The Supremes Said It. Now What???
Summary of Recent California Supreme Court Decisions

2021 CCCBA MCLE Spectacular

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Case	Civil or Criminal	Case Description
1. *Sandoval v. Qualcomm Inc.* (September 9, 2021) 12 Cal.5th 256.	Civil	Following closely on the heels of another *Privette* case, *Gonzalez v. Mathis*, *Sandoval* narrowed a hirer's duty to protect a contractor's workers from injury and expanded the reach of the *Hooker* "retained control exception" to a claim of duty brought against the hirer of the contractor who caused the injury. "To establish a duty under *Hooker*, a plaintiff must establish (1) that the hirer retained control over the manner of performance of some part of the work entrusted to the contractor; and (2) that the hirer actually exercised its retained control over the work in a way that affirmatively contributed to the plaintiff's injury." The court disapproved the standard CACI 1009B because it is insufficiently specific as to control retained and exercised, and as to "affirmative contribution." Throughout the unanimous opinion Justice Cuellar reemphasized the importance of the actual exercise of control element. "Still we impose a duty only where [the limitation imposed on the work by the hirer] itself contributed to the worker's injury (affirmative contribution), rather than where the limitation incidentally created an opportunity for the hirer to prevent the contractor's injury causing conduct."

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2. *Gonzalez v. Mathis* (Aug. 19, 2021) 12 Cal.5th 29.	Civil	When a landowner hires an independent contractor to perform a task on the landowner's property, the landowner presumptively delegates to the contractor a duty to ensure the safety of its workers. This delegation encompasses a duty to determine whether the work can be performed safely despite a known hazard on the worksite. So, where the hirer has effectively delegated its duties, there is no affirmative obligation on the hirer's part to independently assess workplace safety. Thus, unless a landowner retains control over any part of the contractor's work and negligently exercises that retained control in a manner that affirmatively contributes to the injury, the landowner will not be liable to an independent contractor or its workers for an injury resulting from a known hazard on the premises.
3. *Natarajan v. Dignity Health* (Aug. 12, 2021) 11 Cal.5th 1095.	Civil	In a unanimous decision, the Court held that the fact that a hospital might hire a hearing officer again for future work does not create a presumption that the hearing officer has a financial incentive to favor the hospital and does not, without more, require disqualification for bias. Upon Hospital's recommendation that Dr. Natarajan's privileges be terminated, Natarajan requested an administrative hearing. Natarajan complained that the hearing officer must be disqualified for bias, as he had previously served in the same role at other Dignity Hospitals and might do so again in the future. Natarajan's argument was rejected by the hospital board of directors, by the Superior Court, and the Court of Appeal. The Court rejected the argument for a presumption of bias based merely on repeat engagements and potential future engagements. The Court also found no evidence of bias in the case. Whether impermissible financial bias exists depends on the facts of each particular case. Relevant facts include what entity selects the hearing officer and whether, and to what extent, the hearing officer has a likelihood of future work for that same entity. The court found it significant that the hearing officer in Dr. Natarajan's case had contractually agreed not to serve as a hearing officer at the same hospital for a three-year period.

		The court disapproved *Yaqub v. Salinas Valley Memorial Healthcare System* (2004) 122 Cal.App.4th 474, which held that a hearing officer is impermissibly biased if there is a prospect of obtaining future work from the same hospital.
4. *Daly v. San Bernardino County Board of Supervisors* (August 9, 2021) 11 Cal.5th 1030.	Civil	The County Board of Supervisors was held by the Superior Court to have violated the Brown Act in the method by which it filled a Board vacancy. The Superior Court ordered that the Board rescind the appointment, refrain from allowing the selected applicant to participate in meetings, refrain from giving effect to any votes by the applicant, refrain from making any other appointment of a new supervisor, and immediately seat any person duly appointed by the Governor. The Court of Appeal denied a stay pending appeal on the basis that the injunction was prohibitive rather than mandatory, and therefore not automatically stayed on appeal, because the Board's appointment was null and void ab initio. The seemingly mandatory acts were said to be incidental to the finding that the Board made an invalid appointment. The Supreme Court reversed and held the injunction was automatically stayed on appeal as a mandatory injunction. The Court explained the distinction between mandatory and prohibitory injunctions, and the effect that each would have on the status quo of the parties if not automatically stayed on appeal. The Court also clarified that the status quo is generally assessed as the status between the parties at the time an injunctive order issues. But when the defendant is enjoined to abandon a course of repeated conduct held to be in violation of the law, the status quo is determined from the "last actual peaceable, uncontested status" that existed before the dispute arose.
5. *Ferra v. Loews Hollywood Hotel, LLC* (July 15, 2021) 11 Cal.5th 858.	Civil	Hourly employees brought class action suit against hotel for alleged underpayment of meal and rest premiums. Employees alleged that employer failed to accurately compensate them for their missed meal and/or rest breaks in violation of Labor Code Section 226.7. The employer paid meal and rest break premiums at the employees base rate of compensation (their hourly wage), without including an additional amount based on incentive compensation. The question before the Court was whether the Legislature intended "regular rate of compensation" under section 226.7(c) to have the

		same meaning as "regular rate of pay" under section 510(a), such that the calculation of premium pay for noncompliant meal and rest breaks, like the calculation of overtime pay, must account for not only hourly wages but also other nondiscretionary payments. The Supreme Court held that the terms under section 226.7(c) and section 510(a) are synonymous. In creating the Labor Code the primary focus of the Legislature was the protection of employees, to this end, the Court liberally construes the Labor Code and wage orders to favor the protection of employees. Additionally, legislative history shows that the term "regular rate" in section 7(a) of the FLSA accounts for not only hourly wages but also nondiscretionary payments, and the IWC adopted a premium pay requirement for meal or rest break violations using the term "regular rate of compensation."
6. *Bonni v. St. Joseph Health System* (July 9, 2021) 11 Cal.5th 995.	Civil	The anti-SLAPP statute protects speech and petitioning, including in connection with hospital peer review. Here, a hospital filed an anti-SLAPP motion to strike plaintiff's claims for retaliation based on a peer review. "While some of the forms of retaliation alleged in the complaint — including statements made during and in connection with peer review proceedings and disciplinary reports filed with official bodies — do qualify as protected activity, the discipline imposed through the peer review process does not." *Bonni* thus re-affirmed in a new context the rule from *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057 that "the anti-SLAPP statute protects speech and petitioning activity taken in connection with an official proceeding, but not necessarily the decisions made or actions taken as a result of those proceedings." A holding of broader application is that a SLAPP motion can be directed at parts of a cause of action, and need not eliminate the entire cause of action. "The attempt to reduce a multifaceted cause of action into a singular 'essence' would predictably yield overinclusive and underinclusive results that would impair" the purpose of the SLAPP statute to eliminate meritless litigation over protected activity.

7. *People v. Valencia* (July 1, 2021) 11 Cal.5th 818.	Criminal	In a prosecution for attempted murder and active street gang participation, evidence of predicate offenses offered to prove a pattern of street gang activity must be shown by admissible non-hearsay evidence. Predicate offenses are case specific facts which may not be proven by expert testimony where the expert has no direct knowledge of the facts or circumstances of the predicate crimes. Further explains "case specific facts" as discussed in *People v. Veamatahou* (2020) 9 Cal.5th 16.
8. *People v. Lemcke* (May 27, 2021) 11 Cal.5th 644.	Criminal	Defendant was convicted of assault and robbery. The prosecution's primary evidence at trial was the victim's testimony, who identified Defendant as her assailant. At trial, the court gave the jury an instruction which listed 15 factors it should consider when evaluating eyewitness identification evidence. One of the factors stated: "How certain was the witness when he or she made an identification?" Defendant argues that this instruction violated his federal and state due process rights to a fair trial, because research has shown that a witness' confidence in identification is not a reliable indicator of accuracy. The court rejects Defendant's claim. The Supreme Court held that listing the witness's level of certainty as one of 15 factors that the jury should consider, when evaluating identification testimony, did not render the trial fundamentally unfair. A jury instruction should not be judged in "artificial isolation," instead it must be considered in the context of the instructions as a whole and the trial record. Despite this, the Court did refer the matter to the Judicial Council to evaluate whether or how the instruction should be modified to avoid juror confusion.
9. *People v. Nieves* (May 3, 2021) 11 Cal.5th 404.	Criminal	Defendant was convicted of first-degree murder for the deaths of her four daughters, attempted murder of her son, and arson. After trial the jury returned a verdict of death. The trial court denied defendant's motion to modify the death penalty verdict and her motion for a new trial. The appeal is automatic in a death penalty case. The Court found that the trial had been permeated with trial court error. The trial court erred in: (1) excluding relevant expert testimony about defendant's mental condition; (2) excluding defendant's PET scan results; and (3) instructing the

		jury that defendant was at fault for delayed disclosure (implying, without evidence, that the delay affected the prosecution's case). Additionally, the trial judge engaged in pervasive mistreatment of defense counsel from the outset of trial. The Supreme Court reversed the death sentence, affirming the judgment in all other respects. The court held that while the trial court's erroneous discovery violation instruction and limitation on expert witness testimony were harmless when considered individually, and did not affect the outcome of the trial, during the guilt phase; the trial judge's misconduct during the penalty phase could have had an impact on the jury's sentencing decision. The court reasoned that the cumulative effect of the judge's misconduct was to throw "the weight of his judicial position" behind the prosecution's case, undermining the defense's theory of the case, and compromising the jury's function.
10. *Kaanaana v. Barrett Bus. Servs., Inc.* (March 29, 2021) 11 Cal.5th 158.	Civil	Conveyor belt sorters at a county recycling facility brought action against staffing company, alleging failure to (1) pay minimum and/or prevailing wages; (2) pay overtime; (3) provide meal periods; and (4) timely pay all wages owed at the time of termination. Plaintiffs alleged that their work fell under California Labor Code section 1720 subsection (a)(2), which entitled them to prevailing wage compensation. Defendant moved to strike the prevailing wage allegations, arguing that plaintiffs were not entitled to those wages because the district did not fall under the statutory definition of a covered district, and their labor was not the type of work covered by §1720(a)(2). The trial court granted the motion. The court of appeal reversed. The Supreme Court held that plaintiffs were entitled to prevailing wages, because their work as belt sorters falls under the statutory definition of "public works." Despite its historical application to construction work, the term "public works" no longer applies solely to construction. When the Legislature enacted the Labor Code in 1937, it did not adopt the definitions of public works set out in the Public Wage Rate Act of 1931 verbatim. Specifically, the Legislature omitted the word "construction" as a modifier of "work." Section 1720(a)(2) is not limited by the definitions set forth in section 1720(a)(1). Section 1720(a)(2)'s coverage turns on the

		governmental entity for which the work is done, and not on enumerated tasks.
11. *People v. Turner* (Nov. 30, 2020) 10 Cal.5th 786.	Criminal	Defendant was convicted of raping and murdering 10 women and a viable fetus, he was sentenced to death. The death penalty appeal is automatic. On appeal the defendant primarily challenged the admission of statistical evidence about the significance of the DNA matches and the admission of hearsay testimony about the fetus's viability. Defendant alleged that the court erred in: (1) admitting random match probability numbers, because the statistic is not a generally accepted measure of significance in “cold hit” DNA cases; and (2) allowing the testifying doctor, who did not perform the autopsy on the fetus, to present the findings as his own. The Supreme Court held that: the admission of statistical evidence as to the significance of the DNA matches was proper and constituted substantial evidence in support of the verdicts; and that hearsay testimony as to the fetus's viability was erroneously admitted. The fetal murder conviction was reversed, but the judgment was affirmed in all other respects.
12. *Gund v. Cty. Of Trinity* (Aug. 27, 2020)10 Cal.5th 503.	Civil	The case concerns the remedies available to a couple who responded to a deputy's request to check on their neighbor after a 911 call, and walked into a murder scene. After surviving a vicious attack from the perpetrator, the couple brought a civil suit for negligence and misrepresentation against the county and deputy sheriff. The trial court granted summary judgment in favor of the defendants, asserting that the couple were employees under the definition of Labor Code § 3366(a), and were limited to the remedies under the departments worker's compensation insurance. The Supreme Court affirmed the judgment. The Court concluded that responding to a 911 call for assistance of an unknown nature, which possibly incudes criminal activity, falls within the lines defining "active law enforcement activity," as used in Labor Code section 3366(a).
13. *Facebook, Inc. v. Superior Ct. of San Diego Cty.* (Aug. 13, 2020) 10 Cal.5th 329.	Criminal	The court granted review to address the propriety of a criminal defense subpoena served on Facebook in an underlying attempted murder prosecution. The subpoena sought restricted posts and private messages from a user who was also the victim and

		critical witness in the investigation. Facebook submitted a motion to quash. The trial court denied the motion. The question before the Court was whether the subpoenaing party established good cause to acquire the subpoenaed records, and could withstand the motion to quash. When considering whether good cause has been shown the trial court must consider seven factors (the Alhambra factors): (1) did the defendant carry his burden of showing a "plausible justification" for acquiring the documents; (2) is the sought material adequately described and not overly broad; (3) is the material reasonably available to the entity from which it is sought; (4) would production of the materials violate the party's "confidentiality or privacy rights," or intrude upon a protected governmental interest; (5) is the request timely; (6) would the time required to produce the requested information unduly delay the defendant's trial; (7) would production of the records place an unreasonable burden on the subpoenaed party. The Supreme Court remanded the matter back to the trial court with instructions that the trial court vacate its order denying the motion to quash and reconsider the motion, with full participation by the parties. Further, the Supreme Court directed the trial court to use the seven Alhambra factors in reassessing the motion to quash.

Pending Cases of Interest	Civil or Criminal	Case Description
1. *Pulliam v. HNL Auto* (Apr. 28, 2021) 484 P.3d 564. See 60 Cal.App.5th 396.	Civil	Plaintiff sued automobile dealership and the holder of her retail installment contract, alleging six different causes of action. After a jury trial, and a verdict in favor of Plaintiff, the court awarded Plaintiff attorney fees. The Defendant appealed. Defendant alleged that the attorney fee award should be reduced because: (1) Plaintiff prevailed in only one of her six causes of action; (2) the lodestar multiplier was not appropriate because the lawsuit was not exceptionally difficult and plaintiff's counsel was not exceptionally skilled; and (3) the holder of the installment contract was not liable for attorney fees

		as its liability could not exceed the amount that plaintiff paid to it. The appeals court affirmed the trial court's award of attorney fees, holding that the trial judge had discretion in awarding attorney fees; that substantial evidence supported the lodestar amount; that there was no abuse of discretion in refusing to apportion the fee award; that there was no abuse of discretion in applying a lodestar multiplier; and that the Holder Rule did not limit the holder of the installment contract's liability for attorney fees. The case is awaiting review by the Supreme Court. <u>Case presents the following issue:</u> Does the word "recovery," as used in the Holder Rule (16 C.F.R. § 433.2), include attorney fees?
2. *Niedermeier v. FCA US* (Feb. 10, 2021) 480 P.3d 1. See 56 Cal.App.5th 1052.	Civil	In 2011, plaintiff purchased a new automobile from defendant, a car manufacturer, and experienced numerous problems with the vehicle during the time she owned it. The plaintiff requested that the defendant buy back the vehicle, defendant refused, and plaintiff subsequently traded in the vehicle to another dealer. Plaintiff brought claims under the Song-Beverly Consumer Warranty Act, commonly known as the "Lemon Law." The jury found in favor of the plaintiff awarding her damages and a civil penalty at one-and-a-half times the damages award. Defendant filed motions for a new trial and to set aside and vacate the judgment, arguing that the damages and civil penalty awards should be reduced by the $19,000 trade in amount. The trial court denied the motions. Defendant appealed. The court of appeal held that restitution under the Act does not include the amounts recovered from the trade-in or defective vehicle; and that it is appropriate to preserve as much of the civil penalty as the act allows because the jury knew of the $19,000 trade-in and already factored that into their award. The court of appeal reduced the damages award by the $19,000 trade-in amount, reducing the civil penalty to two and a half times the new amount. The case is awaiting review by the California Supreme Court. <u>Case presents the following issues:</u> (1) Does the statutory restitution remedy under the Song-Beverly Act (Civ. Code, § 1790 et seq.)

		necessarily include an offset for a trade-in credit? (2) If the amount that a consumer has received in a trade-in transaction must be subtracted from the consumer's recovery, should that amount be subtracted from the statutory restitution remedy or from the consumer's total recovery?
3. *Travis v. Brand* (March 19, 2021) 487 P.3d 973. See 62 Cal.App.5th 240.	Civil	Redondo Beach residents sued political action committee and two candidates, alleging that the candidates controlled the committee. The trial court vindicated the committee and the candidates and awarded attorney fees. Plaintiffs appealed the judgement and the fee award alleging that the court erred in finding: (1) that the committee was a general purpose committee; (2) by entering judgement against nonparties; and (3) by granting attorney's fees (plaintiffs did not contest the amount of the fee, rather their argument was based on the defendant's entitlement to the fees). The Court of Appeal for the Second District voided the judgment against the nonparties, reaffirming the judgment in all other respects. <u>Case presents the following issue:</u> Must a prevailing defendant in an action under the Political Reform Act of 1974 (Gov. Code § 81000 et seq.) show that the case was frivolous, unreasonable, or without foundation in order to recover attorney fees?
4. *Boermeester v. Carry* (September 16, 2020) 472 P.3d 1062; see 49 Cal.App.5th 682 (note: ordered not to be published).	Civil	Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents the following issues: (1) Under what circumstances, if any, does the common law right to fair procedure require a private university to afford a student who is the subject of a disciplinary proceeding with the opportunity to utilize certain procedural processes, such as cross-examination of witnesses at a live hearing? (2) Did the student who was the subject of the disciplinary proceeding in this matter waive or forfeit any right he may have had to cross-examine witnesses at a live hearing? (3) Assuming it was error for the university to fail to provide the accused student with the opportunity to cross-examine witnesses at a live hearing in this matter, was the error harmless? (4) What effect, if any, does Senate Bill No. 493 (2019-

		2020 Reg. Sess.) have on the resolution of the issues presented by this case? Matthew Boermeester was expelled from the University of Southern California (USC) for committing intimate partner violence against Jane Roe. The Superior Court denied his petition for writ of administrative mandate to set aside the expulsion. He appeals, contending, among other things, that the process leading to his expulsion violated his right to a fair hearing. Court of Appeal concluded that USC's disciplinary procedures at the time were unfair because they denied Boermeester a meaningful opportunity to cross-examine critical witnesses at an in-person hearing. "Critical witnesses" including the girlfriend he publicly choked and who attempted to recant to avoid hurting his NFL chances. Boermeester was a member of the USC football team, who kicked the game-winning field goal for USC at the 2017 Rose Bowl.