



RECENT EMPLOYMENT LAW DECISIONS

CALIFORNIA SUPREME COURT

SUPREME COURT DECERTIFIES
OPINION THAT REQUIRED
WHISTLEBLOWERS TO EXHAUST
ADMINISTRATIVE REMEDY
BEFORE SUING FOR
VIOLATIONS OF LABOR CODE
§§ 1102.5 AND 6310

MacDONALD v STATE OF CALIFORNIA. On November 26, the Supreme denied a petition for review and decertified the August 27 opinion in which the Third District held that a plaintiff must exhaust the administrative remedy in Labor Code § 98.7 before filing suit in Superior Court for retaliatory discharge in violation of §§ 1102.5 and 6310. The Third District's opinion appeared at 219 CA4th 67, 161 CR3d 520, and was summarized in **CELA Bulletin**, Sep 2013, p.9.

For plaintiff: *Adam Blair Corren*.
For State of California: Mark J. Tamblyn,
Deputy Attorney General.
**Cal SC, 11/26/13; Case No. S213450;
2013 DAR 15501.**

CALIFORNIA COURTS OF APPEAL

MOA DID NOT CLEARLY
AND UNMISTAKABLY WAIVE
EMPLOYEE'S RIGHT TO JUDICIAL
FORUM FOR STATUTORY
DISCRIMINATION CLAIMS

VOLPEI v COUNTY OF VENTURA.
"An employee is a member of a union
whose collective bargaining agreement
provides that the union may submit a

(Cont'd on Page 2, **DECISIONS**)

*Note: An italicized attorney's name
in a case summary indicates CELA
membership.*

SONIC-CALABASAS II: WHAT COMES NEXT?

by Miles E. Locker

[*CELA members Miles Locker and Rachel Folberg, (Locker Folberg, San Francisco), both former DLSE attorneys, represented Frank Moreno in the Sonic I and Sonic II litigation.*]

I. When Worlds Collide: State Public Policy and the Federal Arbitration Act

In its initial 2011 decision in *Sonic-Calabasas A, Inc. v Moreno*, ("Sonic I," 51 C.4th 659), the California Supreme Court established a categorical rule that it is contrary to public policy and unconscionable for an employer to require an employee, as a condition of employment, to waive the right to have a wage claim decided by the Labor Commissioner under the Berman hearing process set out at Labor Code § 98, *et seq.* *Sonic I* further held that this rule, when applied to arbitration agreements, was not preempted by the Federal Arbitration Act ("FAA"), and that when an employee chooses to have a wage claim heard by the Labor Commissioner, the arbitration agreement cannot be enforced until the completion of the Berman hearing process. If then enforceable, the arbitration would serve as a substitute for *de novo* superior court proceedings triggered by the timely filing of an appeal under Labor Code §98.2, with the employee obtaining the benefit of all of the rights that flow from access to the Berman process.

But just a few months after the issuance of *Sonic I*, the United States Supreme Court decided *AT & T Mobility, LLC v Concepcion* (2011) 563 U.S.

CELA NOTES

—**TOP MEDIATORS PLEDGE COMMITMENT TO DIVERSITY.** FAIR, the non-profit organization founded by CELA leaders to promote diversity in the plaintiffs' employment bar, has launched a new campaign to increase opportunities for diverse law students and new lawyers to receive summer and post-graduate fellowships at CELA member firms.

Top employment mediator Mark Rudy of San Francisco helped initiate the "challenge" campaign, in which employment mediators around California are being asked to donate a day's

mediation proceeds, (or the plaintiff's share of day's proceeds) to FAIR, to support the organization's diversity recruitment efforts.

"FAIR's leadership believes that the mediators who work with CELA members every day and whose practices benefit so much from the support of the plaintiffs' employment law community, should give back, by means of a tax deductible donation, to show support for the cause of increasing diversity in the plaintiffs' employment bar," said

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NOTES

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Bryan Schwartz, FAIR's President. "Our work is all about addressing diversity concerns in the workplace—and Mark Rudy and other top mediators are realizing how important it is that we exemplify the values we are trying to promote. Along with Mark, the following leading mediators have led the way in accepting the Mark Rudy Mediators' Challenge, demonstrating their serious commitment to inclusivity in our community: Kathy Edwards (Huntington Beach); Joel Grossman (Santa Monica); Linda Meyer (Malibu); Cynthia Remmers (Oakland); Judge Enrique Romero (Los Angeles); Steve Serratore (Los Angeles); and Todd Smith (Calabasas).

If you are a mediator and want to accept the Challenge by making a fully tax deductible contribution, and/or know a mediator who may also wish to donate, contact FAIR President Bryan Schwartz; bryan@bryanschwarz-law.com.

—MARKETING YOUR LAW PRACTICE. On Friday, January 24, 2014, at the Center at Cathedral Plaza in downtown Los Angeles; and on Thursday, February 13, 2014, at the Ed Roberts Campus in Berkeley, CELA's Practice Management Committee will present a seminar entitled "Marketing Your Law Practice." Both programs will run from 9:00am-1:00pm.

Solo practitioners make up a large part of CELA's membership. Come hear from seasoned and new solos how they market their practices, and learn about: branding; networking; Web presence; free and paid advertising; and more.

Speakers at the Southern California program will include Rob Hennig, Debra Lauzon, Joseph Lavi, Eugene Lee, Ramit Mizrahi, Miguel Ramirez, Sarah Schlehr, and Patty Thammalaiviroj. (The Northern California line-up has not yet been finalized.)

The Center at Cathedral Plaza is adjacent to the Cathedral of Our Lady of The Angels in downtown Los Angeles. The Ed Roberts Campus is located at 3075 Adeline Street in Berkeley, south of Ashby Avenue between Tremont and

Woolsey Streets. Online registration will be coming soon.

—SONIC v CALABASAS WEBINAR.

On Thursday December 12, from noon until 1:30, CELA's Wage & Hour Committee will present "*Sonic v Calabasas*, Forced Arbitration, and a Game Changer for Wage Cases." Attend this 90-minute webinar and:

- Hear about the implications of *Sonic v Calabasas* and *Chavarria v Ralphs Grocery Co.*
- Get an important update on forced arbitration; and
- Hear how SB 462, just signed into law, changes the game in straight wage cases.

If you are an employee-side wage & hour lawyer, you MUST attend this webinar!

PRESENTERS: Scot Bernstein, Law Offices of Scot D. Bernstein, Folsom; Miles Locker, Locker Folberg LLP, San Francisco; Claire Prestel, Public Justice, Washington DC.

For further information and to register, go to www.cela.org and click on Upcoming Events. The price is \$30 for CELA and NELA members, and 1.50 hours of MCLE credit are available. (CELA is a State Bar of California approved MCLE provider.)

—CELA'S FEDERAL RULES TASK FORCE.

CELA and our FRCP Taskforce are pleased to announce the addition of a page on the CELA website to keep CELA members and the public updated on proposed changes to the Federal Rules of Civil Procedure that would severely impact our members' ability to enforce employment civil rights in federal court. The public comment period is open until February 15, 2014, but we encourage you to submit your comments by December 9, 2013, one month prior to the second public hearing. Please make your voices heard to protect the rights of all workers, and send public comments either directly to the Federal Court Advisory Committee or to CELA's FRCP Taskforce to be in in-

cluded in our response. Keep checking our website for any upcoming changes, and concerning the hearings on these draconian limitations to the discovery rules.

—FAIR'S EMPLOYEE JUSTICE FELLOWSHIPS.

As of Thanksgiving, seven CELA firms had hired top notch law students from diverse backgrounds as law clerks for next summer, and law student resumes and initial interview notes from some of California's top law schools—Boalt Hall, UCLA, Golden Gate, USF, Loyola, USC, UC Davis, Hastings, Chapman, Whittier, and UC Irvine—are available for viewing. If you are interested in seeing those materials, contact Christina@cela.org. We're hoping that all hiring decisions can be made by December 16. The Employee Justice Fellowship promises that firms will pay summer law clerks at an hourly rate of at least \$15 an hour, which will be matched by up to \$4,000 in Fellowship funds. For more information, see www.fair-foundation.org.

—CELA'S INAUGURAL "TRIAL COLLEGE."

CELA will hold its first-ever three-day Trial College on June 5-7, 2014, at Loyola Law School in Los Angeles. Stay tuned for details and registration information.

—E-DISCOVERY TechTalk RECORDING IS NOW AVAILABLE.

If you missed November 13's informative TechTalk on E-Discovery, it is available two ways: (1) Free Conference Playback; Playback Number: (605) 475-4009; Access Code 399776#; Reference No. 3#; or (2) if you would like to access/download the MP3 recording, send an e-mail to Christina@cela.org and I'll send you a Dropbox invitation.

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