



JANUARY 2014

# Appellate Reports and cases in brief

## *Cases of interest to members of the plaintiffs' bar*

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### ***Frye v. County of Butte***

(2013) \_\_ Cal.App.4th \_\_ (3d Dist.)

**Who needs to know about this case?**

All lawyers who litigate cases.

**Why it's important:** Holds that a document filed by the trial court titled "Statement of Decision" was actually an appealable judgment, which triggered the parties' deadlines to file a notice of appeal. Their later appeals from a document titled "judgment" were untimely, and their appeals were dismissed. This case illustrates that counsel cannot take for granted what the legal effect of a document is for the purposes of appealability based solely on its title, and must instead carefully analyze orders and decisions to determine whether they qualify as an appealable judgment.

**Synopsis:** County animal-control officers seized Frye's horses. She filed administrative proceedings challenging the validity of the seizure. On September 21, 2010, the trial court issued a document called a "statement of decision" finding that there were defects in the procedure used by the county, and remanding the matter for further administrative hearings. On April 15, 2011, Frye moved to have the trial court enter a judgment in her favor. On August 22, 2011, the court entered a document called "judgment" ordering new administrative hearings. A notice of entry of this judgment was filed on August 31, 2011, and the county appealed within 60 days. Frye then filed a cross-appeal nine days later.

The appellate court dismissed the appeal and cross appeal, finding that they were not timely. The court held that

the statement of decision resolved all issues before the trial court for consideration, and therefore constituted an appealable judgment, triggering the parties' right to appeal. Since no notice of entry was served, the parties had 180 days after entry of the "judgment" to file their notice of appeal. The trial court lacked jurisdiction to extend this deadline, or to enter the document it titled "judgment."

### **Short(er) takes**

**Class Action Fairness Act (CAFA); removal; proof.** *Mondragon v. Capital One Auto Finance* (9th Cir. 2013).

Mondragon filed a class action in the Superior Court against Capital One Finance and Ron Baker Chevrolet alleging various state-law violations related to the disclosures in auto-financing contracts. The defendants removed under CAFA. Mondragon sought remand based on the "local controversy" exception to CAFA, in 28 U.S.C. § 1332(d)(4)(A), which allows remand to allow a state court to hear a class action in which greater than two-thirds of the class are citizens of the forum state. Mondragon argued that his class definitions – All persons who purchased a vehicle from Ron Baker Chevrolet for personal use to be registered in California; and All persons who purchased a vehicle in California for personal use to be registered in California – demonstrated that the local-controversy exception was met. No further affirmative proof was provided on this issue concerning the state of residence of the members of the plaintiff class. The district court accepted this argument and remanded. Defendants appealed, and the Ninth Circuit

reversed. It held that there must be some facts in evidence from which the district court can make factual findings to support a remand based on the local-controversy requirements, and by failing to provide any proof concerning the citizenship of the class, Mondragon had failed to satisfy his burden.

**Sanctions; Code Civ. Proc. § 128.7;**

**frivolous claims; arbitrators and**

**arbitration:** *Optimal Markets, Inc. v. Salant* (2013) \_ Cal.App.4th \_ (6th Dist.)

Optimal filed a complaint against several defendants. The parties agreed to have the case resolved in binding arbitration. The arbitrator denied all of Optimal's claims, and awarded attorney's fees and costs against it. The defendants had also requested sanctions against Optimal and its counsel, but the arbitrator denied that request because he concluded that he lacked the authority to order sanctions under the terms of the parties' arbitration agreement. The defendants filed motions in the Superior Court to confirm the arbitration award and for sanctions under Code of Civil Procedure section 128.7. The trial court confirmed the award, but refused to award sanctions, finding that the arbitrator's decision not to award sanctions resolved the matter and was binding. Affirmed. Section 128.7 provides a mechanism for obtaining sanctions arising out of court proceedings. Since the case was resolved in arbitration, it did not apply. The arbitrator was more familiar with the facts and circumstances of the case than the trial court, since the matter was resolved before the arbitrator, not the trial court. It therefore was proper for the arbitrator to decide the sanction issue in the arbitration.



JANUARY 2014

**Torts; comparative fault of dismissed defendants; Code Civ. Proc. § 581c, subd. (d); causation:** *Leal v. Mansour* (2013) \_\_ Cal.App.4th \_\_ (2d Dist., Div. 8.)

Felipa Hernandez died while a patient at a hospital. Her family filed a wrongful-death action against the hospital and her physician. At the close of the plaintiff's evidence at trial the hospital moved for nonsuit, and its motion was granted. The case proceeded against the doctor. The jury returned a verdict in favor of the doctor, finding that his negligence was not a substantial factor in causing Ms. Hernandez's death. On appeal, the plaintiffs argued that the trial court erred in allowing the doctor to present evidence and argument that a ventilator malfunction, not

the doctor's negligence, was the cause of death. They argued that section 581d, subd.(d) should have precluded the doctor from offering evidence about the ventilator. That section precludes a defendant from attempting, over the plaintiff's objection, to attribute fault to a defendant who has been dismissed on the basis that the defendant was without fault.

The Court of Appeal held that the statute did not preclude the doctor from arguing that a ventilator malfunction was the cause of death, because the nonsuit in favor of the hospital had not been made on the ground that it was without fault. Rather, it had been made on the ground that there had been no showing as to the hospital's standard of care. The fact that the ventilator was the hospital's equip-

ment did not mean that attributing fault to the ventilator was tantamount to attributing fault to the hospital.



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