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**HOW DID YOU
WIN THAT CASE?**

**\$10 MILLION SETTLEMENT
AFTER 2 MONTH TRIAL**

Pedowitz vs. UC Regents



Mark T. Quigley

is a nationally respected trial attorney who has spent the past three decades championing the rights of whistleblowers and workers who've been terminated or retaliated against due to unlawful employment practices. Mark has spent his career as an underdog trial lawyer willing to stand up to some of the nation's largest entities and institutions.



Ivan Puchalt

has won several high-profile cases involving public safety and the rights of whistleblowers — earning him the nomination for Trial Lawyer of the Year from Consumer Attorneys of California in 2013, 2014 and 2018. His trial practice focuses on catastrophic personal injury, products liability, wrongful death municipal liability, and employment.



Christian Nickerson

is a trial attorney at Greene Broillet & Wheeler, LLP specializing in employment litigation, business litigation, catastrophic personal injury, and wrongful death cases.

Christian has achieved over \$160 million in jury verdicts and negotiated settlements on behalf of clients, and is a two-time finalist for CAOC's Consumer Attorney of the Year Award.

Los Angeles Times

**HIGH
PROFILE
SETTLEMENT**



Mark Quigley, Ivan Puchalt and Christian Nickerson
Discuss California's Evolving Whistleblower Protection Act

Email from Pedowitz to Kerr

From: Pedowitz, Robert M.D.
Sent: Wednesday, September 16, 2009 11:42 AM
To: Kerr, Katherine
Cc: Koffman, Adam; Eckardt, Jeff M.D.; Oakes, Daniel A.; McAllister, David
Subject: RE: Follow up from meeting to discuss Dept of Ortho Disclosure Policies and procedures

This is our dirty laundry and it is time to clean it up.

example the indemnification issue; then we should pose them to Dr. Pawzy for clarification and then we can present the information to the group. At this point, compliance with disclosure policies and the associated departmental taxation are internal problems. **This is our dirty laundry and it is time to clean it up.**

It sounds to me like there is some resistance to the idea of disclosure. I don't think this is negotiable. I am hoping that the group will help to create agreeable mechanisms for compliance with the existing disclosure policy (ideally in a manner that

Transparency is the fundamental objective here.

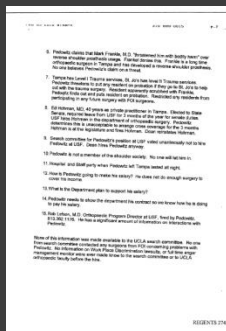
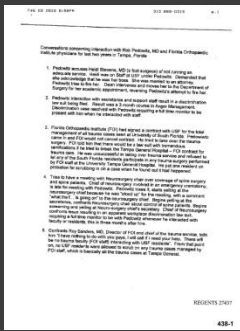
lose their job over this issue, but I think people are underestimating the risk.

I agree 110% on point #2. **Transparency is the fundamental objective here.**

On point #3, I am open to further discussion. This is not an issue of overall department finances: that would imply that we are trying to balance the books based upon taxation on outside income. That is not at all the case. The objective is to

Johnson Memo

Trial Ex. 438



False Statements:

- Attempts to Fire Heidi Stephens
- “Discrimination lawsuit” filed
- “Results in 3 month course in Anger Management”
- “Requiring a full time monitor to be present”
- Tries to break Tampa General contract
- Puts residents on probation
- Fires Dr. Homan, a State Senator, and Dean has to reinstate him.
- Search committee “voted unanimously not to hire Pedowitz”
- No one will let Pedowitz into shoulder society

March 21, 2010 Faculty Letter

UNIVERSITY OF CALIFORNIA, LOS ANGELES

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UCLA

SANTA BARBARA • SANTA CRUZ

DEPARTMENT OF ORTHOPAEDIC SURGERY
DAVID GEFKEN SCHOOL OF MEDICINE AT UCLA
CENTER FOR THE HEALTH SCIENCES
BOX 956902
LOS ANGELES, CALIFORNIA 90095-6902

March 21, 2010

A. Eugene Washington, MD
Dean, David Geffen School of Medicine at UCLA
Vice Chancellor, UCLA Health Sciences

Re: Robert A. Pedowitz, MD, PhD
Chairman, Department of Orthopaedic Surgery

Dear Dr. Washington,

It is with genuine regret that the undersigned faculty feel compelled to write this letter of concern about Robert A. Pedowitz, M.D., Ph.D and his role as chairman of the UCLA/Orthopaedic Hospital Department of Orthopaedic Surgery at the David Geffen School of Medicine at UCLA. As you are aware, he was hired as the new chairman of orthopaedic surgery in July, 2009 prior to your arrival. We realize and accept that transitioning to a new chairman, especially one from an outside institution can be challenging. The success of the new chair means success for the department and, thus, we were open and welcoming to him and his new ideas. We were excited about a new direction for our department. It is for this reason that we are particularly disappointed to have to write this letter.

PLF/DEFT EXHIBIT 4

M.R. KASS, CSR 2383

WITNESS Eckardt

DATE 5/8/13 PGS 6

March 21, 2010 Faculty Letter

Sincerely yours,

Yusef R. McAllister, MD
Yusef R. McAllister, MD
Professor (12 yrs)

Keith Markoff Ph.D.
Keith Markoff Ph.D.
Professor (37 yrs)

Henry A. Mikellod Ph.D.
HENRY A. MIKELLOD
PROFESSOR

Seth Gambor, MD
SETH GAMBOR, MD
ASSISTANT PROFESSOR

John AP
John Sath. MD
Associate Professor (7 yrs)

Ellen Fowler, PhD
Ellen Fowler

Adjunct Professor

Professor
Professor
Professor (12 yrs)
LUCK

Edward Ebrahimpour, PhD
Edward Ebrahimpour, PhD
Adj. Associate Prof. (11 yrs)

Sophia Sangiorgio, Ph.D.
SOPHIA SANGIORGIO, Ph.D.
Adj. Asst Professor

Prosser Kintan, MD
Prosser Kintan, MD
Associate Professor (12 yrs)

Eric S. Johnson, MD, FRCR
Eric S. Johnson, MD, FRCR
Professor of
Orthopaedic Trauma (26 yrs)

Koon Nam, MD
Koon Nam, MD
Associate Professor (2 yrs)

William A. Applegate, MD
William A. Applegate, MD
Professor (21 yrs)

WHISTLEBLOWER PROTECTION LAWS

- Government Code Section 8547 et seq.
- Labor Code Section 1102.5
- Healthy and Safety Code Section 1278.5
- Labor Code Section Section 6310
- False Claims Act – Government Code Section 12653

OTHER CAUSES OF ACTION

- Defamation
- Tortious Interference Claims
- FEHA
- Breach of Contract
- Wrongful Discharge in Violation of Public Policy

Govt. Code § 8547.10

CA Whistleblower Protection Act (“CWPA”)

- Under the CWPA, employees of the University of California are protected against retaliation for making “protected disclosure[s].”
- A “[p]rotected disclosure” includes “a good faith communication ... that discloses or demonstrates an intention to disclose information that may evidence:
 - (1) an **improper governmental activity**, or
 - (2) a condition that may significantly threaten the **health or safety** of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.
 - Govt. Code § 8547.2 (c)

Improper Governmental Activity

- “Improper Governmental Activity” is defined as an “activity by a state agency or employee” that:
 1. is in violation of any state or federal law or regulation or
 2. is in violation of an Executive order of the Governor, a California Rule of Court, or any policy or procedure mandated by the State Administrative Manual or State Contracting Manual
 3. is “economically wasteful, involves gross misconduct, incompetency, or inefficiency.”
 - Govt. Code § 8547.2 (c).

- “Policies established by the Regents as matters of internal regulation may enjoy a status equivalent to that of state statutes.”
 - *Campbell v. Regents of University of California* (2005) 35 Cal. 4th 311, 326.
- Regents have rulemaking and policymaking power in regard to the University; their policies and procedures have the force and effect of statute. [Citation.]”
 - *Lachtman v. Regents of University of California* (2007) 158 Cal.App.4th 187,
- *Levi v. Regents of University of California*, (2017) 15 Cal. App. 5th 892, 903

Labor Code section 1102.5(b) and (c)

- (b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

Labor Code section 1102.5

- (c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee **for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.**

Elements for Whistleblowing claim under Govt. Code § 8547.10

- That, in good faith, Dr. Pedowitz made written protected disclosures of **improper governmental activity**;
- That the defendants engaged in acts of reprisal, retaliation, threats, coercion, or similar acts against Dr. Pedowitz;
- That Dr. Pedowitz's disclosures were a contributing factor for the defendants decision to engaged in acts of reprisal, retaliation, threats, coercion, or similar acts against Dr. Pedowitz;
- That Dr. Pedowitz was harmed

“Adverse action” is not limited to termination

- California courts recognize that the term An adverse employment action is any action that "materially affect[s] the terms and conditions of employment."
 - *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1036.
 - CACI 2509

Dr. Pedowitz's Protected Disclosures Prior to March 21, 2010

- Faculty reporting/depositing outside income
 - Dr. X, \$250,000 for 20 days of work
- Dr. Y and Z board positions with MTF
- Dr. W Conflict of Commitment/ Interest
- Dr. Q financial relationship with VuMedi

Trial Testimony of Dr. X

Q. AT THE TIME YOU ARE ON THE BOARD OF MTF?

A. YES.

Q. YOU ARE WRITING THE LETTER TO THE GUY WHO PURCHASES TISSUES THAT MTF HAS A BETTER PRODUCT THAN OSTEOTECH?

A. YES.

Trial Testimony of Dr. X

Q. IF I GO BACK AND LOOK THROUGH UCLA RECORDS, I'M GOING TO FIND DISCLOSURE FORMS FILLED OUT BY YOU FOR ALL THAT TIME YOU'RE THE CHAIR AND SITTING ON THE BOARD OF MTF DISCLOSING THE AMOUNT OF MONEY YOU WILL GETTING FROM THAT COMPANY?

A. NO, YOU'RE NOT.

Q. I'M NOT GOING TO FIND THAT?

A. NO, YOU'RE NOT.

Trial Testimony of former Dept. Chair

Q. AND YOU TOLD DR. PEDOWITZ THAT WHILE YOU WERE THE CHAIR, YOU ALLOWED THE FACULTY MEMBERS TO KEEP THEIR OUTSIDE INCOME, RIGHT?

A. RIGHT.

Different Causation Standards

- Gov. Code 8547.10 = “Contributing factor”
 - Defense will argue for “Substantial Motivating Reason” (CACI 2507) which applies under FEHA
 - *Harris v. City of Santa Monica*, 56 Cal.4th 203 (2013)
- Health and Safety Code 1278.5 = “Substantial Motivating Reason”

ADMINISTRATIVE REMEDIES

- *Campbell v. Regents of University of California (2005)*, held that public employees *must* pursue appropriate internal administrative remedies before filing a case against their employer

ADMINISTRATIVE REMEDIES

- Confusion Following *Campbell*: Some Courts hold that public employees only had to exhaust internal administrative remedies before filing a civil case. Others hold that it was necessary for public employees to first bring a claim with the Labor Commissioner before filing in civil Court.

ADMINISTRATIVE REMEDIES

- Senate Bill No. 666 enacts Labor Code section 244, subdivision (a), and amends Labor Code section 98.7 (involving Labor Commissioner claims) to try to resolve the confusion arising from *Campbell*.

ADMINISTRATIVE REMEDIES

- *Labor Code* section 244 - an individual is “not required to exhaust administrative remedies or procedures in order to bring a civil action under any provision of this [the labor] code, unless that section under which the action is brought expressly requires the exhaustion of an administrative remedy...” i.e. not required to bring a claim before the Labor Commissioner before filing as long as the statute does not require it.

ADMINISTRATIVE REMEDIES

- *Terris v. County of Santa Barbara (2018)*: examined Labor Code section 244 and determined that it has no effect on the *Campbell* rule. Public employees must still pursue “appropriate internal administrative remedies,” such as internal grievance procedures prior to filing a civil lawsuit.

ADMINISTRATIVE REMEDIES

So what does it all mean?

THE CURRENT STATE OF THE LAW DICTATES THAT IF YOU HAVE AN INTERNAL ADMINISTRATIVE REMEDY AVAILABLE TO YOU AS A PUBLIC EMPLOYEE, THEN YOU MUST EXHAUST IT BEFORE FILING A CIVIL ACTION.

ADMINISTRATIVE REMEDIES

Do your research to see if there is an administrative remedy available

UC REGENTS EXAMPLE: Government Code Section 8547 et seq.

Other considerations

- Government Tort Claim
 - However not required for the Regents

ADMINISTRATIVE REMEDIES

UC REGENTS EMPLOYEES: Gov't Code 8547(a)

”may file a written complaint... alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts for having made a protected disclosure, together with a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, under penalty of perjury. The complaint shall be filed within 12 months of the most recent act of reprisal complained about.

ADMINISTRATIVE REMEDIES

UC REGENTS EMPLOYEES: Gov't Code 8547(c)

“any action for damages shall not be available to the injured party unless the injured party has first filed a complaint with the university officer identified pursuant to subdivision (a), and the university has failed to reach a decision regarding that complaint within the time limits established... Nothing in this section is intended to prohibit the injured party from seeking a remedy if the university has not satisfactorily addressed the complaint within 18 months.”

ADMINISTRATIVE REMEDIES

UCLA WHISTLEBLOWER RETALIATION COMPLAINT FORM

Part I: Statement of the Complaint

This form is intended for use by an individual who believes he/she has been retaliated against in his/her role as a UCLA employee or applicant for UCLA employment, in violation of the University of California's Whistleblower Protection Policy. The completed form and any supporting documentation should be returned to: Locally Designated Official, UCLA Administrative Policies & Compliance Office, 2255 Murphy Hall, 405 Hilgard Avenue, Los Angeles, CA 90095-1405 (or use Mail Code 140501 for campus mail).

1. Complainant (person alleging retaliation)

Name:	Job Title/Classification or position applied for
Robert A Pedowitz, MD, PhD	Professor of Orthopaedic Surgery

2. Respondent(s) (person or persons alleged to have retaliated against Complainant)

Name(s): Faculty of the UCLA Department of Orthopaedic Surgery (including but not limited to J. Eckardt, D. McAllister, J. Luck, N. Seohoo), G. Washington, J. Boubelik, K. Reed, M. Arvin, Orthopaedic Surgery Executive Comm.	Dept(s): UCLA Orthopaedic Surgery, UCLA Health Sciences Office of the Dean, UCLA Health Sciences Legal Affairs, UCLA Campus Counsel, UCLA Compliance Office	Relationship(s) to Complainant: Supervisors and co-workers within the UCLA Department of Orthopaedic Surgery, Administrative Supervisors for UCLA Health Sciences and Compliance / Legal Affairs
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3. Protected Activity (engaged in by Complainant and alleged to be the basis for the retaliation)

Describe the Protected Activity (what and when) of the Complainant. Please see attached documentation regarding Protected Activities including (but not limited to) disclosures to G. Washington, G. Levey, G. Block, J. Boubelik, K. Reed, T. Rice, M. Arvin, J. Mazziotta, P. Kapur, J. Atkinson, D. Feinberg, W. Cormier, A. Rubin, P. Carpenter, J. Braun, J. Miller, J. Luck, M. Lombardi, F. Fawzy, N. Parker, P. Thomason, and J. Eckardt, involving various faculty members of the UCLA Department of Orthopaedic Surgery, actions of the Dean of the David Geffen School of Medicine, activities pertaining to Los Angeles Orthopaedic Hospital with the UCLA Department of Orthopaedic Surgery, the UCLA / Orthopaedic Hospital Alliance Agreement and the UCLA Orthopaedic Surgery Residency Training Program, activities pertaining to the on-line durable medical equipment service of David McAllister, MD (TheDoctorShop), and activities pertaining to the conflicts of interest of Bert Thomas, MD related to surgical product purchasing and clinical utilization of orthopaedic implants. These disclosures involved conditions that may have significantly threatened the health or safety of employees or the public had the disclosure not been made. Some or all of the disclosures involved activities or actions that were economically wasteful, and/or involved gross misconduct, incompetency, or inefficiency.

Additional specific identifying information will be provided, to the extent possible, during the investigation.

4. Alleged Retaliation (alleged to be retaliatory)

Describe the Adverse Employment Action or Actions (e.g., termination, demotion, or other change in working or academic conditions) experienced by the complainant, including when the action or actions occurred.

Please see the attached document describing the unlawful retaliation that I have experienced since June 1, 2010; These intentional actions were:

- (1) Coordinated to make my working conditions intolerable
- (2) Designed to drive me from employment by the University of California
- (3) Organized to interfere with my development of a robust surgical practice
- (4) Created to decrease my ability to thrive within the University environment
- (5) Implemented in manners that have caused irreparable harm to my professional reputation

ADMINISTRATIVE REMEDIES

OTHER CONSIDERATIONS:

- Administrative complaints should be all inclusive and detail oriented
- Provide backup documentation where available

Continuing Violation Doctrine

- The doctrine applies if “the employer’s actions were:
 1. Sufficiently similar in kind—recognizing . . . that similar kinds of unlawful employer conduct, such as acts of harassment or failures to reasonably accommodate disability, may take a number of different forms [Citation];
 2. Have occurred with reasonable frequency;
 3. And have not acquired a degree of permanence.”

(*Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 028, 1059, quoting *Richards, supra*, 26 Cal.4th at p. 823.)

What is a “degree of permanence?”

- Actions acquire a degree of permanence when “an employer’s statements and actions make clear to a reasonable employee that any further efforts at informal conciliation to obtain reasonable accommodation or end harassment will be futile.”
 - *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798, 823.

PRE-TRIAL DISCOVERY STRATEGY

- Your client is a tremendous asset/resource of knowledge in discovery. Work closely with him or her and keep them involved.

The Silos



PRE-TRIAL DISCOVERY STRATEGY

PRE-TRIAL DISCOVERY STRATEGY

- Policies and Procedures
- Written Discovery
- Document Production
- Depositions
- Experts

PRE-TRIAL DISCOVERY STRATEGY

Policies and Procedures

- Policies related to the protected activity
- Whistleblower Policies
- (Can be used to set the Standard)
- Investigation Procedures

PRE-TRIAL DISCOVERY STRATEGY

Written Discovery

- Contentions
- Witnesses
- Prior Complaints against Plaintiff
- Document Requests
- Employment Form Interrogatories

PRE-TRIAL DISCOVERY STRATEGY

Document Production

- Employment File
- Investigation File
- E-mails / Text Messages
- Documented Complaints
- FOIA Requests
- Employment Contract
- Performance Reviews

PRE-TRIAL DISCOVERY STRATEGY

Depositions

- Over 100 Depositions in the Pedowitz case
- 67 Trial Witnesses

PRE-TRIAL DISCOVERY STRATEGY

Depositions

- Eyewitnesses
- Human Resources
- The Investigator
- The Retaliators
- Damages witnesses

PRE-TRIAL DISCOVERY STRATEGY

Experts

- Economist
- Human Resources Experts
- Investigation Experts
- Compliance Experts
- Non-retained experts

Burden of Proof

Labor Code § 1102.5

- Claimant has the initial burden of proof under *Labor Code* § 1102.5 to demonstrate “by a preponderance of the evidence” that the protected activity “was a contributing factor in the alleged prohibited action against” him. *Cal. Lab. Code* § 1102.6.
- The burden of proof then shifts to Respondent to “demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in” protected activity. *Id.*

Burden of Proof

Govt. Code § 8547

- (e) In any civil action or administrative proceeding, once it has been demonstrated by a preponderance of the evidence that **an activity protected by this article was a contributing factor** in the alleged retaliation against a former, current, or prospective employee, **the burden of proof shall be on the supervisor, manager, or appointing power to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons** even if the employee had not engaged in protected disclosures or refused an illegal
 - Govt. Code § 8547(e)

Burden of Proof

Govt. Code § 8547

- A plaintiff may establish pretext either by persuading the court that a discriminatory reason more likely motivated the employer or by showing that the employer's proffered explanation is unworthy of credence.
 - *Morgan v. Regents of University of California* (2000) 88 Cal.App.4th 56, 68.

Burden of Proof Govt. Code § 8547

Dr. Pedowitz's Protected Disclosures were a
Contributing Factor to the Retaliation

Provost admits a “connection” between Disclosures and adverse Employment Actions:

Q. Perhaps a better way to phrase the question is let me ask you. Do you believe that there was any connection at all between his allegations of improper government activities and any of the adverse employment actions?

THE WITNESS: And I think the answer is yes.

MR. PUCHALT: Q. Yes, that there was some connection?

A. Yeah.

Q. What connections do you recall noting?

A. In Ms. Allison's report, the -- she commented on a couple of her interviews, I think with the sports medicine physicians, that had a joint appointment between their parent department and Orthopedics. There were three that I think she interviewed. And at least

Independent Investigator's Trial Testimony

Page 122:18-123:8

MR. QUIGLEY: COULD I READ FROM THE WITNESS'S DEPOSITION AT PAGE 81, LINES 2 THROUGH 15?

THE COURT: YOU MAY READ.

MR. QUIGLEY: THANK YOU, YOUR HONOR.

"Q. CERTAINLY THERE WAS SOME CONNECTION BETWEEN HIS ALLEGATIONS OF IMPROPER GOVERNMENT ACTIVITY AND THE ADVERSE EMPLOYMENT THAT YOU FOUND?

"A. THERE WAS SOME CONNECTION, YES.

"Q. AND ONE CONNECTION WAS JUST THE FACT THAT HE WAS MAKING A COMPLAINT?

"A. CORRECT.

Independent Investigator's Trial Testimony

Page 122:18-123:8

"Q. AND ANOTHER CONNECTION WAS THE NUMBER, THE VOLUME OF THE COMPLAINTS HE WAS MAKING, CORRECT?

"A. CORRECT.

"Q. AND ANOTHER CONNECTION WAS THE INTENSITY AND THE NATURE OF HOW HE PURSUED THESE ALLEGATIONS?

"A. CORRECT."

Plaintiff need not be the first or only employee to raise a particular concern in order to qualify as a whistleblower.

- “The plain language of former section 1102.5(b) also does not limit whistleblower protection only to an employee who discloses unlawful conduct that had not been previously disclosed by another employee...”
 - *Hager v. County of Los Angeles* (2014) 228 Cal.App.4th 1538, 1549-1550.)

Common Issues at MSJ

Patten v. Grant Joint Union High Sch. Dist. (2005) 134 Cal.App.4th 1378

Facts:

- A school principal reported several complaints to school district administration.
- Some complaints were about inappropriate conduct by teachers and the need for additional staff to improve school safety.
- The court held this was not protected conduct because “the disclosures indisputably encompassed only the context of internal personnel matters involving a supervisor and her employee, rather than the disclosure of a legal violation.” *Id.* at 1384-1385.

Levi v. Regents of University of California, (2017) 15 Cal. App. 5th 892, 904

- In contrast [to *Patten*], the complaints Levi filed or participated in—alleging Weinreb had conflicts of interest related to Vasile's residency application, modified policies to favor Vasile, retaliated against Levi for being a whistleblower or participating in whistleblower investigations, and improperly funded Vasile's internship at the University—implicated policies that have the force and effect of statutes.
 - *Levi v. Regents*, at 904.

Levi v. Regents of University of California,
(2017) 15 Cal. App. 5th 892, 904

- HOWEVER...Yelling, hurtful comments, undermining employee confidence may violate Regents' policies, but not protected under CWPA.

Cat's Paw



Cat's Paw



- Under the cat's paw rule, the person who actually took the adverse employment action against the employee was not acting out of any improper animus.
- The decision maker, however, acted on information provided by a supervisor who was acting out of discriminatory or retaliatory animus with the objective of causing the adverse employment action.
- The decision maker is referred to as the "cat's paw" of the person with the animus.
 - See *Reeves v. Safeway Stores, Inc.* (2004) 121 Cal.App.4th 95, 100.”
 - CACI 2511

Gov Code § 821.6 Immunity

- § 821.6: A **public employee** is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause.
- Gov Code § 821.6 does not apply to whistleblower retaliation claims.
 - See *Shoemaker v. Myers* (1992) 2 Cal App 4th 1407.
- Immunity does not apply in cases against entities.
 - *Whitehall v. County Of San Bernardino* (2017) 17 Cal.App.5th 352

Inference Of Causation

- “Proof of discriminatory intent often depends on inferences rather than direct evidence. [Citation.] And because it does, ‘very little evidence of such intent is necessary to defeat summary judgment.’
 - *Nazir v. United Airlines* (2009) 179 Cal.App.4th 243, 283.

PRESENTING DAMAGES IN EMPLOYMENT CASES

- Economic Damages -
 - Calculating Damages – Experts
 - Duty to Mitigate – Comparable employment
 - Reinstatement
 - Attorneys' Fees – Post Trial

PRESENTING DAMAGES IN EMPLOYMENT CASES

- Non-Economic Damages -
 - The Whistleblower Stigma
 - Emotional Distress
 - Damage to Reputation

CONCLUSION / QUESTIONS

Mark Quigley – mquigley@gbw.law

Ivan Puchalt – ipuchalt@gbw.law

Christian Nickerson – cnickerson@gbw.law