

3/28/2019

2019 WL 1396734

Plaintiff sued defendant after she hit him with her car as he was using a marked crosswalk. After a jury found defendant liable, she appealed, arguing (1) insufficient evidence supports the jury's negligence finding; (2) it was unreasonable for the jury to find she was 95 percent at fault for causing the accident; and (3) the court prejudicially erred when it allowed a traffic engineer to testify about the average perception-response time for a driver because he was not an expert on that matter. Court affirmed judgment, holding defendant mischaracterized the

SIGNATURE

RESOLUTION

testimony of a critical expert witness that supported the jury's finding that she was negligent because she was paying attention to a passing truck instead of monitoring the crosswalk where defendant was walking; the jury's comparative fault finding was supported by the facts that plaintiff was using a marked crosswalk that was illuminated by streetlights, defendant was aware that the road had pedestrian crosswalks, and plaintiff could have seen plaintiff from a distance that would have given her sufficient distance to stop; and the admission of plaintiff's expert testimony regarding a driver's perception-response time was not prejudicial under Evidence Code section 801.

The November First Partnership v. Islam

4/26/2019

2019 WL 1873279

Cross-plaintiff filed a cross-complaint alleging tort and contract claims against other members of a limited partnership. After a bench trial, the trial court found a dissolution action filed by one of the defendants breached the partnership agreement but caused no damage, and none of cross-plaintiff's other claims had merit. After finding the cross-defendants were the prevailing parties, the court ordered cross-plaintiff to pay more than \$ 880,000 in costs and attorney fees. Cross-plaintiff appealed. Court affirmed the judgment, holding that cross-plaintiff forfeited the issue of obtaining nominal damages by failing to raise it in the trial court.

Kevorkian v. Hastings

4/30/2019

2019 WL 1922932

Plaintiff appealed an order denying his motion to set aside his voluntary dismissal under Code of Civil Procedure section 473 of his action, alleging defendant attacked him with pepper spray and assaulted him when he went to serve her with court papers for an upcoming court hearing in another matter. Court affirmed order, holding that plaintiff's dismissal was not due to mistake, inadvertence, surprise, or excusable neglect because the evidence showed that plaintiff negotiated the dismissal in exchange for defendant's waiver of her right to collect unpaid sanctions in order for plaintiff to recover his van.

Pullara v. Burchett

5/16/2019

2019 WL 2136115

Plaintiff appealed from the trial court's order granting the special motion to strike under Code of Civil Procedure 425.16 (anti-SLAPP) brought by university defendants. The complaint included causes of action for defamation, defamation per se, intentional infliction of emotional distress, and negligent infliction of emotional distress and alleged that a university employee falsely reported to police that plaintiff had made a threatening remark during a telephone conversation with a student working in the provost's office. Court affirmed order, holding that filing a police report—even if it is alleged to be false—is plainly within the scope of the anti-

SIGNATURE

RESOLUTION

SLAPP statute unless it is undisputed that the report was, in fact, false. Here, evidence showed that university defendants did not speak with any law enforcement personnel about plaintiff, file a police report (let alone a false police report) about plaintiff, or make false statements to the police about plaintiff, thus, defendants met their burden to show that plaintiff's claim was meritless.

Stokes v. Baker

5/30/2019

35 Cal.App.5th 946

Patient brought action against emergency room physician, alleging negligent failure to diagnose a subarachnoid hemorrhage. The trial court granted summary judgment in favor of physician and plaintiff appealed. Court reversed judgment, holding Health and Safety Code section 1799.110(c) providing that, in negligence action against emergency room physician, court could only admit expert medical testimony from physicians with substantial professional experience within the last five years with emergency medical coverage, does not require every expert who provides medical testimony in the action to have such experience; rather, it applies only to those medical experts who testify as to emergency room physician's standard of care.

Gallegos v. Tesoro Sierra Properties, LLC

6/19/2019

2019 WL 2521712

Plaintiff fell off a concrete curb and injured his ankle. He sued the contractor and the owner and operator of the gas station and minimart on the premises. The trial court filed judgment on a jury verdict finding that contractor was not in control of the premises and was not negligent. The jury found that operator and plaintiff were equally negligent. Plaintiff's damages totaled \$ 209,643.81, and the jury awarded plaintiff \$ 104,821.91 against operator and zero damages against contractor. On appeal, plaintiff challenged the trial court's award of expert fees to contractor under Code of Civil Procedure 998. Court dismissed the appeal because it lacked jurisdiction to hear plaintiff's because he did not properly appeal from the order denying his motion to tax costs and repeatedly indicated that he was only appealing from the judgment and the order denying his motion for new trial.

Pereida v. Doljenko

6/20/2019

2019 WL 2537692

Defendants appealed from civil harassment restraining orders entered against them. Plaintiff invited defendants, who were homeless, to stay with her temporarily at her office, however, when she asked them to leave, they slammed the office door on her foot and threatened her. Court affirmed orders, holding that the evidence showed that plaintiff met her burden to show defendants engaged in the requisite course of conduct under Code of Civil Procedure 527.6

SIGNATURE

RESOLUTION

because defendants barred plaintiff from her office by slamming the door on her and threatened her by saying "we'll be back" when they were escorted off the premises.

Sealutions, LLC v. Schwab

6/25/2019

2019 WL 2591024

Plaintiffs sued 12 defendants for a variety of tort and contract claims arising out of the parties' former business dealings. Plaintiffs filed a fictitious name amendment substituting a Cayman Islands limited partnership as a Doe defendant. Plaintiffs then purported to effect service on the fund by sending a summons and complaint by certified mail to the Securities Administrator for the State of California, Department of Business Oversight. The trial court granted the fund's motion to quash service of the summons, and plaintiffs appealed. The Court affirmed the order, holding that, because the fund agreed that a designated officer of the state could accept service on its behalf only with regard to an action "arising out of any activity in connection with the offering of securities," and plaintiffs could not establish that their claims arose out of the offerings of securities, the trial court properly granted the motion to quash.

Ulloa v. Gonzalez

7/11/2019

2019 WL 3026850

Defendant appealed from a civil harassment restraining order protecting plaintiff and her daughter. Court affirmed the order, finding defendant could not establish that trial court erred in considering social media and text messages exchanged with plaintiff did not constitute harassment because defendant failed to provide those messages on appeal.

Louise v. Howard Jarvis Taxpayers Association

7/15/2019

2019 WL 3162133

Defendant appealed an order denying its special motion to strike under Code of Civil Procedure section 425.16 (anti-SLAPP) a complaint filed by plaintiffs, alleging defendant fraudulently induced registered voters to sign a petition to recall a Democratic state senator. Court reversed order, holding that plaintiffs failed to meet their burden of establishing a probability of prevailing on the merits on their fraud claim because plaintiff failed to establish the identity of the signature gatherers and to establish that those individuals were acting as agents of defendant as opposed to agents of another entity, independent contractors, or unpaid volunteers working on the recall campaign.

SIGNATURE

RESOLUTION

Castellon v. San Fernando Police Officers Association

7/18/2019

2019 WL 3228955

Police association appealed the trial court's order denying its special motion to strike under Code of Civil Procedure section 425.16 (anti-SLAPP) the complaint brought by a former police officer and former member of the association. The officer sued the association after it produced and mailed a two-sided flyer to residents of city in advance of a local election. The flyer called out the officer by name and either directly stated or insinuated that he had previously committed a number of misdeeds in coordination with the prior mayor of the city, who was purportedly recalled by an overwhelming majority of the city's residents. Court reversed in part and affirmed in part the order, holding that officer established that his claims for defamation, false light, and intentional infliction of emotional distress had the minimal merit necessary to defeat an anti-SLAPP motion even though the conduct at issue was clearly protected activity. However, with respect to another flyer that was not created or distributed by the association, plaintiff could not establish that he would prevail on the merits.

Sun v. Chang

7/22/2019

2019 WL 3282956

Plaintiff created a small business to support her request for permanent residence in the United States under the EB-5 program. Plaintiff invested \$500,000 in the business and hired defendant to manage it. The business became insolvent and the United States Citizenship and Immigration Service (USCIS) denied plaintiff's residency request, concluding that her representations about the business activities were untrue. Plaintiff sued defendant and a jury awarded her damages for a variety of torts, including fraud, and common counts. Court affirmed judgment, finding substantial evidence supported plaintiff's claims that defendant never intended to operate the business as a general manager, but instead drained the business of its cash and created false reports of purchases and sales.

Sun v. Chang II

7/22/2019

2019 WL 3282985

Plaintiff obtained a judgment against defendant, and subsequently secured an order assigning rents from real property owned by defendant to satisfy the judgment. Defendant moved to vacate the assignment order, arguing he had not been properly served with the assignment motion and was no longer the record owner of the real property. The trial court denied the motion to vacate, and defendant appealed. Court affirmed the order, holding that an order denying a Code of Civil Procedure section 1008 motion is not appealable and that was the only authority cited by defendant in support of his motion to vacate the assignment. However, even if the Court were to construe defendant's appeal to be from a motion to vacate under Code of Civil Procedure section 473, which is appealable, the appeal would fail on the merits because

SIGNATURE

RESOLUTION

substantial evidence supported the trial court's finding that defendant was properly served with the assignment order and defendant lacked standing to assert error on behalf of the record owner of the real property.

Moore v. Lerner

7/23/2019

2019 WL 3297146

Plaintiff appealed from a dismissal of his action for breach of contract and intentional interference with prospective economic advantage after he failed to post a vexatious litigant bond under Code of Civil Procedure section 391. Court affirmed the dismissal, holding trial court properly qualified plaintiff as a vexatious litigant given two prior findings by other courts that plaintiff was a vexatious litigant; plaintiff could not demonstrate his claims in this action were not frivolous; and plaintiff could not use an unliquidated judgment against a trust as an offset or an exemption to the bond requirement given the judgment was against a separate entity from plaintiff.

Ash v. Pick

9/25/2019

2019 WL 4667999

Plaintiff sued defendant, alleging defendant's dog bit him, causing plaintiff personal injuries. Plaintiff appealed the judgment entered on the jury's special verdict, which found defendant did not own the dog that bit plaintiff. On appeal, plaintiff asserted numerous trial errors and that the trial court erred in denying his motion to tax costs. Court affirmed judgment and order, holding: plaintiff failed to show prejudicial error regarding the transfer of his case given the trial court's finding that the personal injury case was too complicated for the personal injury courts to manage; plaintiff failed to establish prejudicial error regarding the trial court's denial of a continuance because the evidence showed plaintiff was well aware of a conflict with the trial court dates but waited until the last minute to ask for a continuance; and plaintiff could not establish an abuse of discretion on the trial court's evidentiary rulings because the "bite report" was inadmissible hearsay that did not disclose where the report came from and plaintiff's other evidence was irrelevant to the issue of it was defendant's dog bit plaintiff.

Koerber v. Project Veritas

9/26/2019

2019 WL 4686622

Plaintiff appealed from the trial court's order granting defendant's special motion to strike all causes of action against it in the operative complaint under Code of Civil Procedure section 425.16 (anti-SLAPP). The lawsuit arose out defendant's publication of an interview with plaintiff where plaintiff made numerous disparaging remarks about Common Core and other political issues. Plaintiff argued the trial court abused its discretion in denying her ex parte request to conduct additional discovery and erred in granting defendant's anti-SLAPP motion.

SIGNATURE

RESOLUTION

Court affirmed the order, holding the trial court did not abuse its discretion in denying plaintiff's request to conduct additional discovery; the trial court correctly found all plaintiff's claims against defendant arise out of the defendant's protected free speech activity; and plaintiff has forfeited her challenge to the court's findings that she failed to demonstrate a probability of prevailing on any of her claims.

Shorter v. Ralphs Grocery Company

10/3/2019

2019 WL 4879016

Plaintiff filed two lawsuits against a grocery store and a security company after she was assaulted in an area outside of the store by the store's patrons, alleging that the absence of security guards outside the store substantially contributed to her injury. The trial court granted summary judgment in favor of the grocery store in the first action, finding that it was undisputed that plaintiff was the primary cause of the altercation with the store's patrons. In the second action, plaintiff repeated her allegations and added new negligence theories and the trial court sustained the defendants' demurrers on res judicata grounds. Court affirmed the judgment of dismissal, holding the specific factual finding on which the summary judgment in the prior case was based—that the absence of security guards on the premises was not the proximate cause of plaintiff's injury—was the same issue raised in the second case and therefore the second action was barred by res judicata.

Berlin v. Johnson

10/16/2019

2019 WL 5204252

Plaintiff sued defendant for medical malpractice after plaintiff was injured after a back surgery performed by defendant. The trial court granted summary judgment in favor of the defendant, finding that plaintiff failed to raise a triable issue of fact about whether the defendant exercised reasonable care in performing the surgery. Court affirmed the judgment, finding plaintiff failed to proffer any expert opinion that defendant's surgical performance fell below the community standard of care as both experts merely testified the specific surgery may not have been not performed (it was undisputed that it had been) and that the operation was not successful.

Simoni v. Swan

10/25/2019

2019 WL 5485209

Plaintiff posted statements to the consumer review website Yelp.com claiming, among other things, defendant doctor “screwed up so badly” on a plastic surgery he performed on her that she needed “10 surgeries” and “still need[ed] many more” to “fix it.” After corresponding with plaintiff about negative statements she posted to other review websites, defendant sued for defamation based on the Yelp review. Plaintiff responded with a cross-complaint for

SIGNATURE

RESOLUTION

defamation based on a blog post defendant published to his website, in which he claimed plaintiff posted “false negative reviews” and tried to “blackmail” him. Plaintiff filed a special motion to strike under Code of Civil Procedure section 425.16 (anti-SLAPP), arguing her review consisted of nonactionable opinions or truthful statements on a matter of public interest. The trial court denied the motion because defendant had demonstrated a probability of prevailing on the claim by submitting evidence of truthfulness of plaintiff’s statement. Court affirmed the order, holding a reasonable fact finder could conclude the statement that defendant “screwed up” declared or implied an assertion of fact, and the negative reviews referenced in defendant’s blog post were critical of defendant’s medical practice and sought to warn prospective customers of, among other things, a liposuction that allegedly “went wrong.” Because defendant’s blog post sought to countermand those negative reviews, it concerned an issue of public interest.

Leung v. Leung

10/30/2019

2019 WL 5587257

Defendant appealed a judgment entered in favor of individual plaintiff and a preschool over the sale and operation of the school. The court affirmed the judgment because defendant failed to provide a sufficient record for meaningful appellate review.

Chapman v. Hardway

11/7/2019

2019 WL 5799599

Defendant appealed from a civil harassment restraining order protecting plaintiff and his wife and son after defendant exhibited bizarre behavior after plaintiff evicted defendant from his property. Court affirmed the order, finding substantial evidence showed that defendant went on plaintiff’s property multiple times after he was evicted and threatening plaintiff’s family.

Tesoro Refining & Marketing Co. LLC v. Los Angeles Regional Water Quality Control Board

11/22/2019

42 Cal.App.5th 453

Gasoline company filed petition for writ of mandate, seeking to set aside cleanup and abatement order issued by regional water quality control board based on alleged discharge of contaminants from pipelines. The trial court denied the petition and company appealed. Court affirmed judgment, holding sufficient evidence supported finding that gasoline discharge from company’s pipeline was source of contamination; issue of whether event causing contamination occurred at point in time purportedly necessary for it to be a “discharge” was not exempt from administrative exhaustion requirement; raising argument that contamination was not a “discharge” before agency would have been futile; and plume of gasoline contamination was a “discharge” under water quality statute regardless of date of initial contaminating event.

SIGNATURE

RESOLUTION

Blas v. U.S. Sports Camps, Inc.

11/22/2019

2019 WL 6242469

Plaintiff appealed a judgment entered after the trial court granted separate summary judgment motions in favor of defendants sports camp and golf course operator in a personal injury action stemming from a golfing accident during a summer camp at a golf course. Plaintiff, who was seven years old at the time, was struck with a golf club by another seven-year-old camper while practicing chip shots under the supervision of volunteer golf instructor. Court affirmed in part and reversed in part the judgments, holding that defendants' evidence successfully negated plaintiff's joint venture theory, however, the sports camp's employment documents, which showed that sports camp exercised substantive control over the volunteer golf instructor, were sufficient to raise a triable issue of fact as to whether the sports camp could be held vicariously liable under a respondeat superior doctrine.

Richie v. Kassan

11/25/2019

2019 WL 6270416

Employer sued former employer for misappropriation of trade secrets and breach of his employment severance agreement. Employee cross-claimed for defamation, alleging other employees made disparaging remarks about him to mutual professional contacts and the police. Plaintiff brought a special motion to strike under Code of Civil Procedure section 425.16 (anti-SLAPP), which the trial court granted in part and denied in part, finding that the statements to law enforcement were protected, but granted it as to those statements made to the mutual professional contacts. Court affirmed the order, holding the statements to colleagues were not protected under the anti-SLAPP statute as there was no evidence that the alleged statements were made in a public forum and related to a matter of public concern.

Berlin v. Johnson II

12/10/2019

2019 WL 6711407

Plaintiff sued doctor for professional negligence related to a spinal surgery. The trial court granted summary judgment in favor of spine center, finding that plaintiff improperly added the spine center as a Doe defendant even though he knew of the spine center's existence when he filed his complaint. The trial court also awarded the doctor's costs for retrieval of plaintiff's medical records. Court reversed, holding that a triable issue of fact existed as to whether plaintiff knew about the spine center when he filed his complaint given there was evidence that plaintiff believed the spine center was the same entity as the hospital that he did name as a defendant. Further, the trial court improperly awarded the doctor his costs for retrieving plaintiff's medical record because those costs were essentially photocopying costs, which are generally not recoverable under Code of Civil Procedure section 1033.5(b)(3).

SIGNATURE

RESOLUTION

Koerber v. Project Veritas II

1/7/2020

2020 WL 64022

Plaintiff sued defendant after defendant published a surreptitiously recorded interview of her. Plaintiff appealed the trial court's orders granting defendants' motion to quash service of summons. Court dismissed the appeal, holding that the trial court's orders were moot because plaintiff filed her amended complaint before the trial court entered its orders granting the motions to quash.

Kevorkian v. Hastings II

1/23/2020

2020 WL 373039

Plaintiff appealed an order denying his motion under Code of Civil Procedure section 473(d) to set aside an earlier order declaring him a vexatious litigant in an action where plaintiff alleged that defendant assaulted plaintiff with pepper spray when he tried to serve her with court papers. Court affirmed order, holding that even though plaintiff voluntarily dismissed his lawsuit after a settlement agreement and mutual release, the trial court retained jurisdiction to rule on defendant's vexatious litigant motion under Code of Civil Procedure 391.7

MacDonald v. Kempinsky

1/24/2020

2020 WL 401603

Plaintiff sued defendant and defense counsel after plaintiff received a demand letter that threatened to name him and disclose his sexual proclivities. The trial court granted defendants' special motion to strike under Code of Civil Procedure section 425.16 (anti-SLAPP). Plaintiff filed a second lawsuit against defendants alleging certain misconduct during the first lawsuit, and defendant filed another special motion to strike, which was granted. Court affirmed orders, holding that plaintiff failed to present a coherent argument demonstrating error, and even though plaintiff was not an attorney, he should have been familiar with the legal principles governing appeals given the extensive litigation and the two prior appeals.

Maggiore v. Vandenhende

2/5/2020

2020 WL 563335

Plaintiff appealed an order striking his claims for trade libel and tortious interference with contract under Code of Civil Procedure section 425.16 (anti-SLAPP). Plaintiff sued defendants based on false accusations to representatives of a record company with the intent to interfere with a pre-existing contract between plaintiff and the record company. Court reversed order, holding defendants improperly recast plaintiff's allegations as limited to a public scandal

SIGNATURE

RESOLUTION

regarding a song rather, however, plaintiff's allegations clearly encompassed statements made to the record company's representatives.

California Lawyers Group LLP v. McNulty

2/27/2020

2020 WL 948342

Defendant retained plaintiffs to represent him in a lawsuit related to an automobile accident. Defendant later terminated plaintiffs and retained a new law firm, who subsequently negotiated \$575,000 settlement with the insurer. Plaintiffs asserted a lien on the funds and sued defendant, the new law firm, and the insurer on a variety of torts, asserting that the disbursement of the settlement funds interfered with his lien. The trial court dismissed the lawsuit on statute of limitations grounds. Court affirmed the dismissal, holding that plaintiff's claims were barred under Code of Civil Procedure section 340.6, which provides that a wrongful act or omission arising in the performance of professional services is subject to a one-year statute of limitations, because all of plaintiff's claims arose out the payment and distribution of the settlement funds, which are governed by the California Rules of Professional Conduct.

Fontana v. Thomas

4/9/2020

2020 WL 1809210

Court affirmed domestic violence restraining order against husband protecting his estranged wife, holding it was proper for trial court to rely on husband's admission that he "self-identified" as "a danger to his wife."

Ramirez v. Javahery

5/15/2020

2020 WL 2505702

Mother sued physicians after her son died from a malignant brain tumor. Physicians had treated son for many years for brain tumors and seizures. The trial court granted summary judgment in favor of physicians, finding physicians' conduct did not fall below standard of care and mother could not establish causation. Court affirmed judgment, holding plaintiff could not allege that physicians failed to obtain informed consent for the treatment plan pursued, only that physicians failed to adequately advise plaintiff of surgical alternatives to the plan, and it was within the standard of care not recommend the surgical option.

Hanouchian v. Steele

6/4/2020

51 Cal.App.5th 99

Partygoer brought action against hosts of off-campus sorority party, seeking to recover damages for injuries he sustained when he was attacked by two other men at the party under duty to protect and negligent undertaking theories. The trial court sustained hosts' demurrers

SIGNATURE

RESOLUTION

without leave to amend and entered judgment for hosts, and partygoer appealed. Court affirmed the dismissals, holding plaintiff failed to establish high degree of foreseeability necessary for hosts to have duty to take highly burdensome measures to prevent third-party criminal attacks, and defendants' agreements to university's fraternal organization safety protocols did not support negligent undertaking claim.

Sojai v. Solomon

7/13/2020

2020 WL 3957208

Plaintiff sued defendants driver and owner of vehicle after plaintiff sustained injuries in a pile-up automobile accident, alleging motor vehicle and general negligence and claiming compensatory damages according to proof. The trial court granted summary judgment in favor of the defendants, and plaintiff appealed. Court affirmed the judgment, holding plaintiff failed to show trial court erred in denying him a continuance because there was no evidence that he had asked for a continuance. Further, the admitted facts showed defendants were entitled to judgment as a matter of law based on plaintiff's deemed admissions under Code of Civil Procedure 2033.280 that the accident was not the result of defendants' failure to reasonable care and the accident did not result in any type of harm to plaintiff whatsoever.

Nelson v. Holquin

7/28/2020

2020 WL 4332858

Plaintiff was injured in an automobile accident and sued the estate of the driver who caused the accident. Estate challenged the trial court's post-judgment imposition of a cost-of-proof award against it under Code of Civil Procedure section 2033.420. Court dismissed the appeal because the estate, through its insurer, voluntarily paid the award as well as the remainder of the judgment, and those payments had been completely disbursed to various parties including lienholders.

Albarracin v. Fidelity National Financial, Inc.

8/13/2020

2020 WL 4691740

Plaintiff sued her former employer and supervisor for intentional infliction of emotional distress and several employment-related claims arising out of the termination of her employment after she complained that her supervisor had sexually harassed her during a work retreat. A jury found defendants liable for intentional infliction of emotional distress, retaliation for engaging in protected activity under the Fair Employment and Housing Act (FEHA), and wrongful termination. The jury also awarded plaintiff damages for emotional distress and punitive damages against the employer. Defendants appealed the judgment and attorney fee award. Court affirmed the judgment and order, holding substantial evidence supported the jury's finding of oppressive and malicious conduct because defendants purposely ignored plaintiff's

SIGNATURE

RESOLUTION

complaints and instead looked for a way to terminate her employment. Further, the punitive damage award did not exceed constitutional limits given plaintiff's harm was not purely economic, defendants demonstrated an indifference to or reckless disregard for plaintiff's health and safety, and plaintiff's harm was a direct result of defendants' intentional trickery. Nor was the punitive damages award excessive considering the comparable civil penalties, the size of the compensatory damages award, and defendants' wealth.

