## Daily Journal

# VERDICTS & SETTLEMENTS

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FRIDAY, DECEMBER 3

## THIS WEEK IN **VERDICTS** & **SETTLEMENTS**

### Hair Fray:

Attorneys Neville L. Johnson, Douglas L. Johnson, and Jordanna G. Thigpen of Johnson & Johnson LLP in Beverly Hills. were among the legal team that helped garner a \$26 million settlement against a haircare manufacturer.

See page 5

#### **Technical Difficulties:**

Attorneys Stephen J. Tully and Trang T. Tran of Garrett & Tully in Westlake Village successfully defended a public accounting firm that was sued by a memory modules manufacturer that claimed the firm overstated the amount of royalties it owed, and caused the manufacturer to be sued by its supplier, who stopped selling to plaintiff. Plaintiff alleged that as a result, it incurred \$11.765 million defending the suit, and lost \$13 million in profits it otherwise would have earned had the sales occurred.

See page 7

## They've got your back:

Sand Diego-based attorney Erwin L. Cena of Kilpatrick, Townsend & Stockton LLP, along with Sean P. DeBruine of Kilpatrick, Townsend & Stockton LLP in Menlo Park, were among a legal team that obtained over \$20 million in a patent infringement case in a Texas district court.

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Check out Top Verdicts on page 2 for this week's biggest results.

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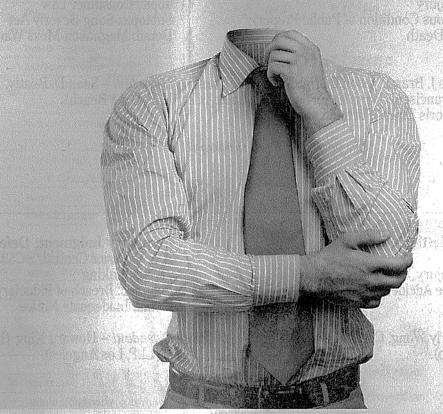
By Douglas E. Noll

ne might think that being an arbitrator is a pretty good gig, and it is, for the most part. However, if you are appearing before arbitrators with any frequency, it might be useful to know what they think and fret about.

The first rule for an arbitrator: protect the award. Nothing is worse for an arbitrator than for a judge to vacate an award, especially in larger, complex cases. From the moment of initial inquiry, an arbitrator is thinking about how to protect the award. While the grounds for vacatur are narrow, some of those grounds can be widened into a superhighway by a judge who doesn't like a result or doesn't like arbitration generally. Arbitrators know that and are paranoid because of it.

Protecting the award starts with full and complete disclosures. It is not unheard of for a lawyer to sandbag knowledge of a potential undisclosed fact for later use if the award goes the wrong way. Arbitrators know that, too. Arbitrators worry that their disclosures are never enough and look for every opportunity to reveal information that might, possibly, conceivably, in some small way, have a bearing on some arbitral bias. Sometimes what seems innocuous, like a testimonial that is 10 years old on a social media website, can bite back hard. Disclosures become particularly important when there are repeat players involved.

In arbitration, jurisdiction over issues of arbitrability are split between the courts and the arbitrator. Generally, the courts decide if the parties entered into an agreement to arbitrate, while the arbiWhat's on an arbitrator's mind



Joinder issues can be very complex, especially when there is a danger of inconsistent results between arbitration and trial. Arbitrators have virtually no power to force nonsignatories into arbitration. That task is usually left to the trator decides everything else. court to puzzle through. Thus, the trator will bend over backwards

arbitrator will protect the award by not extending the arbitration to nonsignatories unless a court has ordered the joinder.

Protecting the award also means conducting a very, very fair process. This means that the arbito let each side have its say, present evidence and make whatever arguments need to be made. Although an arbitrator may, depending on the rules, have the power to rule on dispositive motions, unless there is truly indisputable facts, most issues will be resolved at hearing rather than by There are reasons for m dispositive motion, such cating the arbitrator, test reaction to arguments, an but don't expect to see ma tions granted.

The rules of evidence in tion are relaxed. What this in practical terms is the everything will be admit evidence. Just because th are relaxed does not me everything plus the kitch needs to be thrown at the tor. Most arbitrators operators their "BS radar" on high The more garbage you into the hearing, the grechance that you will be we your credibility and the cre of your case. The junk will and be disregarded. The d that your good stuff will k garded too.

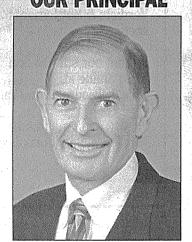
Arbitration hearings a erally more relaxed affai trials. However, the degree formality varies arbitrator trator. Some formality pre fairer process, which prot award. Do not let the more environment lull you into t that your presentation can py and unprepared. Arl prefer crisp, succinct p tions of argument and e Most will not be impress bluster.

The arbitrator will be t about the structure of th very early on. The evide be evaluated in terms of v clear, well-reasoned awar such is called for, as oppo summary decision) that w stand judicial scrutiny. Arl are well aware that award vacated for manifest disre the law in some instance

See Page 2 -

## CONSTRUCTION • SAFETY • SLIPS/FALLS • ACCIDENT RECONSTRUCTION

## **OUR PRINCIPAL**



DR. STEPHEN C. WEXLER, PE

CPE, CCE, CCS, CPMP, CVS, CMC, CBO, CSP

Licensed Civil Engineer Licensed Safety Engineer Licensed General Contractor Const Mgt Trainer - US Navy Seabees

**OUR PRESIDENT** 





**KELLY GOLDA** ACTAR. CXLT. EIT Sr. Engineering



**KEN HUEY B ARCH** Sr. Forensic Manag



**JEFF HUGHES** GC, CM Sr. Construction Manager

connection with a contractual dispute.

PLAINTIFF'S CONTENTIONS: Plaintiff purchased an industrial parcel of real estate located in Wilmington, California. Plaintiff obtained a loan from the Bank of Yorba Linda to purchase the property, secured by a deed of trust. The bank later assigned the rights to the loan to First Bank. In 2010, First Bank initiated foreclosure proceedings following plaintiff's default. Plaintiff later entered into a forbearance agreement with First Bank. Plaintiff subsequently made payments pursuant to the agreement. In June 2011, First Bank sold the note and deed of trust to USA Consolidators. The property subsequently sold at a trustee's sale for nearly \$300,000. Plaintiff filed this action, alleging breach of contract and promissory estoppel.

**DEFENDANTS' CONTENTIONS:** USA Consolidators moved for summary judgment. USA Consolidators was not a party to the underlying forbearance agreement, accordingly, it could not be held liable for the alleged breach. Moreover, plaintiff allegedly lacked standing to sue for loss of the real property. First Bank also moved for summary judgment for the sole remaining action against it (breach of contract) given that the second cause of action for promissory estoppel had already been dismissed.

DAMAGES: Ace sought \$3 million in damages.

RESULT: The court granted summary judgment in favor of the defense.

OTHER INFORMATION: FILING DATE: June 22, 2015.

## **CONTRACTS**

#### **FRAUD**

Intentional and Negligent Misrepresentation

VERDICT: Defense

CASE/NUMBER: PNY Technologies Inc. v. Miller, Kaplan, Arase & Co., LLP / 3:15-cv-01728-MMC

COURT/DATE: USDC Northern / Nov. 15, 2016

JUDGE: Hon. Maxine M. Chesney. ATTORNEYS: Plaintiff - Thomas P. Lane, Sean R. Anderson (Winston & Strawn LLP, New York, N.Y.); Drew A. Robertson (Winston & agreement, fraud, intentional misrepresentation, negligent misrepresentation and interference with contractual relations. PNY claimed Miller Kaplan had made misrepresentations regarding its independence and in its examination report. Upon removal of the case to federal court and on the motion of Miller Kaplan, venue was changed to US Northern District Court.

On Sept. 28, 2016, the court granted partial summary judgment in favor of Miller Kaplan on PNY's claims of misrepresentations in the examination report, and on the cause of action for interference with contractual relations. The case went to trial on Oct. 31, 2016 on PNY's claims of misrepresentations regarding independence and breach of the non-disclosure agreement by Miller Kaplan, and PNY's damage claims of over \$11 million in attorney fees, \$13 million in lost profits, and a loss of market share.

During trial, the court granted non-suit on PNY's cause of action for breach of the non-disclosure agreement and its damage claim for loss of market share. PNY's claims of misrepresentation by Miller Kaplan regarding its independence, and PNY's remaining damage claim went to the jury.

PLAINTIFF'S CONTENTIONS: PNY claimed that an intentional or negligent misrepresentation by Miller Kaplan that it could be independent in 2010 caused PNY to submit to Miller Kaplan's royalty examination. PNY further claimed that that examination overstated the amount of royalties it owed, and caused SanDisk to file the Santa Clara lawsuit, and to refuse to sell product to PNY. PNY alleged that as a result, it incurred \$11.765 million defending the SanDisk suit, and lost \$13 million in profits it otherwise would have earned had the SanDisk sales occurred.

DEFENDANT'S CONTENTIONS: Miller Kaplan claimed that it was independent, and that in all events PNY disagreed with, and did not rely on Miller Kaplan's representation concerning independence. Miller Kaplan further contended that its report, which disclaimed an opinion and warned that the numbers in it may be unreliable due to PNY's failure to provide needed information, had no causal connection to SanDisk's

Jr., and Joseph O. Williams Jr., individually, sued Gary Berger,

PLAINTIFFS' CONTENTIONS: Plaintiffs' parents set up the trust in 1998 with the assistance of a non-defendant attorney. Plaintiff were the intended beneficiaries for the trusts. In 2000, their parents amended the estate plan and attendant trust documents with the assistance of attorneydefendant. Defendant's allegedly faulty preparation caused the estate to fail to capture an available \$300,000 tax deduction, causing more than \$25,000 in damages. Hence, plaintiffs asserted causes of action for negligence and breach of fiduciary duty.

DEFENDANT'S CONTENTIONS: Defendant moved for judgment on the pleadings on the grounds that the causes of action were barred by the statute of limitations.

RESULT: The court granted Berger's motion for judgment on the pleadings without leave to amend.

OTHER INFORMATION: FILING DATE: May 4, 2016.

## **EMPLOYMENT LAW**

WAGE AND HOUR Meal and Rest Period

SETTLEMENT: \$1,350,000

CASE/NUMBER: Manny Ponce v. Pentair Water Pool and Spa Inc., Roth Staffing Companies LLC, and Does 1 through 50, inclusive / 30-2013-00647036-CU-OE-CXC

COURT/DATE: Orange Superior / Dec. 2, 2016

JUDGE: Hon. Thierry P. Colaw.

ATTORNEYS: Plaintiff - Eliot J. Rushovich, Aanand Ghods-Mehtani (Rushovich Mehtani LLP, Los Angeles).

Defendant - Carrie A. McAtee (Shook, Hardy & Bacon LLP, Kansas City, Mo.) for Pentair Water Pool and Spa Inc.; Scott C. Lacunza (Jackson Lewis PC, Irvine) for Roth Staffing Companies LLC. FACTS: Plaintiff brought a wage and hour class action against his employer and its staffing company, asserting various violations of the labor code.

PLAINTIFF'S CONTENTIONS: Plaintiff contended that defendants failed to pay wages, failed to provide overtime compensation, failed to pay wages upon termination, failed to provide accurate itemized wage statements, M. Monte (Littler Menuelson FC, Chicago, Ill.). FACTS: Plaintiff brought a collective action on behalf of herself and other employees of PLS Check Cashers of California.

PLAINTIFFS CONTENTIONS: Plaintiff contended that defendant failed to pay them all minimum wages and overtime compensation due, in violation of the Fair Labor Standards Act.

DEFENDANT'S CONTENTIONS: Defendant claimed plaintiff's claims were barred by res judicata.

RESULT: The court granted defendant's motion to dismiss and dismissed the complaint with prejudice.

OTHER INFORMATION: Plaintiff has filed a Notice of Appeal.

## **INSURANCE**

## **DECLARATORY RELIEF**Mistaken Receipt, Unjust

Enrichment

BENCH DECISION: Defense

CASE/NUMBER: General Star Indemnity Company v. Thunderbutte Enterprises LLC dba Sierra Nevada House / 2:16-cv-00628-MCE-AC

COURT/DATE: USDC Eastern / Nov. 17, 2016

JUDGE: Hon. Morrison C. England, Jr.

ATTORNEYS: Plaintiff - Alan H. Barbanel, Paul A. Impellezzeri (Barbanel & Treuer PC, Los Angeles).

Defendant - Ivo Labar, Daniel J. Veroff (Kerr & Wagstaffe LLP, San Francisco).

FACTS: General Star Indemnity Co. filed a complaint for declaratory judgment and mistaken receipt (unjust enrichment) claim against Thunderbutte Enterprises LLC dba Sierra Nevada House.

PLAINTIFF'S CONTENTIONS: Plaintiff issued a commercial property insurance policy to defendant, which operated a historic hotel and restaurant in Coloma. The policy provided \$1 million in loss coverage and additional coverage for personal property and business income losses. Plaintiff's agent inspected the premises in September 2015, and made certain required loss control recommendations. Defendant failed to confirm completion of the loss control recommendations. Thereafter,

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LLP, Calabasas). Defendant - Michael L. Cohen (Cohen McKeon LLP, Los Angeles).

FACTS: Plaintiff Segler Holdings Inc. hired supermodel Marisa Miller to act as its spokesperson and ambassador to promote its sunless tanning salons, sunless tanning products and to launch a sunless tanning initiative. Plaintiff also hired Miller's management company to coordinate and promote the activities Miller was hired to perform.

PLAINTIFF'S CONTENTIONS: Plaintiff contended that both Miller and Cartel Management took Segler's money and then failed to perform their contractual obligations.

**DEFENDANT'S CONTENTIONS:** Defendants contended they performed all obligations required of them under the contracts and that any damages plaintiff sustained were the result of its own actions or inactions.

JURY TRIAL: Length, four days; Poll, 8-0 (liability and damages); Deliberation, 3.5 hours

RESULT: The jury rendered a verdict for plaintiff in the total amount of \$1 million, which consisted of \$300,000 against Miller and \$700,000 against Cartel Management.

OTHER INFORMATION: A mediation was held before Hon. Richard Stone, ret., of ADR. The parties mediated their dispute but the matter did not resolve.

FILING DATE: June 9, 2015.

#### CONTRACTS

**BREACH OF CONTRACT Promissory Estoppel** 

SUMMARY JUDGMENT: Defense CASE/NUMBER: Ace Roll-Off Rubbish Service Inc. v. First Bank, USA Consolidators Inc., and Does 1 to 10, inclusive / 30-2015-00794737-CU-BC-CJC

COURT/DATE: Orange Superior / Dec. 2, 2016

JUDGE: Hon. David R. Chaffee.

ATTORNEYS: Plaintiff - Kenneth Gaugh (Law Office of Kenneth Gaugh, Torrance). Defendant - John A. Crose, Jr. (Isaacs, Clouse, Crose &

Oxford LLP, Torrance) for USA Consolidators Inc. FACTS: Ace Roll-Off Rubbish Service Inc. sued First Bank

and USA Consolidators Inc., in connection with a contractual dispute.

PLAINTIFF'S CONTENTIONS: Plaintiff purchased an industrial parcel of real estate located in Wilmington, California. Plaintiff obtained a loan from the Bank of Yorba Linda to purchase the property, secured by a deed of bank later as the rights to the loan to First Bank. In 2010, First Bank initiated foreclosure proceedings following plaintiff's default. Plaintiff later entered into a forbearance agreement with First Bank. Plaintiff subsequently made payments pursuant to the agreement. In June 2011, First Bank sold the note and deed of trust to USA Consolidators. The property subsequently sold at a trustee's sale for nearly \$300,000. Plaintiff filed this action, alleging breach of contract and promissory estoppel.

**DEFENDANTS' CONTENTIONS: USA Consolidators moved** for summary judgment. USA Consolidators was not a party to the underlying forbearance agreement, accordingly, it could not be held liable for the alleged breach. Moreover, plaintiff allegedly lacked standing to sue for loss of the real property. First Bank Strawn LLP, Los Angeles). Defendant - Stephen J. Tully, Trang T. Tran (Garrett & Tully, Westlake

TECHNICAL EXPERTS: Plaintiff -James Schratz, legal billings audit, Sonoma; Christian Tregillis, CPA, ABV, CLP, forensic accounting, Los

Defendant - Brand Cooper, Esq., legal fees, Pasadena; David E. Nolte, CPA, forensic accounting, Los Angeles.

FACTS: In 2008, plaintiff PNY Technologies Inc. entered into a license agreement with SanDisk Corporation, by which PNY agreed to report and pay royalties on the sale of SanDisk-licensed products. By 2010, PNY had neither reported nor paid any royalties, and SanDisk gave notice of an audit of PNY's royalty obligations. SanDisk engaged defendant Miller Kaplan Arase & Co. LLP to perform an examination of amounts owed by PNY. Before the examination began, PNY disputed Miller Kaplan's independence and requested that Miller Kaplan withdraw. Miller Kaplan maintained that it was independent, and the

examination began in December

In June 2011, Miller Kaplan issued a final examination report that estimated royalties owed by PNY of between \$20 million and \$40 million, but disclaimed an opinion and warned that the estimates may be unreliable due to missing information. During and after the examination, SanDisk proposed meetings, a second examination by another accounting firm, mediation, and that PNY offer some amount in settlement, among other things, to attempt to reach a resolution of the dispute concerning PNY's royalty obligations short of litigation. After PNY declined each of its proposals, SanDisk filed suit against PNY in Santa Clara Superior Court in late July 2011. In March 2014 that case was tried, and a jury returned a verdict finding PNY owed San Disk over \$28.5 million in royalties and interest, some of which represented PNY's royalty obligation during the period covered by Miller Kaplan's royalty examination. PNY and SanDisk later entered into a settlement, by which PNY agreed to pay a total of \$24 million for a release of all claims and a royalty-free license to sell SanDisk products until 2020.

In May 2014, PNY filed suit against Miller Kaplan in New Jersey state court, alleging causes of action for breach of a non-disclosure agreement, fraud, intentional misrepresentation, negligent misrepresentation and interference with contractual relations. PNY claimed Miller Kaplan had made misrepresentations regarding its independence and in its examination report. Upon removal of the case to federal court and on the motion of Miller Kaplan, venue was changed to US Northern District Court,

On Sept. 28, 2016, the court granted partial summary judgment in favor of Miller Kaplan on PNY's claims of misrepresentations in the examination report, and on the cause of action for interference with contractual relations. The case went to trial on Oct. 31, 2016 on PNY's claims of misrepresentations regarding independence and breach of the non-disclosure agreement by Miller Kaplan, and PNY's damage claims of over \$11 million in attorney fees, \$13 million in lost profits, and a loss of market share.

During trial, the court granted non-suit on PNY's cause of action for breach of the non-disclosure agreement and its damage claim for loss of market share. PNY's claims of misrepresentation by Miller Kaplan regarding its independence and PNV's

decisions to sue or to refrain from selling product to PNY. Rather, it was PNY's breaches, bad faith, and rejections of SanDisk's numerous proposals to engage in resolution processes that forced San Disk to sue and to refrain from any sales or further business relations with PNY. Miller Kaplan also contended that as a result of the 2014 settlement, PNY received monetary benefits in excess of the damage PNY claimed Miller Kaplan caused.

DAMAGES: PNY claimed attorney fees damages of \$11.756 million, lost profit damages of \$13 million. and additional damages in the form of a loss of market share.

JURY TRIAL: Length, two weeks; Poll, 7-0 (intentional and negligent misrepresentation);

RESULT: The jury rendered a verdict for the defense.

OTHER INFORMATION: Mediations were conducted before Hon. Dickran Tevrizian on March 29, 2016 and Oct. 27, 2016.

FILING DATE: May 31, 2014.

## CONTRACTS

**PROFESSIONAL NEGLIGENCE Breach of Fiduciary Duty** 

**BENCH DECISION: Defense** CASE/NUMBER: John Williams, individually, and as Trustee of The Williams Family Trust, U.D.T., dated 01/30/1998, and the two subtrusts created under it, i.e. The Williams Family Survivor's Trust and The Joe Williams Lifetime Benefits Trust, and as Trustee of the Exempt Trust and the Non-Exempt Trust for Joseph O. Williams Jr., and Joseph O. Williams Jr., individually v. Gary Donald Berger, and Does 1 through 100, inclusive / CGC-16-

COURT/DATE: San Francisco Superior / Dec. 1, 2016

JUDGE: Hon. Harold E. Kahn.

ATTORNEYS: Plaintiff - Lawrence W. Fasano, Jr. (Fasano Law Office, San Francisco).

Defendant - Brian F. Connors (Law Offices of Brian F. Connors, San Francisco).

FACTS: John Williams, individually, and as Trustee of The Williams Family Trust, U.D.T., dated 01/30/1998, and the two subtrusts created under it, i.e. The Williams Family Survivor's Trust and The Joe Williams Lifetime Benefits Trust, and as Trustee of the Exempt Trust and the Non-Exempt Trust for Joseph O. Williams Jr., and Joseph O. Williams Jr.,

individually, sued Gary Berger, PLAINTIFFS' CONTENTIONS: Plaintiffs' parents set up the trust in 1998 with the assistance of a non-defendant attorney. Plaintiff were the intended beneficiaries for the trusts. In 2000, their parents amended the estate plan and attendant trust documents with the assistance of attorneydefendant. Defendant's allegedly faulty preparation caused the estate to fail to capture an available \$300,000 tax deduction, causing more than \$25,000 in damages. Hence, plaintiffs asserted causes of action for negligence and breach of fiduciary duty.

**DEFENDANT'S CONTENTIONS:** Defendant moved for judgment on the pleadings on the grounds that the causes of action were barred by the statute of limitations

RESULT: The court granted Berger's motion for judgment on the pleadings without leave to amend.

OTHER INFORMATION: FILING DATE: May 4, 2016.

## **EMPLOYMENT LAW**

**WAGE AND HOUR** Meal and Rest Period Defendants denied wrongdoing. RESULT: The parties settled for \$1.35 million.

**WAGE AND HOUR** 

Greenblatt, and Nicole Cahill, each individually, on behalf of all others similarly situated, and on behalf of the general public v. Hog & Rocks LLC, and Does 1 to 5 / CGC-16-

JUDGE: Hon. Harold E. Kahn.

ATTORNEYS: Plaintiff - Arlo G. Uriarte, Brent A. Robinson (Liberation Law Group PC, San Francisco).

Defendant - Steven Kesten (Kesten Law, San Anselmo).

and Nicole Cahill filed a PAGA representative action, along with individual claims, against Hog & Rocks LLC, for alleged violations of the California Labor Code.

settle for \$275,000.

DATE: July 8, 2016.

**WAGE AND HOUR** 

**BENCH DECISION: Defense** 

CASE/NUMBER: Pearl Rangel, as an individual, and on behalf of all employees similarly situated v. Pls Check Cashers of California Inc. / 2:16-cv-06119-DMG-SS

COURT/DATE: USDC Central / Nov. 16, 2016

JUDGE: Hon. Dolly M. Gee.

FACTS: Plaintiff brought a collective action on behalf of herself and other employees of PLS Check Cashers of California.

PLAINTIFF'S CONTENTIONS: Plaintiff contended that defendant failed to pay them all minimum wages and overtime compensation due, in violation of the Fair Labor

**DEFENDANT'S CONTENTIONS:** Defendant claimed plaintiff's claims were barred by res judicata.

OTHER INFORMATION: Plaintiff has filed a Notice of Appeal.

**BENCH DECISION: Defense** 

Star Indemnity Company v. Thunderbutte Enterprises LLC dba Sierra Nevada House / 2:16-cv-00628-MCE-AC

Nov 17 2016

and failed to provide meal periods. **DEFENDANT'S CONTENTIONS:** 

OTHER INFORMATION: FILING DATE: April 29, 2013.

## **EMPLOYMENT LAW**

Meal and Rest Period

**SETTLEMENT: \$275,000** 

CASE/NUMBER: Emmanuela

COURT/DATE: San Francisco Superior / Nov. 30, 2016

FACTS: Emmanuela Greenblatt

PLAINTIFFS' CONTENTIONS: Plaintiffs worked for defendant as servers. Plaintiffs asserted claims for harassment, discrimination, wrongful termination and retaliation.

RESULT: Hog & Rocks agreed to

OTHER INFORMATION: FILING

## **EMPLOYMENT LAW**

Unpaid Minimum Wages and Overtime

ATTORNEYS: Plaintiff - Kevin Mahoney, Katherine J. Odenbreit, Atoy Wilson (Mahoney Law Group APC, Long Beach).

Defendant - Margaret H. Gillespie, Chelsea E. Hadaway (Littler Mendelson PC, Los Angeles); Ines M. Monte (Littler Mendelson PC, Chicago, Ill.).

Standards Act.

RESULT: The court granted defendant's motion to dismiss and dismissed the complaint with prejudice.

## INSURANCE

**DECLARATORY RELIEF** Mistaken Receipt, Unjust Enrichment

CASE/NUMBER: General

COURT/DATE: USDC Eastern /

plaintiff's agent issued a notice of cancellation with an effective date of Nov. 23, 2015 due to defendant's failure to comply with the recommendations, but agent did not inform plaintiff. Plaintiff's agent continued to attempt to obtain confirmation of completion of the recommendations to reinstate the policy, but defendant's agent never responded. Then, on Dec. 14, defendant sustained fire damage. Not realizing the policy's cancellation, plaintiff sent an independent adjuster to handle the claim and thereafter issued a \$100,000 advance payment. In March 2016, when plaintiff became aware of the cancellation, plaintiff demanded return of the funds and indicated that cancellation was valid because one of the required recommendations that defendant had failed to correct was a violation of California Mechanical Code Section 515.1.1.3. Plaintiff then brought this action seeking declaratory relief regarding the validity of the cancellation and return of the funds advanced to defendant.

**DEFENDANT'S CONTENTIONS:** 

Defendant ThunderButte moved to dismiss the complaint for failure to state a claim for relief because the alleged insurance policy cancellation was ineffective as a matter of law, for two reasons. First, the policy could not legally be cancelled because of an alleged failure to follow recommendations. California statute sets forth the only reasons an insurer can cancel a commercial property policy that has been in effect for more than 60 days, and failure to follow recommendations is not one of them. Second, plaintiff's argument that the failure to follow recommendations equated to a violation of state law, a statutorily permissible basis for cancellation, did not render the cancellation effective. California law requires notices of cancellation to strictly state the factual basis, and plaintiff's notice stated that the reason was a failure to follow recommendations, not violation of state law. Because plaintiff incorporated the relevant statutory language into the insurance policy, it must comply with California law even though it was a non-admitted surplus lines carrier. As such, the cancellation was ineffective as a matter of law, and plaintiff failed to

dismissal without leave to amend. RESULT: This court granted ThunderButte's motion to dismiss without leave to amend.

state a claim for relief, warranting a

## **INTELLECTUAL PROPERTY**

COPYRIGHT INFRINGEMENT Unfair Competition

BENCH DECISION:

CASE/NUMBER: Sanrio Inc., Disney Enterprises Inc. v. Ronnie Home Textile Inc.; Kenneth J. Doeing; QinQin Pan aka PanQing Qing aka Tiffany Qing aka Tiffany Pan aka Maria Pan; and Does 1? 10, inclusive / 2:14-cv-06369-RSWL-

COURT/DATE: USDC Central / Nov. 22, 2016

JUDGE: Hon. Ronald Lew.

ATTORNEYS: Plaintiff - J. Andrew Coombs, Annie S. Wang (J. Andrew Coombs APC, Glendale). Defendant - Robert S. Altagen (Law Offices of Robert S. Altagen, Monterey Park).

FACTS: Plaintiffs brought a complaint for copyright infringement, trademark infringement, and unfair competition.

PLAINTIFFS' CONTENTIONS: Plaintiffs contended that defendants infringed their Hello Kitty related trademarks and copyrights by manufacturing,

JUDGE: Hon. Terry J. H. ATTORNEYS: Plaintiff -Blaha (Law Offices of Mi Blaha, Santa Monica). Defendant - Geordie Duc Animal Law Practice, Tig FACTS: Plaintiff sued de

copyright infringement. PLAINTIFF'S CONTENT Plaintiff contended that I the exclusive rights to th picture "The Day of the I and that defendant infrin his copyright by offering film for sale on its websit cheezyflicks.com.

RESULT: The court gran summary judgment in fa plaintiff and awarded hin in damages. It also enjoir defendant from infringing plaintiff's exclusive right film.

## INTELLECTU **PROPERT COPYRIGHT INFRIN**

Unfair Business Pra

SETTLEMENT: \$150,00 CASE/NUMBER: Warne Home Entertainment Inc Enterprises Inc. v. Frank Joseph Wojcik aka Joe W Does 2? 10, inclusive / 2

COURT/DATE: USDC Nov. 21, 2016

01618-R-JEM

JUDGE: Hon. Manuel L. ATTORNEYS: Plaintiff -Coombs, Annie S. Wang Coombs APC, Glendale)

(Law Office of Joseph C. South Gate). FACTS: Plaintiffs sued d for copyright infringeme

Defendant - Joseph C. M

PLAINTIFFS' CONTEN Plaintiffs contended that defendants made unauth uses of their copyrighted

**DEFENDANTS' CONTI** Defendants denied infrir and asserted various affi defenses. RESULT: Pursuant to the

stipulation for entry of co decree and permanent in and settlement agreemer into between the parties, court ordered defendant its infringing activities an plaintiffs \$150,000 in dam

OTHER INFORMATION DATE: March 9, 2016.

## INTELLECTI PROPERT

**PATENT INFRINGI** Willful Infrigeme

VERDICT: \$20,300,000 CASE/NUMBER: Mark M.D. v. Medtronic Inc. / 00104-RC

COURT/DATE: USDC' NOV. 11, 2016

JUDGE: Hon. Ron Clark ATTORNEYS: Plaintiff -L. Cena (Kilpatrick, Tow Stockton LLP, San Diego DeBruine (Kilpatrick, To Stockton LLP. Menlo Pa C. Holloway, Dario A. M (Kilpatrick, Townsend & LLP, Atlanta, Ga.); Laura Mullendore (Kilpatrick, & Stockton LLP, Denver Defendant - Aimee M. H Mary-Olga Lovett (Gree Traurig LLP, Houston, T P. Bookbinder, Scott J. B Allan A. Kassenoff, Richa (Greenberg Traurig LLF York, N.Y.); Clyde M. Sie (Greenberg Traurig LLF Texas).

FACTS: Plaintiff was a po orthopedic surgeon who patents for a spinal defor procedure. He sued defe a medical device manufa company, for patent infri