



## → Thomas R. Kaufman

### Of Counsel

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Thomas Kaufman is of counsel in the Labor & Employment Practice Group in the firm's Century City office.

### Areas of Practice

Tom's practice is in employment litigation defense, with a subspecialty in California Labor Code and federal wage/hour class actions. Tom has handled class litigation matters for a wide variety of industries, including banks and mortgage lenders, hospitals, information technology and communications companies, restaurants, and other retailers. Tom leads monthly educational seminars within the firm on developments in wage/hour law. Tom also is experienced in litigating individual employment discrimination cases, including winning several jury trials in such matters.

### Honors

Labor and Employment Star - California, *Benchmark Litigation*, 2020-2022

Best Lawyer in America, *Best Lawyers*, 2020-2023

Labor and Employment, *The Legal 500*, 2018-2019

Top Labor & Employment Lawyer, *Chambers & Partners*, 2019-2022

6 times selected for Top 75 California Employment Lawyers, *Daily Journal* 2013-2020

Southern California Super Lawyer, *Super Lawyers*, 2012-2022

### Experience

#### Notable Class Action Experience

- *Taylor v. Cox Communications, Inc.*, 776 Fed. Appx. 544 (9th Cir. 2019) (affirming 283 F. Supp. 2d 881 (C.D. Cal. 2017) (federal court adopting same rule that employers not required to pay for time on voluntary commute in company vehicle).
- *Hernandez v. Pacific Bell Telephone Co.*, 29 Cal. App. 5th 131 (2018). Established rule that employers are not required to pay employees for time spent commuting in company vehicle where employees had option to commute in personal transportation.
- *Ibarra v. Manheim Investments, Inc.*, 775 F.3d 1193 (9th Cir. 2015). Reversed district court order remanding case and established more employer-friendly test for removing cases to federal court under the Class Action Fairness Act.

- *Jong v. Kaiser Foundation Health Plan*, 226 Cal. App. 4th 391 (2014). Affirming summary judgment in off-the-clock case and establishing that California follows federal standard for when off-the-clock work is compensable.
- *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935 (9th Cir. 2009) (affirming 246 F.R.D. 637 (S.D. Cal. 2007)). Motion to deny class certification granted as to purported class of several thousand Home Loan Consultants. Disapproved line of anti-employer class certification decisions.
- *Louie v. McCormick & Schmick Restaurant Corp.*, 460 F. Supp. 2d 1153 (2006). Obtained dismissal in tip-pooling class action that established the proposition that it is lawful to compel waitstaff to share tips with restaurant bartenders.
- *Steinhebel v. Los Angeles Times Communications, LLC*, 126 Cal.App.4th 696 (2005). Obtained summary judgment in \$7 million class action alleging that defendant unlawfully charged back commissions it had previously advanced to its telesales employees for new subscription sales when those subscriptions were canceled in the first 28 days. Argued case on appeal, resulting in published affirmance of summary judgment.

## Notable Trial Experience

- *Ayala v. Manheim Investments, Inc.*, 16-cv-06341-CJC-AS (USDC C.D. Cal.). Won age discrimination jury trial against Shegerian & Associates; unanimous defense verdict after only 90 minutes of deliberation.
- *Garcia v. Stericycle, Inc.*, BC367878 (Los Angeles Superior Court). One-week jury trial in downtown Los Angeles on claims for disability discrimination, failure to accommodate and whistleblower retaliation. After only 90 minutes of deliberation, obtained a defense verdict on all counts.
- *Brown and Morones v. Prospect Mortgage*, JAMS No. 1200050840. Two-plaintiff race harassment case from African-American and Hispanic Loan Originators where supervisor admittedly used racially insensitive nicknames. Before former plaintiff's lawyer arbitrator, obtained complete defense ruling following 5-day arbitration.
- *Friedman v. Symantec Corp.*, BC367878 (Los Angeles Superior Court). Two-week jury trial in downtown Los Angeles for fraud, breach of contract and failure to pay wages to high-paid salesperson. After less than two hours of deliberation, unanimous jury awarded complete defense verdict.
- *Sosa v. Southern California Permanente Medical Group*, 03-CC-14786 (Orange County Superior Court). Three week jury trial in the Orange County Superior Court. Allegations of failure to promote on account of age and gender discrimination. After less than one hour of deliberation, unanimous jury awarded complete defense verdict.
- *Moultrup v. The Staubach Co.*, BC281068 (Los Angeles Superior Court). Began as a ten-day jury trial in the Los Angeles Superior Court. Allegations of breach of executive employment contract and fraud. Five days into the trial, Plaintiff agreed to dismiss his case in exchange for a waiver of costs.
- *Whelan v. LSG Sky Chefs, Inc.*, 03-cv-1016 (USDC C.D. Cal.). Five-day jury trial in the Santa Ana federal court. Allegations of fraudulent misrepresentations concerning eligibility of employee to retire. After less than one day of deliberation, unanimous jury awarded complete defense verdict.

## Wage and Hour Class and Collective Action Experience

- *Acuity Brands Lighting adv. DeLaTorre*, CIVDS1601800 (San Bernardino Superior Court) (failure to provide meal and rest periods, failure to include bonus in regular rate, time rounding).

- *Advantage Services adv. Ramirez*, BC368131 (Los Angeles Superior Court) (improper deductions from temporary employee's to cover cost of safety belts and meal period violations).
- *American Restaurant Group adv. Farmer*, BC349068 (Los Angeles Superior Court) (tip-pooling distribution from servers to bartenders).
- *American Restaurant Group adv. Walker*, 106CV070418 (Santa Clara Superior Court) (failure to provide meal and rest breaks to servers).
- *ARAMARK Uniform & Career Apparel, Inc. adv. Austin*, 02-CC-105 (Orange County Superior Court) (deductions taken from checks of route salesmen who failed to collect from customers).
- *ARAMARK Uniform & Career Apparel, Inc. adv. Dufour/Page*, 04CV21852 (Santa Clara Superior Court) (failure to provide mandatory meal and rest breaks to driver salespersons).
- *Autotrader.com adv. Carter*, BC357958 (Los Angeles Superior Court) (failure to reimburse expenses and unlawful chargeback of commission wages).
- *AT&T Services, Inc. adv. Walton*, 15-cv-03653 (USDC N.D. Cal.) (exempt misclassification of training instructors and designers).
- *Balboa Life & Casualty adv. E. Zamora*, BC360026 (Los Angeles Superior Court) (failure to provide accurate wage statements to non-exempt employees).
- *Bank of America adv. Pittman*, 08-cv-006588 (USDC C.D. Cal.) (failure to maintain proper meal and time records on contract employees).
- *Baxter Healthcare Corporation adv. Sayaman*, 10-cv-1049 (USDC C.D. Cal.) (exempt misclassification of Quality Laboratory Associates).
- *Bose Corporation adv. Logan*, BC418158 (Los Angeles Superior Court) (off-the-clock work for non-exempt employees in retail stores).
- *Cenveo Corporation adv. Negrete*, BC468072 (Los Angeles Superior Court) (unlawful rounding and failure to provide lawful meal periods to publishing plant employees).
- *Charter Communications adv. Au*, BC615210 (Los Angeles Superior Court) (seeking to hold cable company liable for subcontractor's alleged meal and rest period and off the clock violations toward its employees).
- *Charter Communications adv. Novoa*, 13-cv-01302 (USDC E.D. Cal.) (alleged off-the-clock work for field technicians).
- *Countrywide Financial Corp. adv. Arpajian*, BC392136 (Los Angeles Superior Court) (waiting time penalties for failure to provide timely final paychecks to terminating employees).
- *Countrywide Financial Corp. adv. Daly*, 06-cv-05145 (USDC C.D. Cal.) (exempt misclassification of branch and call center subprime loan originators).
- *Countrywide Financial Corp. adv. Lew*, 08-cv-01993 (USDC N.D. Cal.) (failure to provide meal and rest periods to non-exempt loan processor employees).
- *Countrywide Financial Corp. adv. R. Zamora*, BC351127 (Los Angeles Superior Court) (challenging provisions of Account Executive comp plan as unlawful forfeitures of wages).
- *Countrywide Home Loans adv. Cheenan*, BC346411 (Los Angeles Superior Court) (waiting time penalties for temp agency's failure to provide final check on last day of temp assignment).
- *Countrywide Home Loans adv. Chin*, RG08404332 (Alameda Superior Court) (misclassification of sales managers and branch loan originators, collateral Labor Code claims).

- *Countrywide Home Loans adv. Reveles*, BC366011 (Los Angeles Superior Court) (off-the-clock work and failure to provide meal and rest breaks to non-exempt loan specialists).
- *Countrywide Home Loans adv. Rounsavall*, BC362453 (Los Angeles Superior Court) (misclassification of loan underwriters).
- *Countrywide Home Loans adv. Urso*, CA5-705-08-01 (AAA Arbitration) (misclassification of branch-based A-paper mortgage loan originators as outside salespersons).
- *Countrywide Home Loans adv. Vinole*, GIC-874405 (San Diego Superior Court) (misclassification of branch-based A-paper mortgage loan originators as outside salespersons).
- *Countrywide Home Loans adv. Wallace*, 08-cv-01463 (USDC C.D. Cal.) (misclassification of account executives and alleged fraud in carrying out voluntary back pay program in connection with reclassification of job to non-exempt status).
- *Countrywide Insurance Services adv. Tollefson*, 56-2008-00332381 (Ventura Superior Court) (failure to provide meal periods and defective wage statements for non-exempt employees).
- *Countrywide Securities Corp. adv. Cota*, BC388005 (Los Angeles Superior Court) (exempt status of software developers at Countrywide).
- *Cox Automotive adv. Kelter*, 30-2019-01107264 (Orange Superior Court) (alleged unlawful rounding and unpaid time waiting in security line).
- *Cox Automotive adv. Cresci*, 20STCV22982 (Los Angeles Superior Court) (alleged failure to reimburse expenses for remote workers).
- *Cox Auto Trader, Inc. adv. Byrd*, CGC 07-463062 (San Francisco Superior Court) (failure to reimburse mileage and cell phones for outside salespersons).
- *Cox Auto Trader, Inc. adv. Montelongo*, CGC 08-483561 (San Francisco Superior Court) (unlawful vacation pay forfeiture, failure to reimburse expenses, and waiting time penalties).
- *Cox Communications adv. Amiri*, 30-2016-00835723 (Orange County Superior Court) (alleged failure to pay wages properly for on call time).
- *Cox Communications adv. Camia*, 30-2012-00564626 (Orange County Superior Court) (off-the-clock work for non-exempt cable company field technicians).
- *Cox Communications adv. Castillo*, 10-cv-1622 (USDC S.D. Cal.) (off-the-clock work, meal periods, reimbursement for equipment expenses, and allegedly unlawful vacation policy).
- *Cox Communications adv. Davis*, 37-2015-00031791 (San Diego Superior Court) (alleged failure to provide meal and rest periods to non-field technical workers).
- *Cox Communications, Inc. adv. Feltz*, 19-cv-02002 (USDC C.D. Cal.) (unlawful rounding and failure to provide second meal periods to field technicians).
- *Cox Communications, Inc. adv. Khaski*, 37-2017-00007573 (San Diego Superior Court) (off-the-clock work and failure to provide meal and rest periods to fiber technicians).
- *Cox Communications adv. Lassiter*, 37-2008-00084510 (San Diego Superior Court) (denial of meal and rest periods and wage statement violations as to non-exempt field service representatives).
- *Cox Communications adv. Taylor*, 16-cv-01915 (USDC C.D. Cal.) (seeking to force cable company to pay employees who bring their work vehicles home at night for time spent driving the vehicle home at the end of the workday).

- *Cox Target Media, Inc. adv. Mitchiner*, 19STCV00319 (Los Angeles Superior Court) (failure to reimburse expenses to outside salespersons).
- *Cross Country TravCorps adv. Cossack*, 03-CC-406 (Orange County Superior Court) (miscalculation of overtime rate, failure to provide statutory meal periods, and waiting time penalties).
- *Cross Country TravCorps adv. Kidd*, BC410547 (Los Angeles Superior Court) (miscalculation of overtime rate and failure to provide meal periods).
- *Dominion Distribution Services adv. Cortez*, BC397208 (Los Angeles Superior Court) (failure to properly calculate overtime, failure to reimburse expenses, defective wage statements).
- *DS Waters adv. Alexander*, 09-cv-03384 (USDC C.D. Cal.) (failure to provide meal periods and alleged off-the-clock work for route drivers).
- *E\*TRADE Securities, Inc. adv. Simpson*, 07-cv-00156 (USDC C.D. Cal.) (exempt misclassification of relationship manager financial advisors).
- *Flextronics International USA, Inc. adv. Khan*, 109CV152574 (Santa Clara Superior Court) (PAGA-only action alleging exempt misclassification of various IT employees).
- *Fluor Enterprises, Inc. adv. Ward*, 11-cv-00467 (USDC C.D. Cal.) (misclassification due to alleged failure to pay salary basis to otherwise exempt project controls employees).
- *Follett Corp. adv. Hinman*, 03-CC-6456 (Orange County Superior Court) (reimbursement of travel expenses of California-based sales employees).
- *GM Financial adv. Nemeth*, 12-cv-02761 (USDC C.D. Cal.) (alleged misclassification of auto finance company credit analysts).
- *HomeServices Lending adv. Buchanan*, 11-cv-00922 (USDC S.D. Cal.) (deductions for business losses and expense reimbursement for HMCs of Wells Fargo joint venture).
- *HomeServices Lending adv. DeBlanco*, 11-cv-08254 (USDC C.D. Cal.) (misclassification of Home Mortgage Consultants for Wells Fargo joint venture).
- *Kaiser Foundation Health Plan adv. Allen*, BC328121 (Los Angeles Superior Court) (failure to provide accurate wage statements or calculate regular rate for non-exempt employees).
- *Kaiser Foundation Health Plan adv. Andino*, RG11580548 (Alameda Superior Court) (challenge to time rounding practices and to pay practices involving shifts spanning two designated "workdays").
- *Kaiser Foundation Health Plan adv. Batin*, RG05236181 (Alameda Superior Court) (exempt misclassification of staff and project specialists).
- *Kaiser Foundation Health Plan adv. Beauchamp*, RG07307245 (Alameda Superior Court) (misclassification of IT employees in Operations and Systems Programmer job families).
- *Kaiser Foundation Health Plan adv. Brown*, BC489643 (Los Angeles Superior Court) (alleged failure to include non-discretionary bonus payments in the regular rate of pay).
- *Kaiser Foundation Health Plan adv. Calhoun*, CGC 10-501257 (San Francisco Superior Court) (failure to pay retention bonuses to HealthConnect employees at layoff).
- *Kaiser Foundation Health Plan adv. Cervantes*, RG06254835 (Alameda Superior Court) (waiting time penalties for alleged policy to delay in paying all employees' final paychecks).
- *Kaiser Foundation Health Plan adv. Clark*, RG13692780 (Alameda Superior Court) (failure to pay for daily overtime where more than eight hours worked in one calendar day but on different work-shifts).

- *Kaiser Foundation Health Plan adv. Coleman-Williams*, 13-cv-0998 (USDC N.D. Cal.) (alleged exempt misclassification of insurance account managers).
- *Kaiser Foundation Health Plan adv. Gonzalez*, BC492725 (Los Angeles Superior Court) (alleged off-the-clock work by home health and palliative care employees who work in patient homes).
- *Kaiser Foundation Health Plan adv. Hardesty*, 37-2013-00044819 (San Diego Superior Court) (exempt misclassification of pharmacy project managers).
- *Kaiser Foundation Health Plan, et al. adv. Holliman*, RG05247858 (Alameda Superior Court) (miscalculation of overtime rate for all unionized, non-exempt employees).
- *Kaiser Foundation Health Plan adv. Johnson*, BC335531 (Los Angeles Superior Court) (exempt misclassification of software testers).
- *Kaiser Foundation Health Plan adv. Jones*, RG07332538 (Alameda Superior Court) (seeking waiting time penalties for failure to pay timely final paychecks to on-call employees).
- *Kaiser Foundation Health Plan adv. Jong*, RG12613328 (Alameda Superior Court) (off-the-clock work for pharmacy managers following their reclassification to non-exempt status).
- *Kaiser Foundation Health Plan adv. Lazar*, 114CV273289 (Santa Clara Superior Court) (exempt misclassification of account managers).
- *Kaiser Foundation Health Plan adv. Lemmons*, 34-2012-00125488 (Sacramento Superior Court) (failure to pay for alleged controlled-standby time for site support specialists).
- *Kaiser Foundation Health Plan adv. Lopez*, RG07305405 (Alameda Superior Court) (exempt misclassification of outpatient pharmacy managers).
- *Kaiser Foundation Health Plan, et al. adv. Louie*, 08-cv-0795 (USDC S.D. Cal.) (exempt status of Site Support Specialists on KP HealthConnect project).
- *Kaiser Foundation Health Plan adv. Louie*, 10-cv-670 (USDC C.D. Cal.) (lawfulness of on-duty meal period for graveyard shift hospital pharmacists).
- *Kaiser Foundation Health Plan adv. Lucero*, 37-2012-00084091 (San Diego Superior Court) (alleged misclassification of KP-IT business consultants).
- *Kaiser Foundation Health Plan adv. Lusso*, RG11593080 (Alameda Superior Court) (exempt misclassification of IT employees with Solutions Consultant job title).
- *Kaiser Foundation Health Plan adv. Magistrado*, BC362677 (Los Angeles Superior Court) (exempt misclassification of health plan underwriters).
- *Kaiser Foundation Health Plan adv. Maricich*, 10-cv-1375 (USDC S.D. Cal.) (exempt misclassification of administrative services supervisors).
- *Kaiser Foundation Health Plan adv. Martel*, 12-cv-0350 (USDC C.D. Cal.) (alleged misclassification of appointment center supervisors).
- *Kaiser Foundation Health Plan adv. Martin, et al.*, BC395992 (Los Angeles Superior Court) (exempt misclassification of nurse case managers).
- *Kaiser Foundation Health Plan, et al. adv. Mike*, 08-cv-05374 (USDC N.D. Cal.) (exempt misclassification of IT Project Managers).
- *Kaiser Foundation Health Plan adv. Miles*, BC343535 (and related cases) (Los Angeles Superior Court) (exempt misclassification of IT desktop support employees).

- *Kaiser Foundation Health Plan adv. Okura*, BC337100 (Los Angeles Superior Court) (exempt misclassification of pharmacy managers).
- *Kaiser Foundation Health Plan adv. Pasquale*, 08-cv-00785 (USDC S.D. Cal.) (misclassification of Application Coordinators).
- *Kaiser Foundation Health Plan, et al. adv. Ramsey*, BC368605 (Los Angeles Superior Court) (exempt misclassification of utilization analysts and emergency room coordinators).
- *Kaiser Foundation Health Plan adv. Santos*, RG06300551 (Alameda Superior Court) (exempt misclassification of IT network telephony and operations employees).
- *Kaiser Foundation Health Plan adv. Scott*, RG11582019 (Alameda Superior Court) (reimbursement of uniform expenses for hospital employees and meal period practices for patient mobility coordinators).
- *Kaiser Foundation Health Plan adv. Small*, 37-2011-00099011 (San Diego Superior Court) (exempt misclassification of Network Telephony leads).
- *Kaiser Foundation Health Plan adv. Smith*, 08-cv-02353 (USDC S.D. Cal.) (exempt misclassification of Senior Business Application Coordinators and KP HealthConnect Analysts and Senior Analysts).
- *Kaiser Foundation Health Plan adv. Stringer*, RG07349734 (Alameda Superior Court) (exempt misclassification of Business Application Coordinators on KP HealthConnect project).
- *Kaiser Foundation Health Plan adv. Tate*, RG07318416 (Alameda Superior Court) (failure to pay overtime and provide meal and rest periods to recruiters).
- *Kaiser Foundation Health Plan adv. Verma*, 00303869 (Orange County Superior Court) (exempt misclassification of Assistant Dept. Administrators involved in nurse education).
- *Kaiser Foundation Health Plan adv. Yam*, RG10498319 (Alameda Superior Court) (exempt misclassification of IT employees working as Desktop Support Leads).
- *Kiewit Pacific Co. adv. Burnside*, 04-cv-1745 (USDC S.D. Cal.) (failure to pay wages for travel time on company van).
- *Lawrence Service Company adv. Green*, 12-cv-06155 (USDC C.D. Cal.) (off-the-clock work, failure to reimburse expenses, and meal and rest period violations for part-time merchandisers paid on a "project basis").
- *Los Angeles Times Communications LLC adv. Steinhebel*, BC278968 (Los Angeles Superior Court) (commission chargebacks for newspaper telemarketers).
- *Manheim Investments, Inc. adv. Cullum*, 30-2015-00772124 (Orange County Superior Court) (misclassification of auctioneers as independent contractors).
- *Manheim Investments, Inc. adv. Ibarra*, 12-cv-00318 (USDC S.D. Cal.) (failure to provide meal and rest periods and off-the-clock work for non-exempt auto auction employees).
- *Manheim Investments, Inc. adv. Lewis*, 30-2016-0082960 (Orange County Superior Court) (failure to pay temp employees for time spent waiting to see if they have a temp assignment for the day).
- *Manheim Investments, Inc. adv. Torres*, CIVDS 1616773 (San Bernardino Superior Court) (failure to provide meal and rest periods to automobile auction operations employees).
- *McCormick & Schmick's adv. Louie*, BC349037 (Los Angeles Superior Court) (forced tip-pooling distribution from servers to bartenders).
- *Mpower Communications Corp. adv. Roberts*, BC329012 (Los Angeles Superior Court) (failure to reimburse business expenses).

- *Pacific Bell Telephone Co. adv. Hernandez*, 34-2013-00153842 (Sacramento Superior Court) (failure to pay employees for time spent commuting in company vehicle).
- *Pacific Bell Telephone Co. adv. Meza*, BCV-15101572 (Kern Superior Court) (failure to provide meal and rest periods and failure to include hours and hourly rate information on wage statements).
- *Pacific Interpreters adv. Miller*, 12-cv-02074 (USDC Ore.) (alleged misclassification of language translators as independent contractors).
- *Pitney Bowes, Inc. adv. Chiaramonte*, 06-cv-1507 (USDC S.D. Cal.) (unlawful commission chargebacks and failure to reimburse expenses of sales employees).
- *Pitney Bowes, Inc. adv. Nettles*, RG08397421 (Alameda Superior Court) (off-the-clock work, denial of meal periods, and denial of reimbursements to non-exempt service technicians).
- *Ruth's Chris Steakhouse adv. Miller*, 03-CC-00435 (Orange County Superior Court) (failure to provide meal and rest periods and failure to pay accrued vacation pay upon termination of employment).
- *Snap-on, Inc. adv. Plantillas*, 13-cv-05153 (USDC C.D. Cal.) (unlawful rounding, failure to pay regular rate on bonus, and failure to pay for uniform expenses).
- *Southern California Permanente Medical Group adv. Flores*, BC424255 (Los Angeles Superior Court) (failure to provide meal periods and reimburse expenses of phlebotomists).
- *Southern California Permanente Medical Group adv. Luna*, BC370874 (Los Angeles Superior Court) (failure to provide meal periods to any Kaiser non-exempt employees).
- *Southern California Permanente Medical Group adv. Malmad*, BC391131 (Los Angeles Superior Court) (exempt misclassification of Senior Systems Consultants).
- *Southern California Permanente Medical Group adv. Penuela*, BC396462 (Los Angeles Superior Court) (exempt misclassification of IT Project Managers).
- *Southern California Permanente Medical Group adv. Port*, 37-2007-00067538 (San Diego Superior Court) (exempt misclassification of Analysts of KP HealthConnect project).
- *Stanford Hotels, Inc. adv. Carranza*, BC427215 (Los Angeles Superior Court) (unlawful time clock rounding, reporting time pay, and meal period violations).
- *Stericycle adv. Butler*, 34-2015-00180282 (Sacramento Superior Court) (failure to provide meal and rest periods, and failure to include bonus pay in regular rate).
- *Stericycle, Inc. adv. Camacho*, 39-2014-00307879 (San Joaquin Superior Court) (failure to provide meal and rest periods to non-exempt operations employees).
- *Stericycle, Inc. adv. Gutierrez*, 15-cv-08187 (USDC C.D. Cal.) (failure to provide meal and rest periods and off-the-clock work for all non-exempt employees).
- *Symantec Corp. adv. Merenda*, BC350605 (Los Angeles Superior Court) (exempt misclassification of software testers).
- *Symantec Corp. adv. Sarkisian*, BC423476 (Los Angeles Superior Court) (exempt misclassification of IT technical workers).
- *Tilly's, Inc. adv. Ward*, BC595405 (Los Angeles Superior Court) (alleged failure to pay reporting time pay for call-in shifts).
- *Tuesday Morning, Inc. adv. Doherty*, BC255823 (Los Angeles Superior Court) (bonus plan challenged as unlawful deduction scheme).



- *Tully's Coffee Co. adv. Lam*, BC311114 (Los Angeles Superior Court) (exempt misclassification of store managers in coffee shops).
- *Tully's Coffee Co. adv. Kullar*, RG07362451 (Alameda Superior Court) (failure to provide meal and rest periods to non-exempt employees working in coffee shops).
- *Tuneup Masters adv. Pimentel*, BC271698 (Los Angeles Superior Court) (exempt misclassification of store managers in automotive service stores).
- *Tyco International (U.S.), Inc. adv. Hernandez*, BC315749 (Los Angeles Superior Court) (meal and rest period violations and unlawful rounding down of time for industrial employees).
- *Valero Refining Company adv. Wulfe*, 12-cv-05971 (USDC C.D. Cal.) (alleged failure to provide meal periods and off-the-clock work for refinery operators).
- *Valero Services, Inc. adv. Garcia*, BC373720 (Los Angeles Superior Court) (failure to provide meal periods and to properly calculate regular rate of pay for non-exempt refinery employees).
- *Virgin America, Inc. adv. Lorre*, BC554740 (Los Angeles Superior Court) (failure to provide meal and rest periods and unlawful alternative work arrangement for non-exempt airport employees).
- *Wells Fargo Bank adv. Caprarola*, L-3570-13 (New Jersey Superior Court) (challenging under New Jersey law method of calculation employee commissions as "unlawful deductions" and challenging requirement that employees pay subscription fee for websites and marketing programs).
- *Wells Fargo Bank adv. Cox*, 13-cv-01052 (USDC Conn.) (challenging under Connecticut law method of calculation employee commissions as "unlawful deductions" and challenging requirement that employees pay subscription fee for websites and marketing programs).
- *Wells Fargo Bank adv. Dyer*, 13-cv-2858 (USDC N.D. Cal.) (nationwide breach of contract action alleging Wells Fargo systematically miscalculated commissions on a certain type of mortgage loan).
- *Wells Fargo Bank adv. Fudge*, 37-2012-00084040 (San Diego Superior Court) (alleged failure to pay earned commissions to terminated loan originators).
- *Wells Fargo Bank adv. Galowitch*, 130302298 (Philadelphia Court of Common Pleas) (challenging method of calculation employee commissions as "unlawful deductions" under Pennsylvania law).
- *Wells Fargo Bank adv. Gilbert*, 11-cv-01841 (USDC Nev.) (nationwide misclassification of business sales officers under FLSA and Nevada law).
- *Wells Fargo Bank adv. Gordon*, 11-cv-00090 (USDC S.D. Cal.) (misclassification of business sales consultants and failure to reimburse expenses).
- *Wells Fargo Bank, N.A. adv. Ibarra*, 17-cv-04344 (USDC C.D. Cal.) (failure to pay for rest period for mortgage loan originators paid on a hybrid hourly/incentive pay basis).
- *Wells Fargo Bank, N.A. adv. Kang*, 17-cv-06220 (USDC N.D. Cal.) (failure to pay minimum wage to mortgage loan originators paid on a hybrid hourly/incentive pay basis).
- *Wells Fargo Bank adv. Lewis*, CGC 13-534914 (San Francisco Superior Court) (misclassification of Private Mortgage Bankers).
- *Wells Fargo Bank adv. Macey, et al.*, CGC 10-501835 (San Francisco Superior Court) (deductions from commissions for "trust losses" and reimbursement of HMC expenses).
- *Wells Fargo Bank adv. Nguyen*, CGC 15-547596 (San Francisco Superior Court; removed to USDC N.D. Cal. 15-cv-5239) (various challenges to Wells Fargo compensation plans including allegations of unlawful

deductions, vacation forfeiture, and failure to pay commission wages in a timely manner).

- *Wells Fargo Bank adv. Selga*, 37-2012-00102593 (San Diego Superior Court) (failure to provide meal periods and off-the-clock work to trainers allegedly required to take breaks while in flight between states).
- *Wells Fargo Bank adv. Sylvia*, 03-CC-5747 (Orange County Superior Court) (failure to reimburse loan originator's business expenses and unlawful deductions from commissions).
- *Wells Fargo Bank adv. Taylor*, BC433225 (Los Angeles Superior Court) (off-the-clock work for call center collections employees).
- *Wells Fargo Bank adv. Vartanian*, BC283288 (Los Angeles Superior Court) (performance-based bonus system challenged as unlawful wage deduction policy).
- *Wells Fargo Bank adv. Vuong*, CGC 08-480756 (San Francisco Superior Court) (exempt misclassification of service managers in bank branches).
- *Yoshinoya America, Inc. adv. Monroy*, BC653419 (Los Angeles Superior Court) (reporting time pay for retail employees told not to work their assigned on-call shifts).

## Articles

- PAGA Ruling Unlocks Manageability Defense For Employers  
*Law360*, 09.22.2021
- Dukes Represents a Triumph of the Defense View of Class Certification, *Westlaw Journal*, November 1, 2011
- Saved From The Bell?, *Law360*, June 29, 2011
- 'AT&T Mobility' May Have Big Impact on Employment, *The Recorder*, May 5, 2011
- More Employers Could Force Arbitration, *Daily Journal*, May 2, 2011
- Class Certification And The Underpants Gnomes, *Law360*, December 3, 2010
- 9th Circuit: Wage and Hour Class Action Prevails, *Society for Human Resource Management*, October 22, 2010
- A Tragedy of Manners: Flawed Reasoning Equates Workplace Sexuality With Gender Discrimination, *The Recorder*, August 12, 2005
- California Supreme Court Reaffirms Trial Court's Power to Decide Whether a Class Action Should Be Certified, *California Labor & Employment Law Quarterly*, Fall 2004
- National Bank Act Preemption Can Provide Banks a Defense to Labor Code Class Actions, *California Labor & Employment Law Quarterly*, Fall 2003
- The Supreme Court Provides California Employers With Some Ammunition Against Stale Discrimination and Retaliation Claims, *California Labor & Employment Law Quarterly*, Fall 2002
- California Appellate Courts Continue to Make Hash of Workers' Compensation Exclusivity Doctrine, *California Labor & Employment Law Quarterly*, Summer 2002
- Changing the Rules After the Game Has Been Played: The Pitfalls of Applying AB 2222 Retroactively, *California Labor & Employment Law Quarterly*, Spring 2001
- Legal Principles Defeat Poetic Justice: Richards Offers a Guide Through Continuing Violations Thicket, *The Recorder*, May 10, 2000
- Retreating from Moorpark: Avoiding an Overexpansive Breadth of Wrongful Discharge in Violation of Public Policy, *California Labor & Employment Law Quarterly*, Spring 2000

- Greening the Public Policy Claim, *The Recorder*, February 23, 2000
- Toward Efficiency: California Officials are Taking Only Baby Steps in Launching High-Tech Courthouses, "The Closer" Column for *California Law Business*, January 3, 2000
- Sole Remedy: Relief for Wrongful Termination Claims Shouldn't Be Expanded, *Daily Journal*, November 23, 1999

## Labor & Employment Law Blog Posts

- "Supreme Court Grants Review in Important Arbitration Case Regarding PAGA," December 15, 2021
- "Ninth Circuit Reversed Grubhub's Victory on Independent Contractor Classification in Light of the Retroactive Application of Dynamex," September 22, 2021
- "Manageability – a New Weapon to Stave Off Unmanageable PAGA Claims," September 14, 2021
- "California Supreme Court Announces New Standard That Meal and Rest Period Premiums Must Be Paid at Same "Regular Rate of Pay" Used to Calculate Overtime Payments," July 16, 2021
- "Sheppard Mullin Helps Overturn \$102 Million Dollar Verdict," July 13, 2021
- "California Appellate Court Clarifies the Monetary Amount for Meal Period, Rest Break, and Recovery Period Premiums, and Affirms an Employer's Neutral Rounding Policy," November 4, 2019
- "U.S. Supreme Court Upholds Individualized Arbitration Where Agreement Is Ambiguous on Issue of Class Arbitration," April 30, 2019
- "*Ward v. Tilly's, Inc.*: California Employers Should Dial Back On-Call Shift Policies," February 7, 2019
- "California Wage and Hour Win for Employers: Rounding Policies and Timesheet Certifications," December 21, 2018
- "California Court Reaffirms And Extends Rounding Rules," July 11, 2018
- "Court Expands Reach of California PAGA Representative Actions," June 5, 2018
- "U.S. Supreme Court Upholds Enforceability of Mandatory Employment Class Action Waivers," May 22, 2018
- "Court Of Appeal Holds That Claims To Recover Wages Under Labor Code Section 558 Brought Through The Private Attorneys General Act May Be Arbitrated," August 28, 2017
- "California Supreme Court Reaffirms Broad Right to Discovery in PAGA Actions," July 21, 2017
- "Texas Federal Court Blocks New Salary Restrictions for Exempt Employees," November 23, 2016
- "Ninth Circuit Invalidates Arbitration Agreement," August 26, 2016
- "U.S. Supreme Court's Tyson Foods v. Bouaphakeo Opinion Reaffirms The Importance Of Challenging Plaintiff's Experts In Class Actions," March 29, 2016
- "*Brinker* for Dummies," November 14, 2014

- "California Supreme Court Limits Application of Commissioned Employee Exemption," July 16, 2014
- "Cal. Supreme Court Clarifies Standards for Class Certification of Independent Contract Class Actions," July 2, 2014
- "*Hall v. Rite Aid* and the Return of the Underpants Gnomes," May 27, 2014
- "New Decision Clarifies Summary Judgment Standards for Off-the-Clock Claims," May 21, 2014
- "New Decision Examines the Scope of Constructive Discharge," January 10, 2014
- "Sonic Calabazas Is A Tactical Retreat From Supreme Court FAA Precedent," October 18, 2013
- "Ninth Circuit Falls In Line With Supreme Court Ruling on Class Action Removals," August 29, 2013
- "Court of Appeal Affirms Summary Judgment in Favor of Farmers Insurance on Independent Contract Issue," July 13, 2013, also published in *FC&S Legal*
- "Supreme Court Continues To Expand FAA Preemption," June 20, 2013
- "Ninth Circuit Rules that Comcast Does Not Kill Wage and Hour Class Actions," May 29, 2013
- "New Appellate Decision Applies Brinker to Require Certification of Certain Meal and Rest Claims," May 13, 2013
- "Plaintiffs' Bar is Whistling Past the Graveyard on Comcast," April 2, 2013
- "Supreme Court Ruling Reverses Bad 9th Circuit Precedent on CAFA," March 20, 2013
- "9th Circuit Applies *Dukes v. Wal-Mart* to a Wage/Hour Class Action," March 6, 2013
- "New 7th Circuit Opinion Explains Plaintiff's Obligation to Have a Trial Plan to Maintain Class Certification," February 6, 2013
- "Plaintiffs Must Offer "Significant Proof" Of A Common Policy Or Practice To Satisfy Commonality Under Rule 23 Post-*Dukes*," February 1, 2013
- "Appellate Panel Tries to Draft a Roadmap for the California Supreme Court to Save California's Prohibition of Class Action Waivers from U.S. Supreme Court Precedent," November 30, 2012
- "Cal Court Of Appeal Hands Sheppard Mullin A Victory - Affirms Denial Of Class Certification In An Expense Reimbursement/Uniform Action," November 11, 2012
- "California Court Holds That California Follows Federal Law On Time Clock Rounding," October 31, 2012
- "California Appellate Court Continues The Trend Of Accepting *Concepcion* Standards In California," August 15, 2012
- "DeLeon II Further Expands Employers' Right to Charge Back Commission Advances," July 12, 2012
- "Sotelo Decision is Packed With Class Action Goodness," July 3, 2012
- "California Supreme Court Clarifies and Strengthens Work Product Protections for Attorney-Procured Witness Declarations," June 28, 2012
- "U.S. Supreme Court Sides With Employers on the Outside Sales Exemption," June 19, 2012
- "Everything an Employer Could Ask For in One Decision on Class Action Waivers," June 6, 2012
- "Seventh Circuit Holds Pharmaceutical Reps Exempt Under Administrative Exemption," May 10, 2012
- "Brinker Clarifies California Law on Meal and Rest Periods in a Pro-Employer Direction," April 12, 2012
- "New California Appellate Decision May Sound the Death Knell for Many Wage/Hour Class Actions," February 7, 2012; republished in Martindale-Hubbell's *Counsel to Counsel Report*, February 7, 2012

- "California Appellate Court Issues a Decision That Mutual of Omaha Insurance Agents Qualify as Independent Contractors as a Matter of Law," January 2, 2012
- "Cal Supreme Court Reverses Horrific Decision on Administrative Exemption But Declines to Provide Much Guidance on How Exemption Should Be Applied," December 29, 2011
- "California Court of Appeal Construes Wage Order Split Shift and Reporting Time Pay Provisions in a Pro-Employer Way," December 27, 2011; republished in the Employer Advisory Council of Orange County, Inc.'s *The Advisor*, Winter 2012
- "California Court of Appeal Holds Defendant Did Not Waive Its Right To Compel Arbitration By Waiting Until After Class Certification Where Other Class Members--But Not Plaintiff--Had Agreed To Arbitrate," December 20, 2011
- "Ninth Circuit Affirms That Employees Who Work Outside California Cannot Use the California Unfair Competition Law to Vindicate Their Federal Overtime Rights," December 15, 2011
- "Deciphering *Dukes*: Ninth Circuit Hands Down Decision Interpreting The Game-Changer," September 28, 2011
- "Ninth Circuit Attempts to Clarify Learned Professional Exemption's Educational Requirement," September 13, 2011
- "California Appellate Court Analyzes Employment Arbitration Agreement after Supreme Court's AT&T Decision," July 14, 2011
- "New Case on Rules Governing Application of California Overtime Law to Non-California Residents," June 30, 2011
- "U.S. Supreme Court Rejects Gender Discrimination Class Action Against Wal-Mart," June 20, 2011

## Media Mentions

California's Top Labor and Employment Lawyers  
*Daily Journal*, 07.20.2016

Attys React To High Court's Auto Service Advisers OT Ruling  
*Law360*, 06.20.2016

Attorneys React To High Court's Tyson Class Action Ruling  
*Law360*, 03.22.2016

Top Labor & Employment Attorneys  
*Daily Journal*, 06.03.2015

Countrywide Seeks OK For \$10M OT Deal After 9-Year Fight  
*Law360*, 02.06.2015

CAFA Threshold Assumptions Must Be 'Reasonable': 9th Circ.  
*Law360*, 01.08.2015

Calif. Panel Says Concepcion Defeats Broughton-Cruz Rule  
*Law360*, 12.19.2014

2 Cos. Tell 9th Circ. Max Damages Count For CAFA Removal

*Law360*, 12.08.2014

California labor law only covers wages due on termination date, judge finds

*Westlaw Journal/Thomson Reuters*, 09.16.2014

4 Employment Cases To Watch In The Next High Court Term

*Law360*, 07.03.2014

5 California Employment Cases To Watch in 2014

*Law360*, 01.10.2014

9th Circuit Warns Employers Not To Overreach On Arbitration

*Law360*, 10.29.2013

Calif. High Court Pushes Narrow Reading Of Concepcion

*Law360*, 10.18.2013

Retail services company settles wage-and-hour dispute with staff

*Westlaw Journal/Thomson Reuters*, 08.28.2013

Attorneys React To High Court's Arbitration Ruling

*Law360*, 06.20.2013

Citing *Dukes*, court overturns class certification in wage and hour dispute

*Inside Counsel*, 05.01.2013

Q&A: If you could change one California law, which would it be and why?

*California Lawyer*, 05.2013

Lawyers Weigh In On Supreme Court's FLSA Ruling

*Law360*, 04.16.2013

KeyBank Ruling May Help Employers Force Arbitration

*Law360*, 04.12.2013

Calif. High Court Case May Reveal Stance On Class Waivers

*Law360*, 03.08.2013

Quinn Emanuel Contract Atty Faces Uphill Battle In OT Suit

*Law360*, 03.05.2013

7th Circ. Ruling Raises Bar For FLSA Class Cert.

*Law360*, 02.07.2013

Case May Give Calif. High Court Clear Shot At Employer Arbitration

*Law360*, 08.17.2012

Wells Fargo Sales Staff Wins Conditional Cert. In OT Suit

*Law360*, 07.06.2012

As Conception interpretations roll on, a win for California employers  
*Thomson Reuters*, 06.08.2012

California Ruling Shakes Up Employment Class Waiver Landscape  
*Law360*, 06.05.2012

Dukes Might Not Kill Countrywide Workers' Class, Judge Says  
*Law360*, 05.21.2012

Employer Liability For Rest Breaks Clarified By High Court  
*Daily Journal*, 04.13.2012

Countrywide Says Dukes Dooms Worker Wage Suit  
*Law360*, 04.08.2012

Wage-and-Hour Ruling May Curb Class Actions  
*Business Insurance*, 02.13.2012

Countrywide Wants Competition Claims Cut From OT Suit  
*Law360*, 10.17.2011

## Speaking Engagements

Wage & Hour Class Actions—Update: October 15, 2011 panel speaker within The State Bar of California Labor and Employment Section 29th Annual Meeting.

Latest Trends in Class Action Mediation: April 30, 2010 panel speaker within CELA's 6th Annual Advanced Wage and Hour seminar.

Representative Actions Under the UCL and PAGA: New Direction from the California Supreme Court: July 24, 2009, Panel speaker at teleseminar sponsored by State Bar.

Advanced Strategies in Reducing Class Litigation: October 20, 2005 presentation at Seyfarth Shaw annual Labor Law symposium.

Bridgeport Continuing Education - 2005 Conference on Labor and Employment Law: Master of Ceremonies for September 14-15, 2005 CLE seminar.

The Class Action Fairness Act of 2005: Issues and Insights, June 7, 2005 presentation to Allstate Insurance Company in Northbrook, Illinois.

Get That Monkey Off Your Back! Cutting Edge Employment Law Compliance Issues, April 20, 2005 presentation to American Corporate Counsel Association (ACCA).

From Hiring to Firing: The Nuts and Bolts of Employment Law, February 5, 2005 presentation at Southwestern University on the subject of Business & Professions Code Section 17200 and Wage-Hour Class Actions.

Recent Trends in Employment Class Actions – It's Certainly Not Just Title VII Anymore, October 21, 2004 presentation at Seyfarth Shaw annual Labor Law symposium.

Beyond The Exempt/Non-Exempt Dilemma – The Most Treacherous California Wage & Hour Laws You Never Heard of (but Plaintiffs Have), June 18, 2003 presentation to American Corporate Counsel Association (ACCA).

## Practices

Labor and Employment

Healthcare

Discrimination, Harassment, and Retaliation

Labor and Employment Litigation

Wage and Hour Class Actions

Wage and Hour Regulations

Wrongful Termination

## Industries

Entertainment, Technology and Advertising

Financial Services

Healthcare

Hospitality

Mortgage Banking

Retail, Fashion & Beauty

## Education

J.D., University of California, Los Angeles, 1995

## Admissions

California

Supreme Court of the United States of America

U.S. Court of Appeals for the Ninth Circuit

U.S. District Court for the Eastern, Northern and Southern Districts of California

U.S. District Court for the District of Colorado