CPOA CASE SUMMARIES – APRIL 2025

CONSTITUTIONAL LAW

A. GPS location tracking and sharing for defendants granted pretrial release subject to electronic monitoring was not facially unconstitutional.

Simon v. City & Cnty. of S.F., 2025 U.S. App. LEXIS 9657 (9th Cir. Apr. 23, 2025)

Facts: In San Francisco, after an individual is arrested, booked, and placed in a local jail, he appears in front of a Superior Court judge. After making individualized findings, the judge can order pretrial release and impose conditions, including submitting to warrantless drug testing, warrantless searches, or participation in various programs administered by the San Francisco Sheriff's Office ("SFSO" or the "Sheriff"). To enroll in such programs, defendants must agree to rules promulgated by SFSO. One program available to Superior Court judges is the Pre-Trial Electronic Monitoring program ("PTEM"), which is governed by Program Rules established by SFSO.

Plaintiffs - three criminal defendants in San Francisco - brought an action under 42 U.S.C. section 1983 and various provisions of the California Constitution challenging the constitutionality of two of the Rules on their face to which defendants participating in PTEM must agree. They alleged in part that the Program Rules violate their right to be free from unreasonable searches and seizures under the Fourth Amendment of the U.S. Constitution and Article I, section 1 of the California Constitution. Plaintiffs challenged the constitutionality of PTEM's Rule 5, which requires enrollees to submit to warrantless searches, and Rule 11, which allows SFSO to share participants' location data with other law enforcement agencies without a warrant and to retain the data. They sought to enjoin the Sheriff from imposing or enforcing the Rule 5 and Rule 11 conditions. The District Court found the rules were imposed on criminal defendants in violation of their constitutional rights and enjoined SFSO from enforcing these rules. The Sheriff appealed.

Held: The Ninth Circuit Court of Appeals explained that a plaintiff seeking a preliminary injunction must establish, among other things, that he is likely to succeed on the merits. The Court noted that "[a] facial challenge is really just a claim that the law or policy at issue is unconstitutional in all its applications." *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019). For Plaintiffs' facial challenge to the Rules, the Court considered whether Plaintiffs were likely to show that the challenged Program Rules were unconstitutional in "every conceivable application."[1]

The Court observed that the Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV.[2] A defendant released on pretrial bail does not "lose his or her Fourth Amendment right to be free of unreasonable [searches]." *Cruz v. Kauai County*, 279 F.3d 1064, 1068 (9th Cir.

[1] See *Wolford v. Lopez*, 116 F.4th 959, 984 (9th Cir. 2024).

[2] The Ninth Circuit explained that the right to be free from unreasonable searches under the California Constitution parallels the Fourth Amendment inquiry.

2002). Searches made pursuant to a condition of probation or pretrial release must meet this Fourth Amendment reasonableness standard. See *United States v. Scott*, 450 F.3d 863, 868 (9th Cir. 2006). Citing *Carpenter v. United States*, 585 U.S. 296 (2018), the Court of Appeals considered that Rule 11's GPS location tracking and sharing condition is a "search" under the Fourth Amendment.

In its previous decision in *United States v. Scott*, 450 F.3d 863 (9th Cir. 2006), the Ninth Circuit considered whether warrantless searches consented to by a defendant violated the Fourth Amendment. Following Scott's arrest on drug charges, a Nevada state court conditioned pretrial release on his consent to random warrantless drug testing and warrantless searches of his home for drugs. The Court found "no evidence that the conditions were the result of findings made after any sort of hearing." *Id.* at 865. Instead, they "were merely checked off by a judge from a standard list of pretrial release conditions." *Id.* (internal quotation marks omitted). *Scott* held that the search condition violated Scott's Fourth Amendment rights, finding that consent alone did not validate the drug test and searches under the Fourth Amendment because "[p]ervasively imposing an intrusive search regime as the price of pretrial release, just like imposing such a regime outright, can contribute to the downward ratchet of privacy expectations." *Id.* at 867. Consent "is merely a relevant factor in determining how strong [one's] expectation of privacy is and thus may contribute to a finding of reasonableness. *Id.* at 868. *Scott* found the search condition unreasonable because the Nevada court's "assumption that Scott was more likely to commit crimes than other members of the public, without an individualized determination to that effect . . . [could not], as a constitutional matter, give rise to any inference that he [wa]s more likely than any other citizen to commit a crime if he [wa]s released from custody." *Id.* at 874. Further, the Nevada court imposed the conditions without "any sort of hearing" and instead "merely checked off" the conditions from a "standard list." *Id.* at 865 (internal quotation marks omitted).

The Ninth Circuit here stated that *Scott* left the door open to pretrial release conditions that intrude on a defendant's privacy so long as the court makes an "individualized determination" that a defendant is "more likely to commit crimes than other members of the public." *Id.* at 874. The Court concluded that if the Superior Court orders PTEM following an individualized determination of its reasonableness, a condition that defendants consent to in the presence of counsel, then the order is consistent with the Fourth Amendment. The Court explained that such a condition furthers the government's interest in solving crimes quickly. The Court concluded that tracking and sharing the location of PTEM enrollees without a warrant is thus reasonable under the totality of the circumstances and therefore permissible under both the Fourth Amendment and the California Constitution. The Court stated that Plaintiffs were unlikely to succeed on those claims. Moreover, Rule 5's warrantless search condition was likewise "reasonable" under the Fourth Amendment (and California Constitution) for the same reasons the location sharing provision was deemed reasonable.

The Ninth Circuit accordingly vacated in part the preliminary injunction as to Rule 11. Regarding the District Court's order granting plaintiffs' motion to enforce the preliminary injunction as to Rule 5's warrantless search condition, the Ninth Circuit granted the Sheriff's motion for a stay of the order for many of the same reasons that the Court provided pertaining to PTEM's Rule 11 location sharing provision.

B. No Fourth Amendment violation where warrantless entry and search of plaintiff's home was justified under the hot-pursuit exception.

Newman v. Underhill, 2025 U.S. App. LEXIS 9655 (9th Cir. Apr. 23, 2025)

Facts: In the early hours of July 27, 2022, San Bernardino County Sheriff's Department Deputy Todd Underhill attempted to pull over a black Chevy Silverado with expired registration. The Silverado's driver, later identified as Richard Delacruz, fled. Underhill immediately pursued. Eventually, Delacruz got out of his truck on a dead-end street and ran away on foot. Underhill pursued on foot but lost sight of Delacruz. Underhill reported to dispatch that Delacruz had been "[l]ast seen toward the residence at 4083 Camellia Drive." The house at that location was on a hill, with "drop offs" between it and adjacent properties and with fencing around the perimeter of the backyard that was only waist high in some places. Underhill ran toward the house's backyard and decided to wait for backup before continuing the pursuit. Underhill believed that Delacruz might have entered the home. Deputies arrived and a Sheriff's Department helicopter looked from overhead, but their combined efforts did not find any sign of Delacruz outside the home.

Underhill noticed something about the backdoor of the house and was recorded stating: "We got an unlocked rear door." He later testified that the backdoor had been "slightly ajar[]." Underhill began announcing the Sheriff's Department's presence and ordering any occupants of the home to exit. Underhill heard at least one voice coming from inside the house. Approximately nine minutes after last seeing Delacruz, Underhill and the two deputies who arrived as backup entered the home through the back door. Hearing a voice coming from elsewhere in the house, Underhill found a room where he discovered the owner of the house, Plaintiff Michael Newman, who is "a quadriplegic in a wheelchair." During their conversation, Plaintiff told Underhill that his roommate drove a black Chevy Silverado. Plaintiff gave the officers consent to look for his roommate in a different part of the house. The officers soon found and arrested Delacruz. He was later convicted of a felony for evading a peace officer with wanton disregard for safety, in violation of California Vehicle Code section 2800.2(a).

Plaintiff sued Defendants Underhill, Laidlaw, and Blankenship, asserting, inter alia, a claim under 42 U.S.C. section 1983 for unreasonable search in violation of the Fourth Amendment. The District Court entered summary judgment in favor of Defendants on all claims. Plaintiff appealed.

Held: Plaintiff's claims were based on the allegation that Defendants violated Plaintiff's Fourth Amendment rights when they entered his home without a warrant. The Ninth Circuit Court of Appeals explained that under the Fourth Amendment, The government ordinarily may not search someone's home without "a criminal warrant supported by probable cause." *United States v. Grey*, 959 F.3d 1166, 1177 (9th Cir. 2020), but there are a few narrow exceptions. The Court observed that "the exigencies of [a] situation" sometimes "make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable."[3] Situations involving "the hot pursuit of a fleeing suspect" can fit that description. *United States v. Struckman*, 603 F.3d 731, 743 (9th Cir. 2010).

[3] *Lange v. California*, 594 U.S. 295, 301 (2021) (second alteration in original) (quoting *Kentucky v. King*, 563 U.S. 452, 460 (2011)).

The Court explained that to rely on the hot-pursuit exception, Defendants would have to establish that (1) they had probable cause to search Plaintiff's home and (2) "exigent circumstances"—here, the pursuit of a fleeing suspect—"justified the warrantless intrusion." *United States v. Johnson*, 256 F.3d 895, 905 (9th Cir. 2001) (en banc) (per curiam).

The Ninth Circuit stated that to establish probable cause in this case, Defendants had to show that, when Underhill entered Plaintiff's home, "the 'facts and circumstances' before [him were] sufficient to warrant a person of reasonable caution to believe" that Delacruz would be found therein. *Id.* at 905. The Court noted that the following facts were undisputed: (1) Underhill saw Delacruz running toward the back of the house; (2) Underhill, having searched the area, knew that Delacruz was not hiding in the backyard; (3) if Delacruz had tried to move from the backyard to an adjacent property, he would have been hindered by fencing and by drop-offs in the terrain; (4) Underhill found the backdoor unlocked; and (5) Underhill perceived someone interacting with the backdoor at some point during the pursuit. The Court concluded that with these circumstances, a reasonable person in Underhill's shoes would have believed that there was at least a fair probability that Delacruz was in Plaintiff's home. The Court of Appeals held that, as a matter of law, Defendants had probable cause to believe that Delacruz was inside Plaintiff's home.

Regarding the second requirement of the hot-pursuit exception, the Court noted that in the Ninth Circuit, a "hot pursuit" excuses a warrantless intrusion into the home only if the "officers [were] in 'immediate' and 'continuous' pursuit of a suspect from the scene of the crime" at the moment they made entry. *Id.* (quoting *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984)). The Court stated that it was undisputed that Underhill gave chase "immediately" after seeing Delacruz fail to yield to a traffic stop—thereby committing a felony—and fled the scene in his truck.

Plaintiff argued that, because nine minutes elapsed between Underhill's losing sight of Delacruz and Underhill's entering Plaintiff's home, a genuine dispute of material fact existed regarding the continuity of the pursuit. The Court noted that *Johnson*, which addressed the hot-pursuit exception, made clear that, in certain circumstances, the decision to wait for backup "delay[s], but [does] not br[eak]," the "'continuity' of the chase." *Id.* The *Johnson* Court decided that because the officers in *Johnson* had no clue where a suspect who fled was for more than 30 minutes, the chase's continuity had been "clearly broken." *Id.*

Here, the Ninth Circuit discerned two considerations underlying the distinction that *Johnson* drew between "delayed continuity" and "broken continuity." First, whether, and to what degree, the officers lost track of the suspect's whereabouts. Second, whether the officers, after losing sight of the suspect, continued to act with speed in attempting to apprehend the suspect. Applying those principles to the undisputed facts here, the Ninth Circuit concluded that, when Underhill entered Plaintiff's home, the continuity of the chase remained intact. The Court explained that the nine-minute "pause" identified by Plaintiff was far shorter than the 30-minute period at issue in *Johnson*. The undisputed evidence supporting the existence of probable cause also demonstrated that, during those nine minutes, Underhill had a reasonably good idea where Delacruz was hiding. Unlike the officer in *Johnson*, Underhill did not leave the trail to await backup. Underhill spent most, if not all, of the nine minutes in question actively working to find and apprehend Delacruz. The Ninth Circuit determined that there was no genuine issue of material fact suggesting that the continuity

of the chase was broken before Underhill entered Plaintiff's home. The Ninth Circuit held that Defendants had satisfied both requirements of the hot-pursuit exception as a matter of law, and, accordingly, affirmed.

For a more detailed discussion of this case, please see Client Alert Vol. 40, No. 7, available at www.jones-mayer.com.

C. Because California tort law's "reasonable care" standard is broader and distinct from the federal Fourth Amendment's reasonableness standard, Ninth Circuit holds that jury's mixed verdicts - finding deputies did not use excessive force but were negligent under California law - were reconcilable.

Alves v. Cnty. of Riverside, 2025 U.S. App. LEXIS 10265 (9th Cir. Apr. 29, 2025)

Facts: In July 2019, the Riverside County Sheriff's Department dispatch received 911 calls from an apartment complex in Temecula, California reporting that an unarmed man was bleeding from a head wound and yelling to himself. Deputies Brian Keeney and Sonia Gomez responded to the scene. The deputies encountered a man later identified as Kevin Niedzialek seated without shoes. He was bleeding from the head and speaking incoherently. The deputies believed that Niedzialek was under the influence of a controlled substance or experiencing a mental health crisis and requested medical assistance. Niedzialek abruptly stood up and advanced toward Deputy Keeney. Deputy Gomez deployed her taser, Niedzialek fell to the ground but stood up and again advanced towards Deputy Keeney. Deputy Gomez again deployed her taser, and Niedzialek fell forward to the ground. The deputies struggled to handcuff Niedzialek as he lay face down, kicking and flailing his legs. Deputy Keeney placed his right knee on the left side of Niedzialek's back and held Niedzialek's left wrist. Deputy Gomez attempted to gain control of Niedzialek's right arm while retrieving her handcuffs. After struggling for about 35 seconds, Deputy Gomez secured both of Niedzialek's hands behind his back in handcuffs. Deputy Gomez then made a second call for paramedics. Niedzialek continued struggling and kicking. Niedzialek told the deputies, "Need help" and "Get me up," but Deputy Gomez did not hear him. Deputy Keeney removed his right knee from Niedzialek's back. When Niedzialek rolled to his left side, Deputy Keeney once again placed his right knee on the left side of Niedzialek's back near his shoulder blade. Deputy Gomez placed her right hand near the middle of Niedzialek's back between his shoulder blades.

Approximately 45 seconds after Niedzialek's handcuffing, his movements stopped. Niedzialek began to make grunting or moaning noises. Deputy Keeney lifted his knee from Niedzialek's back, but Deputy Gomez kept her right hand on Niedzialek's back. Two and a half minutes later, Deputy Gomez asked Niedzialek for his name. Niedzialek did not respond. Another minute and twenty seconds elapsed before Deputy Keeney noticed that Niedzialek might not be breathing. Deputies Keeney and Gomez rolled Niedzialek onto his back. By this time, Niedzialek had not moved in over four minutes. Deputy Gomez checked and then rechecked for a pulse and detected a "low faint pulse." Neither deputy performed CPR on Niedzialek before paramedics arrived. Paramedics arrived two minutes after Niedzialek had been rolled onto his back and determined that he was not breathing. Paramedics instructed the deputies to begin CPR on Niedzialek. Deputy Keeney and

others performed CPR on Niedzialek until he was transported to the hospital. Niedzialek died the next day.

Niedzialek's successor-in-interest, Plaintiff Tracy Alves, sued the deputies and the County of Riverside under 42 U.S.C. section 1983 for, among other things, excessive force under the Fourth Amendment and California state law claims for, among other things, negligence. Plaintiff's claims for excessive force and negligence were tried before a jury. At Plaintiff's request, the District Court dismissed all claims against Deputies Keeney and Gomez before trial began.

Plaintiff's federal excessive force claim alleged that Deputies Keeney and Gomez subjected Niedzialek to unreasonable force or restraint by holding him down on his chest in a prone position after he was handcuffed, which prevented him from sitting up or breathing and caused him to asphyxiate and die. For the negligence claim, Plaintiff asserted that the deputies owed Niedzialek a duty of care, breached their duty by failing to move Niedzialek into a recovery position, monitor his pulse or breathing, or perform CPR before the arrival of paramedics, and that the deputies' actions were a substantial factor in causing Niedzialek's death. Defendants moved for judgment as a matter of law on all claims under Federal Rule of Civil Procedure 50(a), The District Court denied that motion.

The jury was given a special verdict form to guide its deliberations. One of the questions addressed and provided instructions regarding Plaintiff's Fourth Amendment excessive force claim. Another question addressed and provided instructions about the state law negligence claim. The civil jury returned a mixed verdict, finding that the deputies had not used excessive force or restraint against Niedzialek under the Fourth Amendment but had acted negligently under California law. The District Court entered judgment for Plaintiff. Defendants renewed their motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(b), contending that the jury's mixed verdicts could not be reconciled because the legal standard governing the reasonableness of the deputies' conduct was the same for both claims. The District Court denied Defendants' motion. Defendants appealed.

Held: On appeal, Defendants renewed their contention that the jury was precluded from finding negligence after finding that Deputies Keeney and Gomez did not use excessive force or restraint against Niedzialek under the Fourth Amendment. According to Defendants, unless pre-force tactical conduct and decisions are implicated, the same Fourth Amendment reasonableness standard must apply when evaluating state law negligence and federal excessive force claims.

The Ninth Circuit Court of Appeals explained that under the Fourth Amendment, an officer's use of excessive force during an investigation or arrest constitutes an unreasonable seizure.[4] When evaluating the reasonableness of an officer's use of force, courts must consider the "totality of the circumstances." *Graham v. Connor*, 490 U.S. 386 (1989) (cleaned up). The Fourth Amendment reasonableness inquiry asks "whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to [the officers'] underlying intent or motivation." *Graham*, 490 U.S. at 397.

The Court of Appeals explained that under California negligence law, a plaintiff must show that

[4] *Tolan v. Cotton*, 572 U.S. 650, 656 (2014).

the defendant has "a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury."[5] The California Supreme Court has long recognized that law enforcement officers have a duty to act reasonably when using deadly force against a suspect. See *Hayes v. County of San Diego*, 57 Cal. 4th 622, 629 (2013) (citing *Munoz v. Olin*, 24 Cal. 3d 629, 634 (1979), and *Grudt v. City of Los Angeles*, 2 Cal. 3d 575, 587 (1970)).[6] Like the federal standard, "[t]he reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Id.* at 632 (quoting *Graham*, 490 U.S. at 396). "The reasonableness of an officer's conduct is determined in light of the totality of the circumstances." *Id.* at 629.

The Ninth Circuit observed that, because the Fourth Amendment and California negligence law both focus on whether an officer's use of deadly force has been reasonable under a totality of the circumstances, there was potential for confusion as to whether these two standards were the same. However, that question was settled by the California Supreme Court in *Hayes*, which held that under California negligence law, "liability can arise if the tactical conduct and decisions leading up to the use of deadly force show, as part of the totality of circumstances, that the use of deadly force was unreasonable." *Id.* Rejecting the District Court's conclusion that the deputies could not be held liable for negligence based upon their pre-shooting conduct, *Hayes* noted that this "overlooks the long-established principle of California negligence law that the reasonableness of a peace officer's conduct must be determined in light of the totality of circumstances." *Id.* at 632.

Hayes found its earlier decision in *Grudt* instructive. In *Grudt*, a plainclothes officer approached a vehicle carrying a double-barreled shotgun and rapped the muzzle against the vehicle's window. Believing he was about to be robbed, the driver accelerated his vehicle toward a second officer in plainclothes. Both officers opened fire on the driver, killing him. *Grudt* held that the trial court erred in barring a claim of negligence against the officers. As *Hayes* explained, "[s]ignificantly, the shooting in *Grudt* appeared justified *if examined in isolation*, because the driver was accelerating his car toward one of the officers just before the shooting." *Hayes*, 57 Cal. 4th at 629 (emphasis in original). But the totality of the circumstances, including the pre-shooting conduct of the officers, permitted a jury to find that the officers had not acted "in a manner consistent with their duty of due care when they originally decided to apprehend Grudt, when they approached his vehicle with drawn weapons, and when they shot him to death." *Grudt*, 2 Cal. 3d at 587. "In other words, preshooting circumstances might show that an otherwise reasonable use of deadly force was in fact unreasonable." *Hayes*, 57 Cal. 4th at 630.

Hayes clarified that the "[t]he Fourth Amendment's 'reasonableness' standard is not the same as the standard of 'reasonable care' under tort law, and negligent acts do not incur constitutional liability.'" *Id.* at 639 (quoting *Billington v. Smith*, 292 F.3d 1177, 1190 (9th Cir. 2002), *abrogated on other grounds by Cnty. of Los Angeles v. Mendez*, 581 U.S. 420, 427-28 (2017)). *Hayes* explained that "state negligence law, which considers the totality of the circumstances surrounding

[5] *Vasilenko v. Grace Fam. Church*, 3 Cal. 5th 1077, 1083 (2017) (quoting *Beacon Residential Cmty. Assn. v. Skidmore, Owings & Merrill LLP*, 59 Cal. 4th 568, 573 (2014)).

[6] The Ninth Circuit observed that California courts also recognize a special duty by law enforcement to use reasonable care when arresting or detaining an individual because "[o]nce in custody, an arrestee is vulnerable, dependent, subject to the control of the officer and unable to attend to his or her own medical needs." *Frausto v. Dep't of Cal. Highway Patrol*, 53 Cal. App. 5th 973, 993 (1st Dist. 2020).

any use of deadly force . . . is broader than federal Fourth Amendment law, which tends to focus more narrowly on the moment when deadly force is used." *Id.* at 639 (first citing *Grudt*, 2 Cal. 3d at 585-88; then citing *Billington*, 292 F.3d at 1190). After *Hayes* was decided, the Ninth Circuit repeatedly acknowledged that California negligence law "is broader than federal Fourth Amendment law."[7]

Defendants here argued that the *only* difference between a federal excessive force claim and a California negligence claim is with respect to an officer's tactical conduct and decisions preceding his or her use of lethal force. The Ninth Circuit disagreed, explaining that *Hayes* emphasized that there is "no sound reason to divide plaintiff's [negligence claim] artificially into a series of decisional moments." *Id.* at 637. Pre-force conduct should not be considered in isolation; it is merely one "part of a continuum of circumstances" surrounding the reasonableness of an officer's use of deadly force. *Id.* at 638.

The Ninth Circuit Court of Appeals concluded that the jury's excessive force and negligence verdicts in this case were reconcilable on a "reasonable theory consistent with the evidence." *Vaughan v. Ricketts*, 950 F.2d 1464, 1471 (9th Cir. 1991).

The Ninth Circuit observed that Plaintiff's law enforcement expert Jeffrey Noble had testified that the national standard of care in policing requires moving an arrestee into a recovery position as soon as possible after handcuffing by rolling them to their side or sitting them up to facilitate breathing and prevent asphyxiation. Noble opined that the County of Riverside's policy ignored this generally accepted standard of care. During the cross-examinations of Deputies Keeney and Gomez, Plaintiff emphasized that the deputies failed to respond to Niedzialek's medical needs even after he stopped moving and was unresponsive to their questions. Plaintiff's medical expert Dr. Wohlgelernter testified that Niedzialek was prevented from overcoming an "oxygen debt" when Deputies Keeney and Gomez restrained him in a prone position with pressure applied to his back, rather than putting him in a recovery position where he could breathe more deeply. Dr. Wohlgelernter explained that the "lethal comb[ination]" of decreasing oxygen levels and increasing acid levels led Niedzialek to suffer cardiac arrest, and that his death was not caused by the level of methamphetamine in his system.

The Ninth Circuit Court of Appeals concluded that from this evidence, the jury could have reasonably determined that Deputies Keeney and Gomez owed Niedzialek a duty of due care after restraining him in handcuffs and breached their duty of care by not placing him in a recovery position, failing to check whether he was breathing and had a pulse, or applying pressure on his back when it was no longer necessary. The Ninth Circuit explained that when faced with a claim of inconsistent jury verdicts (as Defendants suggested here), the Court's task was to "search for a reasonable way to read the verdicts as expressing a coherent view of the case,"[8] and to uphold the judgment "if it is possible to reconcile the verdicts on any reasonable theory consistent with the

[7] *C.V. ex rel. Villegas v. City of Anaheim*, 823 F.3d 1252, 1257 n.6 (9th Cir. 2016); *accord Vos v. City of Newport Beach*, 892 F.3d 1024, 1037-38 (9th Cir. 2018); see also *Tabares v. City of Huntington Beach*, 988 F.3d 1119, 1126-28 (9th Cir. 2021) (holding that the District Court erred by "conflat[ing] the broader California negligence standard regarding pre-shooting conduct with the Fourth Amendment standard.").

[8] *Toner for Toner v. Lederle Lab'ys, a Div. of Am. Cyanamid Co.*, 828 F.2d 510, 512 (9th Cir. 1987).

evidence," *Vaughan*, 950 F.2d at 1471. Because it was possible to do so here, the Ninth Circuit Court of Appeals affirmed the lower court's denial of Defendant's renewed motion for judgment as a matter of law.

For a more detailed discussion of this case, please see Client Alert Vol. 40, No. 8, available at www.jones-mayer.com.

PUBLIC RECORDS

Although class claims alleged were barred, demurrer without leave to amend was not appropriate where complaint alleged facts constituting an individual cause of action under the California Public Records Act.

Di Lauro v. City of Burbank, 110 Cal. App. 5th 969 (2nd Dist. 2025)

Facts: The City of Burbank maintains a website that includes a method to submit requests for public records under the CPRA. The City's Department of Water and Power ("DWP") maintains a website separate from the City's website, and the DWP's website has a "Contact Us" button providing members of the public a means to communicate with the DWP through either a phone number or a link to "Send us an Email." However, the DWP website does not contain a link to the City's website, or any identified means specifically for requesting public records.

Plaintiff Desolina Di Lauro thought a water bill was erroneous and in January 2023 accessed the DWP website "to submit a request for publicly available documents—i.e., she requested her past electric bills to determine the reasons for the increase in her utility bill." Via the "Contact Us" portal on the DWP website, she sent her records request two times in January and once in March 2023. She did not receive a response to any of her requests from the City.

Plaintiff filed a putative class action complaint alleging the city violated the California Constitution (Cal. Const., art. I, section 3(a))[9] and the California Public Records Act ("CPRA") (Government Code section 7920.000 et seq.), based on the City's failure to comply with its obligation to respond to her requests for public records and to make such records available for inspection within the statutory period. Plaintiff alleged the City's failure to respond to her 2023 requests, and the absence of any means to request public records through the DWP website, violated the CPRA. The City filed a general demurrer, arguing plaintiff failed to state a cause of action under the CPRA, the purported class action was barred, and the purported class was not likely to be certified. The trial court sustained the City's demurrer without leave to amend and entered judgment in the City's favor. Plaintiff appealed.

Held: The Second District Court of Appeal first explained, "In reviewing an order sustaining a demurrer, we examine the operative complaint de novo to determine whether it alleges facts sufficient to state a cause of action under any legal theory." (*T.H. v. Novartis Pharmaceuticals*

[9] The California Constitution recognizes the right to access information concerning the conduct of the people's business. (Cal. Const., art. I, section 3, subd. (a).)

Corp. (2017) 4 Cal.5th 145, 162.) "When the issue on demurrer involves interpretation of a statute," the Court's fundamental task was "to determine the Legislature's intent so as to effectuate the law's purpose." (*Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165 (internal citation omitted).) In CPRA cases, the interpretation of CPRA statutes "shall be *broadly* construed if it furthers the people's right of access, and *narrowly* construed if it limits the right of access.'" (Cal. Const., art. I, section 3(b)(2), italics added.)

The Second District observed that "[i]n general, [the CPRA] creates 'a presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency.'" (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 616, italics omitted.) The principles and procedures for enforcing the CPRA's requirement to make public records available for inspection are outlined in sections 7923.000 through 7923.500. CPRA's judicial enforcement provision, Section 7923.000, provides that "Any person may institute a proceeding for injunctive or declarative relief, or for a writ of mandate, in any court of competent jurisdiction, to enforce that person's right under this division to inspect or receive a copy of any public record or class of public records." The Court of Appeal held that the trial court correctly interpreted the Section 7923.000 as precluding class relief under the circumstances alleged by Plaintiff because the CPRA authorizes declaratory relief only to determine a public agency's obligation to disclose records, which did not encompass resolving a challenge to the City's practice of not providing a means to submit CPRA requests through departmental websites, absent any facts indicating large numbers of ascertainable people were being denied access to public records held by the utility.

Plaintiff also contended the allegations of her complaint were sufficient to support an individual claim for relief under the CPRA. The Court observed that the CPRA requires the City to respond in writing to any written request for a copy of public records within 10 days of receiving the request, with certain exceptions. (Sections 7922.535, 7922.540.) Thus, upon receiving a request for public records, any agency subject to the CPRA must make the records available or respond to the request within the timeframes described in the statute. (*Community Youth Athletic Center v. City of National City* (4th Dist. 2013) 220 Cal.App.4th 1385, 1419.) Here, Plaintiff alleged that she submitted a request for public records to the DWP, a department of the City, which triggered the City's duty to respond, and the City neither responded in a timely manner nor produced the requested records. The Court found that the City neither responded in a timely manner nor produced the requested records, and that Plaintiff's allegations were sufficient to state an individual claim for relief under the CPRA. Thus, the trial court incorrectly sustained the demurrer to Plaintiff's individual claim. Accordingly, the Second District Court of Appeal reversed and remanded with directions to enter a new order sustaining the demurrer as to the class claims and overruling the demurrer to Plaintiff's individual CPRA claim.

MISCELLANEOUS

A. Administrative hearing officer was not unconstitutionally advocating for defendant when its actions were part of the administrative hearing process's routine procedural undertakings.

Romane v. Dep't of Motor Vehicles, 110 Cal. App. 5th 1002 (4th Dist. 2025)

Facts: Under California's implied consent law, any person who drives a motor vehicle is deemed to have consented to chemical testing of their blood or breath for the purpose of determining their blood-alcohol content if they are lawfully arrested for driving under the influence. If a driver refuses to submit to or complete chemical testing in this circumstance, the Department of Motor Vehicles ("DMV) may suspend the driver's license for one year. (Vehicle Code section 13353(a)(1).) The driver may challenge the license suspension by requesting an "administrative per se" ("APS") hearing. (Section 13558(a).) Although the APS proceedings are streamlined and relatively informal, the driver remains entitled to the minimum protections of due process. In 2022, the Second Appellate District, Division Four in *California DUI Lawyers Assn. v. Department of Motor Vehicles* (2nd Dist. 2022) 77 Cal.App.5th 517 ("*DUI Lawyers*") concluded that a driver's due process right to an impartial adjudicator is violated when the roles of DMV advocate and decision maker are combined into one hearing officer. (*Id.* at pp. 532–533.)

In April 2021, a San Diego police officer arrested Anthony Frank Romane, Jr. for driving under the influence of alcohol. The officer read Romane his *Miranda*[10] rights, but Romane claimed to not understand them. At the police station, Romane maintained that he did not understand his *Miranda* rights. He refused to submit to chemical testing. The DMV later initiated proceedings to suspend Romane's license due to this refusal. Romane exercised his right to an APS hearing.

Romane's APS hearing before Driver Safety Hearing Officer Trena Leota took place months after *DUI Lawyers* was decided. Leota explained that she understood her role was limited to being a trier of fact only, not an advocate. She introduced three documents into evidence—the arresting officer's sworn report on a standard DMV form (DS 367), his unsworn arrest report, and Romane's driving record. She also admitted the body worn camera footage Romane offered into evidence, heard uninterrupted argument from Romane's counsel, and took the matter under submission. There was no live testimony. In a written decision, Leota sustained the suspension of Romane's license.

Romane filed a petition for writ of administrative mandate in the superior court, seeking an order restoring his license on grounds that the hearing officer advocated in violation of his due process rights as explained in *DUI Lawyers*. The superior court agreed and ordered the DMV to set aside the suspension unless and until it conducted a rehearing before a different hearing officer and with a separate individual acting as DMV advocate. The DMV appealed the order.

Held: The DMV argued on appeal that APS hearing officer Leota did not act as an advocate. She simply collected standard items of evidence—routine documents typically admitted at these APS hearings—which did not amount to advocacy. The DMV asserted that Leota otherwise acted as an unbiased adjudicator.

The Fourth District Court of Appeal observed that the Second District in *DUI Lawyers* held that "[a]lthough procedural fairness does not prohibit the combination of the advocacy and adjudicatory functions within a *single administrative agency*, tasking the *same individual* with both roles violates the minimum constitutional standards of due process." (*DUI Lawyers*, *supra*, 77 Cal.App.5th at p. 532, italics added.) In so holding, however, the Second District noted that

[10] *Miranda v. Arizona*, 384 U.S. 436 (1966).

"the DMV may task the same person with both *collecting and developing the evidence* and rendering a final decision." (*Id.* at p. 533, fn. 5, italics added, citing *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 220 ["The same individual in an administrative agency may be tasked with 'developing the facts and rendering a final decision'"].)

The Fourth District here concluded that where, as here, a hearing officer merely introduces the documents that law enforcement duly forwarded to the DMV, which are routinely admitted into evidence at APS hearings, the officer is merely collecting and developing evidence, not advocating for the DMV. The Court explained that Leota did not cross the line into advocacy by introducing and admitting into evidence the sworn DS 367 form prepared pursuant to Vehicle Code section 13380(a), (b), and the unsworn arrest report over the driver's objection because these documents are admissible pursuant to the public records hearsay exception in Evidence Code section 1280, and are routinely admitted into evidence at APS hearings. APS hearings require consideration of the DMV's official records under Vehicle Code section 14104.7, and need not be conducted according to the technical rules of evidence, pursuant to Government Code section 11513(c). Accordingly, the Fourth District Court of Appeal reversed and remanded for further proceedings.

B. Trial court did not abuse its discretion by admitting gang-related evidence, as it was relevant to issues of identity, motive, and witness credibility.

People v. Benson, 110 Cal. App. 5th 1068 (2nd Dist. 2025)

Facts: In October 2019, Chloe Evans was shot to death while engaged as a commercial sex worker in Los Angeles. A jury convicted John Benson of first degree murder and other felonies. During his trial, the trial court admitted gang-related evidence that included Benson's statement before the shooting that he was "here on some gang shit"; the identification of prior events from which a witness recognized Benson as events related to the Main Street Mafia Crips gang, the description of the police officer who identified Benson as a suspect as an officer who monitored the Main Street Mafia Crips gang, and a description of Benson's tattoo as stating "Mafia IV Life."

Benson was convicted of first degree murder, among other things, and sentenced to 120 years to life in state prison. He appealed, arguing that the trial court erred by admitting certain evidence, among other things.

Held: The Second District Court of Appeal explained that "[o]nly relevant evidence is admissible. (Evidence Code section 350.) Evidence is relevant if it has a 'tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.' (*Id.*, section 210.)" (*People v. Helzer* (2024) 15 Cal.5th 622, 667.) This includes evidence relevant to the credibility of a witness. (Evidence Code section 210; *People v. Abel* (2012) 53 Cal.4th 891, 924.) "Although evidence of gang membership carries the potential for prejudice, it '"is often relevant to, and admissible regarding, the charged offense. Evidence of the defendant's gang affiliation—including evidence of the gang's territory, membership, signs, symbols, beliefs and practices, criminal enterprises, rivalries, and the like—can help prove identity, motive, modus operandi, specific intent, means of applying force or fear, or other issues pertinent to guilt of the charged crime."'" (*People v. Holmes, McClain and Newborn* (2022) 12 Cal.5th 719, 772.) "'The trial court has broad discretion to determine the relevance of evidence [citation], and we will not disturb the

court's exercise of that discretion unless it acted in an arbitrary, capricious or patently absurd manner.'" (*Helzer*, at p. 667.)

The Court of Appeal affirmed, holding the gang evidence was relevant and admissible (Evid. Code, sections 210, 350) because it was relevant to issues of identity, witness credibility, and motive. The tattoo helped to establish the contested element of identity, the gang evidence was highly relevant to the credibility of a witness whose fear of Benson and the gang explained a recantation, and Benson's statement about the gang supplied a motive. The Second District Court of Appeal accordingly affirmed.