

Mission & Goals

The Women's Section has been a strong presence in the CCCBA for over 25 years. We welcome members practicing in all areas of the law who work or live in Contra Costa County.

The goals of the Women's Section are:

- ◆ To further the interests of women in the legal profession and the judiciary;
- ◆ To stimulate interest in and encourage discussions regarding legal and social issues of concern to women;
- ◆ To promote a spirit of mutual support, cooperation, and service, and to foster social contacts among the members of the Women's Section;
- ◆ To offer scholarships and support to deserving law students who have shown leadership potential, achieved academic success, and helped to advance women's issues;
- ◆ To promote diversity, equity, and inclusion; and
- ◆ To extend our network of contacts and support of women's interests through affiliation with California Women Lawyers.

The Women's Section offers frequent networking opportunities for its members, such as "Power Lunches" and happy hours, MCLE classes with notable and relevant speakers, and fundraising and community events, such as the Honorable Patricia Herron and Honorable Ellen James Scholarship and an annual Awards Dinner.

For membership information, please contact Jennifer Comages, CCCBA Membership Director, via email at jcomages@cccba.org.

Women's Section

Contra Costa County Bar Association

SPRING 2021 NEWSLETTER

*Welcome to the Spring 2021
Women's Section Newsletter!*

INTRODUCING OUR 2021 BOARD MEMBERS

With the many wonderful new faces we've welcomed to the Women's Section this past year, we wanted to say thank you and take a moment to introduce our 2021 Board members:

Celine M. Simon, President
Strata Legal



Celine is a Real Estate Broker Associate and Attorney of Haylen Real Estate Investments, and Owner of Strata Legal. Born in Hong Kong, Celine earned her J.D. from the University of San Francisco School of Law. She has lived all over the East Bay and currently resides in Walnut Creek with her two daughters and pug. Celine enjoys running, ice-skating, skiing, Latin ballroom dancing, cooking, reading, and traveling. Celine was voted to serve as the 2021 Vice President of Diversity, Equity, and Inclusion (DEI) of CREW East Bay. She is also a Girl Scout troop leader.

**Ingrid P. Rodriguez, Vice-President,
Newsletter Editor**
Brown, Gee & Wenger LLP



Ingrid is a transactional Corporate and Real Estate Associate Attorney at Brown, Gee & Wenger LLP. She is originally from Los Angeles, but moved to the Bay Area for law school (go Bears!) and quickly fell in love with the East Bay. A big nature fan, Ingrid likes to spend her free time outdoors whenever she can (safely while social distancing, of course!) and spends much of her remaining free time cultivating her indoor garden. In addition to the Women's Section, Ingrid is an active member of the CCCBA DEI Committee and a general member of the Association for Corporate Growth (ACG).

2021 Board

Officers

Celine M. Simon, President
Strata Legal

Ingrid P. Rodriguez, Vice-President,
Newsletter Editor
Brown, Gee & Wenger LLP

Janell M. Alberto, Secretary
Wood, Smith, Henning & Berman LLP

Ritzi Lam, Treasurer
Morrill Law

Ex-Officio

Rachel H. Leonard
Tate & Associates

Members-At-Large

Marissa Boyd
Brown, Gee & Wenger LLP

Ariel Brownell Lee
Law Office of Ariel Brownell

Patanisha Davis
Key Counsel, P.C.

Sasha Gray
Brown, Gee & Wenger LLP

Brittany Hendrix-Smith
Law Offices of Brittany Hendrix-Smith

Jennifer McGuire
Morrill Law

Crystal L. Van Der Putten
Livingston Law Firm

Janell M. Alberto, Secretary
Wood, Smith, Henning & Berman LLP



Janell is a senior Litigation Associate at Wood, Smith, Henning & Berman LLP. 2021 is Janell's third year serving as the Women's Section Board Secretary. She served as the President of the Women's Section in 2017. Janell attended Saint Mary's College of California in Moraga, CA for undergraduate school and Willamette University, College of Law in Salem, OR. She enjoys living and working in Contra Costa County and was eager to return after law school.

Ritzi Lam, Treasurer
Morrill Law



Ritzi is an Attorney at Morrill Law and focuses her practice in the areas of probate, estate and trust administration, and conservatorships. She enjoys hiking, traveling, and fostering cats. Along with the Women's Section, Ritzi is also a member of the CCCBA Taxation Section.

Rachel H. Leonard, Ex-Officio
Tate & Associates



Rachel was our 2020 Women's Section President and is a Litigation Attorney at Tate & Associates with a focus on premises liability and medical malpractice defense. In her free time, she enjoys spending time with her family, including her husband and two children. She loves to ski, run, kick box, cook, and read. This is Rachel's fourth year on the Women's Section Board. In addition to serving here, Rachel is a board member of the Association of Defense Counsel of Northern California and Nevada and co-leader of the Pleasant Hill/Walnut Creek chapter of She Runs This Town, an international running club for women.

Marissa R. Boyd
Brown, Gee & Wenger LLP



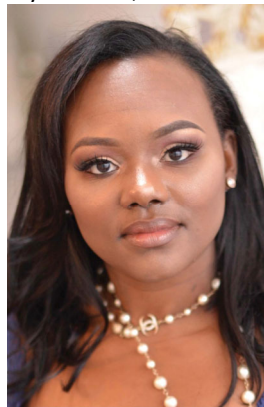
Marissa is a Litigation Associate Attorney at Brown, Gee & Wenger LLP, specializing in labor and employment law, business and corporate disputes, and trademark prosecution. During her time in quarantine, she has enjoyed learning how to bake and hiking with her two huskies. In addition to serving as a Board member of the Women's Section, Marissa is also a general member of the Employment Section.

Ariel Brownell Lee
Law Office of Ariel Brownell



Ariel Brownell Lee runs a family law firm in Walnut Creek. Ariel is an active part of the CCCBA, serving as Past President of the Women's Section, Vice President of the Barristers Section, and a Board Member on the Family Law Board of Directors. She is also active in the Robert G. McGrath American Inn of Court and is a Contra Costa Delegate for the California Conference of Bar Associations.

Patanisha Davis Pierson
Key Counsel, P.C.



Patanisha is a Partner at Key Counsel, P.C., where she specializes in probate, trust litigation, estate planning, and civil litigation. Patanisha is the author of Barren, But Not Broken: A Guide From Infertility to Adoption, and an Adjunct Professor at John F. Kennedy University. In addition to her active involvement in the Women's Section, Patanisha was also recently elected to serve as a member of the 2021 CCCBA's Board of Directors. She is also a member of the DEI Committee.

Sasha Gray
Brown, Gee & Wenger LLP



Sasha is a transactional Real Estate and Corporate Associate Attorney at Brown, Gee & Wenger LLP. She is a Bay Area local, born and raised in Pleasanton. Sasha is the mom to a wonderful, energetic 21-month-old boy named Rhys. For her birthday right before quarantine began, Sasha's husband gifted her a Cricut, so her recent hobbies have involved lots of crafting and learning to use HTV and vinyl! Along with the Women's Section, Sasha is also a member of the CCCBA Real Estate Section and Barristers Section.

Brittany Hendrix-Smith
Law Offices of Brittany Hendrix-Smith



Brittany is a family law attorney, as well as a certified mediator, practicing primarily in Contra Costa County. Along with the Women's Section, Brittany is also a member of the CCCBA Family Law Section and Barristers Section. In her free time, she enjoys cooking and gardening.

Jennifer McGuire
Morrill Law



Jennifer is a Partner at Morrill Law and focuses her practice on trust and estate litigation, financial elder abuse actions, contested conservatorships, and related litigation. Jennifer is a mother to two young daughters and a golden retriever. She participates in two book clubs and is a member of She Runs This Town, a local running group. Jennifer enjoys running everything from local 5Ks to marathons. In addition to serving as a Board member of the Women's Section, Jennifer is also a general member of the Estate Planning & Probate Section.

Crystal L. Van Der Putten
Livingston Law Firm



Crystal is a Shareholder at Livingston Law Firm and specializes in commercial litigation, product liability, premises liability, accessibility and general liability matters in state and federal courts throughout California. Her practice also includes appellate work in state and federal courts. As a past president of the CCCBA Women's Section, Crystal is committed to women's issues in the legal community and to diversity overall.

MEMBER ARTICLE

Dynamex, AB5, and AB2257: The Plot Thickens with Vazquez

By Alexandra Saddik, Ferber Law

In 2018, the California Supreme Court ignored 30 years of precedent by announcing a new classification standard for California employers: all workers are presumed to be employees unless the employer can prove otherwise. *Dynamex Operations West, Inc. v. Sup. Ct.* (2018), 4 Cal.5th 903. This dramatic shift makes it extremely challenging for employers to classify workers as independent contractors, unless the worker falls within a specific statutory exemption. The state legislature quickly followed the *Dynamex* decision with AB5, then AB2257.

However, these legislative moves failed to answer the question left open in *Dynamex*: does the new classification test, referred to as the "ABC test" apply retroactively? The most recent case in the worker classification saga, *Vazquez v. Jan-Pro Franchising International, Inc.*, attempts to address this question.

The Shift Away From Independent Contractors

Prior to *Dynamex*, courts utilized the multi-factor test enunciated by the California Supreme Court in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations* (2018), 48 Cal. 3d 342, to determine whether a worker is an employee or an independent contractor. Courts considered the following factors:

1. Right to discharge at will without cause;
2. Whether the worker is engaged in a distinct occupation or business;
3. Skill required in this occupation;
4. Who pays for equipment and business expenses;
5. Length of time services are to be performed;
6. Method of payment, whether by hour or job;
7. Whether the work is part of the employer's regular business;
8. Whether the parties believe they are creating the employer-employee relationship;
9. Worker's opportunity for entrepreneurial profit or loss depending on his or her managerial skill;
10. Worker's use of helpers or replacements; and
11. Degree of permanence of the working relationship.

The *Borello* test leaves wiggle room for employers to argue what classification is appropriate for their workers. Not all factors need to be met to pass the test. Additionally, some factors are weighed more heavily than other factors by the courts.

Dynamex changed this flexibility by adopting a stringent, 3-part test that requires each of the following criteria be met for a worker to be classified as an independent contractor:

- A. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
- B. The person performs work that is outside the usual course of the hiring entity's business.
- C. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

The state legislature adopted the *Dynamex* standard by passing AB5 in 2019, which requires an employer to use the ABC test unless the employer can meet the criteria for one of the exemptions specifically listed in AB5 (in which case, the *Borello* multi-factor test applies). AB5's provisions apply retroactively for any claim or action existing as of January 1, 2020, that apply to the exemptions to the ABC test listed in AB5; however, AB5 is silent as to whether the actual ABC test is retroactive.

In 2020, the state legislature attempted to address ambiguities in the exemptions and added multiple exemptions via AB2257. However, once again, the legislature failed to provide clarity as to whether the ABC test should be applied retroactively.

***Vazquez*: Is *Dynamex* Retroactive?**

The procedural history of *Vazquez* spans a course of over 12 years. A brief summary is necessary to understand how we arrived here in 2021. *Vazquez* began in 2008 as a class action filed in Massachusetts that alleged Defendant Jan-Pro, an international janitorial cleaning business, deliberately misclassified its janitors as independent contractors to avoid paying them minimum wage and overtime. The Massachusetts district court severed the case as it related to California plaintiffs, moving them to the Northern District Court in California.

Jan-Pro filed a motion for summary judgment in the California litigation that the Northern District granted. Importantly, the Northern District's decision was issued before the California Supreme Court issued the *Dynamex* opinion in 2018. Accordingly, Plaintiffs appealed the Northern District's grant of summary judgment to the Ninth Circuit.

At the request of the Ninth Circuit, the California Supreme Court took on the question of whether *Dynamex*—and the ABC test within it—was retroactive, issuing an opinion on January 14, 2021. The Court concluded that *Dynamex* was retroactive as to all cases that had not been decided on the date the opinion became final. The Court emphasized that California law includes the “well-established principle” that “judicial decisions are given retroactive effect” (citing *Newman v. Emerson Radio Corp.* (1989), 48 Cal.3d 973, 978). The Court saw no reason to deviate from this course, particularly where significant, well-supported policy interest of protecting California workers exists.

The Court was not persuaded by Jan-Pro's argument that an exception to retroactivity is justifiable. Jan-Pro attempted to claim that businesses could not have anticipated that the ABC test would become the prevailing rule for worker classification. Instead, Jan-Pro argued that businesses expected the classification question to be controlled by the more lenient *Borello* multi-factor test. The *Vazquez* Court rejected this argument, concluding instead that the wage orders—which uses the suffer or permit to work standard for defining an employee—included the prevailing standard for classifying an employee for more than a century. As such, though *Dynamex* itself broke new ground, it did so in an established area of law. The question of worker classification had been argued for years in prior cases despite the fact that it had not been decided until *Dynamex*. Finally, the Court determined that the ABC test itself is not new; the elements of the ABC test make up part of the *Borello* multi-factor test, and other jurisdictions have already adopted the ABC test for worker classification. Therefore, the Court concluded that businesses were reasonably put on notice such that there was no reason to carve out an exception to California's tradition of retroactivity.

The Ninth Circuit further held that the California Supreme Court's holding does not violate due process. The Court concluded that the question of retroactivity is an economic matter that falls under the rational basis test for due process. The Ninth Circuit reasoned that the wage orders are intended to be interpreted liberally, and that there is a strong societal benefit to ensuring that workers are treated properly and provided adequate wages. This satisfies the rational basis test; therefore, retroactivity is constitutional.

What Does This Mean For Employers?

Vazquez, although admittedly a lengthy decision spanning two different courts, does clarify this: the ABC test is retroactive as to claims for violation of California's Wage Orders that were pending at the time of the *Dynamex* decision (2018). This means that employers have potential liability exposure until the statute of limitations on these wage and hour claims has passed, which in most cases, is 4 years (2022).

Apart from answering the retroactivity question, the dicta in *Vazquez* emphasizes the fact that other jurisdictions applying the ABC test consistently held that franchisees may be considered employees. This dictum is concerning. If adopted by another California court, it could expose franchisors to an increased risk of liability as an employer. Such risk may have the effect of disincentivizing franchisor-franchisee relationships.

Conclusion: What Exactly Does *Vazquez* Tell Us?

There are still several outstanding issues surrounding *Dynamex* and its legislative and judicial progeny. Notwithstanding, *Vazquez* dictates the following:

1. The ABC test is retroactive as to outstanding claims under the California Wage Orders at the time *Dynamex* was issued (2018);
2. Said retroactivity is in fact constitutional; and
3. There may be situations where a franchisee may be considered an employee under the ABC test.

What direction California will take after this decision is unknown. However, if recent history is any indication, it is likely that the state legislature will weigh in on one or both of these issues. As such, this is an area of employment that needs to be monitored carefully. Ferber Law provides expert advice and consulting on all employment matters and is ready to assist your business as needed. For more information, please visit: www.ferberlaw.com.

DISCLAIMER: Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

About the Author:



Alexandra P. Saddik is an Associate at Ferber Law, A Professional Corporation. She has experience working in both litigation and transactional matters. Alexandra is a member of the CCCBA and active in the Barristers Section. She also co-founded and volunteers at The Glass Ball Foundation, a nonprofit dedicated to providing aid for people with chronic illnesses. Alexandra is an active member of the equestrian community, competing in both English dressage and cowboy dressage. She received a BSc (Economics, 2015), MBA (2018), and JD (2019) from Santa Clara University.

UPCOMING SECTION EVENTS

Virtual Bay Area Women Lawyers Retreat

While we can't be together in person, we can still be there for each other. Please join us for a half-day of CLE, yoga, and schmoozing on **Thursday, February 25, 2021, from 3:00pm to 5:30pm**. Cost is \$30 per person.

Register online now: www.sftla.org.

ApPEERing Productive – the #Wellness Edition

A Collaborative Discussion focusing on Self-Care and Well-Being

This collaboration workshop will be led by Sarah Tetlow of Firm Focus, Legal Productivity Coaching and Consulting, on **Tuesday, March 23, 2021, from 1:00pm to 2:00pm**. It is free for all CCCBA members, and \$10 for non-members.

This workshop encourages peer collaboration on the successes that busy lawyers have mastered, and the challenges that they face, in achieving Work/Life Balance and Self-Care.

During these facilitated conversations, we will discuss:

- How to improve **sleep, Work/Life Balance**, and personal and professional goals.
- Strategies to prioritize **Self-Care**, take **breaks**, and mitigate unproductive mental headspace.
- Practical and applicable tips and techniques to **improve productivity**.

Sometimes the best productivity hacks come from those who are similarly situated. This program encourages the attendees to share their challenges, and their successes, to help others improve their practice and their lives overall. Sarah, CEO of Firm Focus, will provide additional techniques, tips, and strategies to support healthier habits. Attendees are encouraged to join with **video on and unmuted**.

Zoom link to be provided upon sign up on www.cccbba.org.

Women's Section March Book Club

Our next book club meeting will be held on **Thursday, March 25, 2021, from 5:00pm to 6:30pm**. We will be reading A Piece of Cake: A Memoir by Cupcake Brown. Attendance is FREE and open to all members and non-members.

Cupcake Brown will be joining us! She welcomes any and all questions and comments, so please join us for what is sure to be a fantastic conversation with this amazing, inspiring author.



NEW YORK TIMES BESTSELLER
The heart-wrenching, uplifting tale about a woman named Cupcake.

"There are shelves of memoirs about overcoming the death of a parent, childhood abuse, rape, drug addiction, miscarriage, alcoholism, hustling, gangbanging, near-death injuries, drug dealing, prostitution, and homelessness. Cupcake Brown survived all these things before she'd even turned twenty. And that's when things got interesting."

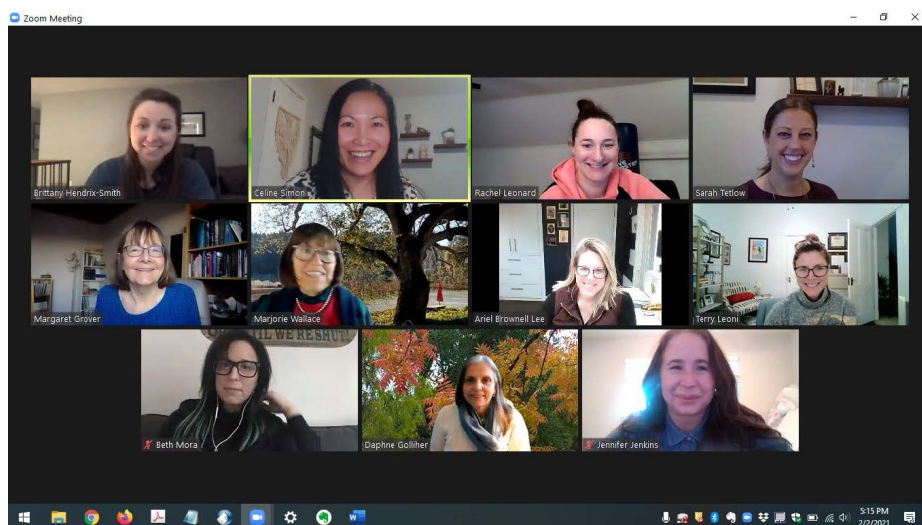
A Piece of Cake is unlike any memoir you'll ever read. Moving in its frankness, this is the most satisfying, startlingly funny, and genuinely affecting tour through hell you'll ever take."

Zoom link to be provided upon sign up on www.cccba.org.

Women's Section Virtual Social Hour

Please join us for a FREE Virtual Social Hour on **Tuesday, April 6, 2021, from 4:30pm to 6pm**. No formal agenda, just a great opportunity to spend some quality time together continuing our long tradition of socializing and networking with one another!

Zoom link to be provided upon sign up on www.cccba.org.



Thank you to the attendees of our February Women's Section Virtual Social Hour!

COMMUNITY SERVICE VOLUNTEER OPPORTUNITY

Women's Section member, Maria Schopp (Attorney-at-Law, The Law Office of Maria Schopp), has shared an exciting community service opportunity!

Maria is a volunteer at White Pony Express (www.whiteponyexpress.org), a non-profit organization located in Pleasant Hill that distributes donated food and clothing to other organizations and those in need. Maria volunteers each weekend with her family, where they package food boxes in the organization's large warehouse (COVID-19 protocols followed).

If you are interested, there are 17 volunteer spots available on Saturdays and Sundays with shifts from 8:30am to 11:30am, and 1:30pm to 3:30pm.

Have a community service/volunteer opportunity you would like to share with the Women's Section? Please email us at cccbawomenssection@gmail.com for a chance to be featured in our quarterly newsletter.

ODDS & ENDS



Wine glasses for sale!

The Women's Section is selling our signature stemless wine glasses for the low price of \$5 each. All proceeds go towards the Women's Section scholarship fund.

Contact us at cccbawomenssection@gmail.com to place your order today!

FEEDBACK

Do you have event ideas you would like the Women's Section to host? Would you like to submit an article for publication or share a community service opportunity with your fellow members? Have any information and/or general feedback about the Women's Section you would like to share?

Please email us at cccbawomenssection@gmail.com.

We hope you have enjoyed the Spring 2021 Women's Section Newsletter and wish you a happy and healthy 2021!