

The LITIGATOR

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ISSUE 3

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Thank you, CAOC!

A political miracle vs. political goliath Uber

No matter how egalitarian our laws are, how wise our judges, or how unbiased our juries are, if regular people cannot find a way to have their cases heard in a courtroom, there cannot be justice in America. Wealthy investors behind Uber thought that they could send their cash to California and trick our neighbors into voting against their own interests. They could not have been more wrong. The Consumer Attorneys of California (CAOC) was up to the fight.

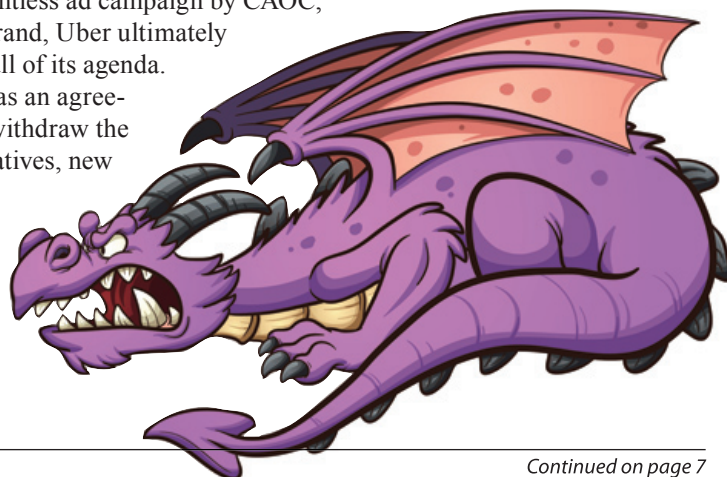
Make no mistake, CAOC, led by President Doug Saeltzer, pulled off what some long-time Capitol commentators are calling a political miracle. CAOC faced off against hundreds of millions of dollars from Uber, formulated a plan of attack, and then executed it without remorse to force Uber into a settlement.

For those who have not been following this saga, you can get caught up with the words of the Past President of the CCTLA, Glenn Guenard, or my own message from earlier this year. But here's a summary of what happened:

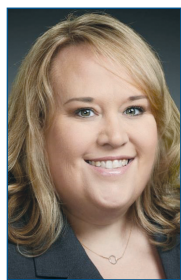
- Since Uber's inception, trial lawyers have been forcing it to be accountable whenever its drivers are negligent and injure Californians.
- Uber devised a misleading ballot initiative that would make it economically impossible for trial lawyers to take on most personal injury cases.
- CAOC leadership, with very little time to respond, mounted a massive statewide campaign, ultimately raising 80 million dollars and qualifying its own ballot initiative to hold Uber accountable for rampant sexual assault by its drivers.
- Faced with a relentless ad campaign by CAOC, directly attacking its brand, Uber ultimately capitulated on almost all of its agenda.
- The end result was an agreement by both sides to withdraw the ballot initiatives, new



Amar Shergill
CCTLA President
Shergill Law Firm



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Marti Taylor,
Wilcoxon Callahan,
is a CCTLA
Vice President

NOTABLE CITES

By: Marti Taylor

QUINTEROS v. HARBOR DISTRIBUTING, LLC

2026 1DCA/2 California Court of Appeal
No. A174202 (June 11, 2026)

COUNSEL OF RECORD BEAR ULTIMATE RESPONSIBILITY FOR A BRIEF CONTAINING AI-FABRICATED CITATIONS AND QUOTATIONS, EVEN WHERE A CONTRACT ATTORNEY DRAFTED IT AND DENIED USING AI

FACTS: The Lipeles Law Group filed a wage-and-hour class action in Los Angeles in June 2024, then filed a substantially duplicative class action against the same defendants in San Francisco six months later. Defendants moved to stay the San Francisco case under the doctrine of exclusive concurrent jurisdiction. LLG opposed with a brief drafted by an outside contract attorney. The opposition cited two cases that do not exist, contained at least eight fabricated quotations attributed to five real cases, and reversed the holdings of the authority it cited.

The trial court issued an order to show cause re: sanctions, noting that fabricated quotations attributed to real reported cases are more insidious than citations to wholly hallucinated cases because they are harder to detect. In response, the contract attorney denied using generative AI, claimed he had run a Lexis citation check three times, and acknowledged no error. The firm's attorneys apologized, but disclaimed responsibility, explaining they trusted the contract attorney's work. At the hearing, the partners conceded they had never read the motion to stay or the opposition, and the signing associate admitted she had not fact-checked or cite checked the brief and had not read the cases in it. The court sanctioned the firm and three attorneys jointly and severally, \$5,000 payable to defendants and \$1,000 payable to the court.

ISSUE: Whether counsel of record may be sanctioned under Code of Civil Procedure section 128.7 for AI-fabricated authority in a brief prepared by an outside contract attorney, and whether a safe-harbor objection not raised in the trial court may be asserted for the first time on appeal.

RULING: Affirmed. The procedural challenges were forfeited, and the sanctions were not an abuse of discretion.

REASONING: Filing briefs containing fabricated legal authority is sanctionable. A fake opinion is not existing law, and citing one supplies no nonfrivolous basis for extending or modifying law. (*Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426.) No paper filed in any court should contain a citation the responsible attorney has not personally read and verified, and that duty cannot be delegated to any form of technology. (*People v. Alvarez* (2025) 114 Cal.App.5th 1115, 1119.) Reviewing and evaluating generative AI output before filing is part of the

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duty of competence under both the ABA and State Bar guidance.

Outsourcing did not shift the risk. LLG was counsel of record, its attorneys' names appeared on the brief, and one of them signed it, certifying after an inquiry reasonable under the circumstances that the legal contentions were warranted by existing law. Signing without reading the cited authority is not such an inquiry. The court noted that LLG continued to shift blame to the contract attorney rather than accept responsibility.

The firm's procedural challenge fared no better. LLG never mentioned the 21-day safe harbor of section 128.7(c)(2) below, and safe-harbor arguments are routinely forfeited when raised for the first time on appeal. The court declined to reach the issue: the safe harbor is not a matter of vital public policy, the argument was relegated to a footnote without analysis, and any cure period would have been futile. LLG could have withdrawn the opposition after defendants' reply identified the misstatements, or after the tentative ruling announced the coming order to show cause, but instead stipulated to the tentative.

KHEDR v. SUPERIOR COURT

(BROADMOOR POLICE PROTECTION DISTRICT)

2026 1DCA/5 California Court of Appeal, No. A173872
(June 24, 2026; Certified for Publication July 13, 2026)

A GOVERNMENT CLAIM STATING THE DATE OF LOSS ONLY AS "NUMEROUS, LOSS IS ONGOING" DOES NOT COMPLY OR SUBSTANTIALLY COMPLY WITH GOVERNMENT CODE SECTION 910

FACTS: Victor Khedr and Syed Husain, part-time officers with

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SB 623: A Great Win, but the Devil's in the Definitions



On June 25, 2026, at literally the last minute, Governor Newsom signed SB 623 into law, driving a stake through the heart of Uber's expensively engineered and draconian initiative not only to cap contingency fees, but also to reshape the state's constitution by eliminating nearly all economic incentives to take any auto case on a contingency fee basis.



Robert Bale,
Dreyer Babich
Buccola Wood
Campora, is a CCTLA
Past President

The good news? Unless a lot of your clients are treated primarily by "lien-based medical providers," there will be virtually no impact on your practice, including in the way you handle medical damages and liens à la *Howell*. The bill's effective date is Jan. 1, 2027. Until then, it is business as usual.

CAOC, its staff, our current Board of Directors, and Senator Tom Umberg all deserve the oceans of praise they have garnered for going to the mat and beyond in their successful battle against what could have been the end of personal injury litigation as we know it.

Kudos also to each of us who contributed financially to the effort, or who made phone calls, wrote letters, or put in volunteer hours working to garner



Andriy Zhernovey,
Dreyer Babich
Buccola Wood
Campora, is a
CCTLA Member

the signatures of registered voters on CAOC's anti-Uber initiative. Without your efforts, multiplied by every CCTLA and CAOC member who stepped up, a lot of us would be looking for a new line of work come the New Year. Many of us attended CAOC's Zoom meeting just after the bill was signed, during which a dozen or so of the key participants told the behind-the-scenes story of how this clear victory came to be. Of course, like all great legislative victories, the devil is in the details, which SB 623 largely hides in its definitions.

Authors' disclaimer

The authors caution that this is new, untested law, much of which was put together in the heat of ongoing negotiations on a short timeline. The Act contains ambiguities that will undoubtedly be tested through the appellate process. In the meantime, DO NOT rely on this article as gospel. While the authors have done their best to focus on and explain certain limited aspects of 623 as they understand it, they strongly

encourage every reader of this article to read and evaluate the Act for themselves.

OK. Let's start with the really good stuff.

Passage of 623 ends Uber's efforts to destroy our industry

That's the key takeaway, and in all candor, unless a significant percentage of your clients are treated strictly by lien-based medical providers, this bill won't really impact your practice at all. That is because as the very first sentence of 623 confirms, it applies **ONLY** to "any civil case, claim, action, or arbitration *against a network company, its subsidiary, or an app-based driver*, as those terms are defined in Section 7463 of the Business and Professions Code, arising out of an automobile accident occurring on or after January 1, 2027, in which a claimant obtained medical treatment by a *lien-based provider*."

623 has a narrow application

Short answer: It applies only to persons injured as a result of an "automobile accident" involving a "Transportation Network Company," a "Network Company" vehicle, or an "app-based driver," and then *only if* their medical treatment for associated injuries is by a lien-based doctor.

As such, this Act applies only to

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cases arising from motor-vehicle collisions in which the defendant driver was a “Transportation Network Company” or “app-based driver” for companies such as Uber, Lyft, DoorDash, etc. This Act does not apply to your standard collisions, or collisions involving other types of entity defendants that are not “Transportation Network Companies.”

Additionally, if your client was injured by the negligence of an Uber driver, but treats through a private or public health insurer subject to the Hospital Lien Act/3045, 623 does not apply.

Also, no specific provision of 623 covers UM/UIM claims. The authors are under the working assumption that Section (a)(1) means what it says, i.e., that 623 “applies to any civil case, claim, action, or arbitration against a network company, its subsidiary, or an app-based driver...”

What is a TNC?

Although the text references B&P Section 7463 for definitions of a “Network Company,” or “Transportation Network Company” (aka TNC), you’ll have to hop, skip, and jump from B&P to PUC to track down the actual definitions, eventually landing at PUC 5431(c), as follows:

“‘Transportation network company’ means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.”

PUC Section 5431(b) defines “personal vehicle” as one that “is owned, leased, rented . . . or otherwise authorized for use by the participating driver.” Generally, this exempts taxis and conveyances like Waymo, where “personal vehicles” are not involved. So, it seems that there is no application to any other drivers or vehicles.

“‘Transportation network company’ means an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.”

Medical damages are limited to the 70th percentile of medical costs incurred with lien-based providers

As for limitations on medical damages, which was a key part of the original Uber initiative, the Act establishes a 70th percentile ceiling for such “lien-based” costs. *Please note, this “70th percentile ceiling” and the evidentiary limitations that come with it, discussed in further detail below, apply ONLY to past medical damages for treatment with lien-based providers. (See Section (a)(4).) This Act should not apply to your claims for future medical damages.*

The Act defines “lien-based provider” at 623(f)(2). It’s a bit lengthy, but worth reading because the implications undercut the Act’s earlier provision at (b)(1)(A) that “The maximum recovery of a plaintiff for damages for any medical expense for services rendered by a lien-based provider *shall not exceed the 70th percentile of FAIR Health, Inc.’s billed charges*, or the 70th percentile of a comparable commercially recognized billed charges database for the same or similar service in the applicable geographic area at the time the service was rendered. No plaintiff may recover past medical expense damages in excess of that amount.”

This sounds advantageous for an injured plaintiff insured by Medi-Cal, the VA, Medicare, or any other insurer whose medical charges and lien amounts are typically much lower than those of Anthem Blue Cross, Blue

Shield of California, Health Net, or other similarly situated private health insurers, especially under *Howell v. Hamilton Meats*. Often, even healthcare billing experts retained by defendants will concede costs at a 70th to 80th percentile valuation. But this is where the devil is in the Act’s definitions, found at 623(f)(2)-(3).

Section (f)(2) defines a “lien-based provider” to mean “any health care provider or other person or entity that renders, furnishes, bills for, finances, or seeks payment for health care-related goods or services provided pursuant to an agreement under which payment is contingent upon, secured by, or expected from, *the proceeds of the patient’s legal claim.*” This definition specifically excludes “providers furnishing the care pursuant to health insurance, government health coverage, or the Hospital Lien Act, as provided in Sections 3045.1 to 3045.6, inclusive.” So, if your injured plaintiff is covered by Blue Shield, Medicare, or any similar plan, SB 623 does not apply. Period.

Section (f)(3)(A) next defines “medical lien” to include any lien, assignment, receivable, right to payment, or similar, “arising from or relating to medical goods or services furnished to a plaintiff or claimant *for which payment is contingent upon, secured by, expected from, or recoverable from the proceeds of a legal claim.*” Technically, that applies to every lien, since at the heart of medical liens is the right to repayment from proceeds of a case resolution.

However, Section (f)(3)(B) lands

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the knock-out punch by defining what a “medical lien” is not. Per that section, a medical lien “does not include any lien, reimbursement claim, or subrogation right asserted by a private health insurer, Employee Retirement Income Security Act (ERISA) plan, workers’ compensation carrier, *Medicare*, *Medi-Cal*, *TRICARE*, or any other federal or state health benefit program.” Move along, folks. Nothing more to see here.

Uber fought very hard for this provision, pointing the finger at PI firms in Southern California that allegedly fostered a practice of referring injured plaintiffs to “lien-based providers” who would allegedly prescribe and provide unnecessary medical treatment, then allegedly charge exorbitant fees and costs for that treatment, allegedly driving up the medical damages in cases that allegedly were only minor if assessed by physicians without a financial incentive. Allegedly, some of these law firms had a contract with the lien-based providers that further profited those firms.

A lot of allegations, to be sure, but

there is no real question that such allegations triggered Uber’s commitment to its initiative. The authors have no personal knowledge as to the veracity of these allegations, but Uber and CAOC just spent tens of millions of dollars in a very public debate about them. In fact, Sections (d)(2)–(e)(6) seem to highlight all of the alleged “wrongs” that brought about Uber’s initiative in the first place. Read these sections carefully, especially if your law firm incorporates the types of practices Uber sought to address with this bill.

Among those sections, refer your “lien-based” physicians to Section (d)(2), which authorizes a request for them to provide a discoverable “declaration” of “...approximate number of patients referred by that attorney or law firm to the provider during the preceding 24 months...” It is unclear how such a request is to be made, to whom, or how it would be enforced. Keep in mind, you do not represent these physicians, and you cannot force them to comply with such “discovery requests”; as such, this is a good section for your

physicians to be aware of and to review with their own attorneys.

In light of what has now become a statutory attack on lien-based medical providers, consider this a cautionary tale. At the least, you might want to let any such lien-based physicians who treat your clients know that 623 has been passed, and that they should consult with their own attorneys to determine the extent to which it may impact their business. From a lien negotiation standpoint with such providers, the jury is out, but there is leverage to be had.

Looking to the future, we should all be thinking about ways to prevent insurance companies from seeking to compel additional regulation of lien-based treaters in all auto cases, or even all personal injury cases. That may be an article for another day, but it deserves your strategic thinking now.

Again, unless your practice relies on developing and encouraging such relationships with lien-based providers, for the purpose of driving up medical damages in cases against TNC op-

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Clower Law

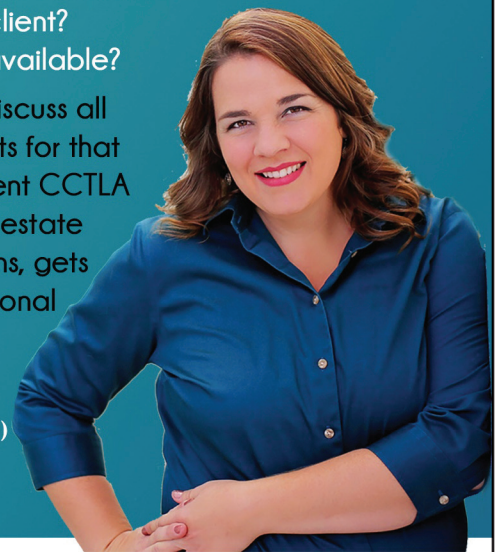
Does your client receive public benefits (like SSI, Section 8 housing, Medi-Cal)?

Did you just work hard to receive a positive result for your client?

Do you want to ensure that your client knows all of the options available?

Don't let your hard work become a problem for your client. Let's discuss all available options for your client and try to preserve public benefits for that person. Ashley Clower is a former personal injury attorney and current CCTLA member who has been in your shoes. Settlement planning by an estate planning attorney ensures that your client knows all of the options, gets individualized attention, and most importantly, makes the personal injury attorney look like the hero that you are!

- * Settlement planning (determining the best course of action for your client)
- * Special Needs Trusts (drafting, funding, notifications to the proper agencies)
 - * Estate planning, probate, conservatorships (if needed)
 - * Free 30 minute consultation for personal injury attorneys



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erations, SB 623 does not change your practice.

What does the 70th percentile mean?

For those of you who might fall into this narrow category, it is incredibly important that you and the “lien-based providers” you will be working with on these limited cases get familiar with FAIR Health, Inc. That’s because your client will only be able to claim medical damages up to the 70th percentile of billed charges, and FAIR Health, Inc., is a statutory source of those calculations.

To make use of FAIR Health, Inc., follow the steps outlined below:

1. Access www.fairhealthconsumer.org;
2. Select the “Medical and Hospital Costs” box;
3. Enter the applicable Zip code;
4. Enter the applicable CPT code or word (e.g., CPT Code 70551 for MRI Scan of the brain without contrast);
5. Compare medical charges based on the “percentiles,” which range from 20th to 90th percentiles.

As you familiarize yourself with this platform, remember that your clients can recover up to the 70th percentile of the “billed charge amount.” This was a huge concession by Uber, which fought hard to limit medical damages to the “in-network allowed amounts.” Among other things, this means that plaintiffs will continue to have access to health care providers of their own choice.

You want to become familiar with the FAIR health provisions of 623 because they include serious evidentiary limitations. First, you will not be able to show evidence of bills/billed charges that exceed the 70th percentile. Also, any charges above the 70th percentile will be deemed void and unenforceable, rendering such over-and-above amounts unrecoverable. (See Sections (b)(2) & (b)(1)(D).)

In short, whether or not lien-based

providers pay attention to these limitations, any amounts they bill for above the 70th percentile of the FAIR health benchmark will be inadmissible as evidence at trial, and unrecoverable by way of verdict. As suggested above, this does create leverage in terms of lien negotiation with such providers.

Unsurprisingly, you have nothing to worry about if your “lien-based providers” bill below the 70th percentile of the FAIR health benchmark for their treatments. (See Section (b)(3).)

Lastly, carefully read the sections addressing the rather restrictive limitations on sale and transfer of medical liens imposed by Sections (c)(1)-(d)(1). Per these sections, your client’s past medical damages will be limited further, from the 70th percentile, to the amounts actually paid for the transfer or sale of the lien. That is, even if the original lien is at 70%, if that lien is sold for a lesser amount, medical damages will be limited to that lower amount.

Once more, for *most* of us in Sacramento, this 70th percentile limitation will apply to a very small percentage of our client base.

The Act also includes some positive changes in TNC security and practices

Uber wanted changes in the handling of lien-based treatments. CAOC righteously wanted changes in the utter failure by TNC operations to conduct background checks on their drivers.

The Act changes that in significant ways. Section 2 of the Act makes significant changes to Public Utilities Code Section 5445.2, which governs TNC operations.

Under new regulations, TNCs are required to conduct broad criminal background checks of every participating driver. This includes nationwide criminal records locators with validation and US DOJ National Sex Offender sweeps. TNCs may not “contract with, employ, or retain” a driver currently registered on the US DOJ National Sex Offender website; or who has been convicted of a wide range of felonies and misdemeanors, including assaults, do-

mestic violence, DUI, weapons charges, or violations of protective orders, even if convicted in other states so long as the statutory elements of the crime are similar to those in California.

Such background checks must be completed before a driver starts transporting passengers, and failure to comply with the background check requirement carries a fine of up to \$5,000, presumably even if the check would have been negative.

The Act also “allows” TNCs to provide a mechanism to facilitate the ability of female passengers to match with female drivers. Allows is not as good as “requires,” but the authors understand both Lyft and Uber have either already incorporated such a mechanism or intend to do so.

Huge win, but no time to rest on our collective laurels

CAOC prevailed in this for three reasons. First, our members dug deep, allowing the organization to show it could raise the money to be taken seriously. Second, our efforts were headed by some of the very best attorneys and leaders in our organization, who had long years of handling significant negotiations behind them. Third, CAOC had the legislative background and experience not only to help our leadership navigate these very muddy waters, but also the credibility of a legitimate and serious lobbying group.

Of those three, money was what ultimately mattered most, because the sad reality is that, at least for now, money is the fuel of the legislative machine. You can hate that fact, but you can’t really ignore it.

Since money is the metric of power, each of us has the inherent ability to benefit from that dynamic. Those of us who have been around for very long at all, and have paid attention, recognize that CAOC does not spend its political or monetary capital needlessly. It knows how to do its job, and that job is to kill bad bills and help pass good ones. For us, a good bill is one that protects and advances the interests of our clients, the citizens of California.

Continued on page 7

How to move ahead (politically speaking)

If you are a plaintiffs' attorney, and have not yet joined CAOC, get serious about your career, and do it today. The authors are not kidding. This is the *ONLY* statewide lobby group that exists solely to serve the interests of plaintiffs' attorneys who practice personal injury and related law. It is the most significant source of education, legislation, and organization for practicing attorneys in this state, and is highly regarded across the nation as a major leader in the advancement of plaintiffs' rights.

If you want to be taken seriously in this industry, there are no good reasons not to join, and many excellent reasons to become a member. Even if you hate the idea of belonging to a political organization, you should want to know not only how the sausage is made, but how you can contribute to making changes that benefit your clients and your professional life. It's easy to join, and you can do so on CAOC's website, which is www.caoc.org.

If you are already a CAOC member,

If you are a plaintiffs' attorney, and have not yet joined CAOC, get serious about your career, and do it today . . . This is the *ONLY* statewide lobby group that exists solely to serve the interests of plaintiffs' attorneys who practice personal injury and related law. It is the most significant source of education, legislation, and organization for practicing attorneys in this state, and is highly regarded across the nation as a major leader in the advancement of plaintiffs' rights.

start making a monthly contribution to CAOC's Political Action Committee ("PAC") fund. CAOC uses this fund to invest in political, electoral, and legislative change. For those of you who are just starting out, an automatic contribution from your credit card or checking account of even \$20 a month would help, especially if our fellow attorneys here in Sacramento join your efforts. It will also get you noticed, because CAOC cannot function without PAC funds, and it appreciates those who support such efforts.

For those of you interested in pursuing a leadership position in CAOC, joining the PAC is an essential rung on the

climb up that particular ladder.

Robert Bale and Andriy Zhernovey specialize in catastrophic litigation and trials.

Bale is a partner at Dreyer Babich Buccola Wood Campora and a CCTLA past president and member. He is also a CAOC member, has served on its Board of Governors for over a decade, and is a long-time member of its Legislative Committee.

Zhernovey is an associate at Dreyer Babich Buccola Wood Campora and a CCTLA member.

President's Message

Continued from page one

guidelines for Uber to screen drivers and prevent sexual assaults, and a limited reduction in medical bills in cases against Uber involving medical liens. It simply cannot be overstated how well CAOC fulfilled its mission in this moment, acting as the shield and sword for attorneys across the state. CAOC's elected leadership, executives, and staff worked long hours in an impossibly dynamic environment and against a political goliath. They pulled together the funds that were needed, they assembled an impressive political team, and they did not relent until Uber came to the table. Then they leaned on decades of relationships in the Capitol to quickly get a bill memorializing the deal written and signed by the Governor.

As CAOC President Doug Saeltzer said, "We are an organization of fighters and trial lawyers . . . We showed a blueprint for how to stand up to these large corporations that try to avoid responsibility."

"In a time of crisis when our own government seems to be working against the common citizen and for large corporations, it is important to find ways to fight. That is why I am so proud to be part of CAOC's legislative and political team that is dedicated to protecting consumer rights," Saeltzer added.

"The civil justice system has always been hated by those who have disproportionate power precisely because the jury system and rule of law provide a level playing field for the ordinary individual. The attacks have only increased with the vast wealth inequality in society, the corporatization of media and the shift in the political landscape. CAOC is one of the few organizations that is always watching out for the little guy."

With all of this in mind, I share two messages with the reader:

1. Support the organizations that represent you. Build them if they do not exist. Put tough and courageous leadership

at the helm. When the billionaires come for your livelihood and threaten your way of life, you will need to stand together and with allies who stand beside you.

2. If you are an attorney representing real people, join CAOC. Every attorney, whether practicing in personal injury, elder abuse, or medical malpractice, needs an organization that connects them with other attorneys and advocates for their interests. CAOC has its own elections coming up in September, and you should vote for leadership that carries your voice to the Legislature and beyond. There simply is no better advocate for our interests and for protecting access to the courtroom.

Finally, we went through a crucible this year. CCTLA and CAOC have emerged stronger. My sincerest appreciation to all of our members who showed up, got the word out, and contributed financially to the cause. We have work ahead to ensure this victory persists, and I know we will get this done together.



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- Asset Management
- Preservation Strategies
- Settlement Planning
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Stop Preparing Victims. Prepare Victors!

*(and other lessons from
Witness Prep Consultant
Jesse Wilson)*



By: Kate Ebert

It's 8:30 a.m. on April 7, 2026, one week before trial in the office's largest case to date. All the attorneys in the firm are standing in a circle around our large conference room table, screaming in unison: "F*** YOU, LET'S GO!"

Later that afternoon, we're told, "Write this down: 'Suck. But.'"

The following morning, we're wearing white *Phantom of the Opera* masks while silently acting out memories from our lives that "bring us joy."

To say it was a unique couple of days at the office would be an understatement. But that's what you get when you work with Trial/Witness Prep Consultant Jesse Wilson.

I first worked with Jesse Wilson in 2024 on two other cases. Both our prior sessions were conducted over Zoom. In preparation for our session, Wilson examined the case file, had meetings in advance with us, and then met with us and our client to get the client "trial ready." Both were great experiences, and both cases settled just before trial.

The in-person experience with Jesse exceeded my expectations because it brought his highly effective technique to life and simplified his mantra that I've been trying to implement early in my cases since 2024:

"Embrace the 'suck,' but get to the 'but.'"

— Jesse Wilson

The idea is simple: help clients move out of a victim mentality and into a mindset where they can tell their story with confidence—becoming the person opposing counsel will fear (and a jury will want to help) at trial.

When preparing clients for deposition, I go through the same checklist everyone does. I help my clients remember when their symptoms began and in what order, which providers they saw, and how their injuries have affected their lives.

Sometimes, I get lucky. I have a client with a great memory who is naturally upbeat and able to talk about what happened

without getting overwhelmed by it.

More often, though, I have a client who is angry, has a poor memory, and/or has allowed this "bad thing" to become their identity in the worst possible way.

We've all been there.

It's hour three of your client's deposition. They're tired and annoyed. You're thinking about the four sets of discovery you still have to review before tomorrow's deadline, when opposing counsel drops the question:

"Are there things you can no longer do because of the injuries from the collision?"

Regardless of how much time I spend preparing my clients, I always hold my breath waiting for the answer. If I have Debbie Downer as my client, I may close my eyes, too.

If they *aren't* properly prepared, Debbie Downer might say: "I can't do anything since the accident! I can't exercise. I can't sit in the car. I can't unload the dishwasher. I can't play with my kids. I can't hike. I can't clean. I can't, I can't, I can't."

Cringeworthy.

And, frankly, these are often the clients I have the hardest time talking to because they can be energy vampires every time you get them on the phone.

Before working with Jesse, I did my best to prevent this. I would tell clients that when they are testifying, they **must** mean the *literal words* they say. The only time they should use the word "can't" is when, with a gun to their—or their child's—head, they physically could not do something. They could say "struggle with" or "it's a challenge to ..." but they should not say "can't."

My instructions worked on most people. But after implementing Jesse's "Embrace the 'suck,' but get to the 'but,'" approach, I am much less anxious when clients are asked this question. And for those clients who really understand the concept, I actually look forward to hearing their answer.

Continued on page 10

Jesse would do a much better job explaining it, but this is how I have internalized his teaching and how I explain it to my clients:

When you hear that question, opposing counsel is really asking you to describe the things you now have to work harder to do—and, more importantly, **why the extra effort is worth it.**

Ten times out of 10, the answer is connected to one of three things: **(1) something that brought the client joy in the past, (2) the fact that they are a fighter at heart, or (3) both.**

I watched this happen in April during our firm's two-day, in-person session with Jesse and the lead witness—the mother of two children whose dad, her life partner, was killed in a horrible crash.

Jesse took a large flip chart and divided it into two columns:

SUCK	BUT
------	-----

The assignment was simple. In the “SUCK” column, the mother listed all of the things that had been difficult since losing her partner. Next to each one, in the “BUT” column, she had to explain **why she did the hard thing anyway.**

For example:

SUCK	BUT
Getting out of bed in the morning...	...but I was now the sole provider, and I needed to be there for our kids.
Following through with nursing school out of state...	...but I knew that's what he would have wanted me to do for me and our family.

The exercise showed us—and, more importantly, showed *her*—just how resilient she had been since experiencing an unimaginable loss. It brought to the surface the character that a jury would ultimately want to root for and help.

I have found that implementing this mindset earlier than deposition preparation—particularly with my *extreme victims*, my true Debbie Downers—can even help them personally with their recovery.

I don't hold myself out as a mental-health expert, but I do believe that when someone develops a consistently negative

outlook, negative outcomes can become more likely. Helping a client identify the ways they are pushing through their obstacles can change the way they see themselves.

I started using the technique with a client whose case had not even been filed yet.

This client was exceptionally negative and exceptionally wedded to identifying as a “victim” of everything: the at-fault driver, the doctors who “didn't fix him,” the insurance company that didn't believe him—you name it, he had been victimized by it.

During our calls leading up to *demanding arbitration*, I would ask him about his symptoms, how they prevented him from doing the things he wanted to do, and what upcoming treatments he had scheduled. A typical call.

But at the end, I started asking one more question:

“How are you pushing through this?” Or:

“Why are you pushing through this obstacle?”

Over the course of many months, I trained this client to give me the “but” naturally and unprompted after nearly every “sucky” thing he had to tell me.

By the time we got to his deposition, it didn't sound performative or forced. It was simply how he talked about his life.

I'm not suggesting this will work every time with every client. But I do think it can help. I will continue using it because of how much it helped this particular client—not only in his deposition, but personally, too.

The other technique of Jesse's I have been trying to implement since our first meeting is to embrace the power of my client's **joy** during deposition.

Jesse argues that “**‘less is more’ when you are talking about pain, but ‘more is more’ when you are talking about joy.**”

In other words, have your client testify about joy—particularly the joy they experienced doing the things they loved before the crash—as much as possible.

Let them paint the picture.

Let them give you every detail.

It is one of the few times when the traditional instructions “don't volunteer anything” and “answer only the question you are asked” can be relaxed. If allowed, they should describe how great that thing *was* and how happy it *made* them.

Why? Because, especially if you follow the first rule—**less is more when talking about pain**—the loss hits so much harder when you understand what the crash actually took from them.

It didn't just take away “hiking” or “playing the piano.”

It took away something that brought this person joy and defined who they were.

Jesse's advice about joy really clicked for me when I watched him work, during those two days in April, with the mother who lost her partner, the father of her children.

At the beginning of the session, she was understandably emotional. She had a hard time telling almost any story about her partner without bursting into tears. By the end, she was able to tell stories about him from a place of happiness—stories that made all of us laugh out loud.

I found myself getting lost in her stories. I would think, *This guy is so cool. What a great dad. I want to meet him.*

And then I would quickly remember, *Oh wait. He's gone.*

That was the power of what Jesse had helped her do. She was able to embrace the joy of her partner without denying the pain of his loss. And somehow, that made the tragedy feel even more profound.

When I spoke with John Demas and Tim Spangler, the attorneys in my office who ultimately tried the case, they each agreed that Jesse's strength was getting the client into the right frame of mind. That mindset ultimately unlocked the reasons why the jury should care about this person—and why the jury should want to help this family.

Having watched the process firsthand and having implemented some of Jesse's teachings in my own cases, I believe that the right mindset can and should be developed as early as possible with a client.

Witness preparation shouldn't begin the night before a deposition, and it shouldn't be limited to memorizing dates, doctors, symptoms, and treatment.

We should be helping our clients understand their own stories long before they ever sit in the deposition chair. In fact, the most valuable lesson this process has taught me is that it isn't limited to increasing the value of a client's case.

It may also help a fellow human being navigate something horrible a little more easily.

And isn't that the whole point?

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MATT CHISHOLM

An attorney with **Dudensing Law**, Matt Chisholm brings more than two decades of courtroom experience — and a lifelong commitment to justice — to the panel. Before joining the firm, Matt spent 20 years as a Principal Attorney with the Sacramento County District Attorney's Office, where he handled some of the county's most serious criminal cases. Over the course of his career, he successfully took more than 70 jury trials to verdict, ranging from domestic violence to elder abuse, and 16 of which were homicide cases.



THOMAS REYDA

Thomas is a partner at **Cutter Law P.C.**, where he advocates for injured clients, with a focus on representing victims of dependent adult and elder abuse at nursing homes and assisted living facilities. With nearly a decade of experience in civil litigation, Tom brings a deep understanding of both the legal system generally and nursing home abuse cases specifically.



JACQUELINE SERNA

Jacque joined **CAOC** in 2011 after working in the Assembly. As Policy Director, she has successfully passed legislation to permit post-death pain and suffering damages, ban secret settlements in sexual harassment and sexual assault cases, better the rights of elder abuse victims, ensure fair and just compensation for injured undocumented immigrants, and protect the rights of workers.



STUART TALLEY

Stuart's legal career has been focused largely on class action, mass torts, and other complex litigation. In private practice and acting as court-appointed counsel in high profile cases, he works tirelessly to see that justice is served. He has been particularly successful in cases involving abusive nursing homes, among many other practice areas. He is partner with **Kershaw Talley Barlow**.



WENDY YORK

Wendy is a nationally recognized subject matter expert in elder law litigation, representing individuals and families with a focused expertise in elder abuse, nursing home abuse and neglect, and wrongful death. She successfully handled the first ever elder abuse case to go to trial in Sacramento County, California in 2002! Wendy is the founding attorney and lead trial counsel at **York Law Firm**.

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New Waves of Privacy Litigation Under the California Invasion of Privacy Act



By: Ian Barlow

The California Invasion of Privacy Act (CIPA), Cal. Penal Code §631, et seq., enacted in 1967, was originally used to criminalize wiretapping and eavesdropping on telephone calls. However, the statute is now at the center of a fast-growing wave of privacy litigation involving sophisticated third-party electronic marketing, sales, and customer engagement techniques that depend upon harvesting consumer behavioral data, online interactions, and even mouse movements. CIPA's animating principle – whether the conduct involves telephones or computer code – is the same: protecting Californians' privacy in their communications.

This article provides an overview of CIPA, describes common technologies that trigger claims, discusses available remedies, and reviews recent CIPA cases, including potential defenses concerning standing, whether the practice falls under CIPA, and consumer consent.

The following CIPA provisions have served as core liability theories in recent litigation:

- **Section 631(a), “Wiretap Theory”:** This provision prohibits a third party from reading or attempting to read the contents of a communication while it is in transit, without consent. There are two clauses embedded in section 631(a): It punishes (1) persons who tap telephone wires, lines, and cables; and (2) persons who, without authorization, attempt to learn the contents of communications passing over any wires, lines, and cables. Courts have held that the first clause does not apply to internet connections, “while the second clause does.” *Greenley v. Kochava, Inc.*, 684 F. Supp. 3d 1024, 1051 (S.D. Cal. 2023).
- **Section 632, “Confidential Recording Theory”:** This provision targets the recording of “confidential” communications without consent. It historically applied to phone calls. However, today the same issues arise with VoIP systems and “quality assurance” recordings.
- **Section 638.51, “Pen Register/Trap and Trace”:** This section prohibits the installation or use of a pen register or a trap and trace device without first obtaining a court order. A “pen register” is “a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, but not the contents

of a communication.” Cal. Penal Code § 638.50(b). A “trap and trace device” is a “device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but not the contents of a communication.” *Id.* § 638.50(c). Today, pen registers and trap and trace devices take the form of software and internet communications. See, e.g., *Greenley*, 684 F. Supp. 3d at 1050.

Conduct, Technologies, and Tools Involved in CIPA Violations

Applied to modern marketing and consumer acquisition practices, the above CIPA sections help protect consumer privacy where companies use tools such as tracking pixels (e.g., Meta Pixel), cookies, or web beacons to monitor and collect consumer activity without consumers' consent. CIPA claims frequently target:

- **Session Replay.** Some sites install software or code that records a user's visit like a screen movie, capturing keystrokes, mouse movements, browsing behavior, and form fields in real time.
- **Website Chat Widgets.** These are tools that transmit the real-time contents of a user's live chat, such as with a chatbot, to a third-party vendor for analytics.
- **Pixels and Embedded Code.** These are tracking technologies that can log what a consumer views or types and then send specific interaction content – including the user's IP address, device information, URL, or website paths – to a third party.

Intake Considerations

Below are some intake considerations that may be helpful for evaluating a potential CIPA case:

1. Did the potential client use a website or app and later see



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Continued on page 16



Continued from page 15

- their exact actions or words reflected back in targeted ads, emails, or other outreach by third parties?
2. Did the potential client use a live chat that they think may have been administered by a third party and share information that was sensitive or private (e.g., medical or financial) without first being presented with a disclosure statement?
 3. Did the potential client fill out a form with personal or sensitive information and later suspect it was shared — for example, after describing a medical symptom or financial situation in a form, they received specific emails, calls, or ads related to that information?
 4. Did the business rely on “implied consent” through a buried privacy policy rather than a reasonably conspicuous notice that requires some form of affirmative consent?

CIPA Remedies

CIPA is a powerful statute for plaintiffs because it provides statutory damages of \$5,000 per violation. Cal. Penal Code § 637.2(a)(1). This can amount to significant financial risk for defendants where such violations are multiplied across a class of users. Equitable remedies are also available under CIPA. *Id.* § 637.2(b). Such relief can take the form of halting the challenged practices, requiring clear and conspicuous disclosures, and purging wrongfully collected data.

Case Examples

In *Sanchez v. Adidas America, Inc.*, 809 F. Supp. 3d 1095 (S.D. Cal. 2025), plaintiffs and putative class members asserted that Adidas violated CIPA through its use of the TikTok Pixel and Microsoft Bing Bat Tracker cookie. *Id.* at 1100. Plaintiffs explained that pixels are ‘small, almost-invisible image[s] . . . embedded in a website or an email to track a user’s activities.’ When a user visits a website, the website’s code installs the tracker into the user’s browser and can, at that point, track user interactions ‘on its platform in order to place targeted advertisements.’ The tracked data can include ‘the user’s operating system . . . the time when the website was accessed, [and] the user’s IP address . . .’

Id. In addition, the TikTok Pixel uses “fingerprinting” to collect information about the website user and then “match[es] it to information within the existing TikTok database across other websites with the pixel installed . . . This process associates information gathered from the pixel with personally identifying information, allowing one to track specific device activity.” *Id.*

Adidas moved to dismiss, arguing in part that the plaintiffs lacked standing, that cookies did not constitute “pen registers” under CIPA, and that plaintiffs consented to the trackers. The court rejected each of these arguments. It found that plaintiffs had Article III standing based on Adidas’ alleged infringement of a substantive right and on the concrete harm plaintiffs suffered in the form of privacy violations, “particularly in the control of their own information.” *Sanchez*, 809 F. Supp. 3d at 1105-06. More-

over, the court held that website-based trackers, cookies, and surreptitiously embedded software can constitute “pen registers” under CIPA. *Id.* at 1107.

The court also found that — while the footer of Adidas’ website included hyperlinks to its privacy notice stating that cookies and other tracking technologies were used to collect and store data — such disclosures were not reasonably conspicuous and did not require plaintiffs to affirmatively consent to those terms (e.g., in the form of a pop-up, button, cookie selections, or a checkbox). As a result, the court held that plaintiffs did not consent to Adidas’ use of pen registers on its web browser. *Id.* at 1108-09.

CIPA cases have also recently been certified as class actions. In *Torres v. Prudential Financial, Inc., et al.*, No. 22-cv-7465-CRB, 2024 WL 4894289 (N.D. Cal. Nov. 26, 2024), plaintiffs alleged that Prudential and its subsidiary, Assurance (together, “Prudential”), designed and operated a form on Prudential’s website that users could fill out to obtain a life insurance quote. *Id.* at *1. Users entered information about their demographics, family situation, and medical history. Prudential added third-party ActiveProspect’s TrustedForm “script” to the source code, which intercepted and collected information such as the user’s IP address and real-time interactions with the form, including keystrokes, mouse movements, and clicks. It then used that data to recreate a visual “‘session replay’ (resembling a video recording) of the user’s interactions with the form.” *Id.* at *1-2. Plaintiffs argued that they did not consent to ActiveProspect’s interception and collection of their information. *Id.* at *2.

Defendants argued, among other things, that the class should not be certified because individual issues predominated over whether class members consented to ActiveProspect’s script. *Id.* at *3. However, the court held that “Prudential’s Privacy Notice . . . likely would not put a reasonable person on explicit notice of ActiveProspect’s real-time interception of their every interaction, keystroke by keystroke, with Prudential’s form.” *Id.* at *6. Prudential’s privacy policies and its presentation of those policies presented a common question that could be resolved with class-wide proof. *Id.* at *7. The court granted class certification. *Id.* at *9-10.

CIPA applies a nearly 60-year-old wiretapping and eavesdropping statute to advanced tools used by companies to identify consumers, intercept consumer data, and monitor consumer behavior. It provides significant statutory damages and injunctive relief for consumer privacy violations. Practitioners should consider familiarizing themselves with this practice area given the potential to bring these cases as class actions or mass arbitrations, the widespread activities involving consumer data collection and interception, and the increasingly sophisticated threats to consumer privacy.



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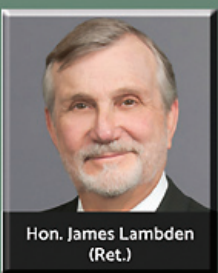
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A Better Trade: Rethinking AB 218 Reform Before the Counties Write It for Us



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By: Virginia Martucci

During a recent phone call with a colleague, he asked what type of law I was practicing these days. I told him that my current practice area is exclusively in childhood sexual abuse, specifically representing adults who were abused as children in institutions like foster care, schools, or youth-serving organizations. My clients range in age from their 20s to their 60s, thanks in large part to the extended limitations period the Legislature enacted in 2020. This particular colleague has been practicing much longer than me and mentioned he had never handled a case like that. He wondered how prevalent these cases are.

The answer would probably shock you. Childhood sexual abuse in taxpayer-funded institutions is disturbingly prevalent. The barrier to entry, even through the 2000s, was relatively low and largely required a background check and cross-check in a DOJ database.

Once child molesters infiltrate these institutions, the institutions have an incentive to protect them. Teachers are transferred to other schools after an accusation or allowed to transfer districts with positive letters of recommendation. Foster children are disbelieved due to their own behavioral

issues and the limited number of foster parents available, allowing abuse to continue after documented allegations. Physical abuse or punishments used by perpetrators (excessive chores, near drownings, beatings, withholding food) in foster care were seen as a foster parent training issue rather than child abuse or a red flag of an unsafe environment. In my experience, only a fraction of abuse deemed substantiated was ever criminally prosecuted.

Now that CAOC has defeated the Uber initiative, tort reformers have their sights set on reforming AB 218, which opened the statute of limitations for childhood sexual abuse cases.¹ Reforming AB 218 or capping damages would be devastating for the victims and present yet another barrier to seeking justice. This article describes the current pitfalls in litigating these cases and proposes amendments to AB 218 to prevent an all-out cap on damages.

These Are Not Slam-Dunk Cases

Anyone who has litigated or tried one of these cases will tell you that AB 218 did not make childhood sexual abuse litigation easy. It made it possible. Those are different things, and the current reform debate is being conducted as though the former were true. The plaintiffs I represent are, almost by definition, asking a court to reconstruct events from decades ago: a placement decision from 1974, a foster care file from 1988, a complaint that may or may not

have been logged in 1993. Witnesses have died. Records were purged under routine retention schedules that predate anyone imagining a revival statute. Memories, even honest ones, are reconstructed rather than recalled, and defense counsel will spend the entire case saying so. Corroboration often comes from a handful of other survivors willing to come forward, which is precisely the dynamic AB 218 hoped to make possible in the first place.

None of this makes these cases frivolous. It makes them hard, in the ordinary evidentiary sense, well before anyone gets to the merits of who did what to whom.

The Public Entity Problem

Cases against schools, counties, and other public entities are fraught with landmines that the reform debate largely ignores. A public entity generally has no common-law duty. Liability arises from breach of a specific statute, regulation, or ordinance.² That statutory liability requirement collides directly with the age of these cases, because the statutory infrastructure survivors are asked to rely on is itself young. California did not enact a comprehensive mandated reporting scheme until 1980, when the Legislature overhauled a patchwork of reporting duties and created the Child Abuse and Neglect Reporting Act.³

In other words, for any client abused

Continued on page 23

before 1980, the very reporting duties a plaintiff needs to point to in order to establish that an institution had a statutory obligation to act barely existed, if at all. That is not a reason to bar these claims. It is a reason the county association's proposal to require plaintiffs over 40 to prove the entity had "actual knowledge" sets a standard far harder to satisfy than it sounds, for reasons that have nothing to do with whether the abuse happened.

Immunity, Immunity, Immunity

Even where a plaintiff can identify a statutory duty, the Government Claims Act is riddled with immunities that do most of the defense work in these cases. Discretionary act immunity under Government Code section 820.2, and the derivative immunity it confers on the public entity itself under section 815.2, subdivision (b), have been read to cover a social worker's decisions about whether and how to investigate a report of abuse, whether to remove a child from a placement, and whether to initiate dependency proceedings.

The Court of Appeal affirmed dismissal on immunity at the pleading stage in a case involving abuse in a Merced County foster home in the 1970s, holding that a social worker's choice not to act on a report of abuse was an immunized discretionary decision.⁴ This means that even at the pleading stage, where a plaintiff alleges a social worker had notice of sexual abuse but failed to act, the social worker is immune. Fortunately, that case is pending review, but if it stands, it could dispose of foster care abuse cases at the demurrer stage.

The negligent placement cases are, if anything, more counterintuitive. Common sense says that if a public entity places a child with, or otherwise gives access to, someone it knows or suspects is a molester,

the entity should be liable for what happens next. California courts have largely held otherwise, treating the placement and supervision decision itself as immunized discretionary conduct under sections 820.2 and 815.2.⁵

There is a narrower rule, recognized decades ago by our Supreme Court, that once the placement decision itself is made, a subsequent failure to warn the people actually entrusted with the child is not immunized. But that exception is applied narrowly in practice, and it does little for the client whose theory is that the placement decision was the negligence.

No Enhanced Damages Against Public Entities

As written, Code of Civil Procedure section 340.1 lets a survivor recover treble damages on proof that the assault resulted from a cover-up, a provision the Legislature clearly intended as a deterrent aimed at institutions that concealed abuse.

However, the California Supreme Court held that because the treble damages remedy is punitive rather than compensatory, Government Code section 818's blanket immunity from damages "imposed primarily for the sake of example and by way of punishing the defendant" bars it entirely as to public entities.⁶ A survivor can prove, to a jury's satisfaction, that a school district deliberately buried a molestation complaint for years, and still recover nothing beyond ordinary compensatory damages. Notably, the tool the Legislature built specifically to punish and deter institutional cover-ups has already been entirely disarmed.

What Is Actually Being Proposed

Against that backdrop, a conglomerate of county associations and public entities has urged the Legislature to adopt heightened evidentiary standards, caps on damages, and several liability.⁷

Given how much these cases are

already immunized, capped, or foreclosed against public entities, the Legislature should not now cap damages without something in exchange for the victims. Public entities are betraying the public's trust through negligence and outright cover-ups, all on the taxpayers' dime and with no accountability for those involved. There needs to be accountability. Two alternatives to outright caps are worth putting in front of the Legislature.

Enhanced Remedies and Fee-Shifting

These proposals borrow from the Elder Abuse and Dependent Adult Civil Protection Act. The first accepts some sort of cap on ordinary negligence-based non-economic damages, roughly the trade the counties are already asking for, but pairs it with an enhanced remedy for cases proven by clear and convincing evidence. This would be available against any defendant, public or private, once a plaintiff proves their case by clear and convincing evidence or proves a cover-up. The enhanced remedy should be structured as mandatory attorney's fees and costs and no cap on damages. A cover-up case is almost by definition a case that requires years of additional litigation and investigation to uncover. Fee-shifting compensates for that and incentivizes attorneys to take cases where damages are capped.

The second proposal does not cap damages, but accepts the tort reformers' clear and convincing evidentiary standard for claims arising more than twenty years after the abuse, but only in exchange for expressly preserving enhanced remedies (attorney's fees, costs, treble damages) against public entity defendants where that heightened standard is met.

Either version keeps faith with the purpose of AB 218, which aimed to give survivors of institutional abuse a real chance to hold institutions accountable.

¹ Peele, Thomas, New efforts to reform California's childhood sex abuse law draw on past proposals, EdSource (March 11, 2026), available at <https://edsources.org/2026/california-child-abuse-lawsuit-reforms/753203>.

² Where a public entity is sued, the basis for its liability for negligence can be either (i) Government Code sections 815.2 and 815.4, which provide that public entities can be vicariously liable for a plaintiff's injuries proximately caused by the acts or omissions of their employees, agents, and/or independent contractors; or (ii) section 815.6, which provides that public entities can be directly liable for negligence where they fail to discharge mandatory duties.

³ Cal. Pen. Code § 11164 et seq. (Stats. 1980, ch. 1071, § 4); see also *Krikorian v. Barry* (1987) 196 Cal.App.3d 1211, 1216-1217 [noting Department of Justice estimate that, prior to the 1980 reenactment, only about ten percent of child abuse cases were being reported].

⁴ *K.C. v. County of Merced* (2025) 109 Cal.App.5th 606. Review has been granted (Jan. 14, 2026, S290435), so the opinion is not currently citable as precedent, see Cal. Rules of Court, rule 8.1115, but the Supreme Court has agreed to decide the same discretionary-immunity question discussed here.

⁵ *Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450 (negligent placement and supervision decisions immunized under Gov. Code §§ 815.2, 820.2); cf. *Johnson v. State of California* (1968) 69 Cal.2d 782 [once the placement decision itself is made, a subsequent failure to warn is not immunized].

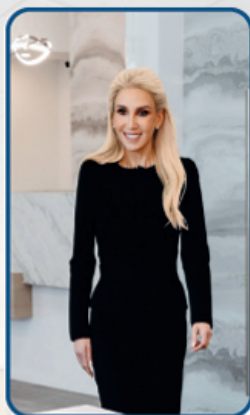
⁶ *Los Angeles Unified School Dist. v. Superior Court* (2023) 14 Cal.5th 744.

⁷ Peele, supra note 1.



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Beyond Retained Control

Proving Actual Exercise and Affirmative Contribution after Sandoval

This article is intended to provide plaintiff's counsel seeking to establish liability under the retained-control exception to the Privette doctrine with a practical framework for identifying and developing the evidence necessary to prove such a claim.

The focus is on moving beyond merely demonstrating that a hirer retained authority over a contractor's work to establishing that the hirer actually exercised that control in a manner that affirmatively contributed to the plaintiff's injuries. As discussed below, Hooker and Sandoval provide the framework for developing this evidence through targeted discovery, focused depositions, and careful examination of the hirer's conduct at the worksite.

The Privette Rule and Hooker Exception

In Privette v. Superior Court (1993) 5 Cal.4th 689, the California Supreme Court explained that a person who hires an independent contractor is generally not liable under the peculiar-risk doctrine for injuries sustained by the contractor's employees. The Court reasoned that, because the workers' compensation system generally provides the employee's exclusive remedy against the contractor-employer, the employee should not also be permitted to impose vicarious liability on the hirer under the peculiar-risk doctrine.

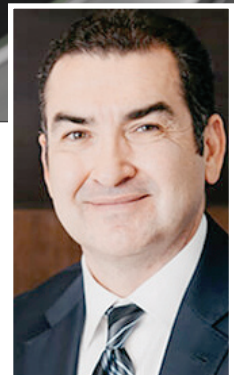
Privette addressed vicarious liability under the peculiar-risk doctrine and did not foreclose liability based on a hirer's own conduct. California courts have recognized limited exceptions to the Privette doctrine where the hirer may be held liable for its own conduct. A hirer may still face liability where its exercise of retained control affirmatively contributes to the injury (Hooker v. Department of Transportation (2002) 27 Cal.4th 198, 202), where a landowner fails to disclose a concealed, pre-existing hazardous condition (Kinsman v. Unocal Corp. (2005) 37 Cal.4th 659, 664), or where the hirer's provision of unsafe equipment affirmatively contributes to the injury (McKown v. Wal-Mart Stores, Inc. (2002) 27 Cal.4th 219, 222–223).

While there are multiple recognized exceptions to the Privette doctrine, this discussion is limited to the retained-control exception set forth in Hooker v. Department of Transportation (2002) 27 Cal.4th 198. The remaining exceptions are beyond the scope of this discussion.

In Hooker, a crane operator employed by an independent contractor hired by the California Department of Transporta-



By: Peter Tiemann



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tion (Caltrans) was killed when the crane he was operating tipped over during construction of an overpass after he attempted to operate it without first re-extending the outriggers. Following his death, his wife, who had received workers' compensation benefits, brought a negligence action against Caltrans, alleging that Caltrans negligently exercised the control it had retained over safety conditions at the worksite. (Hooker, supra, 27 Cal.4th 198.)

The Three-Part Sandoval Framework

In addressing the issue presented, the Hooker Court held that a hirer is not liable merely because it retained control over some aspect of the contractor's work. Nearly two decades later, Sandoval clarified the requirements for establishing liability under Hooker's retained-control exception. Under this framework, liability may arise where (1) the hirer retained control over the manner of performance of some part of the work entrusted to the contractor; (2) the hirer actually exercised that retained control; and (3) the exercise of that control affirmatively contributed to the worker's injury.

(Hooker, supra, 27 Cal.4th at p. 202; Sandoval v. Qualcomm Incorporated (2021) 12 Cal.5th 256, 274–278.)

1) Retained Control – Did the Hirer Have the Right?

In Hooker, the Court addressed whether an employee of a

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contractor may sue the hirer of the contractor for negligent exercise of retained control. (*Hooker, supra*, 27 Cal.4th at p. 201.)

The Supreme Court found that the plaintiff raised a triable issue of material fact as to whether the defendant retained control over safety conditions at the worksite. (*Hooker, supra*, 27 Cal.4th at p. 202.)

The Court concluded that the plaintiff presented evidence that the defendant retained control over safety conditions at the worksite by showing that: (1) the Caltrans Construction Manual stated that Caltrans was responsible for obtaining the contractor's compliance with applicable safety laws and regulations; (2) the Construction Safety Coordinator was responsible for recognizing unsafe conditions and periodically inspecting the contractor's operations; and (3) the Caltrans resident engineer had authority to establish compliance schedules, require correction of dangerous conditions, and shut down operations until those conditions were corrected. In addition, Caltrans personnel knew that crane operators frequently retracted the outriggers and understood the danger associated with doing so. (*Hooker, supra*, 27 Cal.4th at pp. 202-203.)

Although the plaintiff established that the defendant retained control over safety conditions at the worksite, the plaintiff failed to raise a triable issue of material fact as to whether the defendant actually exercised that control in a manner that affirmatively contributed to the death of plaintiff's husband. (*Hooker, supra*, 27 Cal.4th at p. 202.)

Hooker teaches that establishing retained control alone is insufficient. Plaintiff's counsel must also develop evidence showing that the hirer actually exercised its retained control and that its exercise of that control affirmatively contributed to the injury.

2) Actual Exercise – Did the Hirer Use That Right?

Sandoval clarifies what constitutes an "actual exercise" of retained control. A hirer actually exercises its retained control when it involves itself in the contracted work such that the contractor is not entirely free to perform the work in its own manner. This requires the hirer to exert some influence over the manner in which the contracted work is performed, such as through direction, participation, or induced reliance. (*Sandoval, supra*, 12 Cal.5th at p. 276.)

Direction, participation, and induced reliance are not separate elements that a plaintiff must establish. Rather, they are examples of conduct that may demonstrate that the hirer actually exercised its retained control. The central inquiry is whether the hirer moved beyond merely possessing the authority to control the work and actually involved itself in how the contracted work was performed. (*Sandoval, supra*, 12 Cal.5th at p. 276.)

One way a hirer may exert such influence is through direction. Although *Sandoval* recognized direction as a means of demonstrating actual exercise, the evidence there did not establish that Qualcomm directed the manner in which the contracted work was performed.

Tverberg v. Fillner Construction, Inc. (2012) 202 Cal.App.4th 1439 provides a useful example of evidence sufficient to demonstrate direction. There, the evidence showed that the hirer directed another subcontractor to dig bollard holes in the area where the plaintiff was expected to erect a canopy and required the plaintiff to perform unrelated work near the holes. The Court held that ordering the holes to be created and requiring the plaintiff to work near them could constitute a negligent exercise of retained control that affirmatively contributed to the plaintiff's injury. (*Tverberg, supra*,

202 Cal.App.4th at p. 1448.)

Tverberg also demonstrates that direction and participation may overlap. The Court distinguished between passively permitting an unsafe condition to occur and actively participating in its creation, explaining that "the act of directing that it occur is active participation." Thus, Fillner's direction that the bollard holes be created and that Tverberg work near them could constitute both active participation and a negligent exercise of retained control. (*Tverberg, supra*, 202 Cal.App.4th at p. 1448.)

Induced reliance is another means of demonstrating actual exercise of retained control. In *Sandoval*, the Supreme Court recognized that a hirer may exercise retained control by inducing the contractor to rely upon the hirer in performing the contracted work. Although the facts in *Sandoval* did not establish induced reliance, the Court discussed other cases illustrating the concept, including *Kinney v. CSB Construction, Inc.* (2001) 87 Cal. App.4th 28, in which the hirer induced the contractor's conduct through actual direction, reliance on the hirer, or otherwise. Thus, actual exercise may be established not only through direction or active participation, but also where the hirer's conduct induces reliance that influences the manner in which the contractor performs the work. (*Sandoval, supra*, 12 Cal.5th at pp. 276-277.)

3) Affirmative Contribution – Did Its Exercise Contribute to the Injury?

Actual exercise of retained control, standing alone, is not enough. The plaintiff must also establish that the hirer's exercise of retained control affirmatively contributed to the injury. "Affirmative contribution" means that the hirer's exercise of retained control contributed to the injury in a manner that was not merely de-

Continued on page 30

Although the plaintiff established that the defendant retained control over safety conditions at the worksite, the plaintiff failed to raise a triable issue of material fact as to whether the defendant actually exercised that control in a manner that affirmatively contributed to the death of plaintiff's husband. (*Hooker, supra*, 27 Cal.4th at p. 202.) *Hooker* teaches that establishing retained control alone is insufficient. Plaintiff's counsel must also develop evidence showing that the hirer actually exercised its retained control and that its exercise of that control affirmatively contributed to the injury.

Continued from page 29

rivative of the contractor's own contribution to the injury. (See *Sandoval*, supra, 12 Cal.5th at p. 277.) Where the contractor's conduct is the immediate cause of the injury, affirmative contribution generally requires evidence that the hirer induced that conduct rather than merely failing to prevent it. (*Ibid.*) Thus, the distinction is between a hirer that merely possessed the authority or opportunity to prevent unsafe conduct and a hirer whose exercise of retained control actually contributed to bringing about the injury.

Tverberg: An Example of Affirmative Contribution

In *Tverberg*, Jeffrey Tverberg, an independent contractor hired to erect a metal canopy, was injured after falling into an uncovered bollard hole dug by another subcontractor at the direction of the general contractor, Fillner Construction. Before the accident, Tverberg twice requested that the holes be covered, but they remained uncovered. Tverberg and his wife subsequently sued Fillner, alleging that it negligently exercised its retained control over jobsite safety. (*Tverberg*, supra, 202 Cal.App.4th 1439.)

In *Tverberg*, the Court considered whether Fillner Construction's exercise of its retained control over the jobsite affirmatively contributed to Tverberg's injuries. (*Tverberg*, supra, 202 Cal.App.4th at p. 1447.)

In reviewing the grant of summary judgment, the Court concluded that Tverberg presented sufficient evidence from which a jury could conclude that Fillner affirmatively contributed to his injuries in three ways: (1) Fillner directed another subcontractor to create the bollard holes and required Tverberg to perform unrelated work next to them; (2) there was evidence that Fillner affirmatively assumed responsibility for worker safety; and (3) Fillner's conduct supported an inference that it affirmatively assumed responsibility for a safety measure and then negligently performed that responsi-

bility. (*Tverberg*, supra, 202 Cal.App.4th at p. 1448.)

Tverberg demonstrates that affirmative contribution may arise where the hirer's own conduct creates or contributes to the hazard, directs the contractor to work in proximity to the hazard, or assumes and then negligently performs a safety responsibility. Mere knowledge of an unsafe condition or failure to intervene, standing alone, generally will not satisfy the affirmative-contribution requirement. (*Tverberg*, supra, 202 Cal.App.4th at pp. 1446–1448.)

Thus, *Hooker* established that a plaintiff must prove that the hirer retained control and actually exercised that retained control in a manner that affirmatively contributed to the worker's injury. *Sandoval* further clarified these requirements by distinguishing between retained control, actual exercise, and affirmative contribution. Merely showing that the hirer retained control is insufficient; the plaintiff must present evidence that the hirer actually exercised that retained control in a manner that affirmatively contributed to the injury. (*Sandoval*, supra, 12 Cal.5th at pp. 274–278.)

Proving the Exception in Discovery

1) Retained Control

Plaintiffs should use discovery to identify what authority the hirer retained over the contractor's work and safety conditions. Discovery should examine the contract, safety policies, work orders, inspection procedures, and communications to determine who had authority to direct or modify the work, require correction of unsafe conditions, conduct safety inspections, or stop the work.

In particular, discovery should establish: Who had authority to direct the manner of work? Who could change the work? What authority did the contract reserve to the hirer? Depositions should establish who held that authority, how the authority was communicated to the contractor, and what responsibilities the hirer assumed for safety at the worksite. The goal is to

establish the scope of the hirer's retained authority before turning to the separate question of how the hirer actually exercised that authority.

2) Actual Exercise

To prove actual exercise of control, discovery should focus on what the hirer actually did. Identify who gave instructions, who participated in the work, what decisions the hirer made, and what the contractor relied on. In particular, ask: Who gave the instruction? Who decided where, how, or when the work occurred? Who changed the contractor's proposed method? What did the contractor do because of that direction?

Discovery should also identify who directed the work, who approved or changed the work, and whether the contractor acted based on the hirer's instructions or representations. Request documents showing those actions, including emails, texts, work orders, safety documents, meeting notes, and other communications. The goal is to establish who made the decision, what they did or communicated, what the contractor did in response, and how that conduct contributed to the injury.

3) Affirmative Contribution

To develop evidence of affirmative contribution in discovery, plaintiff's counsel should establish who directed the work, who assigned the plaintiff to the area, who made decisions concerning safety, what documents memorialize those decisions, who was notified of the dangerous condition, and what action the hirer agreed to take in response.

Discovery should also ask: What decision exposed the worker to the hazard? Did the hirer create the hazard? Did it require use of particular equipment? Did it prevent a safety precaution? Did it promise to perform a safety function and fail to do so? The goal is to identify the hirer's specific conduct that affirmatively contributed to the worker's injury, rather

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The retained-control exception is not established merely by showing that the hirer maintained a safety program, retained stop-work authority, conducted inspections, or knew of an unsafe condition. The critical inquiry is what the hirer actually did with the authority it retained.

Continued from page 30

than merely showing that the hirer knew of or permitted an unsafe condition.

Conclusion

The retained-control exception is not established merely by showing that the hirer maintained a safety program, retained stop-work authority, conducted inspections, or knew of an unsafe condition. The critical inquiry is what the hirer actually did with the authority it retained.

Under *Hooker* and *Sandoval*, plaintiff's counsel should develop evidence focused on three distinct issues: retained control, actual exercise of that control, and affirmative contribution. The strongest cases are those in which the evidence demonstrates that the hirer crossed the line from general oversight into exercising influence over the manner in which the contracted work was performed, directing conduct that exposed the worker to a hazard, creating or contributing to the hazard, or undertaking a safety responsibility and negligently performing it.

Accordingly, discovery should not end with the contract or safety manual. Those documents may establish the hirer's authority, but deposition testimony, communications, inspection records, safety meetings, and evidence concerning what occurred at the worksite are often necessary to establish how that authority was exercised and how it contributed to the injury.

Peter Tiemann is a principal of the Tiemann Law Firm based in Northern California. He focuses on personal injury and trucking cases throughout the state of California. Jade Smith is a law clerk at the Tiemann Law Firm.



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Judicial Members Present: Hon. Larry Brown; Hon. Steven M. Geverser; Hon. George Acero; Hon. Alin Cinteau; Hon. Jeff Galvin; Hon. Christopher Krueger; Hon. Richard Miadich; Hon. Rick Sueyoshi; Hon. Jill Talley; Hon. Curtis Fiorini; and Hon. Julie Yap.

Court Representatives Present: Brenda Allen (Director of Operations); Amy Malone (Operations Manager, Civil Division); and Drew Taylor.

Attorney Members Present: Bob Bale; Karen Goodman; Karen Jacobsen; Bill Kershaw; Jason Sommer; Bob Zimmerman; Laura McHugh; Angelina Ray; Justin Rodriguez; Ronald Scholar; and Brittany Benzin.

Minutes Recorded by Bill Kershaw.

Call to Order: 12:10 p.m. by Presiding Judge Larry Brown

1. **New Courthouse and Success on Move and Response by Judges, Staff, Jurors and Attorneys to date:** The move from the old Courthouse occurred over a 5-week period beginning at the end of March 2026, taking advantage of light Monday schedules as previously planned. Impressively, the Court continued operating during the entire move and never went dark as other Courts have done. The move relocated 470 Judicial Officers and staff and required significant downsizing to more efficiently utilize space. Unfortunately, due to budget constraints, the Court was unable to construct a new juror parking lot but there are future plans to re-examine this issue. As with any new construction, bugs are still being worked out with elevators, Zoom camera angles and the like.

Attorney Workrooms: There is an Attorney workroom for counsel on the first floor next to the Information Kiosk – Room 108, which has desks and workstations for attorney discussions and witness preparation. Downstream, the Court hopes to add some artwork to make the area look a little homier. Additionally, each courtroom has two anterooms that can be used to house trial materials or prepare witnesses while the Court is in session, but which are locked during lunch for security reasons. In this regard there was discussion that it would be nice to have such anterooms open at lunch for further witness preparation and for trial counsel to work on upcoming issues. Currently, however, security precludes keeping such rooms open while court is not in session.

2. **New Judicial Assignments Impacting Civil:**
 - Judge Jeff Galvin: has moved from Civil to Probate;

- Judge James McFetridge: has moved downtown to handle civil matters and is scheduled to retire in October;
- Judge Renuka George: has moved from downtown to the Ridgeway Courthouse to handle Family Law;
- Judge Julie Weng-Gutierrez: has moved from Family Law to the downtown Civil Division and is now handling CHRO, Dept 6B;
- Judge George Acero: is now handling Minor's Compromise, Dept 10A;
- Judge Ken Mennemier: is now handling the OX (Orders of Examination) calendar, Dept. 14C.

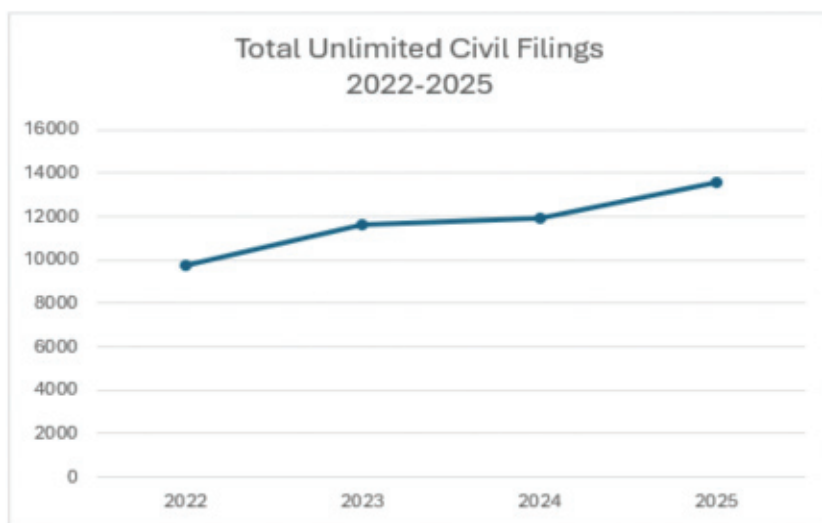
3. **Retirements and Appointments:** Judge James McFetridge is retiring in October 2026; Judge Laurel White is retiring December 31, 2026; Commissioner James Morse, who ran for and was elected to Judge White's seat, will be assuming that position at the beginning of 2027; and Commissioner Heath Langle, who ran for and was elected to Judge McFetridge's seat, will be assuming that position in October 2026. Finally, Judge Don Currier, who is currently in the criminal division, is moving to New Hampshire in the near future. Given that the Court had two retirements late last year (Judges Gilliard and Oros), there will be at least three vacancies.

4. **Trials and Courtroom Availability:**

2026 Civil Division – January through May	
Total scheduled Civil Trial Assignment Hearings	1,807
Total Civil Trial Assignment Hearings addressed by Dept. 47 Civil Trial Assignment Calendar	372
Assigned to a Dept.	81
Pre-Assigned to a Dept.	3
Reset due to No Courts Avail.	2
Continued - (Continuances requested by parties within 4-6 weeks of trial date)	149
Settled - (Settlements that occurred in D.59 and Notices of settlement reported by parties within 4-6 weeks of trial date)	16
Trailed	3
Dismissed	19
No Appearance	6
Dropped	17
Referred to Trial Setting Program (TSP)	51
Set for OSC re: Dismissal	25

Presiding Judge Larry Brown advised that the Court had only two cases reset due to the unavailability of an open trial department in April 2026 – one matter trailed for a week, and another in which each side filed CCP 170.6 challenges. In this regard there was a discussion about the recent California Supreme Court Decision in *J.O. v. Superior Court of San Joaquin County*, decided May 28, 2026, allowing for objection and opposition to the “blanket” filing of a CCP 170.6 challenge under certain circumstances involving a pattern or practice implicating separation of powers issues. The Court commends the case to practitioners for their reading.

5. **New Unlimited Civil Case Filings Continue to Rise in Sacramento:**



- From 2022 through 2025, unlimited civil filings have increased by 38%, close to 14,000 filings, which has challenged the ability of the Court to handle and dispose of the vast increase in new cases.

6. **Update on 4 Civil Home Court Depts since their 10/2025 implementation:** Judge Gevercer began by describing some of the historical changes the Court has instituted to streamline Law & Motion (L&M) to make it more responsive to civil litigation needs. In October 2025, the Court implemented the Civil Home Court(s), increasing from 2 to 4 the number of Judges who handle Law and Motion and adding in case management through handling the CMC for those cases as well. For all intents and purposes, this has created a single pre-trial assignment jurist for civil cases.

- **Dramatic Increase in Filings:** Judge Gevercer also reported a 14–15% increase per year in civil filings, 35% to 45% of which are Lemon Law cases as of June 2026. This has impacted the wait times on demurrers and other Law & Motion (L&M) matters. The Court is evaluating ways in which to reduce wait times, and hopes to discuss options with the Advisory Committee. Contributing to this increase is the fact that AI has created the capacity for anyone with a bar card and a laptop to crank out complaints and discovery motions with lightning speed.
- **Different AI Programs:** The Court has embraced the potential for using AI to more effectively manage civil litigation and to increase efficiency. To that end, under the leadership of L&M Judge Alin Cintean, the Court is experimenting with a significant number of different AI programs to determine which and how many might best serve the Court's needs. Tailoring an effective and comprehensive AI program for Judges and research attorneys is a priority for the Court this year.
- **L&M Judge Chris Krueger:** Observed that because significant numbers of Lemon Law cases were blocking demurrer scheduling slots, L&M Judges instituted an L&M reservation call-in process whereby the caller is required to state whether the motion they are seeking to file relates to a Lemon Law matter; if so, the motion is accorded a particular slot, which is designed to expedite decisions on such cases.

- **L&M Judge Julie Yap:** Emphasized that practitioners should get their motions on file early, particularly Ex Parte and continuance requests. The L&M Depts are doing their best to shuffle things around and are routinely oversetting to try to make sure that everything is heard as timely as possible.
- **L&M Judge Rick Sueyoshi:** Observed that with the increase in the number of filings, the foregoing is now the new normal. While in the past L&M used to have off days, allowing them to catch up to some extent, this is no longer the case and the challenge now is simply not to fall behind. He also observed that this phenomenon is not unique to Sacramento County – it is being experienced throughout California. By the time this Committee has its next meeting, he hopes to have some data and new ideas to talk about.

7. **Update on Department 59 Pro Tems and New Facility:** Judge Curtis Fiorini, who leads the Dept. 59 Pro Tem Settlement Program, reported that the program is doing well and has settled into its new location. He reported that Pro Tems have really been stepping up to fulfill the Court's needs, but that even more volunteers would be helpful. Judge Fiorini advised that when the Dept. sends out a request for help, it is serious and help is truly needed. In addition to the traditional email requests for assistance, Dept. 59 has been individually calling lawyers and that effort has been successful and will be continued. So, if you receive a call, please help. He also advised that the new quarters have a dozen conference rooms with Zoom capabilities and well-stocked snacks.

8. **Update on available technology equipment in courtrooms including delivery of electronic evidence such as deposition excerpts and videos:** Amy Malone and Drew Taylor reported that the Court's basic technology includes high-quality sound and the ability to present documentary evidence digitally from one's desktop wirelessly through Bluetooth technology. Drew and Amy also advised that if counsel wanted to come over to the courtroom before trial to test out presenting materials through the Court's facilities and/or to add to them, counsel should feel free to do so with advance notice to the courtroom. They also advised that bugs are still being worked out and that any feedback counsel might have is welcome.

9. **Other**

10. **Future Meetings:**

September 3, 2026

December 9, 2026 (on Wednesday due to conflicts)

Meeting adjourned at 1:15 p.m.

MEMBER VERDICTS & SETTLEMENTS

CCTLA members are invited to share their verdicts and settlements: Contact Marti Taylor, editor of *The Litigator*, mtaylor@wilcoxenlaw.com, for preferred sample format. The next issue of *The Litigator* will be the Winter 2026 issue, and submissions need to be sent to Marti before November 1, 2026. Please try to keep word count below 2,000.

VERDICT: \$91,029,670

Duane Miller, an individual, vs. Michael Axline, an individual, and Miller & Axline, a P.C.

Breach of Contract, Financial Elder Abuse, Conversion, Breach of Fiduciary Duty, Declaratory Relief, and Unjust Enrichment

Total Verdict: \$91,029,670

Breakdown: \$60 million in stock by partial directed verdict, plus a jury verdict against Axline in the amount of \$31,029,670, including \$5,000,000 in emotional distress.

Plaintiff's Counsel: Ognian Gavrillov, Eliezer Cohen and Elizabeth Niemi, of Gavrillov & Brooks

Defendants' Counsel: (1) Devin Donahue and Andrew Hutchinson, of Loeb & Loeb, LLP, and (2) Gary Lincenberg and Ashley Bowman, of Bird, Marella, Rhoads, Lincenberg, Drooks & Nessim, LLP

Court and Judge: Sacramento County Superior Court, the Honorable Jeffrey S. Galvin

Trial Dates: (15 days): March 16-20, 2026, March 23-27, 2026, March 30, 2026, and April 1-4, 2026

Case Summary: Miller and Axline were long-time law partners in Miller & Axline when Miller got sick, which caused Miller to act erratically. Miller's family obtained temporary probate court orders over Miller's medical care, and Miller was placed into a secured memory care facility.

Axline knew that Miller was challenging these orders on June 30, 2022. On June 29, 2022, without giving notice to Miller and without paying Miller anything, Axline vacated Miller's position on the firm's board of directors and transferred Miller's 60% ownership interest in Miller & Axline to the firm. In 2024, Axline made himself a majority owner of the firm and paid himself nearly \$20,000,000, without paying Miller a penny.

Trial Summary: On Feb. 3, 2026, the court ruled that Axline was not *required* to take Miller's shares. On Mar. 9, 2026, the court ruled that Axline's attempt to vacate Miller's seat on the board of directors was invalid. On Apr. 1, 2026, the court ruled that Axline was not *permitted* to take Miller's shares.

Each side called ethics experts, probate experts, medical experts, forensic accounting/business experts and corporate governance experts. Axline's only quantified settlement offer to Miller was \$6,500,000. Using firm money, Axline paid his attorneys close to \$9,000,000.

VERDICT: \$2,525,995.50

Magnasco v. Kaiser

Medical Malpractice - Kaiser Arbitration

Total Verdict: \$2,525,995.50 (inclusive of 998 costs & interest) *Mr. Magnasco:* \$1,059,525 (future medical care); \$361,198 (past/future wage loss); \$470,000 (pain/suffering). *Mrs. Magnasco:* \$470,000 (loss of consortium); 998 costs & interest: \$165,272.50

Plaintiff's Counsel: Christopher G. Romero (Wilcoxon Callahan, LLP)

Defendant's Counsel: Christopher T. Lustig & Kevin B. Buiza (Craddick, Candland & Conti)

Court & Judge: John M. Drath

Trial Dates: April 27-May 4, 2026

Case Summary:

This case involved the failure of Mr. Magnasco's PCP at Kaiser to timely diagnose a vertebral artery dissection that resulted in a devastating and life-altering left lateral medullary stroke.

On Oct. 3, 2023, Magnasco (age 61) was at work when he began experiencing acute left-sided neck pain that radiated to his head, resulting in a severe headache. He presented to his PCP at Kaiser the following morning, along with his wife, a registered nurse, who went to the appointment out of concern, where the circumstances of the day before were described, including "the worst headache of his life."

The records, however, did not document a headache (severe or otherwise) but rather "ache/soreness" in Magnasco's neck, and he was diagnosed with a neck muscle strain.

There were two additional visits (Oct. 10, 2023, annual physical; Oct. 12, 2023, virtual PT) where neck strain was confirmed as the active diagnosis. Magnasco then suffered a stroke on Oct. 15, 2023, due to "likely vertebral artery dissection."

Trial Summary:

Upon the conclusion of expert depositions, claimants made 998 offers of \$800k for Magnasco and \$450k for Mrs. Magnasco. Kaiser did not make any offers and refused to mediate. Kaiser's focus at arbitration was the lack of documentation to support claimants' theory (as "headache" was not mentioned a single time in thousands of pages of records), while also disputing that vertebral artery dissection was (1) the cause of his

Continued on page 41

MEMBER VERDICTS & SETTLEMENTS

Continued from page 40

stroke, and (2) would have been identified if referred to the ER.

Claimants successfully argued that Magnasco's complaints were relayed to his PCP, but even if not, Kaiser still breached the SOC by failing to take a complete history. Claimants also proved Magnasco did suffer a vertebral artery dissection (which was ultimately admitted by Kaiser's experts at arbitration), which would have been identified and treated, thus preventing his stroke, had he simply been referred to the ER.

Claimants' Experts: Dr. James Leo, internal medicine; Dr. Raymond Ricci, emergency medicine; Dr. Nicholas Telischak, neuroradiologist; Dr. James Hinman, vascular neurologist; Dr. Daniel Neudorf, PM&R/Life Care Planner; and Craig Enos, economist.

SETTLEMENT / MEDIATION: \$1,000,000

Jet Ski Collision

Name of Case: Confidential

Total Settlement: \$1,000,000

Plaintiff's Counsel: Jeffrey M. Schaff, of Schaff Law Group

Defendant's Counsel: Confidential

Mediator: Confidential

Case Summary:

Plaintiff suffered a traumatic brain injury and other injuries while a passenger in a jet ski crash at an unofficial work event on the Sacramento River. After the workers' comp claim was denied, Plaintiff filed suit against the employer and the unofficial host of the work party. Plaintiff leveraged significant future medical care needs and joint and several liability at and following mediation to advocate for tender of the policy. Once the employer and its insurer realized their risk, they almost immediately tendered the \$1 million policy to Plaintiff.

NOTABLE CITES Continued from page 2

the Broadmoor Police Protection District, alleged they were harassed, retaliated against, and terminated after reporting fiscal mismanagement and conflict of interest violations by a commissioner who had appointed himself chief of police. On Jan. 19, 2021, each submitted a claim form listing the Date of Loss as "Numerous, Loss is ongoing." Their narratives described numerous discrete events, including threats of termination, interrogations, a fabricated criminal referral, stalking, disparaging public statements, and removal of job duties, but contained no dates or date ranges anywhere on the forms.

The district served notices of insufficiency under section 910.8 identifying the missing date of loss and allowing 15 days to cure. Petitioners did not respond. The claims were rejected, suit followed, and the trial court sustained demurrers without leave to amend to the whistleblower retaliation, Bane Act, invasion of privacy, and intentional infliction causes of action for failure to comply with the Government Claims Act. Notably, a co-plaintiff who filed a claim the same day did include dates for some discrete incidents, and his form was found to substantially comply. Petitioners sought writ relief.

ISSUE: Whether a claim form alleging continuing retaliatory conduct satisfies Government Code section 910(c) when it gives no dates other than the date the form was signed and describes the date of loss only as ongoing.

RULING: Writ petition denied. The claim forms neither complied nor substantially complied with section 910.

REASONING: Section 910(c) requires the date, place, and other circumstances of the occurrence or transaction giving rise to the claim. The purpose is to give the entity enough information to investigate and settle meritorious claims without litigation, and the statutes must be satisfied even where the entity has actual knowledge of the circumstances. (*DiCampi-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991.)

Petitioners relied on *Knight v. City of Los Angeles* (1945) 26 Cal.2d 764, where a claim for continuous flood damage was held

to substantially comply though it gave no single date. The court distinguished it: the claimant in *Knight* supplied a span of time, February and March of a stated year through the date of the claim, and the rule of substantial compliance prevents requiring the impossible or absurd. Here petitioners gave no range at all, not even within the narrative, and offered no explanation why one could not be provided when their own description identified multiple discrete events. Substantial compliance cannot be predicated on no compliance.

The court accepted that retaliation may involve a continuing course of conduct. (*Willis v. City of Carlsbad* (2020) 48 Cal. App.5th 1104.) But claims involving ongoing misconduct are not exempt from section 910(c). Invoking the continuing violation doctrine of *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798 did not help, and if anything, cut the other way: without dates it is impossible to assess whether the conduct occurred with sufficient frequency or was sufficiently similar to conduct within the limitations period. The timeliness of the claims was not at issue, only the sufficiency of the information on the forms. Dates pleaded in the later first-amended complaint could not cure the omission, because the issue is resolved on the information contained in the claim forms. The absence of any dates impeded the district's ability to investigate and to prevent further damage, so the forms failed the substantial compliance test.

DEL BIAGGIO v. BANSEN

2026 1DCA/4 California Court of Appeal,
No. A174647 (July 10, 2026)

COUNSEL SANCTIONED \$1,500 AND REFERRED TO THE STATE BAR FOR AI-GENERATED FICTITIOUS QUOTATIONS

FACTS: Del Biaggio prevailed at trial on contract claims and sought fees under a clause allowing the prevailing party "a

Continued on page 42

reasonable sum as and for its attorneys' fees." The trial court reduced the attorney hours and, sua sponte, held the clause did not reach paralegal time. On appeal from that ruling, the opening brief filed by counsel Carlton Floyd argued the paralegal fee point using quotations that do not exist.

The brief attributed two quotations to *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084 stating that paralegal fees are recoverable under Civil Code section 1717, but that language appeared nowhere in the opinion, which never addressed paralegal fees at all. A third purported *PLCM* quotation was also fabricated, distorting a passage that made an entirely different point. A fourth fictitious quotation was attributed to *Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44. The brief also repeatedly cited "*Guinn v. Dotco, Inc.*, 27 Cal.App.4th 262," apparently a garbled reference to *Guinn v. Dotson* (1994) 23 Cal.App.4th 262, which it further misdescribed as a contract case when it construed a statute.

Responding to an order to show cause, Floyd declared that his office uses generative AI with protocols requiring human verification against primary sources. He explained he had added the quotations during recesses in another trial and asked his paralegal to verify them, while she understood he had already done so. He filed a letter withdrawing the misstatements a few days before oral argument, roughly three months after learning of them.

ISSUE: Whether an attorney who files a brief containing AI-generated fictitious quotations may be sanctioned where he delegated verification to a paralegal, did not intend to mislead, and eventually withdrew the misstatements.

RULING: Floyd was ordered to pay \$1,500 in sanctions to the clerk of the court, to serve the opinion on his client and certify he had done so, and the clerk was directed to forward the opinion to the State Bar under Business and Professions Code section 6086.7(a)(3). Sanctions payable to respondents were denied because their motion overreached in calling the appeal frivolous. On the merits of the fee appeal, the court reversed the categorical exclusion of paralegal fees and remanded for a reasonableness determination, vacated the trial court's sanctions award under Code of Civil Procedure section 1008(d), and affirmed the lodestar reduction.

REASONING: The protocol itself was inadequate, apart from the miscommunication. State Bar guidance requires that a lawyer, not a paralegal, review all AI output, including citations to authority, before submission. (State Bar of Cal., Standing Com. on Prof. Responsibility and Conduct, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law, p. 9.) Counsel had no plan for any attorney to read the cases he added. "[I]t is a fundamental duty of attorneys to read the legal authorities they cite." (*Noland v. Land of the Free, L.P.* (2025) 114 Cal.App.5th 426, 445.)

Being in trial made delegation worse, not excusable: counsel's unavailability to supervise the filing made it less appropriate to expect a paralegal to vouch for cases he had never read.

The duty of candor required prompt correction. (Rules Prof. Conduct, rule 3.3(a)(1).) A withdrawal filed days before argument, three months after counsel knew of the problem, did not

suffice, and the court rejected the claim that the uncorrected errors caused no prejudice: misrepresented authority wastes the time of opposing counsel and the court.

VICTOR VALLEY UNION HIGH SCHOOL DISTRICT v. SUPERIOR COURT (MAGISTRALE)

2026 4DCA/2 California Court of Appeal

No. E086569 (July 13, 2026)

EDUCATION CODE SECTION 44808 IMMUNITY TURNS ON WHERE THE DISTRICT'S NEGLIGENT ACT OCCURRED, NOT WHERE THE INJURY OCCURRED

FACTS: Victoria Magistrale attended Silverado High School and participated in ROTC, where Mark Lizama taught math and served as an assistant commandant. Beginning in November 1999, when she was 15, Lizama drove her off campus on three occasions and sexually assaulted her, supplying alcohol each time. On the first occasion he escorted her out through the school office, said goodbye to a school secretary, walked her to the parking lot, and drove away with her in his personal vehicle. Lizama was charged in 2001, terminated by the district, and convicted in 2008 on two counts.

Magistrale sued the District in 2023 under the revival provisions of Code of Civil Procedure section 340.1, alleging negligent supervision, hiring, and retention. The district moved for summary judgment on the ground that Education Code section 44808 gave it complete immunity because all three assaults occurred off campus. The trial court denied the motion, reasoning that a jury could find negligent supervision in the district's allowing a teacher to walk a student through campus past another employee and drive off with her. The district sought writ relief.

ISSUE: Whether section 44808 immunizes a school district from liability for off-campus injuries where the alleged negligent act by the district occurred on campus.

RULING: Writ petition denied. Immunity depends on the location of the alleged negligent act, not the location of the injury, and the district did not establish immunity on this record.

REASONING: Section 44808 provides that a district is not liable for a pupil not on school property unless it has undertaken transportation, undertaken an off-campus school sponsored activity, otherwise specifically assumed responsibility, or has failed to exercise reasonable care under the circumstances.

In *Hoyem v. Manhattan Beach City School District* (1978) 22 Cal.3d 508, the Supreme Court held that a district's emphasis on the situs of the injury is totally misplaced, and that a district may be liable where its negligent supervision on campus proximately causes an off-campus injury. If the alleged negligent act occurs on campus, section 44808 does not confer immunity.

Here the alleged negligence was on campus. It was undisputed that the teacher openly escorted the student through classrooms and the office, past another employee, to the parking lot, and drove her away. The district offered no evidence of any measures in place to prevent employees from transporting teenage students off campus, which would allow a trier of fact to

Continued on page 43

conclude its supervisory procedures fell below the standard of reasonable prudence.

Practitioners should note the resulting conflict. Division Two expressly declined to follow two of its own prior decisions, *Mosley v. San Bernardino City Unified School Dist.* (2005) 134 Cal.App.4th 1260 and *LeRoy v. Yarboi* (2021) 71 Cal.App.5th 737, because both focused on the location of the injury rather than the negligent act, and it also declined to follow *Vallejo City Unified School Dist. v. Superior Court* (2025) 118 Cal.App.5th 139, which had followed *LeRoy*. A concurrence by Justice Raphael added that because the statutory exceptions are joined by “or,” the failure to exercise reasonable care is an independent basis for liability, and that section 44808 eliminates vicarious liability for an employee’s off-campus conduct while preserving direct liability for the district’s own negligence in hiring, training, and supervision.

GODSHALL v. PETERSON

2026 4DCA/1 California Court of Appeal, No. D086572
(July 20, 2026; Certified for Publication August 11, 2026)

*IN A MEDICAL MALPRACTICE ACTION, WHERE
THE NEGLIGENT CAUSE OF THE PLAINTIFF’S
CONTINUING SYMPTOMS IS LATENT, TRIABLE ISSUES
REMAIN AS TO THE “DATE OF INJURY” UNDER CODE
OF CIVIL PROCEDURE SECTION 340.5*

FACTS: Cecilia Godshall, an FBI office support technician whose job required substantial typing, consulted Dr. Drew Peterson in October 2016 for numbness and tingling in her right hand. After a steroid injection failed and an electrodiagnostic study showed moderate to severe carpal tunnel syndrome, Dr. Peterson performed a right carpal tunnel release on Jan. 30, 2017. His operative report stated he had completely released the median nerve.

Godshall’s symptoms never fully resolved. At post-operative visits she reported aching, tightness, and forearm fatigue with repetitive typing, and her occupational therapist noted she felt the carpal tunnel was “creeping back up.” In June 2017, Dr. Peterson wrote a note restricting her typing. He told her the continuing symptoms were normal and that the surgery had been successful, analogizing her condition to his own bad back.

In April 2021, with worsening symptoms, Godshall saw Dr. Eric Hofmeister. An ultrasound showed the transverse carpal ligament, supposedly released in 2017, was still intact. In July 2021, Dr. Hofmeister told her she may have had an incomplete release, and he performed revision surgery on Aug. 17, 2021.

Godshall served a section 364 notice of intent to sue in April 2022 and filed suit in July 2022.

The trial court granted summary judgment, finding the physical manifestations of harm in the months following the 2017 surgery triggered the three-year limitations period of section 340.5, and distinguishing the failure-to-diagnose cases as involving latent or hidden conditions.

ISSUE: Whether the statute of limitations began to run when the plaintiff experienced continuing post-operative symptoms, or whether a triable issue remains as to when appreciable harm manifested and when the plaintiff should have discovered its negligent cause.

RULING: Reversed. Triable issues of material fact remain as to the date of injury and the plaintiff’s discovery of its negligent cause.

REASONING: Section 340.5 requires suit within three years of the date of injury or one year after discovery of the injury and its negligent cause, whichever occurs first. “Injury” means the damaging effect of the wrongful act, not the act itself, and occurs when appreciable harm first manifests, that is, when the damage has clearly surfaced and is noticeable. The one-year period does not run until the plaintiff discovers both the physical condition and its negligent cause, although inquiry notice is sufficient.

The trial court erred by looking solely to when the injury was *caused* (the 2017 surgery), rather than to when Godshall knew or reasonably should have known that the surgery was the source of her continuing symptoms. Although this was not literally a failure-to-diagnose case, it functioned like one: the cause of the injury, the allegedly incomplete release of the ligament, was latent until the 2021 ultrasound and revision surgery. Under *Drexler v. Petersen* (2016) 4 Cal.App.5th 1181, where a pre-existing condition develops into a more serious problem, accrual awaits the patient’s awareness of that development.

The court found *Kernan v. Regents of University of California* (2022) 83 Cal.App.5th 675 analogous: where the procedure appeared successful and the treating physicians themselves did not suspect wrongdoing, reasonable minds could not draw only one conclusion as to when the plaintiff should have suspected negligence. Here, Dr. Peterson affirmatively told Godshall that her ongoing pain was normal and that the surgery was successful. The court reiterated that the mere fact an operation does not produce the hoped-for result does not signify negligence and will not commence the statutory period, and that belated discovery and the exercise of reasonable diligence are ordinarily questions of fact.

Litigator Submissions Welcome

CCTLA is seeking legal-themed articles for publication in its quarterly publication, *The Litigator*, which presents articles on substantive law issues across all practice areas. No area of law is excluded. Practice tips, law-practice management, trial practice including opening and closing arguments, ethics, as well as continuing legal education topics, are among the areas welcomed. Verdict and settlement

information also welcome.

The Litigator is published every three months, beginning in February each year. Due to space constraints, articles should be no more than 2,500 words, unless prior arrangements have been made with *The Litigator* at the CCTLA office. For more information and deadlines, contact CCTLA Executive Director Debbie Keller at debbie@cctl.com

A Political Win Against A Political Goliath

Pages 1 & 3

Capitol City Trial Lawyers Association
Post Office Box 22403
Sacramento, CA 95822-0403

CCTLA COMPREHENSIVE MENTORING PROGRAM — The CCTLA Board has developed a program to assist new attorneys with their cases. For more information or if you have a question with regard to one of your cases, contact: Dan Glass at dsglawyer@gmail.com, Rob Piering at rob@pieringlawfirm.com, Glenn Guenard at gguenard@gblegal.com, or Alla Vorobets at allavorobets00@gmail.com

SEPTEMBER

Thursday, Sept. 3

11:30 am: Elder Abuse Program

Speakers: Wendy York, Thomas Reyda, Stuart Talley, Matt Chisholm and Jacqueline Serna

Zoom. For more details, see pages 12-13

Tuesday, Sept. 8

Noon: Q&A Problem Solving Lunch

CCTLA Members Only | Zoom

Monday, Sept. 28

5:30 pm: CCTLA Fall Mixer

McGeorge School of Law

For more details, see page 21

OCTOBER

Tuesday, Oct. 13

Noon: Q&A Problem Solving Lunch

CCTLA Members Only | Zoom

NOVEMBER

Tuesday, Nov. 10

Noon: Q & A Problem Solving Lunch

CCTLA Members Only | Zoom

DECEMBER

Tuesday, Dec. 8

Noon: Q&A Problem Solving Lunch

CCTLA Members Only | Zoom

Thursday, Dec. 10

**5:30 pm: Holiday Reception & Annual Meeting
& Installation of the 2027 Board**

Sheraton Grand Sacramento Hotel,
1230 J Street, Sacramento, CA 95814



CCTLA CALENDAR OF EVENTS