CPOA CASE SUMMARIES – FEBRUARY 2025

CONSTITUTIONAL LAW

A. Law enforcement officers assigned to a joint federal-state task force implemented by federal law and supervised by a federal agent were operating under federal, rather than state, law.

Tuyet Thai v. Cnty. of L.A., 127 F.4th 1254 (9th Cir. 2025)

Facts: Los Angeles District Attorney's Office investigators Dulce Sanchez and William Villasenor were temporarily assigned to work full time in a joint federal-state program, the Cooperative Disability Investigations ("CDI") Unit, under the supervision of federal Special Agent Glenn Roberts. Anh Thai and Don Doan are Vietnamese refugees and residents of San Diego County who applied for disability benefits. In January 2014, Special Agent Roberts instructed Sanchez and Villasenor to investigate several Social Security applicants in San Diego who were suspected of malingering,[1] including Thai and Doan.

In March 2015, Thai and Doan filed suit bringing state and federal claims against the County of Los Angeles, Sanchez, and Villasenor, based on allegations that Sanchez and Villasenor forcibly entered their respective homes and interrogated them about their disability benefits. Both Thai and Doan contended that during the investigations, the officers displayed guns and state badges, did not seek consent for the search, and failed to have an interpreter present. Thai and Doan's complaint focused on claims brought under 42 U.S.C. section 1983, which authorizes injured parties to seek damages against persons who violate their constitutional rights "under color" of state law. Sanchez and Villasenor argued that their work in the CDI Unit was not under color of state law, and therefore they could not be held liable under Section 1983. The District Court agreed and granted their motion for summary judgment. Thai and Doan appealed.

Held: The Ninth Circuit Court of Appeals explained that if the officers were not acting under color of state law, then Section 1983 could not apply. The Ninth Circuit had not yet squarely addressed when state officers are acting under color of federal law, but the Court agreed with sister circuit cases on the matter.[2] In alignment with these sister circuit decisions, the Ninth Circuit stated that to determine whether state officials assigned to a joint federal-state program operate under color of state law, courts "consider the totality of the circumstances. In general, where the source of authority for the program is federal in nature and the state officials' participation in the challenged conduct is subject to the immediate control of a federal supervisor, those officials act under color of federal law, not under color of state law."

The Ninth Circuit held that because the federal government was the source of authority under which the CDI Unit was implemented and because the officers' day-to-day work was supervised by a federal officer, the officers were acting under color of federal, rather than state, law. Although the officers continued to receive their paychecks from Los Angeles County while they were

[1] I.e., faking a disability for benefit purposes.
[2] See, e.g., *Askew v. Bloemker*, 548 F.2d 673 (7th Cir. 1976) and *Johnson v. Orr*, 780 F.2d 386, 390 (3d Cir. 1986).

assigned to the CDI Unit, the Social Security Administration reimbursed Los Angeles County for their salaries and overtime. The investigations took place in San Diego, outside of Los Angeles County, indicating that the officers were not drawing on their authority as Los Angeles District Attorney's Office investigators. Finally, the federal nature of the CDI Unit was consistent with many other law enforcement programs that involve both state and federal employees whose officers have been held not liable to suit under Section 1983. Thai and Doan provided no evidence that the authority of the state was exerted in enforcing the law such that the officers' conduct was fairly attributable to the state. The Ninth Circuit held that the officers were acting under the color of federal rather than state law for purposes of Section 1983, and were therefore not subject to suit under Section 1983. Accordingly, the Ninth Circuit Court of Appeals affirmed.

B. Gun discovered during an illegal search should have been suppressed where police lacked a particularized and objective basis for believing the suspect was breaking the law when they detained him.

In re L.G., 108 Cal. App. 5th 818 (2nd Dist. 2025)

Facts: As uniformed members of a gang detail, Officers Victor Quezada and Diego Millan were patrolling Harbor City Crips gang territory after dark in a marked cruiser. Millan had arrested an unrelated person for a gun crime in this area about a month earlier. They saw three young males on a sidewalk, including Nathan Cazares, who Milan recognized as a Harbor City Crips member. From their vehicle, the officers questioned the three individuals about where they lived and what they were doing there. Two responded but 15-year-old L.G. did not respond. About 20 seconds into the questioning of the group, Millan shined his flashlight on the three.

Quezada directed questions at L.G. specifically. L.G. did not respond. He did not look at the officers but instead looked sideways and at the ground. This lack of eye contact "piqued" Millan's interest. Quezada thought L.G. looked "nervous." Millan and Quezada exited the car intending to "conduct a narcotic or firearm investigation." Quezada told the youths, "Step out to the street! Get your hands up!" L.G. ran instead. Millan and Quezada called for backup, which arrived and caught L.G., whom they found carrying a gun. Officers arrested L.G. Charged with a gun crime, L.G. moved to suppress challenging the search. The trial court ruled the search was proper. L.G. appealed.

Held: The Second District Court of Appeal initially explained that while consensual encounters require no justification, detentions—*Terry* stops or stop-and-frisks—do. If an officer's show of authority restrains someone's liberty in some way, then the officer has seized that person and must justify this detention. Police seize someone if, in view of the situation, reasonable people would not believe they are free to leave.

The Court concluded the search was improper because there was too little evidence of criminal activity. Officers saw L.G. with a known gang member in gang territory where there had been an unrelated arrest in the past. Being nervous and deliberately avoiding police interaction did not reasonably suggest criminal activity was afoot. (*People v. Flores* (2024) 15 Cal.5th 1032, 1043–1049.) L.G.'s nervousness, the unrelated arrest, and the gang companion did not create reasonable

suspicion that L.G. was at that moment committing a crime. Once the police said, "Step out to the street! Get your hands up!" and advanced in a coordinated and simultaneous approach, reasonable people in L.G.'s situation would not believe they were free to leave. The Court stated that the coordinated advance constituted a show of force that transformed a consensual encounter into an invasion of liberty. However, the officers lacked a particularized and objective basis for believing L.G. was breaking the law. The Second District accordingly reversed the judgment, and remanded with instruction to the lower court vacate the order denying L.G.'s motion to suppress and to grant the motion.

QUALIFIED IMMUNITY

Fourth Amendment violation where law enforcement agency accessed cell phone data from another jurisdiction in the absence of a warrant or any suspicion of criminal activity.

Olson v. Cnty. of Grant, 127 F.4th 1193 (9th Cir. 2025)

Facts: Haley Olson runs a marijuana dispensary in Oregon, where marijuana is legal. In January 2019, Olson was pulled over and arrested in Idaho for marijuana possession. Olson signed a form giving Idaho police consent to search her cell phone, who then created an "extraction," or copy, of her phone contents. During the search of her car, Idaho police found the business card of Tyler Smith, a Grant County, Oregon sheriff's deputy. Glenn Palmer, then-Sheriff of Grant County, Oregon, heard about the Idaho arrest and called the Idaho State trooper in charge of Olson's case. Palmer requested Olson's phone extraction from the Idaho state trooper but was rebuffed.

Palmer next asked Jim Carpenter, then-Grant County Attorney and County Prosecutor, to request the phone extraction from the Idaho prosecutor in Olson's case. Carpenter agreed to do so. Carpenter requested and obtained the extraction. Carpenter asked the Oregon State Patrol and the Deschutes County Sheriff to review the extraction, but both agencies declined, as there was no ongoing or related criminal investigation. Carpenter then reviewed the extraction himself. Concluding that the extraction showed an affair between Olson and Smith (including nude photos of both parties) but no criminal activity, Carpenter wrote Palmer a letter to that effect. Palmer later claimed that Carpenter twice offered Palmer the chance to review the extraction, reporting that Carpenter said that "there were things on the cell phone that, 'once you see them, you can't unsee them.'" Palmer denied having ever reviewed the extraction or seen any nude photos of Olson, and Carpenter denied having ever offered to show the extraction to Palmer. According to Carpenter, immediately upon the conclusion of his review and his report to Palmer, he "reformatted" the flash drive, deleting the extraction.

However, Olson subsequently heard gossip in various encounters around town about the contents of her phone, including intimate photos of Olson and Smith, all seemingly originating from the Sheriff's office. Olson sued Palmer and Carpenter alleging, among other claims, Fourth Amendment violations. The District Court granted summary judgment for Palmer for lack of supervisory liability, and for Carpenter on the grounds of qualified immunity because his actions did not violate clearly established law. Olson appealed the grants of summary judgment to Palmer

and Carpenter.

Held: Considering first the claim against Sheriff Palmer, the Ninth Circuit Court of Appeals explained that third parties may only be liable for the constitutional violations of others under 42 U.S.C. section 1983 if they are a supervisor, and "(1) [they were] personally involved in the constitutional deprivation, or (2) a sufficient causal connection exists 'between the supervisor's wrongful conduct and the constitutional violation.'" *Felarca v. Birgeneau*, 891 F.3d 809, 819-820 (9th Cir. 2018) (quoting *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011)). The Court found that there was no evidence that Palmer reviewed the extraction himself, nor any evidence that Palmer had any supervisory authority over Carpenter in Carpenter's role either as county attorney or county prosecutor.[3]

As to Carpenter, the Court observed that on summary judgment, he would be entitled to qualified immunity unless Olson raised a genuine issue of material fact showing (1) "a violation of a constitutional right," and (2) that the right was "clearly established at the time of [the] defendant's alleged misconduct." *Pearson v. Callahan*, 555 U.S. 223, 232 (2009) (internal quotations omitted).

The Ninth Circuit considered the first prong of the qualified immunity inquiry. The Fourth Amendment prohibits "unreasonable searches and seizures."[4] In assessing whether a government intrusion is a search, courts ask whether "an individual 'seeks to preserve something as private,' and that expectation of privacy is 'one that society is prepared to recognize as reasonable.'"[5] In *Riley v. California*, the United States Supreme Court concluded that review of a cell phone seized from an individual who has been arrested was a Fourth Amendment search, and held that "a warrant is generally required" to search a cell phone, absent application of another exception to the warrant requirement. 573 U.S. 373, 401 (2014).

Here, the Ninth Circuit noted that an extraction or phone dump is typically an exact replica of the data contained on a cell phone at the time of extraction and is easily searchable and reviewable by law enforcement. The Court stated that the extraction was thus "the functional equivalent of Olson's phone at the moment she consented to the search by Idaho law enforcement." The Court concluded that the Fourth Amendment concerns articulated in *Riley* applied with equal force to Olson's cell phone extraction and that Carpenter's subsequent review of Olson's cell phone extraction constituted a Fourth Amendment search. The Ninth Circuit stated that a plain reading of the consent form that Olson signed confirmed that her consent in Idaho did not extend to a search by a different law enforcement agency, in another state, for evidence of her boyfriend's theoretical misdeeds. The Court described this case as involving a law enforcement agency accessing highly sensitive cell phone data from another jurisdiction in the absence of a warrant, consent, or even any investigation or suspicion of criminal activity on the part of a suspect. Under the circumstances presented here, the Ninth Circuit concluded that Carpenter's review of the cell phone data was an unreasonable search.

[3] See *Felarca*, *supra*, 891 F.3d at 820: "Because these administrators had no supervisory authority over the police who allegedly committed the violations, they did not participate in or cause such violations.".

[4] U.S. Const. amend. IV.

[5] *Sanchez v. Los Angeles Dep't of Transp.*, 39 F.4th 548, 555 (9th Cir. 2022) (quoting *Smith v. Maryland*, 442 U.S. 735, 740 (1979)).

Turning to the second step of the qualified immunity analysis, the Ninth Circuit noted that a government official "violates clearly established law when, at the time of the challenged conduct, the contours of the right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (cleaned up). Although a case does not have to be "directly on point for a right to be clearly established, existing precedent must have placed the statutory or constitutional question beyond debate." *Kisela v. Hughes*, 584 U.S. 100, 104 (2018). Although the Ninth Circuit concluded that Carpenter's warrantless search of Olson's cell phone constituted a Fourth Amendment violation, the Court held that the law was not clearly established at the time of the search, thus entitling Carpenter to qualified immunity. Olson did not cite to any Supreme Court or Ninth Circuit authority that placed the constitutional violation as "beyond debate" and none had "clearly established the rule on which [Olson] seek[s] to rely." *Evans v. Skolnik*, 997 F.3d 1060, 1066 (9th Cir. 2021) (internal quotations omitted). Accordingly, the Ninth Circuit Court of Appeals affirmed the District Court's grant of summary judgment.

FIREARMS/SECOND AMENDMENT

Laws prohibiting possession of firearms by convicted felons are not facially unconstitutional.

People v. Richardson, 108 Cal. App. 5th 1203 (2nd Dist. 2025)

Facts: In September 2022, Antoine Leon Richardson, a felon, brandished a gun after an argument with an individual outside of a Lancaster liquor store. In November 2022, police searched Richardson's home, finding many rounds of handgun and rifle ammunition. Richardson was arrested and interviewed by the police. He admitted that in September 2022, he was at the Lancaster liquor store, where he brandished a gun during an argument with a female. Richardson also admitted that the ammunition found inside his home during the search belonged to him.

A jury found Richardson guilty of, among other things, being a felon in possession of a firearm (Penal Code section 29800(a)(1)) and being a felon in possession of ammunition (Section 30305(a)(1)). The jury also found that he had three prior felony convictions and found true an aggravating sentencing factor. Richardson appealed.

Held: The Second Amendment states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." Relying on *New York State Rifle & Pistol Association, Inc. v. Bruen* (2022) 597 U.S. 1, Richardson argued that his convictions for being a felon in possession of a firearm and ammunition must be reversed because Section 29800(a)(1) and Section 30305(a)(1) violate the Second Amendment. The Second District Court of Appeal observed that Richardson did not argue in the lower court that these sections were unconstitutional as applied to him, and he was therefore limited to raising a facial challenge to the constitutionality of those statutes.

The Second District noted that in *District of Columbia v. Heller* (2008) 554 U.S. 570, the United States Supreme Court invalidated laws banning the possession of handguns inside the home. (*Id.* at p. 635.) However, the Supreme Court stated that "nothing in [its] opinion should be taken to

cast doubt on longstanding prohibitions on the possession of firearms by felons…." (*Id.* at pp. 626–627.) In *Bruen*, the Supreme Court clarified its test for assessing the constitutionality of firearm regulations under the Second Amendment. The High Court explained, "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" (*Bruen*, *supra*, 597 U.S. at p. 24.) *Bruen* acknowledged that its decision was consistent with *Heller* and *McDonald v. Chicago* (2010) 561 U.S. 742, which held "that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense." (*Bruen*, *supra*, 597 U.S. at pp. 8–9.) The Supreme Court emphasized that the petitioners in *Bruen*, in whose favor it ruled, were "law-abiding" citizens and, as such, "part of 'the people' whom the Second Amendment protects." (*Id.* at pp. 31–32.)

Here, the Second District noted that Sections 29800(a)(1) and 30305(a)(1) criminalize the possession of firearms and ammunition, respectively, by individuals who have been convicted of felonies. In *People v. Alexander* (4th Dist. 2023) 91 Cal.App.5th 469, Division Two of the Fourth Appellate District held that these statutes do not violate the Second Amendment. (*Id.* at pp. 477–480.) The *Alexander* court explained that the conduct criminalized by the statutes is not covered by the Second Amendment "because according to *Heller* and *Bruen* only law-abiding citizens are included among 'the people' whose right to bear arms is protected by the Second Amendment." (*Alexander*, at p. 478.) Since convicted felons are, by definition, not law-abiding citizens, they do not have the right to possess firearms under the Second Amendment. (*Alexander*, at p. 479.)

The Second District agreed with *Alexander*'s reasoning and concluded that because the possession of firearms and ammunition by convicted felons is not protected by the Second Amendment, Sections 29800(a)(1) and 30305(a)(1) are constitutional. Moreover, even assuming convicted felons were covered by the text of the Second Amendment, the Second District agreed with the First District in *People v. Anderson* (1st Dist. 2024) 104 Cal.App.5th 577, 589, 598) that Sections 29800(a)(1) and 30305(a)(1) are consistent with our national tradition of firearm regulation and, as such, are facially valid. Accordingly, the Second District Court of Appeal affirmed the judgment.

EMPLOYMENT

CalPERS was not required to count police sergeant's term as association president as pensionable compensation when he took a leave of absence to serve that term.

Serrano v. Pub. Employees' Ret. Sys., 109 Cal. App. 5th 96 (3rd Dist. 2025)

Facts: Gerry Serrano was elected president of the Santa Ana Police Officers Association ("Association") in April 2016 after having been a homicide detective sergeant with the City of Santa Ana ("City"). The City and Association had a memorandum of understanding ("MOU") which detailed the City's agreement to grant the Association president full-time release from duty and to pay the president "[full] salary including any salary additives, such as career incentive pay,

confidential premium pay, benefit costs and pension cost." While serving as president, Serrano was on leave of absence from the City, but the City continued to pay Serrano his sergeant's salary and related pay additives he earned while a homicide detective sergeant.

In October 2020, California Public Employees' Retirement System ("CalPERS") wrote a letter to the City determining the confidential premium could not be included in Serrano's pension because he was on leave of absence. The City appealed this determination, which Serrano later joined. CalPERS subsequently reviewed the entirety of Serrano's pay and determined the other pay additives were also not pensionable. At the administrative law hearing, Serrano testified as to his responsibilities as president. Nobody from the City required him to perform any duties for the City as a police officer. Serrano also said he worked 9:00 a.m. to 5:00 p.m. Monday through Friday and was "not required" to work on holidays nor required to wear a uniform.

The administrative law judge found not pensionable most of the pay additives because Serrano's work while on leave did not meet the requirements under the Public Employees' Retirement Law (Government Code section 20000 et seq.) ("Retirement Law"). The Administrative Board of CalPERS ("Board") adopted the administrative law judge's opinion in April 2022. Serrano filed a petition for writ of administrative mandamus seeking to have the Board's decision vacated and to have all pay additives included in his retirement calculation, but the trial court denied the petition. Serrano appealed.

Held: Government Code section 3558.8(a) provides in part: "A public employer shall grant to public employees, upon request of the exclusive representative of that employee, reasonable leaves of absence without loss of compensation or other benefits for the purpose of enabling employees to serve as stewards or officers of the exclusive representative." Section 3558.8(e) provides: "Compensation during leave granted under this section shall include retirement fund contributions required of the public employer as an employer." On appeal, Serrano argued in part that Section 3558.8 mandated that he was entitled to the same pensionable compensation he earned as a police sergeant while serving as the Association president.

The Third District Court of Appeal explained that the Retirement Law "establishes [CalPERS], a retirement system for employees of the state and participating local public agencies. [CalPERS] is a prefunded, defined benefit plan [that] sets an employee's retirement benefit…"[6] The Court observed that Section 3558.8 is not part of the Retirement Law, but instead part of a different statutory scheme called the Meyers-Milias-Brown Act (Government Code section 3500 et seq.; "MMBA"). Noting that neither compensation nor benefits are defined in Section 3558.8 nor elsewhere in the MMBA, the Third District determined that the definition for compensation in the Retirement Law was appropriate for Section 3558.8. The Court stated that the Retirement Law treats differently "compensation" and "pensionable compensation," and determined that compensation in Section 3558.8 is limited to the base pay one receives for services performed during normal working hours. Because the Retirement Law is the authority dictating public employer retirement fund contribution requirements, the Third District concluded Section 3558.8 did not require the compensation Serrano earned as a police sergeant to be entirely pensionable while he served as Association president.

[6] *DiCarlo v. County of Monterey*, 12 Cal.App.5th 468, 480–481 (6th Dist. 2017) (citation omitted).

The Third District next considered Serrano's further challenge to the specific exclusion of the confidential premium and holiday pay from his pensionable compensation. The Court concluded that under Cal. Code Regs., tit. 2, section 571, the confidential premium was not pensionable because it was based on overtime, nor was holiday pay pensionable because the sergeant was not required to work on approved holidays or to work a staffing schedule without regard to holidays. Accordingly, the Court of Appeal affirmed.

PUBLIC RECORDS

City's failure to follow mandated procedures regarding investigation into public release of police officers' records required mandamus relief to compel its compliance.

Santa Ana Police Officers Ass'n v. City of Santa Ana, 109 Cal. App. 5th 296 (4th Dist. 2025)

Facts: The Santa Ana Police Officers Association ("SAPOA"), an employee organization for all nonmanagement Santa Ana Police Department employees, and certain City of Santa Ana police officers filed a first amended complaint ("FAC") alleging as follows. In February 2021, a reporter with the Voice of OC requested from the Santa Ana City Attorney public records (pursuant to the Public Records Act, Government Code section 7920.000 et seq.) involving Santa Ana Police Department employees who had been placed on paid administrative leave. In March 2021, the City and/or the Department produced certain officer personnel records. In April 2021, Deputy Chief of Police on behalf of the Chief of Police requested return of the confidential peace officer personnel records, but the Voice of OC refused. The City notified certain of the officers whose confidential records had been disclosed of the disclosure, but did not advise what specific information had been released or of any rights the officers might have nor indicate whether the City would take any further steps. The Deputy Chief also informed SAPOA that confidential information of certain of its members had been disclosed, but did not specify which officers' records had been disclosed.

SAPOA filed a written complaint, a citizen complaint, with the City requesting that the matter of the disclosure of confidential records be immediately investigated, but found the City's subsequent response unsatisfactory. Subsequently, Plaintiffs filed their initial complaint against the City. Plaintiffs' FAC asserted, among other things, a cause of action for violation of Penal Code sections 832.5 through 832.7 (failure to investigate complaint). The trial court sustained the City's demurrer to the FAC, concluding in part that there is no private right of action for violation of the confidential disclosure procedures of Sections 832.5 and 832.7. A judgment of dismissal was entered. Plaintiffs appealed.

Held: On appeal, Plaintiffs alleged in part that the City breached its duty to investigate SAPOA's written complaint, and, if the City did conduct an investigation, the City breached its duty to notify SAPOA of the disposition of the complaint within 30 days of the disposition. The Fourth District Court of Appeal observed that Penal Code sections 832.5(a) requires each department or agency in California that employs peace officers to establish a procedure to investigate complaints by members of the public against the personnel of these departments or agencies. Section 832.7(f)(1) states: "The department or agency shall provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition."

Based on *Rosales v. City of Los Angeles* (2nd Dist. 2000) 82 Cal.App.4th 419, the trial court concluded, and the City argued, that Plaintiffs' cause of action for failure to investigate a complaint did not state a claim because the peace officer confidentiality statutes do not give rise to a private cause of action. The Court of Appeal disagreed, explaining that *Rosales* did not address the investigation statutes—Penal Code sections 832.5 and 832.7(f)(1)—which were the basis of the cause of action here.[7]

The Fourth District noted that although the investigation statutes do not specifically provide an enforcement mechanism, Code of Civil Procedure section 1085, the mandamus statute, broadly allows for a writ of mandate to enforce ministerial duties. "'A writ of mandate under Code of Civil Procedure section 1085 is a legal tool to compel a public agency to perform a legal, typically ministerial, duty.' [Citations.] 'A ministerial duty is an act that a public agency is required to perform in a prescribed manner under the mandate of legal authority. [Citation.]' …"[8] The Fourth District stated that Plaintiffs here sought such a writ of mandate to compel the City to perform its ministerial duty of conducting an investigation of SAPOA complaint and timely reporting the City's disposition.

The Court stated that *Galzinski v. Somers* (3rd Dist. 2016) 2 Cal.App.5th 1164 supported Plaintiffs' claim for mandamus relief. The City argued the case here was different from *Galzinski* because Plaintiffs in the instant case did not allege facts to support a claim that either their complaint was not addressed or an investigation was not conducted. The Fourth District disagreed. The Court explained that Plaintiffs alleged the City and the Santa Ana Police Department had established and published procedures for receiving and investigating complaints and that procedure "obligated the department to conduct an investigation into the allegations of the complaint that was sufficient to allow a decision-maker [to] make four possible findings, and the procedure obligated the Chief of Police to make one of those findings with respect to each allegation[] of misconduct." Plaintiffs alleged SAPOA filed a written complaint "requesting that the matter be immediately investigated," but the City failed to conduct an investigation or, if the City did conduct an investigation, it failed to notify Plaintiffs of its outcome of the investigation, as required by Penal Code section 832.7(f)(1). For its review here, the Court assumed the truth of those allegations. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) Plaintiffs also alleged that "[the City] had a ministerial duty to investigate the [SA]POA's citizen's complaint and to render a finding on that complaint in compliance with the complaint procedure the department established and made public pursuant to subdivision (a)(1) of Penal Code section 832.5." Accordingly, as to SAPOA, the judgment was reversed with respect to the cause of action for failure to investigate.

MISCELLANEOUS

[7] Moreover, the Fourth District noted that *Rosales* only held that the disclosure statutes at issue there do not give rise to a private right of action for *damages*, rather than for injunctive or mandamus relief as sought by Plaintiffs in the instant case.

[8] *Los Angeles County Employees Retirement Assn. v. County of Los Angeles*, 102 Cal.App.5th 1167, 1199 (2nd Dist. 2024).

Defendant's harassing and threatening messages constituted stalking even though they were publicly posted on Facebook, rather than directly sent to the victim.

People v. Planchard, 109 Cal. App. 5th 157 (3rd Dist. 2025)

Facts: David Paul Planchard and Debra Doe had a relationship that ended in 2000. However, they later had a son named J. in 2006. Doe has sole custody of J. and also has two daughters. In 2015, Planchard was convicted of stalking Doe. Yet Planchard continued efforts to contact Doe, including through other people who tried to pass on his messages. In 2020, Doe obtained a five-year restraining order against Planchard, which included a 200-yard stay-away provision from Doe and her residence and included J. as a protected party.

Between 2016 and 2023, Planchard publicly posted many harassing and threatening messages on Facebook towards Doe and her family. Planchard did not send or tag these posts to Doe, but they remained publicly available. Heather T. became friends with Doe in 2016. Thereafter, Planchard regularly asked Heather (who in 2015 had become Planchard's "friend" on Facebook) to relay messages to Doe. Although Heather ultimately discontinued her Facebook "friend" status with Planchard, she continued to monitor his public posts between 2018 and May 2023. When the posts were disturbing or threatening, she took screenshots of them and shared them with Doe. Doe, who maintained her own Facebook account under a false name, could independently see Planchard's posts because they were public. She saved some of the posts Planchard made, which were introduced as exhibits in trial. Planchard's posts were sometimes derogatory, repeatedly referenced that Doe had been raped when she was younger, made threatening comments about J. and Doe's daughters, or threatened Doe and other of her family. According to Doe, Planchard's "constant threats, the Facebook posts, and his mental health" made her feel "very anxious, very scared, not safe."

In May 2023, Planchard came to Doe's house where she lived with J. and her parents. Planchard screamed, tried to kick in the front door, and called Doe and her father names. Doe "was really scared. [She] knew that [his] mental health had been declining, so [she] wasn't really sure what he was capable of doing." Planchard was arrested later that day. A jury found Planchard guilty of stalking Doe under Penal Code section 646.9 and violating a protective order. Planchard appealed.

Held: Penal Code section 646.9 provides in relevant part: "Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat[9] with the intent to place that person in reasonable fear for their safety, or the safety of their immediate family, is guilty of the crime of stalking." (Section 646.9(a).) The term "'harasses'" means "engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose." (Section 646.9(e).)

On appeal, Planchard argued that the statutory language "conduct directed at a specific person" required the People to have proven he made persistent attempts to directly contact Doe. Because his harassing and threatening messages were publicly posted on Facebook rather than sent directly

[9] "It is not necessary to prove that the defendant had the intent to actually carry out the threat." (Section 646.9(g).)

to her, he argued they could not be used to establish a harassing course of conduct directed at her and the People's evidence was insufficient to sustain his conviction.

The Third District Court of Appeal affirmed the judgment. The Court explained that a review of the plain language of the statute revealed that while Section 646.9 requires the victim to become aware of the stalker's conduct, there is no requirement that the defendant himself or herself must make the victim aware of the conduct to constitute "harassing" for purposes of the stalking statute.[10] Planchard's conduct was not immunized by making his posts available to the Facebook public under circumstances where it was reasonably foreseeable that either Doe would see them or they would be relayed to her by a third party. The Court found there was sufficient evidence to support Planchard's stalking conviction. His social media messages conveyed a desire to either perform violent sexual acts against Does and/or encourage others to do so and were threats that posed a danger to society. By making the posts public, Planchard demonstrated an intent to be heard by someone, and the fact that he did not send the posts directly to Doe was irrelevant. What mattered was that, when Doe did learn of Planchard's acts and threats, Does suffered the requisite fear. As Planchard repeatedly tried to get others to relay messages to Doe, it was clear Planchard wanted Doe to see them.

[10] See also *People v. Obermueller*, 104 Cal.App.5th 207 (2nd Dist. 2024): "The statute has no requirement of direct contact with a victim. The statutory words erect no such rule. Neither does the case law. [Citation.]." (*Id*. at pp. 221–222.)