Senator Dick Durbin
Chair, Senate Judiciary Committee
Written Questions for Lucy Koh
Nominee to be United States Circuit Judge for the Ninth Circuit
October 13, 2021

1. **In your nearly 14 years of experience on the bench, you have issued more than 3,250 written opinions and presided over 271 total trials.**

   How do you think this trial court experience has helped prepare you for the work you'll encounter on the Ninth Circuit?

   Response: For nearly 11.5 years on the federal bench, I have presided over an average of 719 cases per year. In 2017, I presided over 941 cases. As a United States District Judge, I have issued over 3,250 written decisions and have been reversed only 42 times. Twenty percent of these reversals were in my two *Apple v. Samsung* cases, which raised complex issues of first impression. For 2.5 years as a California Superior Court Judge, I presided over 500 cases a week. As a state trial judge, I only had one partial reversal. In total, I have presided over 271 trials.

   From presiding over civil and criminal cases in the federal and state trial courts, I have seen a broad range of subject matters, types of cases, and procedural postures. I greatly appreciate clear guidance from the appellate courts. When I sat by designation on the Ninth Circuit, it gave me a new perspective on how I should make a record and what I should include in my orders. It gave me new eyes with which to see how I should do my job as a federal trial judge better. If confirmed, I hope the volume, breadth, and diversity of my federal and state trial court experience will equally benefit my work as an appellate judge.

2. **At your hearing, Senators Cotton and Tillis both asked you about your decision in *FTC v. Qualcomm*.**

   Please expand on your answers to Senators Cotton and Tillis, including, but not limited to, the reasoning behind your decision.

   Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit reversed my order holding that Qualcomm's licensing practices violated the Sherman Act and the Federal Trade Commission Act ("FTC Act"). I will faithfully follow the Ninth Circuit precedent in any future cases.

   My order has been reversed and has no legal effect. I provide an explanation for my ruling solely to respond to your question. The bench trial for this case consisted of 10 days of evidence and 1 day of argument. *Fed. Trade Comm'n v. Qualcomm Inc.*, 411 F. Supp. 3d 658, 669 (N.D. Cal. 2019). During the trial, 50 witnesses testified, and the parties submitted 276 exhibits. The parties filed 221 pages of proposed findings of fact and conclusions of law. After reviewing the trial record and considering the parties' arguments, I issued a 233-page order with extensive factual and credibility findings and legal analysis.

My order analyzed three causes of action: (1) restraint of trade under Sherman Act § 1; (2) monopolization under Sherman Act § 2; and (3) unfair methods of competition under the FTC Act, which overlaps with the Sherman Act. "Section 1 of the Sherman Act, 15 U.S.C. § 1, prohibits [e]very contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States." *Allied Orthopedic Appliances, Inc. v. Tyco Health Care Grp. LP*, 592 F.3d 991, 996 (9th Cir. 2010). "To establish liability under § 1, a plaintiff must prove (1) the existence of an agreement, and (2) that the agreement was an unreasonable restraint of trade." *Aerotec Int'l, Inc. v. Honeywell Int'l, Inc.*, 836 F.3d 1171, 1178 (9th Cir. 2016). "Section 2 of the Sherman Act makes it unlawful for a firm to 'monopolize.'" *United States v. Microsoft Corp.*, 253 F.3d 34, 50 (D.C. Cir. 2001). "The offense of monopolization has two elements: '(1) the possession of monopoly power in the relevant market'"; and (2) "the willful acquisition or maintenance of that power" through exclusionary conduct "as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.'" *Id.* (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966)).

The FTC identified three specific practices as anticompetitive. First, the FTC challenged Qualcomm's practice of refusing to sell code division multiple access ("CDMA") modem chips and premium Long Term Evolution ("LTE") modem chips to an original equipment manufacturer ("OEM") unless "the OEM sign[ed] a separate patent license agreement." *Qualcomm*, 411 F. Supp. 3d at 697. Second, the FTC challenged Qualcomm's practice of refusing to provide licenses for standard essential patents ("SEPs") to rival chip manufacturers. *Id.* at 758. Third, the FTC challenged Qualcomm's de facto exclusive dealing contracts with Apple. *Id.* at 763.

After considering all the evidence and the parties' arguments, I found that "Qualcomm's licensing practices have strangled competition in the CDMA and premium LTE modem chip markets for years, and harmed rivals, OEMs, and end consumers in the process." *Id*. at 812. I also found that "Qualcomm's conduct 'unfairly tends to destroy competition itself.'" *Id*. (quoting *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993)). Applying the above-described legal standards to these factual findings, I "conclude[d] that Qualcomm's licensing practices [we]re an unreasonable restraint of trade under § 1 of the Sherman Act and exclusionary conduct under § 2 of the Sherman Act." *Id.* (citing *Microsoft*, 253 F.3d at 58-59). Thus, I held that "Qualcomm's practices violate[d] § 1 and § 2 of the Sherman Act" and that Qualcomm was "liable under the FTC Act, as 'unfair methods of competition' under the FTC Act include 'violations of the Sherman Act.'" *Id.* (quoting *Fed. Trade Comm'n v. Cement Inst.*, 333 U.S. 683, 693-94 (1948)).

On appeal, the Ninth Circuit reviewed a different set of arguments and evidence than I did. First, the FTC changed its theory regarding Qualcomm's refusal to license SEPs to rival chip manufacturers. Second, the Department of Justice submitted merits arguments in support of Qualcomm for the first time on appeal and introduced new evidence on appeal. Third, retired Federal Circuit Judge Paul R. Michel submitted for the first time on appeal an argument

about a method for calculating patent royalties and an argument that antitrust law should not be used to resolve disputes involving patent license agreements. Fourth, former FTC Commissioner Joshua Wright submitted for the first time on appeal an argument that the antitrust laws should not be used to resolve contract disputes between private parties. The Ninth Circuit noted all these developments and specifically relied on Judge Michel's and Mr. Wright's briefs for its conclusion regarding Qualcomm's refusal to license SEPs to rival chip manufacturers. *Qualcomm*, 969 F.3d at 997.

The Ninth Circuit held the following, which is the law that I will apply in future cases before me:

The Ninth Circuit held that the FTC failed to show that Qualcomm's practices violated Section 2 of the Sherman Act. First, the Ninth Circuit held that "Qualcomm's practice of licensing its SEPs exclusively at the OEM level does not amount to anticompetitive conduct in violation of § 2, as Qualcomm is under no antitrust duty to license rival chip suppliers." *Id.* at 1005. Although the Ninth Circuit declined to address whether "Qualcomm has breached any of its [fair, reasonable, and non-discriminatory] commitments," the Ninth Circuit stated that "the remedy for such a breach lies in contract and patent law." *Id.* Second, the Ninth Circuit held that "Qualcomm's patent-licensing royalties and 'no license, no chips' policy do not impose an anticompetitive surcharge on rivals' modem chip sales." *Id.* According to the Ninth Circuit, "these aspects of Qualcomm's business model are 'chip-supplier' neutral and do not undermine competition in the relevant antitrust markets." *Id.* Third, the Ninth Circuit held that "Qualcomm's 2011 and 2013 agreements with Apple ha[d] not had the actual or practical effect of substantially foreclosing competition in the CDMA modem chip market." *Id.* "Furthermore, because these agreements were terminated years ago by Apple itself, there [was] nothing to be enjoined." *Id.*

Senator Chuck Grassley, Ranking Member
Questions for the Record
Judge Lucy H. Koh
Judicial Nominee to the United States Circuit Court of Appeals for the Ninth Circuit

1. **In the context of federal case law, what is super precedent? Which cases, if any, count as super precedent?**

   Response: To my knowledge, neither the United States Supreme Court nor the Ninth Circuit has used or defined the term "super precedent." As a lawyer and a judge, I have not used this term. If confirmed, I will faithfully follow all United States Supreme Court and Ninth Circuit precedent.

2. **You can answer the following questions yes or no:**
   a. **Was *Brown v. Board of Education* correctly decided?**
   b. **Was *Loving v. Virginia* correctly decided?**
   c. **Was *Griswold v. Connecticut* correctly decided?**
   d. **Was *Roe v. Wade* correctly decided?**
   e. **Was *Planned Parenthood v. Casey* correctly decided?**
   f. **Was *Gonzales v. Carhart* correctly decided?**
   g. **Was *District of Columbia v. Heller* correctly decided?**
   h. **Was *McDonald v. City of Chicago* correctly decided?**
   i. **Was *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC* correctly decided?**
   j. **Was *Sturgeon v. Frost* correctly decided?**
   k. **Was *Rust v. Sullivan* correctly decided?**
   l. **Was *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* correctly decided?**

   Response: I follow all United States Supreme Court precedents. As a judge, it is improper for me to comment on any issues that may come before me, so as a general matter, I do not comment on the correctness of United States Supreme Court precedents. However, it is unlikely that *de jure* racial segregation in schools or miscegenation laws would be reimposed in the United States, so like prior judicial nominees, I can state that I believe *Brown v. Board of Education* and *Loving v. Virginia* were correctly decided.

3. **Do you agree with Judge Ketanji Brown Jackson when she said in 2013 that she did not believe in a "living constitution"?**

   Response: I am not familiar with Judge Jackson's statement. The Constitution is an enduring document that sets forth the principles that govern our nation. The Constitution does not change unless amended pursuant to Article V.

4. **Should paying clients be able to influence which pro bono clients engage a law firm?**

   Response: Decisions about what clients a law firm engages and under what conditions are decisions for the law firm to make consistent with the law firm's ethical obligations.

5. **Do you agree with the propositions that some clients don't deserve representation on account of their:**

   a. **Heinous crimes?**
   b. **Political beliefs?**
   c. **Religious beliefs?**

   Response: The Sixth Amendment states that in all criminal prosecutions the accused shall have "the assistance of counsel for his defence." U.S. Const. Amend. VI. In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the United States Supreme Court held that the Sixth and Fourteenth Amendments guarantee a right to counsel for indigent defendants, accused of a crime, in federal and state courts, which would include crimes considered to be heinous. There is no similar right to counsel in civil matters. Lawyers should make decisions about whom they choose to represent consistent with their ethical obligations.

6. **Should judicial decisions take into consideration principles of social "equity"?**

   Response: Judicial decisions should take into consideration the record before the court and decide the limited issues before the court by applying precedent.

7. **Please explain whether you agree or disagree with the following statement: "The judgments about the Constitution are value judgments. Judges exercise their own independent value judgments. You reach the answer that essentially your values tell you to reach."**

   Response: Courts should interpret constitutional provisions by using interpretative methodologies as instructed by the United States Supreme Court and by faithfully following United States Supreme Court and Ninth Circuit precedent.

8. **Is climate change real?**

   Response: Climate change is an important issue for the executive and legislative branches of government to consider. As a judge, I decide the limited issues before me in individual cases by carefully reviewing the record and applying United States Supreme Court and Ninth Circuit precedent.

9. Does 8 C.F.R. § 1003.14(a), the regulation concerning an immigration court's jurisdiction, set out a limit on the immigration court's subject matter jurisdiction, a claim-processing rule, or something else?

Response: In *Karingithi v. Whitaker*, 913 F.3d 1158, 1159-60 (9th Cir. 2019), the Ninth Circuit stated that the Attorney General has promulgated regulations governing removal proceedings, including when jurisdiction vests with the Immigration Judge. Specifically, 8 C.F.R. § 1003.14(a) states: "Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service." 8 C.F.R. § 1003.14(a) further states that a charging document "must include a certificate showing service on the opposing party pursuant to § 1003.32 which indicates the Immigration Court in which the charging document is filed." In *Karingithi*, the Ninth Circuit stated that 8 U.S.C. § 1003.15(b) identifies the information that must be included in a notice to appear and does not require that the time and date of the proceedings appear in the initial notice to appear. 913 F.3d at 1160. Instead, 8 C.F.R. § 1003.18(b) compels the inclusion of the time and date of the proceedings "where practicable." *Id*. When that information is not contained in the initial notice to appear, the regulation requires the Immigration Judge to schedule the initial removal hearing and provide notice to the government and the alien of the time, place, and date of the proceeding. *Id*. In *Karingithi*, the Ninth Circuit held that these regulations define when jurisdiction vests. *Id*. Thus, jurisdiction has vested in the Immigration Judge even if the notice to appear does not include the time and date of the proceeding. *Id*. In *United States v. Bastide-Hernandez*, 3 F.4th 1193, 1196 (9th Cir. 2021), the Ninth Circuit clarified that when a notice to appear is filed, jurisdiction exists and vests with the Immigration Court.

10. Do administrative agencies have subject matter jurisdiction, or is that concept specific to Article III courts?

Response: The jurisdiction of an administrative agency is derived from the agency's enabling statute. *See FDA v. Brown & Williamson Tobacco Corp*., 529 U.S. 120, 161 (2000) (The "agency's power to regulate in the public interest must always be grounded in a valid grant of authority from Congress."). An Article III court's subject matter jurisdiction "defines its power to hear cases," *Lightfoot v. Cendant Mortg. Corp*. 137 S. Ct. 553, 560 (2017), and is grounded in the court's "statutory or constitutional power to adjudicate the case," *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998).

11. As the Ninth Circuit has explained, "*In personam* jurisdiction, simply stated, is the power of a court to enter judgment against a person. *In rem* jurisdiction is the court's power over property." Does a court need to identify a statute that grants it personal jurisdiction over a defendant?

Response: Where subject matter jurisdiction is based on diversity of citizenship, a federal district court has no inherent authority to exercise personal jurisdiction. Instead, the

district court has personal jurisdiction only if a federal statute authorizes personal jurisdiction or if a "court of general jurisdiction in the state where the district court is located" would have personal jurisdiction. *See* Fed. R. Civ. P. 4(k)(1). In the latter scenario, the court must refer to the state's long-arm statute.

The same principles apply in most cases where subject matter jurisdiction is based on a "claim that arises under federal law." However, if a claim arises under federal law and the "defendant is not subject to jurisdiction in any state courts," a federal district court has the inherent authority to exercise personal jurisdiction "consistent with the United States Constitution and laws." *See* Fed. R. Civ. P. 4(k)(2).

12. Do parents have a constitutional right to direct the education of their children?

Response: The United States Supreme Court has held that parents have the right to direct their children's education. *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923) ("[Plaintiff's] right thus to teach, and the right of parents to engage [Plaintiff] so to instruct their children, we think, are within the liberty" of the Fourteenth Amendment.); *accord Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

13. Is whether a specific substance causes cancer in humans a scientific question?

Response: The Ninth Circuit has held that scientific evidence is relevant to determining whether a specific substance caused a human's cancer. *See Messick v. Novartis Pharms. Corp.*, 747 F.3d 1193, 1197 (9th Cir. 2014) (holding that it was an abuse of discretion for district court to exclude a doctor's testimony that a particular substance was a substantial factor in the development of woman's cancer).

14. Is when a "fetus is viable" a scientific question?

Response: In *Planned Parenthood v. Casey*, 505 U.S. 833, 860 (1992), the United States Supreme Court noted that "advances in neonatal care have advanced viability to a point somewhat earlier" than in 1973. The Court further noted that viability occurred at approximately 28 weeks at the time of *Roe*, occurred at approximately 23 to 24 weeks at the time of *Casey*, and may occur "at some moment even slightly earlier in pregnancy, as it may if fetal respiratory capacity can somehow be enhanced in the future." *Id*.

15. Is when a human life begins a scientific question?

Response: In *Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992), the United States Supreme Court stated: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."

16. Can someone change his or her biological sex?

Response: To my knowledge, there are medical procedures to change one's biological sex.

17. Is threatening Supreme Court Justices right or wrong?

Response: 18 U.S.C. § 111(a)(2) makes it a crime for someone to "forcibly assault[], resist[], oppose[], impede[], intimidate[], or interfere[] with any person designated in section 1114 of this title while engaged in or on account of the performance of official duties." 18 U.S.C. § 1114 designates "any officer or employee of the United States or of any agency in any branch of the United States Government." In *United States v. Harrelson*, 754 F.2d 1153, 1158 (5th Cir. 1985), the court noted that criminal defendants were charged with murdering a federal judge in violation of 18 U.S.C. §§ 1111 and 1114.

18. How do you distinguish between "attacks" on a sitting judge and mere criticism of an opinion he or she has issued?

Response: If a case came before me that required me to address this issue, I would carefully research the law and impartially apply the law to the facts in the record.

19. Do you think the Supreme Court should be expanded?

Response: As a United States District Judge, I am bound by the United States Supreme Court's precedent regardless of that Court's size or composition, and it would be inappropriate for me to comment on whether the size of that Court should be changed.

20. Does the president have the power to remove senior officials at his pleasure?

Response: The President's authority to remove officials who wield executive power is generally unrestricted. *See Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2191-92 (2020). The United States Supreme Court has recognized only two exceptions to this rule: (1) Congress can include good cause removal protection when creating "expert agencies led by a *group* of principal officers"; or (2) Congress can create tenure protection for "*inferior* officers with narrowly defined duties." *Id.* at 2192.

To determine whether the president has the power to remove a senior official at his pleasure, I would consider any statutory provisions governing removal of the position at issue, and the standards set forth by the United States Supreme Court. *See, e.g.*, *id.* (holding Congress cannot limit the President's removal power in the context of "an independent agency led by a single director"); *Free Enterprise Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010) (holding Congress could not create two levels of for cause removal protection); *Morrison v. Olson*, 487 U.S. 654 (1988) (upholding removal protection for an inferior officer).

21. Is it possible that removing someone—as is the President's power—can be for wholly apolitical reasons?

Response: I believe it is factually possible.

22. Is a social worker qualified to respond to a domestic violence call where there is an allegation that the aggressor is armed?

Response: The question of who should respond to domestic violence calls should be addressed by the executive and legislative branches of government. If a case came before me that required me to answer this question, I would faithfully apply United States Supreme Court and Ninth Circuit precedent to the record.

23. Is it appropriate for the government to use law enforcement to enforce social distancing mandates and gathering limitations for individuals attempting to practice their religion in a church, synagogue, mosque or any other place of religious worship?

Response: Discretionary law enforcement decisions are not for the judicial branch of government to make. As a judge, the issue of whether the government's use of law enforcement resources is appropriate has not been presented to me. As a judge, I am only called upon to determine whether law enforcement has complied with the law. Nonetheless, if a case came before me that required me to answer this question, I would faithfully apply United States Supreme Court and Ninth Circuit precedent to the record.

24. Do you believe that we should defund or decrease funding for police departments and law enforcement, including the law enforcement entities responsible for protecting the federal courthouses in Portland from violent rioters? Please explain.

Response: Questions regarding funding for police departments and law enforcement are for the executive and legislative branches of government and not the judicial branch.

25. Do you believe that local governments should reallocate funds away from police departments to other support services? Please explain.

Response: Questions regarding funding for police departments and social services are for the executive and legislative branches of government and not the judicial branch.

26. Do you believe legal gun purchases have caused the violent crime spike?

Response: Questions regarding whether legal gun purchases have caused a spike in violent crime are for the executive and legislative branches of government and not the judicial branch.

27. Do rogue gun dealers constitute a substantial factor in the amount of crimes committed with firearms?

Response: Questions regarding whether rogue gun dealers constitute a substantial factor in the commission of firearm crimes are for the executive and legislative branches of government and not the judicial branch.

28. What is more important during the COVID-19 pandemic: ensuring the safety of the community by keeping violent, gun re-offenders incarcerated or releasing violent, gun re-offenders to the community?

Response: To determine whether a defendant is entitled to compassionate release, courts determine whether a defendant has satisfied three requirements: (1) has a defendant exhausted his administrative remedies; (2) are the 18 U.S.C. § 3553(a) factors consistent with granting a motion for compassionate release; and (3) do extraordinary and compelling reasons as defined by the United States Sentencing Commission's policy statement warrant compassionate release. The 18 U.S.C. § 3553(a) factors are: the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution to any victims of the offense.

29. What legal standard would you apply in evaluating whether or not a regulation or proposed legislation infringes on Second Amendment rights?

Response: In *District of Columbia v. Heller*, the United States Supreme Court declined to adopt a single standard of review. 554 U.S. 570, 634-35 (2008). The ban on handguns in the home in *Heller* failed any standard of scrutiny applied to enumerated constitutional rights. *Id.* at 628-29. More generally, the United States Supreme Court in *Heller* held that a ban on firearms in the home violates the Second Amendment. *Id.* The United States Supreme Court emphasized, that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and provided three examples of presumptively valid regulations of firearms: (1) prohibitions on possession by "felons or the mentally ill"; (2) "laws forbidding the carrying of firearms in sensitive places such as schools or government buildings"; and (3) "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27. The United States Supreme Court noted that these were examples and the "list does not purport to be exhaustive." *Id.* at 627 n.26.

Applying *Heller*, the Ninth Circuit has adopted a two-step framework when evaluating whether a challenged regulation or law infringes on the rights protected by the Second Amendment. *See Young v. Hawaii*, 992 F.3d 765, 783 (9th Cir. 2021) (en banc). First, the Ninth Circuit determines whether "the challenged law affects conduct that is protected by the Second Amendment" by looking to the "historical understanding of the scope of the right." *Id.* The Ninth Circuit considers "whether there is persuasive historical evidence showing that the regulation does not impinge on the Second Amendment right as it was historically understood. Laws restricting conduct that can be traced to the founding era and are historically understood to fall outside of the Second Amendment's scope may be upheld without further analysis." *Id.* Furthermore, if the challenged law falls within the "presumptively lawful regulatory measures" identified by *Heller*, the law may be upheld without further analysis. *Id.*

If the law is within the historical scope of the Second Amendment, or not presumptively lawful, the Ninth Circuit determines what level of scrutiny applies. *Id.* at 784. As the Ninth Circuit explained in *Young*, it has "understood Heller to require one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny." *Id.* (quoting *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016)).

30. Do state school-choice programs make private schools state actors for the purposes of the Americans with Disabilities Act?

Response: As a judge, this issue has not been presented to me. I am not presently aware of any United States Supreme Court or Ninth Circuit precedent that squarely addresses this issue. If I were confirmed to the Ninth Circuit and a case came before me that presented this issue, I would resolve it by carefully researching the law and impartially applying the law to the facts in the record.

31. Do you agree with Thomas Jefferson that the First Amendment erects "a wall of separation between Church & State"?

Response: The principle that the government may not favor one religion over another both "protect[s] the integrity of individual conscience in religious matters" and "guard[s] against the civic divisiveness that follows when the government weighs in on one side of religious debate." *McCreary Cnty. v. American Civil Liberties Union of Ky.*, 545 U.S. 844, 876 (2005). However, in certain circumstances defined by the United States Supreme Court, religious symbols that have taken on secular meaning may coexist harmoniously with government. *See American Legion v. American Humanist Ass'n*, 139

S. Ct. 2067, 2090 (2019) (holding that a state's maintenance and display of a cross, "undoubtedly a Christian symbol," did not violate the Establishment Clause.)

32. Does a law restrict abortion access if it requires doctors to provide medical care to children born alive following failed abortions?

Response: As a judge, this issue has not been presented to me. If I were confirmed to the Ninth Circuit and a case came before me that presented this issue, I would resolve it by carefully researching the law and impartially applying the law to the facts in the record.

33. Under the Religious Freedom Restoration Act the federal government cannot "substantially burden a person's exercise of religion."

a. **Who decides whether a burden exists on the exercise of religion, the government or the religious adherent?**

b. **How is a burden deemed to be "substantial[]" under current caselaw? Do you agree with this?**

Response: The Religious Freedom Restoration Act of 1993 (RFRA) prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb–1(a), (b). The courts decide whether there is a burden on the exercise of religion under RFRA. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (concluding that a contraceptive mandate that forces plaintiffs to pay "an enormous sum of money" is clearly "a substantial burden on those beliefs").

In *Hobby Lobby*, the United States Supreme Court focused on two factors to find there was a substantial burden on the plaintiffs: (1) that non-compliance with the contraceptive mandate would create "severe" economic costs to plaintiffs; and (2) that compliance caused the objecting party to violate their sincere religious beliefs. 573 U.S. at 720-26. The Court warned that the job of a federal court is "narrow" on the second factor—only "'to determine' whether the line drawn reflects 'an honest conviction'." *Id.* at 725 (quoting *Thomas v. Review Bd. of Ind. Empl. Sec. Div.*, 450 U.S. 707, 716 (1981)).

In passing RFRA, Congress sought to "restore the compelling interest test" set out in *Sherbert v. Verner*, 374 U.S. 398 (1963), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). *See City of Boerne v. Flores*, 521 U.S. 507, 515 (1997). Relying on *Sherbert* and *Yoder*, and prior to *Hobby Lobby*, the Ninth Circuit has held that "[u]nder RFRA, a 'substantial burden' is imposed only when individuals are forced to choose between following the tenets of their religion and receiving a governmental benefit (*Sherbert*) or coerced to act contrary to their religious beliefs by the threat of civil or criminal sanctions (*Yoder*)."

Navajo Nation v. U.S. Forest Service, 535 F.3d 1058, 1069-70 (9th Cir. 2008) (en banc) (holding the use of recycled water on a ski area to make artificial snow on a portion of a public mountain sacred to Native American religion was not a substantial burden under RFRA).

I would follow the United States Supreme Court and Ninth Circuit precedent in determining whether a "substantial burden" exists under RFRA. Any personal views on the matter would be irrelevant.

34. Do you agree with the Supreme Court that the free exercise clause lies at the heart of a pluralistic society (*Bostock v. Clayton County*)? If so, does that mean that the Free Exercise Clause requires that religious organizations be free to act consistently with their beliefs in the public square?

Response: The First Amendment expressly guarantees the right to the free exercise of religion, and the United States Supreme Court has held that this right is a fundamental right. The United States Supreme Court's statement in *Bostock* is consistent with that holding. The United States Supreme Court has a number of precedents that have interpreted the Free Exercise Clause and set forth standards for determining whether state action violates it. One of these precedents held that state administrative officials do not have the discretionary power to "control in advance the right of citizens to speak on religious matters" on state streets. *Kunz v. People of State of New York*, 340 U.S. 290, 314 (1951). I faithfully and impartially follow United States Supreme Court and Ninth Circuit precedent and apply the standards set forth therein.

35. The Federalist Society is an organization of conservatives and libertarians dedicated to the rule of law and legal reform. Would you hire a member of the Federalist Society to serve in your chambers as a law clerk?

Response: I give all applicants for a clerkship the same consideration and would continue to do so if confirmed. As a district judge, I have hired law clerks who were members of the Federalist Society.

36. Judge Stephen Reinhardt once explained that, because the Supreme Court hears a limited number of cases each year, part of his judicial mantra was, "They can't catch 'em all." Is this an appropriate approach for a federal judge to take?

Response: All federal judges must fulfill their judicial oaths to "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States."

37. As a matter of legal ethics do you agree with the proposition that some civil clients don't deserve representation on account of their identity?

Response: There is no constitutional right to counsel in civil cases. Lawyers should make decisions about whom they choose to represent consistent with their ethical obligations.

38. Do you agree that the First Amendment is more often a tool of the powerful than the oppressed?

Response: As a judge, I adjudicate individual cases and am not aware of the parties' positions of power or oppression. I have no frame of reference to evaluate this statement.

39. Do Blaine Amendments violate the Constitution?

Response: In *Espinoza v. Montana Department of Revenue*, 140 S. Ct. 2246, 2259 (2020), the United States Supreme Court explained that the Blaine Amendment of the 1870s, which Congress nearly passed, would have added to the United States Constitution a provision prohibiting states from aiding sectarian schools. Montana's State Constitution had such a no-aid provision. *Id*. at 2251. Montana voters re-adopted Montana's no-aid provision in the 1970s. *Id*. at 2259. In *Espinoza*, the United States Supreme Court held that the Free Exercise Clause precluded the Montana Supreme Court from applying Montana's no-aid provision to bar religious schools from a state-funded scholarship program that was open to non-religious private schools. *Id*.

40. Is the right to petition the government a constitutionally protected right?

Response: The First Amendment to the Constitution protects the right "to petition the Government for a redress of grievances." U.S. Const. Amend. I. The United States Supreme Court's precedent "confirm[s] that the Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011). The right to petition the government "is implicit in '[t]he very idea of government, republican in form.'" *McDonald v. Smith*, 472 U.S. 479, 482 (1985) (quoting *United States v. Cruikshank*, 92 U.S. 542 (1876)).

41. What is the operative standard for determining whether a statement is not protected speech under the "fighting words" doctrine?

Response: The First Amendment has always "'permitted restrictions upon the content of speech in a few limited areas,' and has never 'include[d] a freedom to disregard these traditional limitations.'" *United States v. Stevens*, 559 U.S. 460, 468 (2010) (quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 382-83 (1992)). Fighting words are one of the categories of speech "the prevention and punishment of which has never been thought to raise any Constitutional problem." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942). The United States Supreme Court has stated that fighting words are "those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter

of common knowledge, inherently likely to provoke a violent reaction." *Cohen v. California*, 403 U.S. 15, 20 (1971); *accord Virginia v. Black*, 538 U.S. 343, 359 (2003).

42. What is the operative standard for determining whether a statement is not protected speech under the true threats doctrine?

Response: The United States Supreme Court has held that the First Amendment "permits a State to ban a true threat." *Virginia v. Black*, 538 U.S. 343, 359 (2003) (internal quotation marks omitted). "True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *Id.* (internal quotation marks omitted).

43. Demand Justice is a progressive organization dedicated to "restor[ing] ideological balance and legitimacy to our nation's courts."

a. **Has anyone associated with Demand Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Brian Fallon, Christopher Kang, Tamara Brummer, Katie O'Connor, and/or Jen Dansereau?**

Response: In 2015, I contacted Christopher Kang, who was leading a national consortium of Asian Pacific American community organizations and had previously worked at the White House, about my interest in being considered for the Ninth Circuit. For a couple years after that we competed in an online fantasy football league. I do not recall competing in the same fantasy football league in the past few years.

44. The Alliance for Justice is a "national association of over 120 organizations, representing a broad array of groups committed to progressive values and the creation of an equitable, just, and free society."

a. **Has anyone associated with Alliance for Justice requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Alliance for Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

c. **Have you ever been in contact with anyone associated with Demand Justice, including, but not limited to: Rakim Brooks and/or Daniel L. Goldberg?**

Response: No.

45. Arabella Advisors is a progressive organization founded "to provide strategic guidance for effective philanthropy" that has evolved into a "mission-driven, Certified B Corporation" to "increase their philanthropic impact."

a. **Has anyone associated with Arabella Advisors requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund.**

Response: No.

c. **Are you currently in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

d. **Have you ever been in contact with anyone associated with Arabella Advisors? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.**

Response: No.

46. The Open Society Foundations is a progressive organization that "work[s] to build vibrant and inclusive democracies whose governments are accountable to their citizens."

a. **Has anyone associated with Open Society Fund requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with the Open Society Foundations?**

Response: No.

c. **Have you ever been in contact with anyone associated with the Open Society Foundations?**

Response: No.

47. Fix the Court is a "non-partisan, 501(C)(3) organization that advocates for non-ideological 'fixes' that would make the federal courts, and primarily the U.S. Supreme Court, more open and more accountable to the American people."

a. **Has anyone associated with Fix the Court requested that you provide any services, including but not limited to research, advice, analysis, writing or giving speeches, or appearing at events or on panels?**

Response: No.

b. **Are you currently in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

c. **Have you ever been in contact with anyone associated with Fix the Court, including but not limited to: Gabe Roth, Tyler Cooper, Dylan Hosmer-Quint and/or Mackenzie Long?**

Response: No.

48. Please describe the selection process that led to your nomination to be a circuit judge, from beginning to end (including the circumstances that led to your nomination and the interviews in which you participated).

Response: On September 28, 2015, I sent a letter to the State Chair of Senator Feinstein's bipartisan Judicial Advisory Committee that expressed my interest in being considered for the opening on the Ninth Circuit. On October 12, 2015, I submitted my application to Senator Feinstein's State Chair. On October 30, 2015, I interviewed with Senator Feinstein's Judicial Advisory Committee. On January 6, 2016, an attorney from the White House Counsel's Office notified me that I would be considered for the Ninth Circuit opening. Beginning on January 6, 2016, I had contact with U.S. Department of Justice Office of Legal Policy attorneys and Senator Feinstein's Judiciary Committee staff. On February 18, 2016, I met with Senator Feinstein's Judiciary Committee staff and interviewed with attorneys from the White House Counsel's Office and the Department of Justice. On February 25, 2016, President Obama submitted my nomination to the Senate. I had a confirmation hearing on July 13, 2016. On September

15, 2016, I was voted out of the Senate Judiciary Committee. My nomination was returned to President Obama on January 3, 2017.

On January 19, 2021, I submitted to the State Chair of Senator Feinstein's bipartisan Judicial Advisory Committee my application for any opening on the Ninth Circuit. I updated my application on March 16, 2021 and April 13, 2021.

On February 16, 2021, I submitted to the Statewide Chair of Senator Alex Padilla's bipartisan Judicial Evaluation Commission my application for any opening on the Ninth Circuit. I updated my application on April 15, 2021.

On May 28, 2021, an attorney from the White House Counsel's Office contacted me to confirm my interest in being considered for an opening on the Ninth Circuit. On June 7, 2021, an attorney from the White House Counsel's Office notified me that I would be considered for an opening on the Ninth Circuit. Since June 7, 2021, I have been in contact with attorneys from the Office of Legal Policy at the U.S. Department of Justice. On July 2, 2021, I was interviewed by Senator Padilla. On September 8, 2021, President Biden announced his intent to nominate me. On September 20, 2021, President Biden submitted my nomination to the Senate.

49. During your selection process did you communicate with any officials from or anyone directly associated with the organization Demand Justice? If so, what was the nature of those discussions?

Response: No.

a. **Did anyone do so on your behalf?**

Response: No.

50. During your selection process did you communicate with any officials from or anyone directly associated with the American Constitution Society? If so, what was the nature of those discussions?

Response: No.

a. **Did anyone do so on your behalf?**

Response: My husband taught with former Senator Russ Feingold at Stanford Law School for many years, is a former member of the Board of Directors of the American Constitution Society, and continues to be involved in some American Constitution Society activities. During his conversations with former Senator Feingold, my husband mentioned my interest in being re-nominated to the Ninth Circuit.

51. During your selection process, did you communicate with any officials from or anyone directly associated with Arabella Advisors? If so, what was the nature of those discussions? Please include in this answer anyone associated with Arabella's known subsidiaries the Sixteen Thirty Fund, the New Venture Fund, or any other such Arabella dark-money fund that is still shrouded.

Response: No.

a. **Did anyone do so on your behalf?**

Response: No.

52. During your selection process did you communicate with any officials from or anyone directly associated with the Open Society Foundation. If so, what was the nature of those discussions?

Response: No.

a. **Did anyone do so on your behalf?**

Response: No.

53. Please explain, with particularity, the process whereby you answered these questions.

Response: On October 13, 2021, I received these questions from the Office of Legal Policy (OLP). After reviewing the questions, case law, statutes, regulations, Federal Rules of Appellate Procedure, and case filings, I drafted my answers. OLP provided feedback on my draft, which I considered, before submitting my final answers to the Committee.

Nomination of The Honorable Lucy H. Koh to be
United States Circuit Judge for the Ninth Circuit
Questions for the Record
Submitted October 13, 2021

QUESTIONS FROM SENATOR COTTON

1. **Since becoming a legal adult, have you ever been arrested for or accused of committing a hate crime against any person?**

   Response: No.

2. **Since becoming a legal adult, have you ever been arrested for or accused of committing a violent crime against any person?**

   Response: No.

3. **In a 2020 speech, you said, "We have to all actively check ourselves to make sure we're treating everyone fairly, everyone equally." Should people ever be treated differently than others because of their skin color or race?**

   Response: Judges must treat all litigants fairly and equally regardless of their skin color or race. The judges' oath requires judges to "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States."

4. **Was *D.C. v. Heller*, 554 U.S. 570 (2008) rightly decided?**

   Response: I follow all United States Supreme Court precedent. As a judge, it is improper for me to comment on any issues that may come before me. As a general matter, I do not comment on the correctness of United States Supreme Court precedent.

5. **Is the Second Amendment right to keep and bear arms an individual right belonging to individual persons, or a collective right that only belongs to a group such as a militia?**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the United States Supreme Court concluded that "[t]here seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms."

6. **Please describe what you believe to be the scope of the Second Amendment right to keep and bear arms.**

   Response: In *District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008), the United States Supreme Court held that a ban on firearms in the home violates the right protected

by the Second Amendment. The United States Supreme Court emphasized, that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and provided three examples of presumptively valid regulations of firearms: (1) prohibitions on possession by "felons or the mentally ill"; (2) "laws forbidding the carrying of firearms in sensitive places such as schools or government buildings"; and (3) "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27. The United States Supreme Court noted that these were only examples and the "list does not purport to be exhaustive." *Id.* at 627 n.26.

Applying *Heller*, the Ninth Circuit has adopted a two-step framework when evaluating whether a challenged regulation or law infringes on the rights protected by the Second Amendment. *See Young v. Hawaii*, 992 F.3d 765, 783 (9th Cir. 2021) (en banc). First, the Ninth Circuit determines whether "the challenged law affects conduct that is protected by the Second Amendment" by looking to the "historical understanding of the scope of the right." *Id.* The Ninth Circuit considers "whether there is persuasive historical evidence showing that the regulation does not impinge on the Second Amendment right as it was historically understood. Laws restricting conduct that can be traced to the founding era and are historically understood to fall outside of the Second Amendment's scope may be upheld without further analysis." *Id.* Furthermore, if the challenged law falls within the "presumptively lawful regulatory measures" identified by *Heller*, the law may be upheld without further analysis. *Id.*

If the law is within the historical scope of the Second Amendment, or not presumptively lawful, the Ninth Circuit determines what level of scrutiny applies. *Id.* at 784. As the Ninth Circuit explained in *Young*, it has "understood *Heller* to require one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny." *Id.* (quoting *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016)).

7. **Please describe what you believe to be the Ninth Circuit's holding in *FTC v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020).**

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974, 1005 (9th Cir. 2020), the Ninth Circuit held that the Federal Trade Commission failed to show that three of Qualcomm's business practices violated Sections 1 and 2 of the Sherman Act or the Federal Trade Commission Act. First, the Ninth Circuit held that "Qualcomm's practice of licensing its [standard essential patents] exclusively at the [Original Equipment Manufacturer] level does not amount to anticompetitive conduct in violation of § 2, as Qualcomm is under no antitrust duty to license rival chip suppliers." *Id*. Although the Ninth Circuit declined to address whether "Qualcomm has breached any of its [fair, reasonable, and non-discriminatory] commitments," the Ninth Circuit stated that "the remedy for such a breach lies in contract and patent law." *Id*. Second, the Ninth Circuit held that "Qualcomm's patent-licensing royalties and 'no license, no chips' policy do not impose an anticompetitive surcharge on rivals' modem chip sales." *Id*. According to the

Ninth Circuit, "these aspects of Qualcomm's business model are 'chip-supplier' neutral and do not undermine competition in the relevant antitrust markets." *Id*. Third, the Ninth Circuit held that "Qualcomm's 2011 and 2013 agreements with Apple ha[d] not had the actual or practical effect of substantially foreclosing competition in the [code division multiple access] modem chip market." *Id*. "Furthermore, because these agreements were terminated years ago by Apple itself, there is nothing to be enjoined." *Id*.

8. **Please describe what you believe to be the Supreme Court's holding in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021).**

   Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the United States Supreme Court clarified that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id*. "It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id*.

   In *Tandon*, the United States Supreme Court also clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id*. "Comparability is concerned with the risks various activities pose, not the reasons why people gather." *Id*.

   In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id*. at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id*. (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

   In *Tandon*, the United States Supreme Court also determined that even if the government withdraws or modifies a COVID restriction during the course of litigation, that does not necessarily moot the case. *Id*. "And so long as a case is not moot, litigants otherwise entitled to emergency injunctive relief remain entitled to such relief where the applicants 'remain under a constant threat' that government officials will use their power to reinstate the challenged restrictions.'" *Id*. (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020) (per curiam)).

9. **In the Supreme Court's opinion in *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the Court said that it was "unsurprising" that the litigants were entitled to relief. What do you believe the Court meant by that?**

   Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1297-98 (2021), the United States Supreme Court stated that the case was "the fifth time the Court ha[d] summarily

rejected the Ninth Circuit's analysis of California's COVID restrictions on religious exercise."

10. **Please describe what you believe to be the Supreme Court's holding in *Greer v. United States*, 141 S. Ct. 2090 (2021).**

    Response: In *Greer v. United States*, 141 S. Ct. 2090 (2021), the question before the United States Supreme Court was whether the defendants were entitled to plain error relief for their claims under *Rehaif v. United States*, 139 S. Ct. 2191 (2019), which held that felons must know they are felons to be convicted of being felons in possession of firearms. The United States Supreme Court held that the defendants were not entitled to plain error relief because the defendants failed to show that the error the district court made in this case affected their "substantial rights." *Id.* at 2097. The United States Supreme Court also noted that an appellate court conducting plain error review may review the entire record, not just the record from the particular proceeding where an error occurred. *Id.* at 2098 (citing *United States v. Vonn*, 535 U.S. 55, 58-59 (2002)). Based on that principle, the United States Supreme Court held that "when an appellate court conducts plain-error review of a *Rehaif* instructional error, the court can examine relevant and reliable information from the entire record—including information contained in a pre-sentence report." *Id.*

11. **Please describe what you believe to be the Supreme Court's holding in *Terry v. United States*, 141 S. Ct. 1858 (2021).**

    Response: In *Terry v. United States*, 141 S. Ct. 1858 (2021), the United States Supreme Court addressed the meaning of Section 404 of the First Step Act. That section of the First Step Act makes retroactive the provisions of the Fair Sentencing Act, which increased the amounts of crack cocaine necessary to trigger mandatory minimum sentences. *See* First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194; Fair Sentencing Act of 2010, Pub. L. 111-220, 124 Stat. 2372. Accordingly, the First Step Act "gives certain crack offenders an opportunity to receive a reduced sentence." *Terry*, 141 S. Ct. at 1860.

    In *Terry*, the United States Supreme Court held that the First Step Act does not provide relief for individuals who were convicted of crack cocaine offenses but were not subject to mandatory minimum sentences, even if they were sentenced based on the quantity of cocaine they possessed. *Id*. at 1863-64.

12. **Please describe what you believe to be the Supreme Court's holding in *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021).**

    Response: In *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021), the United States Supreme Court considered the question of whether a Temporary Protected Status ("TPS") recipient who entered the country unlawfully can still become a lawful permanent resident. *Id*. at 1812. "[A] nonimmigrant's eligibility for such an adjustment to permanent status depends (with exceptions not relevant here) on an 'admission' into this country. And an 'admission' is defined as 'the lawful entry of the alien into the United

States after inspection and authorization by an immigration officer.'" *Id*. at 1811 (quoting 8 U.S.C. § 1101(a)(13)(A)). The United States Supreme Court held that the conferral of TPS is not an "admission" into the United States. *Id*. at 1812-13. Thus, the petitioner in *Sanchez* could not become a lawful permanent resident because he was never lawfully "admitted" into the United States, and his TPS did not change that fact. *Id*. at 1815.

13. **Please describe what you believe to be the Supreme Court's holding in *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321 (2021).**

Response: In *Brnovich v. Democratic National Committee*, 141 S. Ct. 2321, 2334 (2021), the United States Supreme Court held that the following two Arizona voting laws did not violate Section 2 of the Voting Rights Act ("VRA"): (1) "[v]oters who choose to vote in person on election day in a county that uses the precinct system must vote in their assigned precincts," and (2) "[f]or those who choose to vote early by mail," it is a "crime for any person other than a postal worker, an elections official, or a voter's caregiver, family member, or household member to knowingly collect an early ballot."

The Democratic National Committee challenged both Arizona laws under Section 2 of the VRA. *Id*. Section 2(a) of the VRA prohibits state voting laws that "deny or abridge the right of any citizen of the United States to vote on account of race or color . . . as provided in subsection (b)." 52 U.S.C. § 10301(a). In turn, Section 2(b) of the VRA provides that "[a] violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a)." *Id*. § 10301(b).

The United States Supreme Court clarified the standard for assessing claims under Section 2 of the VRA. The Court noted that the "key requirement" of Section 2 is "that the political processes leading to nomination and election . . . must be 'equally open' to minority and non-minority groups alike." *Brnovich*, 141 S. Ct. at 2337. Additionally, Section 2's requirement that "the totality of circumstances" be considered means that "any circumstance that has a logical bearing on whether voting is 'equally open' and affords equal 'opportunity' may be considered." *Id*. at 2338. The Court noted five "important circumstances," including "the size of the burden imposed by a challenged voting rule." *Id*. at 2338-40.

Applying this standard, the Court determined that neither of the challenged Arizona voting laws violated Section 2 of the VRA. The "out-of-precinct rule" did not impose a heavy burden because "[h]aving to identify one's own polling place and then travel there to vote does not exceed the 'usual burdens of voting.'" *Id*. at 2343-44. Similarly, the rule restricting the collection of early ballots did not impose a heavy burden because voters had numerous options for submitting those ballots before election day. *Id*. at 2346. For both laws, none of the other "circumstances" indicated that the laws abridged the opportunities for racial minorities to vote. *Id*. at 2343-46.

14. **Please describe what you believe to be the Supreme Court's holding in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).**

Response: In *Jennings v. Rodriguez*, 138 S. Ct. 836 (2018), the United States Supreme Court was asked to interpret several provisions of the Immigration and Nationality Act that authorized the government to detain aliens in the course of immigration proceedings. First, the United States Supreme Court analyzed provisions in Section 1225, which applied to two groups of aliens seeking entry into the United States. *Id*. at 837. The first group consisted of aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation" or those aliens "designated by the Attorney General in his discretion." *Id.* (citing 8 U.S.C. § 1225(b)(1)). The second group consisted of all applicants for admission not included in the first group." *Id.* (citing 8 U.S.C. § 1225(b)(2)). Aliens in the first group who sought asylum could be "detained for further consideration of the application for asylum." *Id.* (citing 8 U.S.C. 1225(b)(1)(B)(ii)). Aliens in the second group "shall be detained" for removal proceedings if immigration officers decide that the alien is not without a doubt entitled to be admitted into the country. *Id.* (citing 8 U.S.C. § 1225(b)(2)(A)).

The United States Supreme Court was asked to determine whether the provisions of Section 1225(b) should be construed to contain implicit limitations on the length of detention and a requirement that bond hearings be made available for the aliens specified under Sections 1225(b)(1) and 1225(b)(2). The United States Supreme Court held that the language of Section 1225 did not contain any such requirements. *Jennings*, 138 S. Ct. at 842 ("[N]othing in the statutory text imposes any limit on the length of detention. And nothing in § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings.").

Second, the United States Supreme Court analyzed 8 U.S.C. § 1226, which covers aliens who are already present in the United States. Section 1226 sets out two categories of aliens who are already present in the United States: criminal aliens, who are covered by Section 1226(c), and all other present aliens, who are covered by Section 1226(a). Criminal aliens covered by 1226(c) may be released on bond or parole "only if" the Attorney General decides "both that doing so is necessary for witness-protection purposes and that the alien will not pose a danger or flight risk." *Jennings* 138 S. Ct. at 846. All other present aliens covered by 1226(a) "may be" released by the Attorney General on bond or parole. *Id.*

The United States Supreme Court was asked to determine whether Section 1226(c) should be interpreted to "include an implicit 6-month time limit on the length of mandatory detention." *Id.* The United States Supreme Court held that an interpretation requiring a limit on the length of mandatory detention for criminal aliens present in the United States "falls far short of a plausible statutory construction." *Id.* (internal quotation marks omitted). Instead, the United States Supreme Court held that the language of Section 1226(c) "expressly and unequivocally imposes an affirmative *prohibition* on releasing detained aliens under any other conditions" than those defined expressly in the statute. *Id.* at 847.

Third, the United States Supreme Court was asked to determine whether Section 1226(a), which covers all other aliens present in the United States, provides procedural protections requiring periodic bond hearings and a determination "by clear and convincing evidence" that the alien's continued detention is not necessary. *Id.* The United States Supreme Court held that nothing in Section 1226(a)'s text "which says only that the Attorney General 'may release' the alien 'on . . . bond'" supports the procedural requirements requested by the parties. *Id.* (quoting 8 U.S.C. § 1226(a)).

15. **Please describe what you believe to be the Supreme Court's holding in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).**

Response: In *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), the United States Supreme Court considered President Trump's Proclamation restricting travel to the United States by citizens of eight countries. The United States Supreme Court made at least the following three separate holdings in this case. First, the Proclamation did not exceed the president's authority under federal immigration laws because the president has broad discretion to suspend the entry of noncitizens into the United States. *Id.* at 2408. Second, the Proclamation did not discriminate based on nationality in violation of Section 1152(a)(1)(A) of the Immigration and Nationality Act. The United States Supreme Court clarified that although the section bars discrimination, the section does not hamper the president's authority to block the entry of nationals from some countries. *Id.* at 2415. Finally, the President's Proclamation did not violate the Establishment Clause of the First Amendment. After assuming rational basis review applied, the United States Supreme Court held that because the Proclamation was based on "a sufficient national security justification," rather than anti-Muslim animus, the Proclamation did not violate the First Amendment. *Id.* at 2423.

16. **What is your view of arbitration as a litigation alternative in civil cases?**

Response: The United States Supreme Court has emphasized that arbitration agreements are "on an equal footing with other contracts, and require[] courts to enforce them according to their terms. Like other contracts, however, they may be invalidated by 'generally applicable contract defenses, such as fraud, duress, or unconscionability.'" *Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67-68 (2010) (citations omitted). The Federal Arbitration Act "establishes procedures by which federal courts implement" the substantive provisions of the Act, including staying federal litigation and compelling arbitration. *Id.* at 68.

17. **Please describe with particularity the process by which you answered these questions and the written questions of the other members of the Committee.**

Response: On October 13, 2021, I received these questions from the Office of Legal Policy (OLP). After reviewing the questions, case law, statutes, regulations, Federal Rules of Appellate Procedure, and case filings, I drafted my answers. OLP provided feedback on my draft, which I considered, before submitting my final answers to the Committee.

18. **Did any individual outside of the United States federal government write or draft your answers to these questions or the written questions of the other members of the Committee? If so, please list each such individual who wrote or drafted your answers. If government officials assisted with writing or drafting your answers, please also identify the department or agency with which those officials are employed.**

    Response: No.

SENATOR TED CRUZ
U.S. Senate Committee on the Judiciary

Questions for the Record for Lucy Haeran Koh, Nominee for the Ninth Circuit

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. Big Tech companies possess a dangerous and overbearing power to silence the voices of millions of Americans, primarily conservatives, who want to exercise their First Amendment right to freedom of speech. In your opinion regarding PragerU and YouTube, you found that YouTube was not a state actor. Under existing precedent, what is the threshold for when a private company's conduct can be treated as state action subject to the First Amendment?

Response: The United States Supreme Court has explained that "a private entity can qualify as a state actor in a few limited circumstances—including, for example, (i) when the private entity performs a traditional, exclusive public function; (ii) when the government compels the private entity to take a particular action; or (iii) when the government acts jointly with the private entity." *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019). Only "very few" functions fall into the first category. *Id.* at 1929. These include running elections and operating a company town. *Id.* In addition, the United States Supreme Court has also found in some circumstances that a private entity may be a state actor "when the government has outsourced one of its constitutional obligations to a private entity." *Id.* at 1929 n.1. Conversely, the United States Supreme Court has ruled that each of the following functions does not qualify as a "traditional, exclusive public function": "running sports associations and leagues, administering insurance payments, operating nursing homes, providing special education, representing indigent criminal defendants, resolving private disputes, and supplying electricity." *Id.* (holding operating public access channels on a cable system was also not a traditional and exclusive public function); *see also Prager University v. Google LLC*, 951 F.3d 991 (9th Cir. 2020) (holding YouTube was not transformed into a state actor because it hosts speech on a private platform).

2. If a senior executive official were to instruct a tech company to remove speech from its online platform that the government flags as "misinformation," "disinformation," or "harmful," and the company complies, would that constitute state action?

Response: If the issue came before me, I would apply the framework in my response to Question 1.

3. If a senior executive official were to instruct a tech company to promote speech that is preferable or politically "friendly" to the incumbent government, and the company complies, would that constitute state action?

Response: If the issue came before me, I would apply the framework in my response to Question 1.

4. Ordering a permanent global injunction—especially when done in error—has a major impact on the nation and on the global economy. In *FTC v. Qualcomm*, you

entered a permanent and global injunction that would've stopped Qualcomm from conducting some of its core business practices. Specifically, you ordered Qualcomm to renegotiate all its chip contracts worldwide and change its pricing structure. Your decision was later reversed. What did you get wrong in that case, and what lessons have you learned?

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit reversed my order holding that Qualcomm's licensing practices violated the Sherman Act and the Federal Trade Commission Act ("FTC Act"). I will faithfully follow the Ninth Circuit precedent in any future cases.

My order has been reversed and has no legal effect. I provide an explanation for my ruling solely to respond to your question. The bench trial for this case consisted of 10 days of evidence and 1 day of argument. *Fed. Trade Comm'n v. Qualcomm Inc.*, 411 F. Supp. 3d 658, 669 (N.D. Cal. 2019). During the trial, 50 witnesses testified, and the parties submitted 276 exhibits. The parties filed 221 pages of proposed findings of fact and conclusions of law. After reviewing the trial record and considering the parties' arguments, I issued a 233-page order with extensive factual and credibility findings and legal analysis.

My order analyzed three causes of action: (1) restraint of trade under Sherman Act § 1; (2) monopolization under Sherman Act § 2; and (3) unfair methods of competition under the FTC Act, which overlaps with the Sherman Act. "Section 1 of the Sherman Act, 15 U.S.C. § 1, prohibits [e]very contract, combination . . . or conspiracy, in restraint of trade or commerce among the several States." *Allied Orthopedic Appliances, Inc. v. Tyco Health Care Grp. LP*, 592 F.3d 991, 996 (9th Cir. 2010). "To establish liability under § 1, a plaintiff must prove (1) the existence of an agreement, and (2) that the agreement was an unreasonable restraint of trade." *Aerotec Int'l, Inc. v. Honeywell Int'l, Inc.*, 836 F.3d 1171, 1178 (9th Cir. 2016). "Section 2 of the Sherman Act makes it unlawful for a firm to 'monopolize.'" *United States v. Microsoft Corp.*, 253 F.3d 34, 50 (D.C. Cir. 2001). "The offense of monopolization has two elements: '(1) the possession of monopoly power in the relevant market'"; and (2) "the willful acquisition or maintenance of that power" through exclusionary conduct "as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.'" *Id.* (quoting *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966)).

The FTC identified three specific practices as anticompetitive. First, the FTC challenged Qualcomm's practice of refusing to sell code division multiple access ("CDMA") modem chips and premium Long Term Evolution ("LTE") modem chips to an original equipment manufacturer ("OEM") unless "the OEM sign[ed] a separate patent license agreement." *Qualcomm*, 411 F. Supp. 3d at 697. Second, the FTC challenged Qualcomm's practice of refusing to provide licenses for standard essential patents ("SEPs") to rival chip manufacturers. *Id.* at 758. Third, the FTC challenged Qualcomm's de facto exclusive dealing contracts with Apple. *Id.* at 763.

After considering all the evidence and the parties' arguments, I found that "Qualcomm's licensing practices have strangled competition in the CDMA and premium LTE modem chip markets for years, and harmed rivals, OEMs, and end consumers in the process." *Qualcomm Inc.*, *Id*. at 812. I also found that "Qualcomm's conduct 'unfairly tends to destroy competition itself.'" *Id*. (quoting *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 458 (1993)). Applying the above-described legal standards to these factual findings, I "conclude[d] that Qualcomm's licensing practices [we]re an unreasonable restraint of trade under § 1 of the Sherman Act and exclusionary conduct under § 2 of the Sherman Act." *Id.* (citing *Microsoft*, 253 F.3d at 58-59). Thus, I held that "Qualcomm's practices violate[d] § 1 and § 2 of the Sherman Act" and that Qualcomm was "liable under the FTC Act, as 'unfair methods of competition' under the FTC Act include 'violations of the Sherman Act.'" *Id.* (quoting *Fed. Trade Comm'n v. Cement Inst.*, 333 U.S. 683, 693-94 (1948)).

On appeal, the Ninth Circuit reviewed a different set of arguments and evidence than I did. First, the FTC changed its theory regarding Qualcomm's refusal to license SEPs to rival chip manufacturers. Second, the Department of Justice submitted merits arguments in support of Qualcomm for the first time on appeal and introduced new evidence on appeal. Third, retired Federal Circuit Judge Paul R. Michel submitted for the first time on appeal an argument about a method for calculating patent royalties and an argument that antitrust law should not be used to resolve disputes involving patent license agreements. Fourth, former FTC Commissioner Joshua Wright submitted for the first time on appeal an argument that the antitrust laws should not be used to resolve contract disputes between private parties. The Ninth Circuit noted all these developments and specifically relied on Judge Michel's and Mr. Wright's briefs for its conclusion regarding Qualcomm's refusal to license SEPs to rival chip manufacturers. *Qualcomm*, 969 F.3d at 997.

The Ninth Circuit held the following, which is the law that I will apply in future cases before me:

The Ninth Circuit held that the FTC failed to show that Qualcomm's practices violated Section 2 of the Sherman Act. First, the Ninth Circuit held that "Qualcomm's practice of licensing its SEPs exclusively at the OEM level does not amount to anticompetitive conduct in violation of § 2, as Qualcomm is under no antitrust duty to license rival chip suppliers." *Id.* at 1005. Although the Ninth Circuit declined to address whether "Qualcomm has breached any of its [fair, reasonable, and non-discriminatory] commitments," the Ninth Circuit stated that "the remedy for such a breach lies in contract and patent law." *Id.* Second, the Ninth Circuit held that "Qualcomm's patent-licensing royalties and 'no license, no chips' policy do not impose an anticompetitive surcharge on rivals' modem chip sales." *Id.* According to the Ninth Circuit, "these aspects of Qualcomm's business model are 'chip-supplier' neutral and do not undermine competition in the relevant antitrust markets." *Id.* Third, the Ninth Circuit held that "Qualcomm's

2011 and 2013 agreements with Apple ha[d] not had the actual or practical effect of substantially foreclosing competition in the CDMA modem chip market." *Id.* "Furthermore, because these agreements were terminated years ago by Apple itself, there [was] nothing to be enjoined." *Id.*

5. You have stated that "we all have conscious or subconscious assumptions about people based on who they are and we all have to be aware that that exists." To help us assess your capacity for judicial impartiality, please list and describe any and all "assumptions about people based on who they are" that you hold and are aware of.

Response: I was referring to social science research that shows that individuals often respond differently in a variety of tests to people of different races, genders, and appearances. I do my level best to treat everyone equally and fairly. I am not aware that I hold any bias toward any person or group, but I believe knowledge of the risk of bias helps us reduce the risk that we will inadvertently treat people differently when we interact with them.

6. Is it appropriate for the executive under the Constitution to refuse to enforce a law, absent constitutional concerns? Please explain.

Response: In *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973), the United States Supreme Court held that private citizens generally "lack standing to contest the policies of the prosecuting authority" when that citizen is neither prosecuted nor threatened with prosecution. Particularly in the realm of criminal law, the "Executive Branch has exclusive authority and absolute discretion to decide whether to prosecute a case." *United States v. Nixon*, 418 U.S. 683, 693 (1974).

7. Describe how you would characterize your judicial philosophy on the federal bench thus far, and identify which U.S. Supreme Court Justice's philosophy out of the Warren, Burger, Rehnquist, and Roberts Courts is most analogous with yours.

Response: My judicial philosophy is to fulfill my judicial oath, which requires that I "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon me" under the Constitution and laws of the United States. This requires that I understand the limited role of the judiciary, which is to carefully consider the facts in the record and apply the law faithfully and impartially in deciding the limited issues before me. I also consider all of the parties' arguments and strive to issue timely orders that clearly and comprehensively state my reasoning. I follow all of the United States Supreme Court's precedent. I have not studied the judicial philosophies of Supreme Court Justices and cannot say which Supreme Court Justice's philosophy is most analogous to my own.

8. Do you believe the meaning of the Constitution changes over time absent changes through the Article V amendment process?

Response: The Constitution is an enduring document that sets forth the principles that govern our nation. The Constitution does not change unless amended pursuant to Article V.

9. Please briefly describe in your own words your understanding of the interpretative method known as originalism.

Response: Black's Law Dictionary defines "originalism" as the "doctrine that words of a legal instrument are to be given the meanings they had when they were adopted."

10. Please briefly describe in your own words your understanding of the interpretive method often referred to as living constitutionalism.

Response: Black's Law Dictionary defines "living constitutionalism" as the "doctrine that the Constitution should be interpreted and applied in accordance with changing circumstances and, in particular, with changes in social values."

11. If you were to be presented with a constitutional issue of first impression—that is, an issue whose resolution is not controlled by binding precedent—and the original public meaning of the Constitution were clear and resolved the issue, would you be bound by that meaning?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text of the Second Amendment at the time of ratification.

12. Is the public's current understanding of the Constitution or of a statute ever relevant when determining the meaning of the Constitution or a statute? If so, when?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text of the Second Amendment at the time of ratification. Similarly, in *Bostock v. Clayton Cty*., 140 S. Ct. 1731, 1738 (2020), the United States Supreme Court stated: "This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment."

13. Do Americans have the right to their religious beliefs outside the walls of their houses of worship and homes?

Response: Yes.

14. Are there identifiable limits to what government may impose—or may require—of private institutions, whether it be a religious organization like Little Sisters of the Poor, or a small business operated by observant owners? What are those limits?

Response: In *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872, 878-82 (1990), the United States Supreme Court held that a law which incidentally burdens religion ordinarily is not subject to strict scrutiny under the Free Exercise Clause if the law is neutral and generally applicable. If a law is neutral and generally applicable, rational basis scrutiny applies. *Id.*

Determining whether a law is neutral and generally applicable requires a two-part analysis. In turn, each part requires two steps.

First, a court must determine whether a law is neutral. That determination requires two steps. The first step asks whether the law is facially neutral. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S 520, 533-34 (1993). If the law is not facially neutral, the law is subject to strict scrutiny. *Id.* If the law is facially neutral, then the court must proceed to the second step. *Id.* at 534 ("Facial neutrality is not determinative.").

The second step asks whether the facially neutral law's enactment or enforcement was motivated by religious animus on the part of the governmental actor. A facially neutral law whose enactment or enforcement was motivated by religious animus is subject to strict scrutiny. Courts must review the record to determine whether there is any evidence of religious animus. *Lukumi*, 508 U.S. at 534-42 (facially neutral city ordinances were non-neutral because they were prompted by concern for Santeria religious practices). In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the United States Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause because hostile statements by officials in public meetings showed that the application of the law was motivated by religious animus. *Id.* at 1729-31 (2018) (finding open expressions of hostility by state civil rights commissioners sufficient to show animus).

Second, a court must determine whether a law is generally applicable. That determination also requires two steps. The first step asks whether any exemptions to the law invite "the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). If the law makes such an invitation, the law is not generally applicable and is subject to strict scrutiny. If the law does not make such an invitation, then the court must proceed to the second step.

The second step asks whether the law is overbroad and underinclusive such that it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 141 S. Ct. at 1877. To

determine whether a restriction is overbroad and underinclusive, courts must compare religious conduct with comparable secular conduct. *See Lukumi*, 508 U.S. at 544-45. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the United States Supreme Court clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* at 1296. Specifically, in *Tandon*, the Court held: "Comparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id.*

In *Tandon,* the United States Supreme Court also clarified that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* The Court explained that "[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

However, not every application of "a valid and neutral law of generally applicability is necessarily constitutional under the Free Exercise Clause." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017). For example, the United States Supreme Court has found a ministerial exception to Title VII employment discrimination laws. *See, e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) (holding that Title VII's prohibition on employment discrimination does not apply to churches when they hire or fire ministers); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (precluding two lay teachers who instructed students in religious studies and prepared students for participation in Church services from pursuing Title VII employment discrimination suits against religious schools).

In addition, the Religious Freedom Restoration Act of 1993 (RFRA) prohibits the "Government [from] substantially burden[ing] a person's exercise of religion even if the burden results from a rule of general applicability" unless the Government "demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest." 42 U.S.C. §§ 2000bb–1(a), (b). The United States Supreme Court has held that RFRA applies both to religious organizations such as Little Sisters of

the Poor, *see Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020), and to small businesses operated by observant owners, *see Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 719 (2014).

15. Is it ever permissible for the government to discriminate against religious organizations or religious people?

Response: Please see my response to Question 14.

16. President Biden has created a commission to advise him on reforming the Supreme Court. Do you believe that Congress should increase, or decrease, the number of justices on the U.S. Supreme Court? Please explain.

Response: As a United States District Judge, I am bound by the United States Supreme Court's precedent regardless of that Court's size or composition, and it would be inappropriate for me to comment on whether the size of that Court should be changed.

17. Is the ability to own a firearm a personal civil right?

Response: In *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), the United States Supreme Court concluded that "[t]here seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms."

18. Does the right to own a firearm receive less protection than the other individual rights specifically enumerated in the Constitution?

Response: No.

19. Does the right to own a firearm receive less protection than the right to vote under the Constitution?

Response: No.

20. If you are to join the federal bench, and supervise along with your colleagues the court's human resources programs, will it be appropriate for the court to provide its employees trainings which include the following:

a. **One race or sex is inherently superior to another race or sex;**

b. **An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive;**

c. **An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex; or**

d. **Meritocracy or related values such as work ethic are racist or sexist.**

Response: I am not aware of any such trainings at my court, the content of trainings provided by the Ninth Circuit, or what role, if any, I would have in determining the content of trainings provided by the Ninth Circuit, if confirmed. All trainings provided by federal courts should be consistent with the Constitution and laws of the United States and should be consistent with sound pedagogy.

21. Will you commit that your court, so far as you have a say, will not provide trainings that teach that meritocracy, or related values such as work ethic and self-reliance, are racist or sexist?

Response: I am not aware of any such trainings at my court, the content of trainings provided by the Ninth Circuit, or what role, if any, I would have in determining the content of trainings provided by the Ninth Circuit, if confirmed. All trainings provided by federal courts should be consistent with the Constitution and laws of the United States and should be consistent with sound pedagogy.

22. Is the criminal justice system systemically racist?

Response: As a judge for the last 14 years, I adjudicate cases raising specific claims of discrimination. These cases require me to determine questions such as whether a claim has been stated, whether administrative remedies have been exhausted, and whether statutes of limitations bar a claim. I also decide whether there is a factual material dispute such that the case should proceed to trial. The juries decide whether the law has been violated, and if so, what the remedy should be. I have no frame of reference or mechanism to judge whether the criminal justice system is racist and have never had that issue come before me. However, I understand that in *Kimbrough v. United States*, 552 U.S. 85, 98 (2007), the United States Supreme Court noted the United States Sentencing Commission's finding that the 100 to 1 ratio for crack cocaine versus powder cocaine sentencing had created the perception that the criminal justice system was promoting racial disparities.

23. Is it appropriate to consider skin color or sex when making a political appointment? Is it constitutional?

Response: Article II of the Constitution gives the President the power, with the advice and consent of the Senate, to make appointments to high-level political positions in the federal government. As a judge, it is not for me to comment on what is or is not appropriate for the President and Senate to consider regarding political appointments.

24. Does the President have the authority to abolish the death penalty?

Response: Article I of the Constitution vests Congress with "[A]ll legislative Powers herein granted." Pursuant to that authority, Congress has enacted 18 United States Code § 3591, which states that a defendant who has been found guilty of certain offenses "shall

be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense." It would thus require appropriate legislation duly passed by Congress and signed into law by the President to amend the current criminal code regarding the availability of capital punishment for certain offenses. However, Article II of the Constitution grants the President the "Power to grant Reprieves and Pardons for Offenses against the United States" in individual cases.

25. Explain the U.S. Supreme Court's holding on the application to vacate stay in *Alabama Association of Realtors v. HHS*.

Response: In *Alabama Association of Realtors v. Dep't. of Health and Human Servs.*, 141 S. Ct. 2485, 2487-88 (2021), the United States Supreme Court vacated the district court's stay of the district court's order concluding the Centers for Disease Control lacked statutory authority to impose an eviction moratorium. The United States Supreme Court applied the governing four factor test announced in *Nken v. Holder*, 556 U.S. 418 (2009): "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Alabama Ass'n of Realtors*, 141 S. Ct. at 2487. The United States Supreme Court concluded that: "it is difficult to imagine [the plaintiffs] losing," the moratorium has put the plaintiffs "at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery," "the Government's interests have decreased," and that although "the public has a strong interest in combating the spread of the COVID-19 Delta variant," agencies may not do so unlawfully. *Id.* at 2488-90.

26. Is unlawfully setting a building on fire, amidst general rioting, a violent act under existing federal criminal law?

Response: Federal criminal law has several statutes that may encompass violent acts, including the: (1) Armed Career Criminal Act, which increases sentences for "certain federal defendants who have three prior convictions 'for a violent felony,' including 'burglary, arson, or extortion,'" *Descamps v. United States*, 570 U.S. 254, 257 (2013); (2) Immigration and Nationality Act, which "renders deportable any alien convicted of an 'aggravated felony' after entering the United States" and includes "a crime of violence" within the definition of aggravated felony, *Sessions v. Dimaya*, 138 S. Ct. 1204, 1211 (2018); and (3) United States Sentencing Guidelines which contain mandatory provisions that increase a defendant's criminal history for prior convictions for a crime of violence, *see, e.g.*, *United States v. Velasquez-Reyes*, 427 F.3d 1227, 1229 (9th Cir. 2005). In all of these circumstances, to determine whether the offense in question would qualify as a "violent felony" or "crime of violence" the United States Supreme Court has applied the categorical approach established in *Taylor v. United States*, 495 U.S. 575, 600 (1990). To my knowledge, this question is unresolved, as it would depend on the specific wording of the individual state statute in question compared to the generic definition of

the federal crime under the *Taylor* categorical approach. *See, e.g.*, *Velasquez-Reyes*, 427 F.3d at 1229-30 (concluding Washington's second degree arson statute fell within the general federal definition of arson and qualified as a "crime of violence" under the Sentencing Guidelines). If the issue came before me, I would similarly apply the categorical approach by comparing the relevant statute against the relevant federal criminal law.

27. Are students accused of sexual misconduct entitled to due process?

Response: The United States Supreme Court has held that the Due Process Clause can apply to public education institutions. *See, e.g.*, *Goss v. Lopez*, 419 U.S. 565, 579 (1975) ("The Due Process Clause will not shield [a student] from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted."). "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569 (1972). The United States Supreme Court has defined liberty interests to encompass instances where "a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him," whereas property interests must come from "independent source[s] such as state law." *Id.* at 573, 577. Lastly, private schools, without more, do not act under the color of state law and are not subject to the requirements of the Due Process Clause. *See Rendell-Baker v. Kohn*, 457 U.S 830, 836-37 (1982).

28. In *Americans for Prosperity Foundation v. Bonta,* the Court majority ruled that California's disclosure requirement was facially invalid because it burdens donors' First Amendment rights to freedom of association. However, the majority was evenly split as to which standard of scrutiny should apply to such cases. Please explain your understanding of the two major arguments, and which of the two standards an appellate judge is bound to apply?

Response: In *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382-83 (2021), Chief Justice Roberts, joined by Justices Kavanaugh and Barrett, stated that the standard of review that applies to First Amendment challenges to compelled disclosure is known as "exacting scrutiny." To withstand "exacting scrutiny," "there must be a 'substantial relation between the disclosure requirement and a sufficiently important government interest.'" *Id.* at 2383 (quoting *Doe v. Reed*, 561 U.S. 186, 196 (2010)).

Justice Thomas, who concurred in part and concurred in the judgment, would have applied strict scrutiny for the compelled disclosure requirement at issue. *Id.* at 2390 (Thomas, J., concurring in part and concurring in the judgment). Justice Alito, joined by Justice Gorsuch, wrote that there was "no need to decide which standard should be applied here or whether the same level of scrutiny should apply in all cases in which the compelled

disclosure of associations is challenged under the First Amendment." *Id.* at 2392 (Alito, J., concurring in part and concurring in the judgment).

The United States Supreme Court in *Marks v. United States*, 430 U.S. 188 (1977), gave advice to lower courts on how to interpret fragmented United States Supreme Court holdings. Specifically, "[w]hen a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred on the judgment on the narrowest grounds.'" *Marks*, 430 U.S. at 193 (quoting *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976)). I would therefore follow the United States Supreme Court's instruction in *Marks* to determine the standard to apply in future cases.

29. Please explain your understanding of the Supreme Court's holding in *Apple v. Pepper*. How does it reconcile with *Illinois Brick*?

Response: In *Apple v. Pepper*, 139 S. Ct. 1514 (2019), the United States Supreme Court held that owners of iPhones who purchased applications from Apple's "App Store" could bring an antitrust claim alleging that Apple had "monopolized the retail market for the sale of apps." *Id.* at 1518. Section 4 of the Clayton Act provides that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue." 15 U.S.C. § 15(a). However, in *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977), the United States Supreme Court held that a person may bring a Clayton Act claim against an alleged antitrust violator only if the person directly purchased a product from the alleged antitrust violator. *Id.* at 745-46. Thus, *Illinois Brick* established a bright-line rule that if "manufacturer A sells to retailer B, and retailer B sells to Consumer C, then C may not sue A." *Pepper*, 139 S. Ct. at 1521. In *Pepper*, the United States Supreme Court held that because "iPhone owners bought the apps directly from Apple," "the iPhone owners were direct purchasers who may sue Apple for alleged monopolization" under *Illinois Brick*. *Id.* at 1520.

30. In *Fulton v. City of Philadelphia*, the Supreme Court was asked to decide whether Philadelphia's refusal to contract with Catholic Social Services to provide foster care, unless it agrees to certify same-sex couples as foster parents, violates the Free Exercise Clause of the First Amendment. Please explain the Court's holding in the case.

Response: In *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1878-81 (2021), the United States Supreme Court held that section 3.21 of Philadelphia's standard foster care contract was "not generally applicable as required by *Smith*" and thus, strict scrutiny applied. The United States Supreme Court reached this conclusion because the provision at issue "incorporates a system of individual exemptions" and "[t]he creation of a formal mechanism for granting exceptions renders a policy not generally applicable." *Id.* at 1878-79. Applying strict scrutiny, the United States Supreme Court concluded that "the

interest of the City in the equal treatment of prospective foster parents and foster children . . . cannot justify denying [plaintiff] an exception for its religious exercise." *Id.* at 1882. Accordingly, the provision "cannot survive strict scrutiny, and violates the First Amendment." *Id.*

31. In *Carpenter v. United States*, what criteria did the Court use to distinguish between phenomena that are covered by the 4th Amendment 3rd Party Doctrine and those that are not?

Response: In *Carpenter v. United States*, 138 S. Ct. 2206 (2018), the United States Supreme Court explained that two factors should be considered when determining whether to apply the third-party doctrine to a new context. First, a court must consider the "'nature of the particular documents sought' to determine whether 'there is a legitimate 'expectation of privacy' concerning their contents.'" *Id.* at 2219. (internal citations omitted). Second, a court must determine whether the information was "truly 'shared' as one normally understands the term." *Id.* at 2220.

32. Please explain the Supreme Court's holding and reasoning in *Associated Press v. United States*.

Response: In *Associated Press v. United States*, 326 U.S. 1 (1945), the United States Supreme Court held that the Associated Press ("AP"), a joint venture of over 1,200 newspapers, violated the Sherman Act by denying membership to newspapers that competed with existing members at the local level. The AP operated by collecting news, both from its own reporters and from its member newspapers then distributing that news to all members. *Id.* at 3-4. However, the AP's By-Laws provided that a newspaper which competed at the local level with an existing AP member could only join if (1) the member-competitor gave permission or (2) if a majority of AP members voted for admission and the new member paid a substantial fee. *Id.* at 4-5. The By-Laws also prevented members from sharing news with non-members. *Id.* "The joint effect of [AP's] By-Laws," the United States Supreme Court explained, was "to block all newspaper non-members from any opportunity to buy news from AP or any of its publisher members." *Id.* at 9.

The United States Supreme Court determined that the "By-Laws on their face, and without regard to their past effect, constitute restraints of trade." *Id.* at 12. Specifically, the "[i]nability to buy news from the largest news agency, or any one of its multitude of members, can have the most serious effects on the publication of competitive newspapers." *Id.* at 13. Accordingly, the AP's By-Laws "tend[ed] to block the initiative which brings newcomers into a field of business and to frustrate the free enterprise system which it was the purpose of the Sherman Act to protect." *Id.* at 13-14.

The United States Supreme Court rejected the AP's argument that the AP had an unlimited right to "choose [its] associates." *Id.* at 14. The United States Supreme Court explained that, although "one can dispose of his property as he pleases, he cannot 'go

beyond the exercise of the right, and by contracts or combinations, express or implied, unduly hinder or obstruct the free and natural flow of commerce in the channels of interstate trade.'" *Id.* at 15 (internal citation omitted). Indeed, the "Sherman Act was specifically intended to prohibit independent businesses from becoming 'associates' in a common plan which is bound to reduce their competitor's opportunity to buy or sell the things in which the groups compete." *Id.*

Additionally, the United States Supreme Court rejected the AP's argument that "since there are other news agencies which sell news, it is not a violation of the Act for an overwhelming majority of American publishers to combine to decline to sell their news to the minority." *Id.* at 17. The United States Supreme Court explained that "the fact that an agreement to restrain trade does not inhibit competition in all of the objects of that trade cannot save it from the condemnation of the Sherman Act." *Id.*

Finally, the United States Supreme Court rejected the AP's argument that applying the Sherman Act to the AP would be "an abridgement of the freedom of the press guaranteed by the First Amendment." *Id.* at 19. The United States Supreme Court explained that "freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not." *Id.* at 20. Indeed, the United States Supreme Court noted that the "First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary." *Id.* Applying the Sherman Act to the AP would ensure the "widest possible dissemination of information," which is consistent with the First Amendment. *Id.*

33. Should courts place significant weight on underlying First Amendment considerations when making antitrust determinations relating to the dissemination of information to the public, as the *Associated Press* majority suggests?

Response: In *Associated Press v. United States*, 326 U.S. 1 (1945), the United States Supreme Court held that the Associated Press ("AP"), a joint venture of over 1,200 newspapers, violated the Sherman Act by denying membership to newspapers that competed with existing AP members at the local level. The United States Supreme Court rejected the AP's argument that applying the Sherman Act to an "association of publishers constitutes an abridgment of the freedom of the press guaranteed by the First Amendment." *Id.* at 19. The United States Supreme Court explained that "freedom to publish is guaranteed by the Constitution, but freedom to combine to keep others from publishing is not." *Id.* at 20. Indeed, the United States Supreme Court noted that the "First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary." *Id.* Applying the Sherman Act to the AP would ensure the "widest possible dissemination of information," which is consistent with the First Amendment. *Id.*

Accordingly, one interpretation of this portion of *Associated Press* is that if an antitrust defendant makes a First Amendment argument against the application of the antitrust laws, a court may take into account whether applying the antitrust laws would be

consistent with the goals of the First Amendment. I will fully and faithfully apply that precedent if the issue comes before me.

Senator Josh Hawley
Questions for the Record

Lucy Koh
Nominee, U.S. Circuit Judge for the Ninth Circuit

1. **The Supreme Court reversed or otherwise blocked at least three of your decisions in just six months. Are you aware of any other district court judges who have been reversed that often by the Supreme Court in such a short time? If so, list them.**

   Response: I am not aware of other district judges' reversal rates at the United States Supreme Court.

2. **The Supreme Court has recognized that the state has an interest in "protecting the potentiality of human life." *Roe v. Wade*, 410 U.S. 113. 162 (1973). Do you believe that this interest is legitimate?**

   Response: In *Roe v. Wade*, 410 U.S. 113 (1973), the United States Supreme Court recognized States' "important and legitimate interest in protecting the potentiality of human life." *Id.* at 162; *accord Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 871 (1992). As a United States District Judge, I am bound by and commit to following all United States Supreme Court and Ninth Circuit precedent and would continue to do so if confirmed to the Ninth Circuit.

3. **Please provide a detailed summary of the process that led to your nomination. Include the following details in particular:**

   a. **Who first raised the possibility of your nomination?**

   b. **Have you spoken with any interest groups, such as Demand Justice, concerning your nomination?**

   c. **How many conversations did you have with White House staff leading up to your nomination?**

      Response: On September 28, 2015, I sent a letter to the State Chair of Senator Feinstein's bipartisan Judicial Advisory Committee that expressed my interest in being considered for the opening on the Ninth Circuit. On October 12, 2015, I submitted my application to Senator Feinstein's State Chair. On October 30, 2015, I interviewed with Senator Feinstein's Judicial Advisory Committee. On January 6, 2016, an attorney from the White House Counsel's Office notified me that I would be considered for the Ninth Circuit opening. Beginning on January 6, 2016, I had contact with U.S. Department of Justice Office of Legal Policy attorneys and Senator Feinstein's Judiciary Committee staff. On February 18, 2016, I met with Senator Feinstein's Judiciary Committee staff and interviewed with attorneys from the White House Counsel's Office and the Department of

Justice. On February 25, 2016, President Obama submitted my nomination to the Senate. I had a confirmation hearing on July 13, 2016. On September 15, 2016, I was voted out of the Senate Judiciary Committee. My nomination was returned to President Obama on January 3, 2017.

On January 19, 2021, I submitted to the State Chair of Senator Feinstein's bipartisan Judicial Advisory Committee my application for any opening on the Ninth Circuit. I updated my application on March 16, 2021 and April 13, 2021.

On February 16, 2021, I submitted to the Statewide Chair of Senator Alex Padilla's bipartisan Judicial Evaluation Commission my application for any opening on the Ninth Circuit. I updated my application on April 15, 2021.

On May 28, 2021, an attorney from the White House Counsel's Office contacted me to confirm my interest in being considered for an opening on the Ninth Circuit. On June 7, 2021, an attorney from the White House Counsel's Office notified me that I would be considered for an opening on the Ninth Circuit. Since June 7, 2021, I have been in contact with attorneys from the Office of Legal Policy at the U.S. Department of Justice. On July 2, 2021, I was interviewed by Senator Padilla. On September 8, 2021, President Biden announced his intent to nominate me. On September 20, 2021, President Biden submitted my nomination to the Senate. I have not had conversations with interest groups, such as Demand Justice, concerning my nomination.

4. In *Tandon* v. *Newsom*, 20A151 (2021), the Supreme Court said, "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" What do you understand this statement to mean?

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the United States Supreme Court clarified that where a regulation treats comparable religious and secular activities differently, the regulation could only survive strict scrutiny's narrow tailoring requirement if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297.

5. In *City of San Jose, California v. Trump*, 497 F. Supp. 3d 680 (N.D. Cal., 2020), you enjoined the Secretary of Commerce from speaking with the President about certain Census-related matters.

a. Explain why you think your decision was consistent with the Opinions Clause in the Constitution?

b. Does the Supreme Court's decision in *Trump* v. *New York*, 592 U.S. ___ (2020), change your view?

Response: In *City of San Jose v. Trump*, 497 F. Supp. 3d 680 (N.D. Cal. 2020), the three-judge court considered statutory and constitutional challenges to a

Presidential Memorandum which made it the policy of the United States to exclude undocumented immigrants from the 2020 Census' congressional apportionment base. *Id*. at 698-99. The Presidential Memorandum directed the Secretary of Commerce to include, in his report of the "total population by States . . . as required for the apportionment of Representatives in Congress," 13 U.S.C. § 141(b), "information permitting the President" to exclude undocumented immigrants from the apportionment base. *City of San Jose*, 497 F. Supp. 3d at 698–99.

The three-judge court determined that the Presidential Memorandum was unlawful and that undocumented immigrants could not be excluded from the apportionment base. *See id*. at 729, 743. Accordingly, the three-judge court enjoined the Secretary of Commerce from including in his official report to the President any information about the number of undocumented immigrants in each state. *Id*. at 744-45.

The three-judge court held that the Opinions Clause of Article II did not require a different result. Under the Opinions Clause, the President "may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices." U.S. Const., Art. II, § 2, cl. 1. The three-judge court explained that prohibiting the Secretary of Commerce from including information about undocumented immigrants in the census report did not "keep the President from requesting information from the Secretary, including . . . the population by state excluding undocumented immigrants." *City of San Jose*, 497 F. Supp. 3d at 739. Instead, the injunction merely prevented the President from requiring the Secretary to alter the contents of the census report mandated by Congress. *Id*.

In *Trump v. New York*, 141 S. Ct. 530, 536-37 (2020), the United States Supreme Court held that challenges to the Presidential Memorandum were non-justiciable under the doctrines of standing and ripeness. The Court "express[ed] no view on the merits of the constitutional and related statutory claims presented." *Id.*

6. Do you believe the Ninth Circuit has authority to sit as an en banc court with all 29 active judges? If so, what standard would you apply when evaluating a party's request to assemble in that manner?

Response: Ninth Circuit Rule 35-3 states that "[i]n appropriate cases, the Court may order a rehearing by the full court following a rehearing or rehearing en banc." Ninth Circuit General Order 5.8 ("Rehearing by Full Court") sets out the procedure by which the full court (defined as "all active judges") would hear the case. Pursuant to Ninth Circuit G.O. 5.8(a)-(b), a party may file a timely petition "for a rehearing en banc before the full court" or a judge may make a sua sponte call within 7 days of the deadline to file the petition for rehearing en banc before the full court. Afterwards ordinary en banc rules and procedures govern. *Id*.

7. Explain your understanding of the holding of *Young v. Hawaii*, No. 12-17808 (2021), the history discussed in that case, and which of the competing narratives of the history you find to be more accurate.

Response: In *Young v. Hawaii*, 992 F.3d 765, 826 (9th Cir. 2021) (en banc), the Ninth Circuit upheld the state of Hawai'i's firearm licensing scheme. The Ninth Circuit held that the "government has the power to regulate arms in the public square" because such regulations are "laws restricting conduct that can be traced back to the founding era and are historically understood to fall outside of the Second Amendment's scope." *Id.* at 813 (cleaned up). As such, these regulations "may be upheld without further analysis." *Id.* (citation omitted).

In reaching this conclusion, the Ninth Circuit reviewed "more than 700 years of English and American legal history." *Id.* This history included: (1) "the English concept of the right to bear arms"; (2) colonial history which included "prohibitions on public carry" and "examples of colonial laws that not only permitted public carry, but mandated it"; and (3) post ratification history on public carry laws. *Id.* at 786-813.

This en banc decision is binding precedent. Moreover, a petition for certiorari review has been filed with the United States Supreme Court. It is not appropriate for me as a United States District Judge or as a circuit nominee to comment on the accuracy of this en banc precedent. I will continue to follow United States Supreme Court and Ninth Circuit precedent on these and all other issues.

8. Justice Marshall famously described his philosophy as "You do what you think is right and let the law catch up."

a. Do you agree with that philosophy?

b. If not, do you think it is a violation of the judicial oath to hold that philosophy?

Response: I am not familiar with that statement or its context. The judicial oath requires that judges "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States." I do my level best to fulfill my judicial oath each and every day.

9. What is the standard for exercising each kind of abstention in the court to which you have been nominated?

Response: The *Pullman* abstention doctrine addresses the scenario in which a plaintiff brings a suit in federal court alleging both a federal constitutional claim and a state law claim. *See R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 498 (1941). If resolving the state law claim could resolve the entire case and the state law

issue is unclear, the federal court should abstain from deciding the case. *Id.* at 501. The Ninth Circuit has held that, "[p]ursuant to the *Pullman* abstention doctrine, federal courts have the power to refrain from hearing cases . . . in which the resolution of a federal constitutional question might be obviated if the state courts were given the opportunity to interpret ambiguous state law." *United States v. State Water Res. Control Bd.*, 988 F.3d 1194, 1209 (9th Cir. 2021) (internal citation omitted).

The *Burford* abstention doctrine provides that a federal court should abstain from exercising diversity jurisdiction over a state law claim that could affect a state's administration of an important policy. *Burford v. Sun Oil Co*., 379 U.S. 315 (1943). In the Ninth Circuit, the *Burford* abstention doctrine applies if the party seeking to invoke the doctrine shows "(1) that the state has concentrated suits involving the local issue in a particular court; (2) the federal issues are not easily separable from complicated state law issues with which the state courts may have special competence; and (3) that federal review might disrupt state efforts to establish a coherent policy." *Tucker v. First Maryland Sav. & Loan, Inc.*, 942 F.2d 1401, 1405 (9th Cir. 1991).

The *Younger* abstention doctrine prohibits a federal court from enjoining certain pending state proceedings. *See Younger v. Harris*, 401 U.S. 37, 54 (1971). In the Ninth Circuit, the *Younger* abstention doctrine prohibits a federal court from enjoining "three categories of state proceedings: (1) ongoing state criminal prosecutions; (2) certain civil enforcement proceedings; and (3) civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *Bristol-Myers Squibb Co. v. Connors*, 979 F.3d 732, 735 (9th Cir. 2020).

The *Colorado River* abstention doctrine addresses the scenario in which there are concurrent state and federal suits addressing the same subject matter. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976). Federal courts should not stay a case in that scenario unless the "clearest of justifications" shows that a stay would be in the interest of "[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation." *Id.* at 818-19. In the Ninth Circuit, there are "eight factors to be considered in determining whether a Colorado River stay is appropriate: (1) which court first assumed jurisdiction over any property at stake; (2) the inconvenience of the federal forum; (3) the desire to avoid piecemeal litigation; (4) the order in which the forums obtained jurisdiction; (5) whether federal law or state law provides the rule of decision on the merits; (6) whether the state court proceedings can adequately protect the rights of the federal litigants; (7) the desire to avoid forum shopping; and (8) whether the state court proceedings will resolve all issues before the federal court." *United States v. State Water Res. Control Bd.*, 988 F.3d 1194, 1203 (9th Cir. 2021) (internal citation omitted).

The *Rooker-Feldman* doctrine prohibits federal courts from hearing "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The Ninth Circuit has "developed a two-part test to determine whether the *Rooker-Feldman* doctrine bars jurisdiction over a complaint filed in federal court": (1) "the federal complaint must assert that the plaintiff was injured by legal error or errors by the state court" and (2) "the federal complaint must seek relief from the state court judgment as the remedy." *Lundstrom v. Young*, 857 F. App'x 952, 955 (9th Cir. 2021) (internal citation omitted).

10. Have you ever worked on a legal case or representation in which you opposed a party's religious liberty claim?

a. If so, please describe the nature of the representation and the extent of your involvement. Please also include citations or reference to the cases, as appropriate.

Response: I have never worked on a legal case or representation in which I opposed a party's religious liberty claim.

11. What role should the original public meaning of the Constitution's text play in the courts' interpretation of its provisions?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text of the Second Amendment at the time of ratification.

12. Do you consider legislative history when interpreting legal texts?

Response: If a federal statutory provision had been previously interpreted by the United States Supreme Court or the Ninth Circuit, that interpretation would be binding precedent. If there is no binding precedent, I first look at the statutory text. As the United States Supreme Court has repeatedly stated, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005). I then look at the statutory scheme. "If the statutory language is unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If the text is ambiguous or the statutory scheme is not coherent or consistent, then I use the tools of statutory construction, such as the canons of construction. I would look to precedent of the United States Supreme Court and Ninth Circuit interpreting related or analogous statutory provisions to discern which statutory construction tools to use. As a last resort, I would consider legislative history, but would do so with

caution. The United States Supreme Court has stated that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil*, 545 U.S. at 568.

a. If so, do you treat all legislative history the same or do you believe some legislative history is more probative of legislative intent than others?

Response: The United States Supreme Court has held that legislative history may "shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil*, 545 U.S. at 568. In *Garcia v. United States*, the United States Supreme Court reiterated that "the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'" 469 U.S. 70, 76 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969)). Moreover, the United States Supreme Court has held that "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended." *Russello v. United States*, 464 U.S. 23-24 (1983).

The United States Supreme Court has cautioned that legislative history may give "unrepresentative committee members—or, worse yet, unelected staffers and lobbyists—both the power and the incentive to attempt strategic manipulations of legislative history to secure results they were unable to achieve through the statutory text." *Exxon Mobil*, 545 U.S. at 568. Thus, the United States Supreme Court has "eschewed reliance on the passing comments of one Member and casual statements from the floor debates." *Garcia*, 469 U.S. at 76 (citation omitted).

b. When, if ever, is it appropriate to consult the laws of foreign nations when interpreting the provisions of the U.S. Constitution?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court looked to the English common law prior to ratification when interpreting the ordinary public meaning of the Second Amendment.

13. Under the precedents of the Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard that applies to a claim that an execution protocol violates the Eighth Amendment's prohibition on cruel and unusual punishment?

Response: The United States Supreme Court has held that, to prove that an execution violates the Eighth Amendment's prohibition on cruel and unusual punishment, a prisoner must make several showings. The prisoner must show that there is "a 'substantial risk of harm,' an 'objectively intolerable risk of harm' that prevents prison officials from pleading that they were 'subjectively blameless for the purposes of the Eighth Amendment.'" *Baze v. Rees*, 553 U.S. 35, 50 (2008) (quoting *Farmer*

v. Brennan, 511 U.S. 825, 842 (1994)). To show this "objectively intolerable risk of harm," the United States Supreme Court has clarified that "prisoners must identify an alternative" to the default method of execution "that is 'feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain.'" *Glossip v. Gross*, 576 U.S. 863, 877 (2015) (quoting *Baze*, 553 U.S. at 52). The United States Supreme Court has also stated that "[s]ome risk of pain is inherent in any method of execution," so "the Constitution does not demand the avoidance of all risk of pain in carrying out executions." *Baze*, 553 U.S. 47. The United States Supreme Court has further clarified that only those methods of executions that "cruelly superadds pain to the death sentence" are inconsistent with the original meaning of the Eighth Amendment. *Bucklew v. Precythe*, 139 S. Ct. 1112, 1123-24 (2019). The Ninth Circuit is bound to apply the standards set forth by the United States Supreme Court. *See e.g., Lopez v. Brewer*, 680 F.3d 1068, 1073 (9th Cir. 2012) (citing *Baze*, 553 U.S. at 50).

14. Under the Supreme Court's holding in *Glossip v. Gross*, 135 S. Ct. 824 (2015), is a petitioner required to establish the availability of a "known and available alternative method" that has a lower risk of pain in order to succeed on a claim against an execution protocol under the Eighth Amendment?

Response: Important context for this response is in my response to Question 13. More specifically, I add that under the United States Supreme Court's precedent in *Glossip v. Gross*, 576 U.S. 863, 880 (2015), a petitioner prisoner is required to "plead and prove a known and available alternative" to the method of execution he is challenging. After proving that there is a "known and available alternative method," the United States Supreme Court held that the petitioner prisoner must establish that alternative method of execution significantly reduces a substantial risk of severe pain. *Id*. at 877.

15. Has the Supreme Court or the U.S. Court of Appeals for the Circuit to which you have been nominated ever recognized a constitutional right to DNA analysis for habeas corpus petitioners in order to prove their innocence of their convicted crime?

Response: In *District Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 67-74 (2009), the United States Supreme Court held that there was no due process right (procedural or substantive) to access DNA evidence for a habeas petitioner.

16. Do you have any doubt about your ability to consider cases in which the government seeks the death penalty, or habeas corpus petitions for relief from a sentence of death, fairly and objectively?

Response: No.

17. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a facially neutral state governmental action is a substantial burden on the free exercise of religion? Please cite any cases you believe would be binding precedent.

Response: In *Employment Division, Department of Human Resources of Oregon v. Smith*, the United States Supreme Court held that a law which incidentally burdens religion ordinarily is not subject to strict scrutiny under the Free Exercise Clause if the law is neutral and generally applicable. 494 U.S. 872, 878-82 (1990). If a law is neutral and generally applicable, rational basis scrutiny applies. *Id.*

Determining whether a law is neutral and generally applicable requires a two-part analysis. In turn, each part requires two steps.

First, a court must determine whether a law is neutral. That determination requires two steps. The first step asks whether the law is facially neutral. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S 520, 533-34 (1993). If the law is not facially neutral, the law is subject to strict scrutiny. *Id.* If the law is facially neutral, then the court must proceed to the second step. *Id.* at 534 ("Facial neutrality is not determinative.").

The second step asks whether the facially neutral law's enactment or enforcement was motivated by religious animus on the part of the governmental actor. A facially neutral law whose enactment or enforcement was motivated by religious animus is subject to strict scrutiny. Courts must review the record to determine whether there is any evidence of religious animus. *Lukumi*, 508 U.S. at 534-42 (facially neutral city ordinances were non-neutral because they were prompted by concern for Santeria religious practices). In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the United States Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause because hostile statements by officials in public meetings showed that the application of the law was motivated by religious animus. *Id.* at 1729-31 (2018) (finding open expressions of hostility by state civil rights commissioners sufficient to show animus).

Second, a court must determine whether a law is generally applicable. That determination also requires two steps. The first step asks whether any exemptions to the law invite "the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). If the law makes such an invitation, the law is not generally applicable and is subject to strict scrutiny. If the law does not make such an invitation, then the court must proceed to the second step.

The second step asks whether the law is overbroad and underinclusive such that it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 141 S. Ct. at 1877. To

determine whether a restriction is overbroad and underinclusive, courts must compare religious conduct with comparable secular conduct. *See Lukumi*, 508 U.S. at 544-45. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the United States Supreme Court clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* at 1296. "Comparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id.*

In *Tandon,* the United States Supreme Court also clarified that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* "It is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

However, not every application of "a valid and neutral law of generally applicability is necessarily constitutional under the Free Exercise Clause." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017). For example, the United States Supreme Court has found a ministerial exception to Title VII employment discrimination laws. *See, e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) (holding that Title VII's prohibition on employment discrimination does not apply to churches when they hire or fire ministers); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (precluding two lay teachers who instructed students in religious studies and prepared students for participation in Church services from pursuing Title VII employment discrimination suits against religious schools).

18. Under Supreme Court and U.S. Court of Appeals for the Circuit to which you have been nominated, what is the legal standard used to evaluate a claim that a state governmental action discriminates against a religious group or religious belief? Please cite any cases you believe would be binding precedent.

Response: Please see my response to Question 17.

19. What is the standard in the U.S. Court of Appeals for the Circuit to which you have been nominated for evaluating whether a person's religious belief is held sincerely?

Response: A religious belief is "sincere" if it is not "obviously" a "sham" or an "absurdit[y]." *Callahan v. Woods*, 658 F.2d 679, 683 (9th Cir. 1981). If a belief is sincere, a court may not inquire into the "truth or verity" of the belief. *United States v. Ballard*, 322 U.S. 78 (1944); *see also Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014) (emphasizing that "it is not for [the court] to say that [plaintiffs'] religious beliefs are mistaken or insubstantial. Instead, [the court's] 'narrow function . . . in this context is to determine' whether the line drawn reflects 'an honest conviction'" (citation omitted)). Sincere religious beliefs "need not be confined in either source or content to traditional or parochial concepts of religion" and can include beliefs held only by a single person. *Welsh v. United States*, 398 U.S. 333, 340 (1970). Indeed, even atheism can count as a sincerely held belief. *Torcaso v. Watkins*, 367 U.S. 488, 490 (1961).

20. The Second Amendment provides that, "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."

a. What is your understanding of the Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008)?

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that the Second Amendment guarantees "the individual right to possess and carry weapons in case of confrontation," regardless of the individual's participation in a "well regulated Militia." *Id*. at 592.

b. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Second Amendment or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: No.

21. Dissenting in *Lochner v. New York*, Justice Oliver Wendell Holmes, Jr. wrote that, "The 14th Amendment does not enact Mr. Herbert Spencer's Social Statics." 198 U.S. 45, 75 (1905).

a. What do you believe Justice Holmes meant by that statement, and do you agree with it?

Response: In his dissent, Justice Holmes explained that "a Constitution is not intended to embody a particular economic theory." *Lochner v. New York*, 198 U.S. 45, 75 (1905) (Holmes, J., dissenting). I believe that the above quoted statement indicates Justice Holmes's belief that the Fourteenth Amendment did not enact the specific economic view set out in the *Lochner* majority opinion. *See Lochner*, 198 U.S. at 64 ("[T]he freedom of master and employee to contract with each other in relation to their employment, and in

defining the same, cannot be prohibited or interfered with, without violating the Federal Constitution.").

b. Do you believe that *Lochner v. New York*, 198 U.S. 45 (1905), was correctly decided? Why or why not?

Response: As a United States District Judge, I am bound to follow binding United States Supreme Court precedent. My understanding is that much of *Lochner* was abrogated by *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 392 (1937) ("There is no absolute freedom to do as one wills or to contract as one chooses.").

22. In *Trump v. Hawaii*, the Supreme Court overruled *Korematsu v. United States*, 323 U.S. 214 (1944), saying that the decision—which had not been followed in over 50 years—had "been overruled in the court of history." 138 S. Ct. 2392, 2423 (2018). What is your understanding of that phrase?

Response: The United States Supreme Court has held that when it reexamines a prior holding, "its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case." *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 854 (1992). Specifically, the United States Supreme Court considers whether its ruling "has proven to be intolerable simply in defying practical workability, whether the rule is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation, whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine, or whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification." *Id*. at 854-55 (internal citations omitted). More recently, the United States Supreme Court has also considered the quality of the reasoning of a prior ruling in deciding whether to overrule the prior ruling. *Janus v. AFSCME*, 138 S. Ct. 2448, 2478-79 (2018).

23. Are there any Supreme Court opinions that have not been formally overruled by the Supreme Court that you believe are no longer good law?

a. If so, what are they?

b. With those exceptions noted, do you commit to faithfully applying all other Supreme Court precedents as decided?

Response: I commit to faithfully applying all binding United States Supreme Court precedents. Any personal views are not relevant to my judicial decision-making.

24. Judge Learned Hand famously said 90% of market share "is enough to constitute a monopoly; it is doubtful whether sixty or sixty-four percent would be enough; and certainly thirty-three per cent is not." *United States v. Aluminum Co. of America*, 148 F.2d 416, 424 (2d Cir. 1945).

a. Do you agree with Judge Learned Hand?

b. If not, please explain why you disagree with Judge Learned Hand.

c. What, in your understanding, is in the minimum percentage of market share for a company to constitute a monopoly? Please provide a numerical answer or appropriate legal citation.

Response: In *Eastman Kodak Co. v. Image Tech. Servs., Inc.,* 504 U.S. 451, 481 (1992), the United States Supreme Court held that evidence that a defendant holds more than 80% share of the product market "with no readily available substitutes" is sufficient to support a finding of monopoly power. *Kodak* also cited United States Supreme Court precedent for the proposition that "over two-thirds of the market is a monopoly." *Id*. (citing *American Tobacco Co. v. United States*, 328 U.S. 781, 797 (1946)). Applying these precedents, the Ninth Circuit has concluded that a "65% market share" typically "establishes a prima facie case of market power." *See Image Tech. Servs., Inc. v. Eastman Kodak Co*., 125 F.3d 1195, 1206 (9th Cir. 1997). By contrast, "numerous cases hold that a market share of less than 50 percent is presumptively insufficient to establish market power." *Rebel Oil Co. v. Atl. Richfield Co*., 51 F.3d 1421, 1434 (9th Cir. 1995). However, the Ninth Circuit also has held that a company with less than 50% market share may have monopoly power if "entry barriers are high and competitors are unable to expand their output in response to supracompetitive pricing." *Id*. at 438 n.10. I will follow United States Supreme Court and Ninth Circuit precedent. Any personal views on the opinion of Judge Learned Hand of the Second Circuit are not relevant to my judicial decision-making.

25. Please describe your understanding of the "federal common law."

Response: In *Rodriguez v. Fed. Deposit Ins. Corp*., 140 S. Ct. 713, 717 (2020), the United States Supreme Court explained that "federal common law plays a necessarily modest role," comprised of "only limited areas . . . in which federal judges may appropriately craft the rule of decision" such as "admiralty disputes, and certain controversies between States." The United States Supreme Court emphasized that to "claim a new area for common lawmaking, strict conditions must be satisfied" including "one of the most basic: In the absence of congressional authorization,

common lawmaking must be 'necessary to protect uniquely federal interests.'" *Id*. (quoting *Texas Indus., Inc. v. Radcliff Materials, Inc*., 451 U.S. 630, 640 (1981)).

26. If a state constitution contains a provision protecting a civil right and is phrased identically with a provision in the federal constitution, how would you determine the scope of the state constitutional right?

a. Do you believe that identical texts should be interpreted identically?

b. Do you believe that the federal provision provides a floor but that the state provision provides greater protections?

Response: Generally, the interpretation of a state constitutional provision is a matter of state law. Federal courts must defer to the decisions of the highest court in the state whose constitution the federal court is interpreting. *See Erie R.R. Co. v. Tomkins*, 304 U.S. 64, 78 (1938) ("Except in matters governed by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.").

The United States Constitution is "the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI cl. 2. This clause means that protections granted by the United States Constitution are binding on states, "notwithstanding" what a state's constitution provides.

27. Do you believe that *Brown v. Board of Education*, 347 U.S. 483 (1954), was correctly decided?

Response: I follow all United States Supreme Court precedent. As a United States District Judge, it is improper for me to comment on any issues that may come before me. However, it is unlikely that de jure racial segregation in schools would be reimposed in the United States, so like prior judicial nominees, I can state that I believe *Brown v. Board of Education* was correctly decided.

28. Do federal courts have the legal authority to issue nationwide injunctions?

a. If so, what is the source of that authority?

b. In what circumstances, if any, is it appropriate for courts to exercise this authority?

Response: The United States Supreme Court has noted that an "injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). However, the United States Supreme Court has upheld nationwide injunctions granted by federal courts when those injunctions are necessary to grant relief to the parties. *See Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2088-89 (2017) (upholding portion of preliminary injunction with respect to parties and nonparties similarly situated). Nationwide injunctions reflect the principle that injunctive relief "should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs." *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979).

29. Under what circumstances do you believe it is appropriate for a federal district judge to issue a nationwide injunction against the implementation of a federal law, administrative agency decision, executive order, or similar federal policy?

Response: Please see my response to Question 28.

30. What is your understanding of the role of federalism in our constitutional system?

Response: The United States Supreme Court has explained that the "federal system established by our Constitution preserves the status of the States in two ways." *Alden v. Maine*, 527 U.S. 706, 714 (1999). "First, it reserves to them a substantial portion of the Nation's primary sovereignty, together with the dignity and essential attributes inhering in that status." *Id.* "Second, even as to matters within the competence of the National Government, the constitutional design secures the founding generation's rejection of the concept of a central government that would act upon and through the States in favor of a system in which the State and Federal Governments would exercise concurrent authority over the people—who were, in Hamilton's words, the only proper objects of government." *Id.*

This system was designed for "the protection of individuals." *New York v. United States*, 505 U.S. 144, 181 (1992). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991).

31. Under what circumstances should a federal court abstain from resolving a pending legal question in deference to adjudication by a state court?

Response: Please see my response to Question 9.

32. What in your view are the relative advantages and disadvantages of awarding damages versus injunctive relief?

Response: The United States Supreme Court has stated that injunctive relief is most appropriate when there is "irreparable injury and inadequacy of legal remedies," including damages. *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987). However, injunctions are also "extraordinary remed[ies]" through which the court directs the conduct of a party "with the full backing of its coercive powers." *Nken v. Holder*, 556 U.S. 418, 428 (2009).

33. What is your understanding of the Supreme Court's precedents on substantive due process?

Response: In *Washington v. Glucksberg*, 117 S.Ct. 2258, 2268 (1997), the United States Supreme Court held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and are "implicit in the concept of ordered liberty." (internal quotation marks omitted). In *Glucksberg*, the United States Supreme Court recognized that the "liberty" protected by the Due Process Clause includes the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1925), *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952); and to abortion, *Planned Parenthood of Pa. v. Casey*, 505 U.S. 833 (1992). The United States Supreme Court in *Glucksberg* also noted that it "assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment." *Glucksberg*, 521 U.S. 720 (citing *Cruzan v. Missouri Dep't of Health*, 497 U.S. 261, 278–279 (1990)). After *Glucksberg*, the United States Supreme Court has also articulated a right to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999), and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

34. The First Amendment provides "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

a. What is your view of the scope of the First Amendment's right to free exercise of religion?

Response: Please see my response to Question 17.

b. Is the right to free exercise of religion synonymous and coextensive with freedom of worship? If not, what else does it include?

Response: The United States Supreme Court has not identified the difference in meaning, if any, between the two. For example, in *Lee v. Weisman*, the

United States Supreme Court referred to the right protected by the Free Exercise Clause in the First Amendment as the "freedom of worship." 505 U.S. 577, 591 (1992); *see also West Virginia State Board of Ed. v. Barnette*, 319 U.S. 624, 638 (1943) (listing the relevant rights as "free speech, a free press, freedom of worship and assembly"). Conversely, in *McDaniel v. Paty*, the United States Supreme Court discussed the First Amendment right as "the right to the free exercise of religion." 435 U.S. 618, 620 (1978); *see also Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012, 2019-20 (discussing a Free Exercise claim as whether denial of a generally available benefit "imposes a penalty on the free exercise of religion").

c. What standard or test would you apply when determining whether a governmental action is a substantial burden on the free exercise of religion?

Response: Please see my response to Question 17.

d. Under what circumstances and using what standard is it appropriate for a federal court to question the sincerity of a religiously held belief?

Response: Please see my response to Question 19.

e. Describe your understanding of the relationship between the Religious Freedom Restoration Act and other federal laws, such as those governing areas like employment and education?

Response: The United States Supreme Court has explained that the Religious Freedom Restoration Act (RFRA) "applies to all Federal law, and the implementation of that law, whether statutory or otherwise. RFRA also permits Congress to exclude statutes from RFRA's protections." *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020).

f. Have you ever issued a judicial opinion, order, or other decision adjudicating a claim under the Religious Freedom Restoration Act, the Religious Land use and Institutionalized Person Act, the Establishment Clause, the Free Exercise Clause, or any analogous state law? If yes, please provide citations to or copies of those decisions.

Response: On October 14, 2021 I ran a Westlaw search for the cases requested above. The following cases appear responsive to the request. *See Smith v. Cruzen*, Nos. 14-CV-4791-LHK (PR), 15-CV-1739 LHK (PR), 15-CV-1891 LHK (PR), 15-CV-2025 LHK (PR), 15-CV-2041 LHK (PR), 15-CV-2017 LHK (PR), 15-CV-2121 LHK (PR), 15-CV-2122 LHK (PR), 15-CV-2205 LHK (PR), 15-CV-2487 LHK (PR), 2017 WL 7343445 (N.D. Cal.

May 2, 2017); *Smith v. Cruzen*, No. 14-CV-04791 LHK (PR), 2017 WL 4865565 (N.D. Cal. Oct. 26, 2017); *Rice v. Ramsey*, No. C 09–1496 LHK (PR), 2012 WL 4177438 (N.D. Cal. Sept. 19, 2012); *Rice v. Curry*, No. C 09–1496 LHK (PR), 2012 WL 4902829 (N.D. Cal. Oct. 12, 2012); *Saif'ullah v. Cruzen*, No. 15-CV-01739 LHK (PR), 2017 WL 4865601 (N.D. Cal. Oct. 26, 2017); *Saif'ullah v. Albritton*, No. 15-CV-05600 LHK (PR), 2017 WL 6558719 (N.D. Cal. Oct. 26, 2017); *Roe v. San Jose Unified School District Board*, No. 20-CV-02798-LHK, 2021 WL 292035 (N.D. Cal. Jan. 28, 2021); *France v. Noll*, No. C 09–4652 LHK (PR), 2011 WL 2149093 (N.D. Cal. May 31, 2011); *Chaparro v. Ducart*, No. C 14-4955 LHK (PR), 2016 WL 491635 (N.D. Cal. Feb. 9, 2016); *Art of Living Foundation v. Does 1-10*, No. 5:10–cv–05022–LHK, 2012 WL 1565281 (N.D. Cal. May 1, 2012); *Singleton v. Volunteers of America*, No. C 12-5399 LHK (PR), 2013 WL 5934647 (N.D. Cal. Nov. 4, 2013); *Hill v. Dept' of Justice*, No. C 12–5008 LHK (PR), 2013 WL 489680 (N.D. Cal. Feb. 7, 2013); *Baker v. Lewis*, No. C 11–3493 LHK (PR), 2012 WL 1932867 (N.D. Cal. May 29, 2012); and *Tandon v. Newsom*, 517 F. Supp. 3d 922 (N.D. Cal. 2021).

35. Under American law, a criminal defendant cannot be convicted unless found to be guilty "beyond a reasonable doubt." On a scale of 0% to 100%, what is your understanding of the confidence threshold necessary for you to say that you believe something "beyond a reasonable doubt." Please provide a numerical answer.

Response: The United States Supreme Court has indicated that "an effort to fix some general, numerically precise degree of certainty" to other standards "may not be helpful." *See Illinois v. Gates*, 462 U.S. 213, 235 (1983) (refusing to assign a numerical value to "probable cause"). In general, "proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty." Ninth Circuit Jury Instructions Committee, Manual of Model Criminal Jury Instructions for the District Courts of the Ninth Circuit 46 (2021). "A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation." *Id*.

36. The Supreme Court has held that a state prisoner may only show that a state decision applied federal law erroneously for the purposes of obtaining a writ of habeas corpus under 28 U.S.C. § 2254(d) if "there is no possibility fairminded jurists could disagree that the state court's decision conflicts with th[e Supreme] Court's precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

a. Do you agree that if there is a circuit split on the underlying issue of federal law, that by definition "fairminded jurists could disagree that the state court's decision conflicts with the Supreme Court's precedents"?

b. In light of the importance of federalism, do you agree that if a state court has issued an opinion on the underlying question of federal law, that by

definition "fairminded jurists could disagree that the state court's decision conflicts if the Supreme Court's precedents"?

c. If you disagree with either of these statements, please explain why and provide examples.

Response: The United States Supreme Court has explained that "[i]t is not an unreasonable application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by this Court." *Harrington v. Richter*, 562 U.S. 86, 101 (2011) (quoting *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009)). Thus, a "federal court may grant habeas relief only if a state court violated '*clearly established* Federal law, as determined by *the Supreme Court* of the United States.'" *Dunn v. Reeves*, 141 S. Ct. 2405, 2410-11 (2021) (emphasis in original). "This 'wide latitude' means that federal courts can correct only 'extreme malfunctions in the state criminal justice system.' And in reviewing the work of their peers, federal judges must begin with the 'presumption that state courts know and follow the law.'" *Id*. (cleaned up). I would follow United States Supreme Court precedent, and any personal views are irrelevant to my judicial decision-making.

37. U.S. Courts of Appeals sometimes issue "unpublished" decisions and suggest that these decisions are not precedential. *Cf.* Rule 32.1 for the U.S. Court of Appeals for the Tenth Circuit.

a. Do you believe it is appropriate for courts to issue "unpublished" decisions?

b. If yes, please explain if and how you believe this practice is consistent with the rule of law.

c. If confirmed, would you treat unpublished decisions as precedential?

d. If not, how is this consistent with the rule of law?

e. If confirmed, would you consider unpublished decisions cited by litigants when hearing cases?

f. Would you take steps to discourage any litigants from citing unpublished opinions? *Cf.* Rule 32.1A for the U.S. Court of Appeals for the Eighth Circuit.

g. Would you prohibit litigants from citing unpublished opinions? *Cf.* Rule 32.1 for the U.S. Court of Appeals for the District of Columbia.

Response: The Ninth Circuit Rules establish the framework for publication of opinions versus unpublished dispositions of the Court. *See* Circuit Rules 36-1, 36-2, 36-3. For example, Ninth Circuit Rule 36-3(a) states that "[u]npublished dispositions and orders of this Court are not precedent, except when relevant under the doctrine of law of the case or rules of claim preclusion or issue preclusion." However, unpublished dispositions and orders issued on or after January 1, 2007 may still be cited in the Ninth Circuit, consistent with Federal Rule of Appellate Procedure 32.1. Furthermore, pursuant to Circuit Rule 36-4, the parties may seek publication of an unpublished disposition, and if such a request is granted, the disposition "will be redesignated an opinion." If confirmed, I would follow the Ninth Circuit Rules and the Federal Rules of Appellate Procedure.

38. In your legal career:

a. How many cases have you tried as first chair?

b. How many have you tried as second chair?

c. How many depositions have you taken?

d. How many depositions have you defended?

e. How many cases have you argued before a federal appellate court?

f. How many cases have you argued before a state appellate court?

g. How many times have you appeared before a federal agency, and in what capacity?

h. How many dispositive motions have you argued before trial courts?

i. How many evidentiary motions have you argued before trial courts?

Responses: As a lawyer, I have tried three cases by myself and four cases with co-counsel with whom I evenly divided the witnesses and arguments. As a lawyer, I drafted for one of my trials a jury instruction, which was adopted as the Ninth Circuit Model Criminal Jury Instruction for Scheme to Defraud—Vicarious Liability. I have briefed more than a dozen appeals. I have argued before the Ninth Circuit once. To the best of my recollection, I have defended about a dozen depositions and taken less than a half dozen depositions. I have litigated patent cases before the United States International Trade Commission. I have argued many evidentiary and dispositive motions in trial courts. As a state and federal trial judge, I have tried 271 cases.

When I worked for the United States Senate Judiciary Committee and the United States Department of Justice Office of the Deputy Attorney General and Office of Legislative Affairs, I did not engage in litigation.

39. If any of your previous jobs required you to track billable hours:

a. What is the maximum number of hours that you billed in a single year?

b. What portion of these were dedicated to pro bono work?

Response: To the best of my recollection, I billed approximately 2,400 to 2,900 hours per year. I cannot recall what portion was dedicated to pro bono work. I did not bill my time doing community service work.

40. Justice Scalia said, "The judge who always likes the result he reaches is a bad judge."

a. What do you understand this statement to mean?

Response: I understand this quote to mean that judges should impartially and faithfully discharge their duties without consideration of their personal opinions as to the results. I do my level best to fulfill my judicial oath to impartially and faithfully discharge my duties each and every day.

41. Chief Justice Roberts said, "Judges are like umpires. Umpires don't make the rules, they apply them."

a. What do you understand this statement to mean?

b. Do you agree or disagree with this statement?

Response: I understand this quote to mean that the legislative and executive branches of government enact laws and that the role of the judicial branch of government is limited to impartially and faithfully applying those laws. I do my level best to fulfill my judicial oath to impartially and faithfully discharge my duties each and every day.

42. When encouraged to "do justice," Justice Holmes is said to have replied, "That is not my job. It is my job to apply the law."

a. What do you think Justice Holmes meant by this?

b. Do you agree or disagree with Justice Holmes? Please explain.

Response: I understand this quote to mean that judges should impartially and faithfully discharge their duties without consideration of their personal

opinions as to the results. I do my level best to fulfill my judicial oath to impartially and faithfully discharge my duties each and every day.

43. Have you ever taken the position in litigation or a publication that a federal or state statute was unconstitutional?

a. If yes, please provide appropriate citations.

Response: To the best of my recollection, I have never taken a position in litigation or in a publication that a federal or state statute was unconstitutional.

44. Since you were first contacted about being under consideration for this nomination, have you deleted or attempted to delete any content from your social media? If so, please produce copies of the originals.

Response: No.

45. What were the last three books you read?

Response: Alexe Van Buren & Dixie Grimes, THE B.T.C. OLD-FASHIONED GROCERY COOKBOOK (2014); Colin Woodward, AMERICAN NATIONS: A HISTORY OF THE ELEVEN RIVAL REGIONAL CULTURES OF NORTH AMERICA (2011); Michelle Zauner, CRYING IN H MART (2021).

46. Do you believe America is a systemically racist country?

Response: As a California Superior Court and United States District Judge for nearly 14 years, I adjudicate cases raising specific claims of discrimination. These cases require me to determine such issues as whether a claim has been stated, whether administrative remedies have been exhausted, and whether statutes of limitations bar a claim. I also decide whether there is a factual material dispute such that the case should proceed to trial. The juries decide whether the law has been violated, and if so, what the remedy should be. I have no frame of reference or mechanism to judge whether an entire nation is racist and have never had that issue come before me.

47. What case or legal representation are you most proud of?

Response: As a lawyer, I drafted for one of my trials a jury instruction, which was adopted as the Ninth Circuit Model Criminal Jury Instruction for Scheme to Defraud—Vicarious Liability.

48. Have you ever taken a position in litigation that conflicted with your personal views?

a. How did you handle the situation?

b. If confirmed, do you commit to applying the law written, regardless of your personal beliefs concerning the policies embodied in legislation?

Response: To the best of my recollection, I believe I have. I fulfilled my duty to zealously advocate on behalf of my client and made good faith, legally supported arguments. As a United States District Judge, I apply the law as written regardless of my personal beliefs and would continue to do so if confirmed as a circuit judge.

49. What three law professors' works do you read most often?

Response: In my work as a United States District Judge, I rely on primary sources such as state and federal constitutions, statutes, regulations, and case law. I rarely rely on treatises or law review articles. I do not regularly read treatises or law review articles, so I do not have any law professors whose work I read most often.

50. Which of the Federalist Papers has most shaped your views of the law?

Response: Federalist No. 78 sets forth the establishment, role, and independence of the judiciary in safeguarding the Constitution relative to legislative power.

51. What is a judicial opinion, law review article, or other legal opinion that made you change your mind?

Response: I have read many judicial opinions that have been persuasively written. I do not regularly read law review articles or treatises.

52. Do you believe that an unborn child is a human being?

Response: As a United States District Judge, it is not appropriate for me to respond to this question because it may create the impression that I have prejudged a future case that may come before me and raise this question.

53. Other than at your hearing before the Senate Judiciary Committee, have you ever testified under oath? Under what circumstances? If this testimony is available online or as a record, please include the reference below or as an attachment.

Response: To the best of my recollection, I have testified under oath four times. First, about 30 years ago, a law school classmate came to my home the morning after a party at which she asserted that she had been raped. I accompanied her to the police station that day and ultimately testified before the grand jury and at trial in *Commonwealth v. David Nolan*, MICR 1993-01056, Middlesex Superior Court. Second, I testified at my February 11, 2010 hearing on my nomination to the United

States District Court for the Northern District of California. Third, I testified at my July 13, 2016 hearing on my nomination to the Ninth Circuit. Fourth, I testified at my October 6, 2021 hearing on my nomination to the Ninth Circuit.

54. In the course of considering your candidacy for this position, has anyone at the White House or Department of Justice asked for you to provide your views on:

a. *Roe v. Wade,* 410 U.S. 113 (1973)?

b. The Supreme Court's substantive due process precedents?

c. Systemic racism?

d. Critical race theory?

Response: No.

55. Do you currently hold any shares in the following companies:

a. Apple?

b. Amazon?

c. Google?

d. Facebook?

e. Twitter?

Response: No. My husband and I invest only in mutual funds and do not own any individual stocks.

56. Have you ever authored or edited a brief that was filed in court without your name on the brief?

a. If so, please identify those cases with appropriate citation.

Response: To the best of my recollection, I have not authored or edited a brief that was filed in court without my name on the brief.

57. Have you ever confessed error to a court?

a. If so, please describe the circumstances.

Response: To the best of my recollection, no.

58. Please describe your understanding of the duty of candor, if any, that nominees have to state their views on their judicial philosophy and be forthcoming when testifying before the Senate Judiciary Committee. *See* U.S. Const. art. II, § 2, cl. 2.

Response: All nominees take the oath before they testify at their confirmation hearing to provide truthful information, so that the United States Senate can fulfill its advice and consent role under the Constitution.

Senator Mike Lee

Questions for the Record

Judge Lucy Haeran Koh, Nominee to the Ninth Circuit Court of Appeals

1. **What's worse: Invalidating a law that is constitutional, or upholding a law that is unconstitutional?**

   Response: Both are undesirable outcomes that judges should strive to avoid.

2. **From 1789 to 1857, the Supreme Court exercised its power of judicial review to strike down federal statutes as unconstitutional only twice. Since then, the invalidation of federal statutes by the Supreme Court has become significantly more common. What do you believe accounts for this change? What are the downsides to the aggressive exercise of judicial review? What are the downsides to judicial passivity?**

   Response: I am not aware of the change in the number of statutes struck down as unconstitutional by the United States Supreme Court over time. United States citizens have a constitutionally protected right to "petition the Government for a redress of grievances." U.S. Const. Amend. I. All judges must fulfill their judicial oaths to "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States."

3. **How would you explain the difference between judicial review and judicial supremacy?**

   Response: I understand the term "judicial review" to mean that the judicial branch has the ability to review the legality of legislative and executive actions. *See Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803) (declaring the Judiciary Act of 1789 unconstitutional). The term "judicial supremacy" appears to have multiple definitions, and I have never used it as a lawyer or as a judge. The term may refer to the view that the only branch of the federal government that has "[t]he power to interpret the Constitution in a case or controversy" is the judiciary. *See City of Boerne v. Flores*, 521 U.S. 507, 524 (1997). The term may also refer to the idea of the court's exceeding its own constitutionally granted authority. *See, e.g.*, *Obergefell v. Hodges*, 576 U.S. 644, 708 (2015) (Roberts, C.J., dissenting).

4. **Abraham Lincoln explained his refusal to honor the *Dred Scott* decision by asserting that "If the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court… the people will have ceased to be their own rulers, having to that extent practically resigned their**

Government into the hands of that eminent tribunal." How do you think elected officials should balance their independent obligation to follow the Constitution with the need to respect duly rendered judicial decisions?

Response: Pursuant to Article VI of the Constitution, federal and state legislators, executive officers, and judicial officers are bound by oath to support the Constitution. Moreover, state legislators and executive and judicial officers are bound to follow decisions of the United States Supreme Court interpreting the Constitution. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.").

5. **In Federalist 78, Hamilton says that the courts are the least dangerous branch because they have neither force nor will, but only judgment. Explain why that's important to keep in mind when judging.**

Response: In *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), the United States Supreme Court stated: "It is emphatically the province and duty of the judicial department to say what the law is." Unlike the legislative and executive branches of government, the courts' role is limited to interpreting what the law is in cases or controversies as set forth in Article III of the Constitution.

6. **How would you describe your judicial philosophy?**

Response: My judicial philosophy is to fulfill my judicial oath, which requires that I "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon me" under the Constitution and laws of the United States. This requires that I understand the limited role of the judiciary, which is to carefully consider the facts in the record and apply the law faithfully and impartially in deciding the limited issues before me. I also consider all of the parties' arguments and strive to issue timely orders that clearly and comprehensively state my reasoning.

7. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: If a federal statutory provision had been previously interpreted by the United States Supreme Court or the Ninth Circuit, that interpretation would be binding precedent. If there is no binding precedent, I first look at the statutory text. As the United States Supreme Court has repeatedly stated, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). I then look at the statutory scheme. "If the statutory language is unambiguous and 'the statutory scheme is coherent

and consistent,'" then "the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If the text is ambiguous or the statutory scheme is not coherent or consistent, then I use the tools of statutory construction, such as the canons of construction. I would look to precedent of the United States Supreme Court and Ninth Circuit interpreting related or analogous statutory provisions to discern which statutory construction tools to use. As a last resort, I would consider legislative history, but would do so with caution. The United States Supreme Court has stated that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil*, 545 U.S. at 568.

8. **What sources would you consult when deciding a case that turned on the interpretation of a federal statute?**

Response: Please see my response to Question 7.

9. **What role do the text and original meaning of a constitutional provision play when interpreting the Constitution?**

Response: In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text at the time of ratification.

10. **How would you describe your approach to reading statutes – how much weight do you give to the plain meaning of the text? When we talk about the plain meaning of a statute, are we talking about the public understanding at the time of enactment, or does the meaning change as social norms and linguistic conventions evolve?**

Response: If a federal statutory provision had been previously interpreted by the United States Supreme Court or the Ninth Circuit, that interpretation would be binding precedent. If there is no binding precedent, I first look at the statutory text. As the United States Supreme Court has repeatedly stated, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005). I then look at the statutory scheme. "If the statutory language is unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If the text is ambiguous or the statutory scheme is not coherent or consistent, then I use the tools of statutory construction, such as the canons of construction. I would look to precedent of the United States Supreme Court and Ninth Circuit interpreting related or analogous statutory provisions to discern which statutory construction tools to use. As a last resort, I would consider legislative history, but would do so with caution. The United States Supreme Court has stated that

"legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil*, 545 U.S. at 568.

In *Bostock v. Clayton Cty*., 140 S. Ct. 1731, 1738 (2020), the United States Supreme Court stated that: "This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court conducted a textual analysis and considered contemporary dictionaries, commentaries, and state constitutions to determine the ordinary public meaning of the text of the Second Amendment at the time of ratification.

11. **What are the constitutional requirements for standing?**

Response: The doctrine of standing enforces Article III's requirement that federal courts adjudicate only "genuine, live dispute[s] between adverse parties." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020). To satisfy "the 'irreducible constitutional minimum' of standing," a "plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo v. Robins*, 136 S. Ct. 1540, 1547 (2016) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

12. **Do you believe Congress has implied powers beyond those enumerated in the Constitution? If so, what are those implied powers?**

Response: The Necessary and Proper Clause grants Congress the power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Art. I, § 8, cl. 18. In *M'Culloch v. Maryland*, 17 U.S. 316, 436-37 (1819), the United States Supreme Court held that Congress has implied powers derived from the Necessary and Proper Clause. Specifically, the United States Supreme Court stated: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional." *Id*. at 421.

13. **Where Congress enacts a law without reference to a specific Constitutional enumerated power, how would you evaluate the constitutionality of that law?**

Response: The United States Supreme Court has instructed that "the 'question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise.'" *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 570 (2012) (quoting *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 144 (1948)). Thus, a court should not automatically strike down the law "because Congress used the wrong

labels" or failed to identify the source of its authority. *Id.* at 569-70. However, a court must consider whether a law is within the scope of Congress's enumerated powers, regardless of whether Congress specifically referred to any power. *Id*. at 570. Any exercise of Congressional authority may not violate other provisions of the Constitution. *See, e.g.*, *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997) (holding portions of Congressional statute regulating internet transmission of obscene or indecent messages to minors violated the First Amendment).

14. **Does the Constitution protect rights that are not expressly enumerated in the Constitution? Which rights?**

Response: In *Washington v. Glucksberg*, 117 S. Ct. 2258, 2268 (1997), the United States Supreme Court held that the Fifth and Fourteenth Amendments protect "those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and tradition," and are "implicit in the concept of ordered liberty." (internal quotation marks omitted). In *Glucksberg*, the United States Supreme Court recognized that the "liberty" protected by the Due Process Clause includes the right to marry, *Loving v. Virginia*, 388 U.S. 1 (1967); to have children, *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, *Meyer v. Nebraska*, 262 U.S. 390 (1925), *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); to marital privacy, *Griswold v. Connecticut*, 381 U.S. 479 (1965); to use contraception, *Eisenstadt v. Baird*, 405 U.S. 438 (1972); to bodily integrity, *Rochin v. California*, 342 U.S. 165 (1952); and to abortion, *Planned Parenthood of Pa. v. Casey*, 505 U.S. 833 (1992). The United States Supreme Court in *Glucksberg* also noted that it "assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment." *Glucksberg*, 521 U.S. 720 (citing *Cruzan v. Missouri Dep't of Health*, 497 U.S. 261, 278-79 (1990)). After *Glucksberg*, the United States Supreme Court has also articulated a right to interstate travel, *Saenz v. Roe*, 526 U.S. 489 (1999), and the right of same-sex couples to marry, *Obergefell v. Hodges*, 576 U.S. 644 (2015).

15. **What rights are protected under substantive due process?**

Response: Please see my response to Question 14.

16. **If you believe substantive due process protects some personal rights such as a right to abortion, but not economic rights such as those at stake in *Lochner v. New York*, on what basis do you distinguish these types of rights for constitutional purposes?**

Response: My response to Questions 14 and 15 are based on my understanding of United States Supreme Court precedent and not on personal beliefs. I faithfully follow all United States Supreme Court precedent regardless of any personal beliefs I may have.

17. **What are the limits on Congress's power under the Commerce Clause?**

Response: The Commerce Clause of Article I grants Congress the authority to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, § 8, cl. 3. The United States Supreme Court has "read that to mean that Congress may regulate 'the channels of interstate commerce,' 'persons or things in interstate commerce,' and 'those activities that substantially affect interstate commerce.'" *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012) (citing *United States v. Morrison*, 529 U.S. 598, 618-19 (2000)). However, Congress may not use the Commerce Clause to "compel[] individuals to become active in commerce by purchasing a product." *Id*. at 552. In other words, Congress may not regulate "inaction." *Id*.

18. **What qualifies a particular group as a "suspect class," such that laws affecting that group must survive strict scrutiny?**

Response: A group of people is a "suspect class" if the group has "the traditional indicia of suspectedness." *Johnson v. Robison*, 415 U.S. 361, 375 n.14 (1974). Under this standard, the United States Supreme Court has explained that a group is a "suspect class" if it has an "immutable characteristic determined solely by the accident of birth" or if it is "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *Id*. For example, a group of people classified by race, religion, national origin, or alienage is a suspect class. *See, e.g.*, *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *Graham v. Richardson*, 403 U.S. 365, 371-32 (1971).

19. **How would you describe the role that checks and balances and separation of powers play in the Constitution's structure?**

Response: In *Seila Law v. CFPB*, the United States Supreme Court stated: "The Framers recognized that, in the long term, structural protections against abuse of power were critical to preserving liberty. Their solution to governmental power and its perils was simple: divide it." 140 S. Ct. 2183, 2202 (2020) (citation omitted). The United States Supreme Court has emphasized that "the system of separated powers and checks and balances established in the Constitution was regarded by the Framers as 'a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.'" *Morrison v. Olson*, 487 U.S. 654, 693 (1988) (quoting *Buckley v. Valeo*, 424 U.S. 1, 122 (1976)).

20. **How would you go about deciding a case in which one branch assumed an authority not granted it by the text of the Constitution?**

Response: I would begin with "the Constitution's text and structure, as well as precedent and history bearing on the question." *Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015). For example, in the context of "claims of Presidential power," the United States Supreme Court applies "Justice Jackson's familiar tripartite framework from" *Youngstown*. *See id.*

(citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring)). Under this framework, the exercise of executive power is divided into three categories: (1) "when 'the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate"; (2) "'in absence of either a congressional grant or denial of authority' there is a 'zone of twilight in which he and Congress may have concurrent authority,' and where 'congressional inertia, indifference or quiescence may' invite the exercise of executive power"; and (3) "when 'the President takes measures incompatible with the expressed or implied will of Congress . . . he can rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter.'" *Id.* (quoting *Youngstown*, 343 U.S. at 635-37). For the President to succeed in the last category, the executive authority must be "both 'exclusive' and 'conclusive' on the issue." *Id.* (quoting *Youngstown*, 343 U.S. at 637-38).

21. **What role should empathy play in a judge's consideration of a case?**

Response: Empathy should play no role in deciding the outcome of a case. A judge must decide cases based on the law and the facts alone. However, judges should treat parties and counsel with dignity and respect.

22. **The Biden Administration has defined "equity" as: "the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality." Do you agree with that definition? If not, how would you define equity?**

Response: I was not previously aware of this definition from the Biden Administration. If a case involving the definition of "equity" came before me, I would look to United States Supreme Court and Ninth Circuit precedent to define it. My personal views are irrelevant to my judicial decision-making.

23. **Is there a difference between "equity" and "equality?" If so, what is it?**

Response: Black's Law Dictionary defines "equity" as "fairness; impartiality; evenhanded dealing" and the "body of principles constituting what is fair and right; natural law." Black's Law Dictionary defines "equality" as the "quality, state, or condition of being equal; esp., likeness in power or political status."

24. **How do you define "systemic racism?"**

Response: I am not aware of any consensus definition of this term, and I do not have a personal definition of this term.

25. **How do you define "critical race theory?"**

Response: Black's Law Dictionary defines "critical race theory" as a "reform movement within the legal profession, particularly within academia, whose adherents believe that the legal system has disempowered racial minorities."

26. **Do you distinguish "critical race theory" from "systemic racism," and if so, how?**

Response: Please see my responses to Questions 24 and 25.

27. **Does the 14th Amendment's equal protection clause guarantee "equity" as defined by the Biden Administration (listed above in question 24)?**

Response: If this issue came before me, I would apply United States Supreme Court and Ninth Circuit precedent on the Equal Protection Clause.

28. **You stated in *Tandon v. Newsom* that "as Plaintiffs concede, the right to earn a living is not a fundamental liberty interest that has been traditionally protected by the substantive component of the Due Process Clause."[1] Please explain what you mean by this.**

Response: "Neither the United States Supreme Court nor the Ninth Circuit 'has []ever held that the right to pursue work is a fundamental right.'" *Tandon v. Newsom*, 517 F. Supp. 3d 922, 949 (N.D. Cal. 2021) (quoting *Sagana v. Tenorio*, 384 F.3d 731, 743 (9th Cir. 2004)). "Rather, the Ninth Circuit has held that the right to pursue one's profession is not a fundamental right protected by the Due Process Clause." *Id*. (*Franceschi v. Yee*, 887 F.3d 927, 937 (9th Cir. 2018)). Under Ninth Circuit precedent, "[s]ubstantive due process has . . . been largely confined to protecting fundamental liberty interests such as marriage, procreation, contraception, family relationships, child rearing, education and a person's bodily integrity, which are 'deeply rooted in this Nation's history and tradition.'" *Id*. (quoting *Franceschi*, 887 F.3d at 937) (internal quotation marks omitted).

29. **In your order you distinguished the *Tandon* case from others like *Roman Catholic Diocese of Brooklyn v. Cuomo* and *South Bay United Pentecostal Church v. Newsom*, by essentially saying that houses of worship could not be restricted, while private gatherings for religious purposes could be. Can you elaborate on that distinction? Does the right to free exercise exist only in houses of worship?**

[1] *Id.* at 949.

a. **Again, if individuals are allowed to gather in groups larger than three households for other purposes, why can they be banned from doing so for religious purposes?**

Response: In *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the United States Supreme Court clarified that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." The Court explained that "[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court also clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* "Comparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id*.

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than secular activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

30. **In 2017, you heard the case *Federal Trade Commission v. Qualcomm*, in which the FTC argued that Qualcomm was using anti-competitive policies in supplying cell phone chips to companies like Apple. Your decision broadened the market to include the entire market for cellular services, included a global injunction against Qualcomm, required the company to renegotiate all its chip contracts with smartphone makers, and imposed seven years of compliance monitoring on the company. The Ninth Circuit stayed this decision and called it "an improper excursion beyond the outer limits of the Sherman Act." This is just one of many examples where a higher court has overturned one of your decisions, which is concerning.**

a. **Now that you are being considered for a position on a higher court, what assurance can you offer that you will base your decisions on the text of existing statutes and Supreme Court precedent?**

Response: I will fulfill my judicial oath, which requires that I "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon me" under the Constitution and laws of the United States. This requires that I understand the limited role of the judiciary, which is to carefully consider the facts in the record and apply the law faithfully and impartially in deciding the limited issues before me.

Questions for the Record from
Senator Thom Tillis for
Lucy Haeran Koh,
Nominee to be U.S. Circuit Judge for the Ninth Circuit

Judicial Philosophy and Judicial Management

1. **Do you believe that a judge's personal views are irrelevant when it comes to interpreting and applying the law?**

   Response: Yes.

2. **What is judicial activism? Do you consider judicial activism appropriate?**

   Response: Judicial activism means a lot of different things to different people. I define judicial activism as a judge who disregards precedent to achieve some personal policy objective or result. It is not appropriate. It undermines the rule of law and faith in our system of justice. Judges must faithfully and impartially discharge their duties.

3. **Do you believe impartiality is an aspiration or an expectation for a judge?**

   Response: Impartiality is a requirement of all judges. All judges must fulfill their judicial oaths to "administer justice without respect to persons, and do equal right to the poor and to the rich," and to "faithfully and impartially discharge and perform all the duties incumbent upon" them "under the Constitution and laws of the United States."

4. **Should a judge second-guess policy decisions by Congress or state legislative bodies to reach a desired outcome?**

   Response: No.

5. **If politicians or the public don't like the outcome of a case, is it ever a judge's responsibility to take that into consideration or to make a ruling based on these feelings? Or is it Congress' responsibility to come to work and change a law where a faithful application of it by judges results in an outcome we either didn't intend or don't like?**

   Response: My response is no to the first question and yes to the second question.

6. **Does faithfully interpreting the law sometimes result in an undesirable outcome? How, as a judge, do you reconcile that?**

   Response: A judge's personal views, if any, are irrelevant to the judicial decision-making process. Judges must impartially and faithfully apply precedent to the facts in the record.

7. **Should a judge interject his or her own politics or policy preferences when interpreting and applying the law?**

   Response: No.

8. Do you think judicial interpretation is different for Circuit Court Judges and District Court Judges? Why or why not?

Response: No. In my case, both courts follow United States Supreme Court and Ninth Circuit precedent and look to United States Supreme Court and Ninth Circuit precedent as to what tools of interpretation to use. District judges in other circuits would follow the precedent of their circuits as well as the United States Supreme Court.

9. When you were nominated for the Ninth Circuit in 2016, I read your student comments about minority judges:

As a law student, you told the Harvard Women's Law Journal: "Part of the problem has to do with the homogeneity of the bench—the reluctance of judges to look beyond their own frame of reference in interpreting the law." She continued: "'[M]inority judges' still need to maintain the disguise of 'objectivity' or else face challenges to their decisions . . . Yes, [a minority judge] is going to identify with [a minority party's] experiences, but she can't 'admit' this. We've got to get more clever and say, look, we're just as neutral as any sixty-year-old white man." She also asked, "[T]actically, what's more pragmatic, to pretend we're objective or to deconstruct objectivity itself?"

In 2016 when I asked you about this, you stated that you now "completely disagree" with that statement. You confirmed that at your hearing on October 5.

a. Does that still hold true?

Response: Yes, I completely disagree with this statement 100% from 31 years ago.

b. Is there anything you would like to add to your statement?

Response: Our justice system and the rule of law absolutely depend on judges being objective and impartial. During the 31 years since I made this statement in the fall of 1990, I have worked for the United States Senate Judiciary Committee, the United States Department of Justice, and the United States Attorney's Office as well as worked in private practice. I have also served as a California Superior Court judge and as a United States District Judge for the past nearly 14 years. I have fulfilled my judicial oath to be impartial and to faithfully discharge my duties.

c. In your role as a judge, is it important to maintain objectivity?

Response: Absolutely.

d. How would you now define objectivity? Has it changed since your statement as a law student, cited above?

Response: I would define objectivity as not being influenced by any personal likes or dislikes, opinions, prejudices or sympathy. I do not recall my understanding of objectivity when I made the statement in the fall of 1990, but I would expect my understanding was largely the same then.

10. Please provide a list of the ten most notable cases you have heard as a District Court Judge.

a. What were the primary legal issues in each of these cases?

1. *In Re: Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-MD-02752-LHK (N.D. Cal.)

This is a Multi-District Litigation involving 32 data breach class action lawsuits filed against Yahoo nationwide. I appointed lead plaintiffs' counsel in February 2017. I granted in part and denied in part motions to dismiss in 2017 and 2018. The parties filed their first motion for preliminary approval of class action settlement in October 2018. I denied this motion on several grounds. Among other things, I found that the settlement's release of claims was inadequately disclosed and overbroad. Accordingly, the parties amended their settlement and filed a second motion for preliminary approval of a $117.5 million class action settlement. I preliminarily approved and then finally approved this amended settlement in 2019 and 2020, respectively. To maximize class members' recovery, I trimmed the plaintiffs' attorneys' fees.

The orders on the motions to dismiss are 2017 WL 3727318 (N.D. Cal. Aug. 30, 2017), and 313 F. Supp. 3d 1113 (N.D. Cal. 2018). The order initially denying preliminary approval is 2019 WL 387322 (N.D. Cal. Jan. 30, 2019). The order granting final approval and reducing the requested attorneys' fees is 2020 WL 4212811 (N.D. Cal. July 22, 2020).

2. *Daniel Miranda and Landmark Protection, Inc. v. U.S. Sec. Assocs., Inc.*, No. 18-CV-734-LHK (N.D. Cal.)

This case involved nonpayment of wages, breach of employment agreement, and open book account claims under California law as well as breach of asset purchase agreement and breach of covenant of good faith and fair dealing claims under Delaware law. In 2019, I denied the defendant's motion for summary judgment, ruled on motions in limine and evidentiary objections, presided over a jury trial, and denied the defendant's motions for judgment as a matter of law. After the jury verdict, I awarded prejudgment interest and waiting time penalties. The parties settled as to the plaintiff's attorneys' fees and stipulated to dismiss the case with prejudice.

The order denying the defendant's motion for summary judgment is 2019 WL 1960351 (N.D. Cal. May 2, 2019). The order ruling on the parties' motions in

limine is 2019 WL 2929966 (N.D. Cal. July 8, 2019). The order denying the defendant's motion for judgment as a matter of law is *Miranda v. U.S. Sec. Assocs., Inc.*, No. 18-CV-00734-LHK, No. 161 (N.D. Cal. Aug. 8, 2019). The order awarding prejudgment interest and waiting time penalties is *Miranda v. U.S. Sec. Assocs., Inc.*, No. 18-CV-00734-LHK, No. 183 (N.D. Cal. Aug. 15, 2019).

3. *Apple, Inc. v. Samsung Elecs. Co. Ltd.*, No. 11-CV-01846-LHK (N.D. Cal.)

This dispute involved claims of patent and trademark infringement, trade dress dilution, antitrust and contractual violations, and unfair competition. In 2011, I ordered expedited discovery and denied a preliminary injunction. After ruling on motions to dismiss, claim construction, *Daubert* motions, spoliation of evidence motions, summary judgment motions, and pre-trial motions, I presided over a jury trial in 2012 that resulted in a damages award of over $1 billion. In 2012 to 2013, I ruled on numerous post-trial motions including one ordering a damages retrial for certain patents and certain products and another denying a permanent injunction. The Federal Circuit reversed and remanded both injunction orders. In 2013, I presided over a damages jury retrial. In 2014, I ruled on numerous post-trial motions and denied a permanent injunction. The parties did not appeal the denial of the permanent injunction. In 2015, the Federal Circuit invalidated Apple's trade dresses. As a result, I scheduled a March 2016 retrial on patent damages for five products. However, I stayed the case when the Supreme Court of the United States granted certiorari in March 2016.

In December 2016, the U.S. Supreme Court reversed the Federal Circuit's method of calculating design patent damages and remanded. In February 2017, the Federal Circuit remanded the case to determine if Samsung had waived the design patent damages issue, and if not, to determine the proper method of calculating design patent damages and whether a new trial was necessary. In July 2017, I found that Samsung had not waived the design patent damages issue.

In October 2017, I held that a new trial with the correct method of calculating design patent damages was necessary. After ruling on summary judgment, motions to exclude expert reports and testimony, and on motions in limine, I presided over a jury trial in May 2018. The jury awarded design patent damages totaling over $538 million. The parties settled and stipulated to dismissal in June 2018 before I ruled on post-trial motions.

In total, I have issued approximately 120 substantive orders in this case. Below are citations to significant orders. The orders on motions to dismiss are 2011 WL 4948567 (N.D. Cal. Oct. 18, 2011), and 2012 WL 1672493 (N.D. Cal. May 14, 2012). The claim construction order is 2012 WL 1123752 (N.D. Cal. Apr. 4, 2012). The order granting-in-part and denying-in-part the parties' motions to exclude experts is 2012 WL 2571332 (N.D. Cal. June 30, 2012). The order finding that both parties spoliated evidence is 888 F. Supp. 2d 976 (N.D. Cal.

2012). The summary judgment orders are 2012 WL 2571719 (N.D. Cal. June 30, 2012) (order denying Samsung's motion for summary judgment), and 876 F. Supp. 2d 1141 (N.D. Cal. 2012) (order granting-in-part and denying-in-part Apple's motion for summary judgment). The post-trial orders from the previous trials are 909 F. Supp. 2d 1147 (N.D. Cal. 2012) (order denying permanent injunction), *aff'd in part, vacated in part*, 735 F.3d 1352 (Fed. Cir. 2013); 2012 WL 6574785 (N.D. Cal. Dec. 17, 2012) (order regarding juror misconduct); 2013 WL 11675 (N.D. Cal. Jan. 1, 2013) (order denying motion to stay); 932 F. Supp. 2d 1076 (N.D. Cal. 2013) (order regarding indefiniteness); 920 F. Supp. 2d 1079 (N.D. Cal. 2013) (order granting-in-part and denying-in-part Samsung's motion for judgment as a matter of law), *aff'd in part, rev'd in part*, 786 F.3d 983 (Fed. Cir. 2015); 920 F. Supp. 2d 1116 (N.D. Cal. 2013) (order granting-in-part and denying-in-part Apple's motion for judgment as a matter of law); 2013 WL 412862 (N.D. Cal. Jan. 29, 2013) (order denying damages enhancements); 926 F. Supp. 2d 1100 (N.D. Cal. 2013) (order regarding damages); 2014 WL 549324 (N.D. Cal. Feb. 7, 2014) (order denying cross-motions for judgment as a matter of law); and 2014 WL 976898 (N.D. Cal. Mar. 6, 2014) (order denying permanent injunction).

4. *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-2617 LHK (N.D. Cal.)

This was a Multi-District Litigation involving 129 data breach class action lawsuits filed against Anthem and Blue Cross Blue Shield insurance companies nationwide. In 2015, I appointed lead plaintiffs' counsel, granted a motion to remand, and denied two motions to remand. In 2016, I granted in part and denied in part two motions to dismiss. The parties fully briefed the issue of class certification, but reached a class action settlement for $115 million prior to the class certification ruling. In 2017, I granted preliminary approval of the class action settlement. The plaintiffs then moved for final approval of the class action settlement and for attorneys' fees. I appointed a Special Master to conduct a review of the plaintiffs' billing records. In 2018, I granted final approval of the class action settlement and reduced the plaintiffs' attorneys' fees in order to maximize class members' recovery.

The orders on the motions to dismiss are 162 F. Supp. 3d 953 (N.D. Cal. 2016), and 2016 WL 3029783 (N.D. Cal. May 27, 2016). The order granting preliminary approval is 2017 WL 3730912 (N.D. Cal. Aug. 25, 2017). The order granting final approval is 327 F.R.D. 299 (N.D. Cal. 2018). The order adopting in part the Special Master's report and recommendation regarding the motion for attorneys' fees and costs is 2018 WL 3960068 (N.D. Cal. Aug. 17, 2018).

5. *Apple, Inc. v. Samsung Elecs. Co. Ltd.*, No. 12-CV-00630 LHK (N.D. Cal.)

This dispute involved cross-claims of patent infringement as well as claims of antitrust and contractual violations. In July 2012, I granted a preliminary

injunction, which the Federal Circuit reversed. In 2013 and 2014, I construed the patents' claims and ruled on summary judgment and *Daubert* motions. In 2014, I presided over a jury trial that resulted in a damages award of over $119 million. I also ruled on pretrial and post-trial motions. I denied a permanent injunction, which the Federal Circuit reversed. In February 2016, the Federal Circuit affirmed the judgments and verdicts as to four patents, but reversed the judgments and jury verdicts for three Apple patents that were the bases for the permanent injunction that the Federal Circuit ordered that I enter.

However, in October 2016, the Federal Circuit en banc reversed the Federal Circuit panel, upheld the judgment and verdicts for the three reversed Apple patents, and remanded the issue of willful infringement in light of an intervening United States Supreme Court case. In June 2017, I concluded that the jury's finding of willfulness was supported by substantial evidence and granted a moderate award of enhanced damages. In February 2018, I granted in part and denied in part Apple's motion for ongoing royalties, thereby awarding Apple $6,494,252 in royalties. Final judgment was entered in April 2018.

Below are citations to significant orders. The order granting a preliminary injunction is 877 F. Supp. 2d 838 (N.D. Cal. 2012), *rev'd and remanded*, 695 F.3d 1370 (Fed. Cir. 2012). The claim construction orders are 2013 WL 1502181 (N.D. Cal. Apr. 10, 2013), and 2014 WL 1322028 (N.D. Cal. Mar. 28, 2014). The order on cross-motions for summary judgment is 2014 WL 252045 (N.D. Cal. Jan. 21, 2014). The order granting-in-part and denying-in-part the parties' motions to exclude experts is 2014 WL 794328 (N.D. Cal. Feb. 25, 2014). The post-trial orders are 2014 WL 12776506 (N.D. Cal. Aug. 21, 2014) (order denying judgment of invalidity); 2014 WL 7496140 (N.D. Cal. Aug. 27, 2014) (order denying permanent injunction), *vacated and remanded*, 809 F.3d 633 (Fed. Cir. 2015); 67 F. Supp. 3d 1100 (N.D. Cal. 2014) (order granting-in-part and denying-in-part Apple's motion for judgment as a matter of law), *aff'd in part, vacated in part*, 816 F.3d 788 (Fed. Cir.), *aff'd in part and remanded in part on en banc reh'g*, 839 F.3d 1034 (Fed. Cir. 2016) (en banc); 2014 WL 4467837 (N.D. Cal. Sept. 9, 2014) (order granting-in-part and denying-in-part Samsung's motion for judgment as a matter of law), *aff'd in part, rev'd in part*, 816 F.3d 788 (Fed. Cir. 2016); 2014 WL 6687122 (N.D. Cal. Nov. 25, 2014) (order granting-in-part Apple's motion for ongoing royalties); and *Apple, Inc. v. Samsung Elecs. Co., Ltd.*, No. 12-CV-00630-LHK, No. 2157 (N.D. Cal. Jan. 18, 2016) (order entering permanent injunction) (copy supplied).

6. *In re High Tech Emp. Antitrust Litig.*, No. 11-CV-02509-LHK (N.D. Cal.)

This case was a consolidation of five antitrust class action lawsuits. In 2012, I granted in part and denied in part a motion to dismiss. In 2013, I denied with leave to amend class certification and denied in part and granted in part the parties' various motions to strike expert reports and evidence. Later in 2013, I certified a damages class and preliminarily approved the plaintiffs' $20 million

settlement with Intuit, Lucasfilm, and Pixar. In 2014, the Ninth Circuit denied review of my class certification order. Also in 2014, I denied six summary judgment motions, denied the defendants' motion to exclude the plaintiffs' expert report, and denied in part and granted in part the defendants' motion to strike the plaintiffs' expert report. In 2014, I granted final approval to the plaintiffs' settlement with Intuit, Lucasfilm, and Pixar, but denied preliminary approval of the plaintiffs' $324.5 million settlement with Apple, Google, Intel, and Adobe. In 2015, I granted preliminary and final approval of the plaintiffs' new $415 million settlement with Apple, Google, Intel, and Adobe.

Below are citations to significant orders. The order on both motions to dismiss is 856 F. Supp. 2d 1103 (N.D. Cal. 2012). The orders on class certification are 289 F.R.D. 555 (N.D. Cal. 2013) (order denying class certification and granting-in-part and denying-in-part motions to strike expert reports), and 985 F. Supp. 2d 1167 (N.D. Cal. 2013) (order granting motion for class certification). The order denying the defendants' six motions for summary judgment is 2014 WL 1283086 (N.D. Cal. Mar. 28, 2014). The order granting final approval of the plaintiffs' settlement with Pixar, Lucasfilm, and Intuit is 2014 WL 10520477 (N.D. Cal. May 16, 2014). The order denying preliminary approval of the settlement with Apple, Google, Intel, and Adobe is 2014 WL 3917126 (N.D. Cal. Aug. 8, 2014). The order granting final approval of the plaintiffs' settlement with Apple, Google, Intel, and Adobe is 2015 WL 5159441 (N.D. Cal. Sept. 2, 2015).

7. *United States v. Orellana*, No. 09-CR-00096 LHK (N.D. Cal.), and *Orellana v. United States*, No. 13-CV-00698 LHK (N.D. Cal.), 2015 WL 4694038 (N.D. Cal. Aug. 6, 2015)

In 2012, I ruled on pretrial motions and presided over a five-day criminal bench trial involving one count of possession with intent to distribute cocaine and one count of conspiracy. I found the defendant guilty of both counts and sentenced him. In 2014, the Ninth Circuit affirmed the conviction and sentence. The defendant thereafter filed a petition for writ of habeas corpus. In 2015, I denied with prejudice the defendant's habeas corpus petition, but reduced the defendant's sentence pursuant to the parties' stipulation based on a change in the U.S. Sentencing Guidelines.

8. *State Farm Life Ins. Co. v. Cai*, No. 09-CV-00396-LHK (N.D. Cal.)

This was an interpleader action to resolve competing claims to a life insurance policy stemming from Mr. Cai's allegedly felonious and intentional killing of the insured, his wife, Ms. Deng. In 2010, I denied State Farm's motion for judgment in interpleader and granted a motion to dismiss cross-claims. In 2011, I denied Mr. Cai's motion to dismiss a cross-claim brought by Ms. Deng's estate. In 2013, I granted State Farm's renewed motion for judgment in interpleader and ruled on State Farm's motion for attorneys' fees. In 2014, I ruled on pretrial motions and presided over a six-day jury trial on cross-claims brought against Mr. Cai by

Ms. Deng's estate. Mr. Cai represented himself until he retained counsel prior to trial. The jury found that Mr. Cai feloniously and intentionally killed Ms. Deng, and thus the life insurance proceeds were awarded to Ms. Deng's estate.

The order denying judgment in interpleader and granting the motion to dismiss cross-claims is 2010 WL 4628228 (N.D. Cal. Nov. 4, 2010). The order denying the second motion to dismiss cross-claims is 2011 WL 864938 (N.D. Cal. Mar. 11, 2011). The order entering judgment in interpleader for State Farm is 2013 WL 4782383 (N.D. Cal. Sept. 6, 2013).

9. *Lift-U v. Ricon Corp.*, No. 10-CV-1850 LHK (N.D. Cal.); *Lift-U v. N. Am. Bus Indus., Inc.*, No. 12-CV-1129 LHK (N.D. Cal.); and *Lift-U v. N. Am. Bus Indus., Inc.*, No. 12-CV-3603 LHK (N.D. Cal.)

These were three patent infringement actions. In 2011, I construed the patent claims, granted summary judgment of invalidity, and denied summary judgment of non-infringement. In 2012, I granted in part and denied in part the parties' cross-motions for partial summary judgment, which addressed validity, infringement, willfulness, and lost profits for four patents. At the parties' request, I presided over the settlement conference that settled all three cases in 2012.

The orders on summary judgment are 2011 WL 5118634 (N.D. Cal. Oct. 28, 2011) (order granting summary judgment of invalidity and denying summary judgment of non-infringement), and 2012 WL 5303301 (N.D. Cal. Oct. 25, 2012) (order granting-in-part and denying-in-part the cross-motions for partial summary judgment).

10. *Columbia Cas. Ins. Co. v. Gordon Trucking*, No. 09-CV-05441 LHK (N.D. Cal.)

This was a civil action between two co-insurers over responsibility for paying for defense costs and the settlement of an underlying state court personal injury case. In 2010, I granted a motion to dismiss and granted in part and denied in part a motion for partial summary judgment. In 2011, I denied motions in limine and presided over a four-day bench trial. After trial, I found that the plaintiff was obligated to pay its $5 million policy limits. The parties reached a settlement and filed a stipulation of dismissal prior to filing any post-trial motions.

The order granting the motion to dismiss is 2010 WL 4591977 (N.D. Cal. Nov. 4, 2010). The order granting-in-part and denying-in-part the motion for partial summary judgment is 758 F. Supp. 2d 909 (N.D. Cal. 2010). My findings of fact and conclusions of law are 2011 WL 4434722 (N.D. Cal. Sept. 23, 2011).

b. Why did you find them to be the most notable for your tenure?

Response: I believe the above ten cases show a wide range of subject matter areas and complex and novel legal issues as well as the breadth and depth of the work I have done as a United States District Judge on motions, trials, and settlement conferences.

c. Have your views changed on how you ruled in any of these cases? If so, please explain how and why.

Response: It would not be appropriate for me to comment on what cases were correctly or wrongly decided.

11. How did your time with the Justice Department and in private practice inform how you approach your role as a judge?

Response: I base my decisions as a judge on the record before me and apply precedent to that record. My personal views are irrelevant to interpreting and applying the law. However, my prior legal experiences did give me broad familiarity with different federal civil and criminal statutes.

At the United States Department of Justice, I advised and prepared briefing materials for the Attorney General and the Deputy Attorney General; worked on formulating the Administration's position on legislation; vetted candidates for appointment to the United States Sentencing Commission; served as a liaison with Congress and state and local officials; represented the Department of Justice in interagency meetings; and assisted in the Department's implementation of new laws.

As an Assistant United States Attorney, I investigated and prosecuted federal crimes, including bank robbery; arson; fraud; narcotics; public corruption; possession of counterfeit currency; immigration; and theft crimes. I tried bench and jury trials. I litigated in and argued before the Ninth Circuit.

In private practice, I litigated complex civil cases involving patent, trade secret, securities, dissenting shareholder appraisal, contract, fraud, copyright, and commercial disputes in trial and appellate courts. I represented plaintiffs and defendants ranging from individual inventors to large multinational companies.

12. As a federal judge, you have already been required to manage staff and clerks to get the work of the District Court.

a. Please describe your approach to management, and how you work with professional staff and with clerks to effectively manage the workload of the court.

b. How many professional staff do you currently manage?

c. How many law clerks do you currently supervise? How many have you worked with during your tenure as District Court Judge?

Response: As a United States District Judge over the last nearly 11.5 years I have presided over an average of 719 cases per year. In 2017 I presided over 941 cases. I currently supervise three law clerks. We work together very closely on all cases over which I preside. Every year I have at least three law clerks. In some years, the San Jose District Judges have shared law clerks. I also work with the Court's pro se law clerks on my pro se prisoner cases and the Court's death penalty law clerks on my death penalty cases. The other professional staff with whom I work are employees of the Clerk's Office and are managed by the Clerk's Office.

13. Do you expect to maintain the same management style if you are confirmed as a Circuit Court Judge? How do you expect your experience as a manager to change at the Circuit Court compared to District Court level?

Response: If confirmed, I will meet with other Ninth Circuit Judges to learn how they set up and manage their Chambers and then decide how best to manage my own Chambers.

14. How have you worked to support the careers of those you supervise, including law clerks, and how would you do so if you were confirmed as a Circuit Court Judge?

Response: I provide career advice and serve as a reference for my law clerks and would continue to do so, if confirmed.

15. What outside the box ideas would you bring to this position to ensure laws are faithfully executed for all Americans?

Response: I will faithfully follow precedent. During my 2.5 years as a California Superior Court Judge, I presided over 500 cases a week. I was reversed only once in part. During my nearly 11.5 years as a United States District Judge, I have issued over 3,250 decisions and have been reversed only 42 times. If confirmed, I will do my level best to continue to faithfully apply United States Supreme Court and Ninth Circuit precedent.

Intellectual Property

16. The Ninth Circuit in *FTC v. Qualcomm* strongly disagreed with your reasoning and your decision in that case. It initially characterizing your decision as either "a trailblazing application of the antitrust laws" or "an improper excursion beyond the outer limits of the Sherman Act." In its 2020 decision, it concluded that your order had exceeded the Sherman Act's limits.

a. Do you agree with the Ninth Circuit's statement that your decision "exceeded the outer limits of the Sherman Act?" Why or why not?

b. At the hearing, you declined to say that you agreed with the Ninth Circuit's opinion and instead stated that "…antitrust is a very complex area of the law and I can see that there are different viewpoints." Do you agree with Ninth Circuit's critique of your decision?

c. Your decision states that Qualcomm had a monopoly, the Ninth Circuit disagreed and found that you had made several errors in your decision. Is this what you mean by a "different viewpoints"?

d. At the hearing, you stated in response to Senator Feinstein that you stated that "every reversal, I try to learn from it, I try to glean—what did I view differently that I need to view differently going forward… I try very hard, and I do incorporate it into my work going forward." What do you need to view differently with respect to *Qualcomm* moving forward?

e. Do you agree with the Ninth Circuit's decision that you erred in holding that Qualcomm is under an antitrust duty to license to rival chip makers because none of the *Aspen Skiing* exceptions are present (let alone all of them)?

f. Are you deconstructing antitrust law to fit your preferred outcome, one that permits analysis of harm to consumers and customers, and that ignores Supreme Court's *Trinko* guidance warning that *Aspen* is the rare exception?

g. Do you agree with the Ninth Circuits analogy in *Qualcomm* that "[t]hus, while Qualcomm's policy toward OEMs is "no license, no chips," its policy toward rival chipmakers could have been characterized as "no license, no problem?"

h. Do you agree with the Ninth Circuit's view that novel business practices—especially in technology markets--should not be "conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use."

i. Do you agree with the Ninth Circuit that your opinion addressed the main theory of harm, namely that the licensing royalty rates impose a surcharge on rivals modem chips was addressed only "in passing"?

j. Do you agree with the Ninth Circuit that you erred in looking beyond the relevant market for anticompetitive conduct, specifically looking at the broader market of cellular services generally and included Qualcomm's customers?

k. Do you agree that the Ninth Circuit appropriately reframed to focus on the chip market that you defined as the relevant market?

l. What did you learn from the decision?

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit held that the FTC failed to show that three of Qualcomm's business practices violated Section 2 of the Sherman Act. First, the Ninth Circuit held that "Qualcomm's practice of licensing its [standard essential patents] exclusively at the [original equipment manufacturers] level does not amount to anticompetitive conduct in violation of § 2, as Qualcomm is under no antitrust duty to license rival chip suppliers." *Id.* at 1005. Although the Ninth Circuit declined to address whether "Qualcomm has breached any of its [fair, reasonable, and non-discriminatory] commitments," the Ninth Circuit stated that "the remedy for such a breach lies in contract and patent law." *Id.* Second, the Ninth Circuit held that "Qualcomm's patent-licensing royalties and 'no license, no chips' policy do not impose an anticompetitive surcharge on rivals' modem chip sales." *Id.* According to the Ninth Circuit, "these aspects of Qualcomm's business model are 'chip-supplier' neutral and do not undermine competition in the relevant antitrust markets." *Id.* Third, the Ninth Circuit held that "Qualcomm's 2011 and 2013 agreements with Apple ha[d] not had the actual or practical effect of substantially foreclosing competition in the CDMA modem chip market." *Id.* "Furthermore, because these agreements were terminated years ago by Apple itself, there [was] nothing to be enjoined." *Id.* Qualcomm did not appeal my finding that Qualcomm had a monopoly, so that issue was not before the Ninth Circuit.

I will faithfully follow this Ninth Circuit precedent. My decision was reversed and has no legal effect. Each and every day I do my level best to accurately interpret and apply the law to the record before me. However, I do not always get it right.

17. Your decision in *Qualcomm* raised serious concerns about the effect it would have on patent law, antitrust law, and innovation going forward.

a. Do you agree that contract law and patent law are better avenues to resolve FRAND disputes, and that bringing this case in antitrust, particularly in the controversial manner in which it was brought, is likely to create bad precedent and have negative impacts on innovation policy?

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit held that where a party brings a claim that a standard essential patent holder has breached fair, reasonable, and non-discriminatory obligations, "the remedy for such a breach lies in contract and patent law." *Id.*

b. In the *Qualcomm* decision, you did not address what a reasonable royalty rate would be before declaring Qualcomm's rate "unreasonable". Were you unaware of precedent under patent law setting forth ways to evaluate whether royalties are unreasonable, including by establishing a reasonable royalty?

Response: My *FTC v. Qualcomm* order has been reversed, and I will follow the Ninth Circuit's precedent. Nonetheless, to respond to this question, I set forth my understanding of the law at the time of my order below.

Under Federal Circuit law, "it is generally required that royalties be based not on the entire product, but instead on the 'smallest salable patent-practicing unit.'" *LaserDynamics, Inc. v. Quanta Computer, Inc.*, 694 F.3d 51, 67 (Fed. Cir. 2012). There is a "narrow exception to this general rule," which states that "[i]f it can be shown that the patented feature drives the demand for an entire multi-component product," it is reasonable for the royalty to be "a percentage of revenues or profits attributable to the entire product." *Id*.

Applying this precedent, I determined that Qualcomm had not based its royalty rate on the "smallest salable patent-practicing unit" and that the trial record established that modem chips do not drive demand for mobile handsets. *Fed. Trade Comm'n v. Qualcomm Inc*., 411 F. Supp. 3d 658, 782 (N.D. Cal. 2019). Accordingly, in light of my other findings that Qualcomm had inflated its royalty rate, I did not find it necessary to separately find what the reasonable rate was.

18. The Supreme Court in *Trinko* stated that "[n]o court should impose a duty to deal that it cannot explain or adequately and reasonably supervise," since this risks the court "assum[ing] the day-to-day controls characteristic of a regulatory agency." 540 U.S. 398, 415 (2004). The global injunction in *Qualcomm* would have imposed such a duty, requiring Qualcomm to "make exhaustive SEP licenses available to [competitors] on FRAND terms" and "negotiate…in good faith" with customers "under conditions free from the threat of lack of access".

a. Do you think that worldwide injunctions on issues involving patents or patent licenses issues are appropriate? Why or why not?

Response: My *FTC v. Qualcomm* order has been reversed, and I will follow the Ninth Circuit's precedent. Nonetheless, to respond to this question, I set forth my understanding of the law at the time of my order below.

In my *FTC v. Qualcomm* order, I based the injunction on the following authorities. The United States Supreme Court has stated that "adequate relief in a

monopolization case should put an end to the combination and deprive the defendants of any of the benefits of the illegal conduct, and break up or render impotent the monopoly power found to be in violation of the Act." *United States v. Grinnell Corp.*, 384 U.S. 563, 577 (1966). Moreover, where the government has brought the action and has established an antitrust violation, "all doubt as to the remedy are to be resolved in [the government's] favor." *United States v. E.I. du Pont de Nemours & Co.*, 366 U.S. 316, 334 (1961). A district court has "'large discretion' to fit the decree to the special needs of the individual case." *Ford Motor Co. v. United States*, 405 U.S. 562, 573 (1972).

The Federal Trade Commission Act ("FTCA") provides the FTC with the authority to seek permanent injunctions of antitrust violations and empowers courts to enter such injunctions. *See* 15 U.S.C. § 53(b). The Ninth Circuit has explained that, if the FTC seeks relief under the Section 53 of the FTCA and proves an antitrust violation, permanent injunctive relief should be granted if "there exists some cognizable danger of recurrent violation." *Fed. Trade Comm'n v. Evans Prods. Co.*, 775 F.2d 1084, 1087 (9th Cir. 1985); *see also United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953) (holding that permanent injunctive relief should be granted for a Clayton Act violation "if the wrongs are ongoing or likely to recur").

b. In light of *Trinko,* is it appropriate to relegate to a national regulatory authority parties' extraterritorial contract negotiations?

Response: The United States Supreme Court's decision in *Verizon Commc'ns Inc. v. L. Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004), addressed the substantive standard for a duty to deal claim. The United States Supreme Court did not address whether that standard would be different if applied to international conduct.

As a United States District Judge, it would be inappropriate for me to comment on the merits of a particular legal argument outside the context of a "genuine, live dispute[s] between adverse parties." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020). If these arguments were presented to me in the context of a live case or controversy, I would consider them fully and fairly and apply United States Supreme Court and Ninth Circuit precedent.

c. Outside of FRAND cases, would you agree that it is rare for national courts to seek to reform or create private contractual arrangements that extend beyond their national borders? What about with respect to patents that are outside the courts' jurisdiction?

Response: Outside of FRAND cases, I do not have any knowledge about the frequency with which parties ask courts to "reform or create private contractual arrangements that extend beyond their national borders." In *Microsoft Corp. v. Motorola*, Inc., 795 F.3d 1024, 1033 (9th Cir. 2015), the Ninth Circuit affirmed the district court's decision that ordinary principles of contract law apply to

FRAND obligations, including those relating to foreign standard essential patents. A United States court may not adjudicate infringement or invalidity of foreign patents. *Stein Assocs., Inc. v. Heat & Control, Inc.*, 748 F.2d 653, 658 (Fed. Cir. 1984) ("Only a British court, applying British law, can determine validity and infringement of British patents.").

d. What role does international comity have in such injunctive or decisions regarding patent licensing outside the United States?

Response: International comity is relevant for determining whether a company can enforce a license to use a foreign patent in a U.S. District Court. In *Microsoft v. Motorola*, 696 F.3d 872 (9th Cir. 2012), the Ninth Circuit considered a claim that Motorola had breached its obligation to license standard essential patents ("SEPs") to Microsoft at fair, reasonable, and non-discriminatory rates. Two of those SEPs were German patents. *Id.* at 879. After Microsoft filed its breach of contract action in U.S. District Court, Motorola asserted those patents against Microsoft in a German court and received an injunction. *Id.* In the U.S. District Court, Microsoft moved to enjoin Motorola from enforcing that German injunction. *Id.* at 880. The Ninth Circuit explained that the "framework for evaluating a foreign anti-suit injunction" includes "assess[ing] whether the injunction's 'impact on comity is tolerable.'" *Id.* at 881.

19. In *Qualcomm,* you stated that "Qualcomm repeatedly acknowledged that its licensing practices raise antitrust claim, yet continued the licensing practices anyway." (pg. 387/808). If business documents reveal that a business is aware that a competitor or customer may raise legal claims against that company, is that the same as admitting that the behavior is illegal? Is it possible that a risk of having to defend legal claims, even if ultimately without merit, is something that a responsible business should assess?

a. Assistant Attorney General Makan Delrahim developed an enlightened way of addressing matters at the antitrust-intellectual property nexus. He called it the New Madison Approach. It respected patent exclusivity, even when standard-essential patents under FRAND commitments are involved. How might your reversed ruling in the *Qualcomm* case have been better informed and on more solid legal ground if you'd incorporated the New Madison Approach into proper account?

Response: As a United States District Judge, it would be inappropriate for me to comment on the merits of a particular legal argument outside the context of a "genuine, live dispute[s] between adverse parties." *Carney v. Adams*, 141 S. Ct. 493, 498 (2020). If arguments based on the "New Madison Approach" were presented to me in the context of a live case or controversy, I would consider them fully and fairly and apply United States Supreme Court and Ninth Circuit precedent.

b. Please explain how you rejected industrywide licensing at the patent portfolio level rather than at the individual chip level.

Response: Please see my response to Question 16.

c. Do you agree with the Ninth Circuit's assessment on this point?

Response: I will follow United States Supreme Court and Ninth Circuit precedent in any future case that raises these issues. My personal views, if any, are irrelevant to interpreting and applying the law.

d. There are concerns that this reflects a personal policy preference, rather than a misunderstanding of the law to ignore the marketplace realities or you disregarded law and fact and went with personal policy preferences. Do your policy preferences help patent owners in enforcing their property rights?

Response: I will follow United States Supreme Court and Ninth Circuit precedent in any future case that raises these issues. My personal views, if any, are irrelevant to interpreting and applying the law.

During my nearly 14 years as a United States District Judge and a California Superior Court Judge, I have done my level best to impartially and faithfully discharge my duties.

During my nearly 11.5 years as a United States District Judge, I have presided over an average of 719 cases per year and in 2017 I presided over 941 cases. I have issued over 3,250 written decisions and have been reversed only 42 times.

During my 2.5 years as California Superior Court Judge, I presided over 500 cases a week. I was reversed only once in part.

If confirmed, I will do my level best to continue to faithfully apply United States Supreme Court and Ninth Circuit precedent.

20. What are your thoughts on the best way to analyze patent licensing issues?

Response: In *Fed. Trade Comm'n v. Qualcomm Inc.*, 969 F.3d 974 (9th Cir. 2020), the Ninth Circuit held that where a party brings a claim that a standard essential patent holder has breached [fair, reasonable, and non-discriminatory] obligations, "the remedy for such a breach lies in contract and patent law." *Id.* In *Microsoft Corp. v. Motorola*, Inc., 795 F.3d 1024, 1033 (9th Cir. 2015), the Ninth Circuit affirmed the district court's decision that ordinary principles of contract law apply to FRAND obligations. For example, the third-party beneficiary doctrine allows third parties to enforce a standard essential patent holder's commitment to a standard setting organization to provide licenses at FRAND rates. *Id.*

21. How does your experience as a patent litigator inform your judicial decisions?

Response: I base my decisions as a judge on the record before me and apply precedent to that record. My personal views are irrelevant to interpreting and applying the law.

In private practice, I litigated complex civil cases involving patent, trade secret, securities, dissenting shareholder appraisal, contract, fraud, copyright, and commercial disputes in trial and appellate courts. I represented plaintiffs and defendants ranging from individual inventors to large multinational companies.

22. Copyright law is a complex area of law that is grounded in our constitution, protects creatives and commercial industries, and is shaped by our cultural values. It has become increasingly important as it informs the appropriate use of digital content and technologies.

a. What experience do you have with copyright law?

Response: To the best of my recollection, I worked on a few copyright cases as a lawyer. As a United States District Judge, I have presided over civil and criminal copyright infringement cases.

b. How many cases have you heard where copyright law was an issue in the case? What was the outcome in these cases?

Response: On October 14, 2021 I ran a Westlaw search, which showed that I have issued 77 orders that appear to relate to copyright infringement. A list of these orders is attached.

c. Please describe any particular experiences involving the Digital Millennium Copyright Act.

Response: On October 14, 2021 I ran a Westlaw search. These orders appear responsive to your request regarding the Digital Millennium Copyright Act ("DMCA"). *See Shropshire v. Canning*, 809 F. Supp. 2d 1139 (N.D. Cal. 2011) (denying motion to dismiss because plaintiff sufficiently alleged a DMCA claim); *Synopsis, Inc. v. InnoGrit, Corp.*, No. 19-CV-02082-LHK, 2019 WL 2617091 (N.D. Cal. June 26, 2019) (granting preliminary injunction because plaintiff was likely to succeed on its DMCA circumvention claim); *Synopsis, Inc. v. InnoGrit, Corp.*, No. 19-CV-02082-LHK, 2019 WL 4848387 (N.D. Cal. Oct. 1, 2019) (plaintiff adequately alleged a circumvention claim under the DMCA); *Autodesk, Inc. v. Flores*, No. 10–CV–01917–LHK, 2011 WL 337836 (N.D. Cal. Jan. 31, 2011) (granting plaintiff's motion for default judgment arising in part from section 1201 DMCA claims and permanent injunction); *DiscoverOrg Data, LLC v. Bitnine Global, Inc.*, No. 19-CV-08098-LHK, 2020 WL 6562333 (N.D. Cal. Nov. 9, 2020) (finding plaintiff adequately pled a claim for circumvention under the DMCA).

23. The legislative history of the Digital Millennium Copyright Act shows that Congress intended to create an obligation for online hosting services to address infringement even when they do not receive a takedown notice. However, the Copyright Office recently reported courts have conflated statutory provisions and created a "high bar" for "red flag knowledge, effectively removing it from the statute..." It also reported that courts have made the traditional common law standard for "willful blindness" harder to meet in copyright cases.

a. In your opinion, what role does or should Congressional intent, as demonstrated in the legislative history, have when deciding how to apply the law to the facts in a particular case?

Response: If a federal statutory provision had been previously interpreted by the United States Supreme Court or the Ninth Circuit, that interpretation would be binding precedent. If there is no binding precedent, I first look at the statutory text. As the United States Supreme Court has repeatedly stated, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobil Corp. v. Allapattah Servs., Inc*., 545 U.S. 546, 568 (2005). I then look at the statutory scheme. "If the statutory language is unambiguous and 'the statutory scheme is coherent and consistent,'" then "the inquiry ceases." *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016). If the text is ambiguous or the statutory scheme is not coherent or consistent, then I use the tools of statutory construction, such as the canons of construction. I would look to precedent of the United States Supreme Court and Ninth Circuit interpreting related or analogous statutory provisions to discern which statutory construction tools to use. As a last resort, I would consider legislative history, but would do so with caution. The United States Supreme Court has stated that "legislative history is itself often murky, ambiguous, and contradictory." *Exxon Mobil*, 545 U.S. at 568.

However, the United States Supreme Court has held that legislative history may "shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms." *Exxon Mobil*, 545 U.S. at 568. In *Garcia v. United States*, the United States Supreme Court reiterated that "the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation.'" 469 U.S. 70, 76 (1984) (quoting *Zuber v. Allen*, 396 U.S. 168, 186 (1969)). Moreover, the United States Supreme Court has held that "[w]here Congress includes limiting language in an earlier version of a bill but deletes it prior to enactment, it may be presumed that the limitation was not intended." *Rusello v. United States*, 464 U.S. 23-24 (1983).

Lastly, the United States Supreme Court has cautioned that legislative history may give "unrepresentative committee members—or, worse yet, unelected staffers and lobbyists—both the power and the incentive to attempt strategic manipulations of

legislative history to secure results they were unable to achieve through the statutory text." *Exxon Mobil*, 545 U.S. at 568. Thus, the United States Supreme Court has "eschewed reliance on the passing comments of one Member and casual statements from the floor debates." *Garcia*, 469 U.S. at 76 (citation omitted).

b. Do you believe that online service providers should be held accountable for copyright infringement occurring on their systems if they are aware of facts and circumstances from which such infringement is apparent?

Response: Although the United States Supreme Court has not interpreted the safe harbor provision in the Digital Millennium Copyright Act, the Ninth Circuit has explained that "[t]he DMCA's safe harbor provisions exempt Internet service providers from copyright liability under discrete statutory provisions." *Adobe Sys. Inc v. Christenson*, 809 F.3d 1071, 1079 (9th Cir. 2015). For example, "[u]nder § 512(c)(1)(A), a service provider can receive safe harbor protection only if it '(i) does not have actual knowledge that the material or an activity using the material on the system or network is infringing;' '(ii) in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or' '(iii) upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material.'" *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1020 (9th Cir. 2013). The Ninth Circuit explained that it read the statute "to have an implicit 'and' between § 512(c)(1)(A)(i) and (ii)." *Id*. at 1020 n.11. "[T]hus treat[ing] the provisions as stating that to qualify for the safe harbor, a service provider must either (1) have no actual knowledge and no 'aware[ness] of facts or circumstances from which infringing activity is apparent' or (2) expeditiously remove or disable access to infringing material of which it knows or is aware." *Id*. (third alteration in original).

c. What experiences do you have addressing intermediary liability for online service providers?

Response: Based on a Westlaw search of my orders, I found only one case in which this issue arose. However, in that case the plaintiff voluntarily dismissed the online service provider, YouTube, before I issued any substantive rulings in the case. After dismissing YouTube from the case, the plaintiff sought to litigate against only the party who uploaded the allegedly infringing video under the Digital Millennium Copyright Act. After YouTube was dismissed from the case, I ruled on three motions to dismiss on issues unrelated to intermediary liability for online service providers. *See Shropshire v. Canning*, No. 10–CV–01941–LHK, 2011 WL 90136 (N.D. Cal. Jan. 11, 2011); 809 F. Supp. 2d 1139 (N.D. Cal. 2011); No. 10–CV–01941–LHK, 2012 WL 13658 (N.D. Cal. Jan. 4, 2012).

24. Over time the number of copyright takedown notices has skyrocketed. Some have raised concerns about fraudulent and abusive notices that may restrain fair use, free

speech, or misuse the notice-and-takedown process. Others have noted that courts interpretation of the "good faith" requirement to send notices may preclude automated notice sending, placing too great a burden on rightsholders.

a. In an increasingly automated world, how can courts appropriately evaluate concepts like "good faith" or "bad faith" that apply to machine-driven actions?

Response: In *American Broadcasting Companies, Inc. v. Aereo, Inc.*, 573 U.S. 431, 451 (2014), the United States Supreme Court responded to concerns about technology outpacing statutory frameworks: "to the extent commercial actors or other interested entities may be concerned with the relationship between the development and use of [certain] technologies and the Copyright Act, they are of course free to seek action from Congress. *Cf.* Digital Millennium Copyright Act, 17 U.S.C. § 512." The Ninth Circuit has explained that "[t]he DMCA requires a complainant to declare, under penalty of perjury, that he is authorized to represent the copyright holder, and that he has a good-faith belief that the use is infringing. This requirement is not superfluous. Accusations of alleged infringement have drastic consequences: a user could have content removed, or may have his access terminated entirely. If the content infringes, justice has been done. But if it does not, speech protected under the First Amendment could be removed. We therefore do not require a service provider to start potentially invasive proceedings if the complainant is unwilling to state under penalty of perjury that he is an authorized representative of the copyright owner, and that he has a good-faith belief that the material is unlicensed." *Perfect 10, Inc. v. CCBill* LLC, 488 F.3d 1102, 1113 (9th Cir. 2007). To the extent the current DMCA framework precludes or impedes automated notice requirements, that is a question for policymakers and stakeholders.

b. What experience do you have with First Amendment and free speech issues? Do you have experience addressing free speech and intellectual property issues, including copyright?

Response: On October 14, 2021 I ran a Westlaw search. The search results showed that I have issued approximately 20 orders involving the First Amendment and free speech issues. Based on the search it appears I have had one case where free speech and intellectual property issues overlapped. In *Art of Living Foundation v. Does 1-10*, I granted a motion to quash a subpoena for one anonymous blogger because their First Amendment right to anonymous speech outweighed the need for discovery at that stage of copyright litigation. No. C10–05022 LHK (HRL), 2011 WL 3501830, at *1-5 (N.D. Cal. Aug. 10, 2011).

Second Amendment

25. How many cases have you heard which raised Second Amendment questions? Please be specific about the number of cases and whether the outcomes protected or restricted Second Amendment rights.

Response: I have not heard any cases in which Second Amendment questions were raised.

26. What were the most common issues which arose during Second Amendment cases?

Response: Please see my response to Question 25.

27. How did you go about interpreting Second Amendment cases? Please explain what factors you considered when reviewing Second Amendment cases.

Response: Please see my response to Question 25.

28. As a federal judge, you swear an oath to protect and defend the Constitution, which includes protecting our liberties under the Bill of Rights.

a. How have you ruled in Second Amendment cases as a District Court Judge?

Response: Please see my response to Question 25.

b. What will you do, if confirmed, to ensure Americans feel confident that their Second Amendment rights are protected?

Response: If I were to hear such a case in the future, I would faithfully follow the United States Supreme Court's decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

29. How would you evaluate a lawsuit challenging a Sheriff's policy of not processing handgun purchase permits?

Response: In *District of Columbia v. Heller*, the United States Supreme Court held that a ban on firearms in the home violates the Second Amendment. 554 U.S. 570, 634-35 (2008). The ban on handguns in the home in *Heller* failed any standard of scrutiny applied to enumerated constitutional rights. *Id.* at 628-29. The United States Supreme Court emphasized that "[l]ike most rights, the right secured by the Second Amendment is not unlimited" and provided three examples of presumptively valid regulations of firearms: (1) prohibition on possession by felons or the mentally ill; (2) "laws forbidding the carrying of firearms in sensitive places such as schools or government buildings"; and (3) "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at

626-27. The United States Supreme Court noted that these were examples and the "list does not purport to be exhaustive." *Id.* at 627 n.26.

Applying *Heller*, the Ninth Circuit has adopted a two-step framework when evaluating whether a challenged regulation or law infringes on the rights protected by the Second Amendment. *See Young v. Hawaii*, 992 F.3d 765, 783 (9th Cir. 2021) (en banc). First, the Ninth Circuit determines whether "the challenged law affects conduct that is protected by the Second Amendment" by looking to the "historical understanding of the scope of the right." *Id.* The Ninth Circuit considers "whether there is persuasive historical evidence showing that the regulation does not impinge on the Second Amendment right as it was historically understood. Laws restricting conduct that can be traced to the founding era and are historically understood to fall outside of the Second Amendment's scope may be upheld without further analysis." *Id.* Furthermore, if the challenged law falls within the "presumptively lawful regulatory measures" identified by *Heller*, the law may be upheld without further analysis. *Id.*

If the law is within the historical scope of the Second Amendment, or not presumptively lawful, the Ninth Circuit determines what level of scrutiny applies. *Id.* at 784. As the Ninth Circuit explained in *Young*, it has "understood Heller to require one of three levels of scrutiny: If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny; a law that 'implicates the core of the Second Amendment right and severely burdens that right' receives strict scrutiny; and in other cases in which Second Amendment rights are affected in some lesser way, we apply intermediate scrutiny." *Id.* (quoting *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016)).

30. Should local officials be able to use a crisis, such as COVID-19 to limit someone's constitutional rights? In other words, does a pandemic limit someone's constitutional rights?

Response: In *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020), the United States Supreme Court held that "[s]temming the spread of COVID-19 is unquestionably a compelling interest" for the purposes of strict scrutiny. Accordingly, a regulation aimed at stemming the spread of a pandemic like COVID-19 may restrict constitutional rights that trigger strict scrutiny if the regulation is "narrowly tailored." *Id.* However, in *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021), the United States Supreme Court clarified that where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)). A similar analysis would likely apply to restrictions on other fundamental rights.

Immigration

31. What experience have you had with immigration law cases during your time as a District Court Judge?

Response: Based on the Court's electronic database, I have presided over approximately 141 criminal cases charging violation of 8 U.S.C. § 1326 (titled "Reentry of removed aliens") and one criminal case charging violation of 8 U.S.C. § 1324 (titled "Bringing in and harboring certain aliens").

On October 15, 2021, I ran a Westlaw search, which showed that I have issued approximately 22 orders, falling generally into two types of cases: (1) habeas corpus cases filed by individuals, currently detained by the Immigration and Customs Enforcement, seeking an individualized bond hearing before an Immigration Judge; and (2) illegal reentry cases under 8 U.S.C. § 1326 where defendants collaterally challenged prior deportations. The Westlaw list of orders is attached.

I also had two cases involving claims against the United States Citizenship and Immigration Services. In one case I granted the government's motion for summary judgment. *See Fayad v. Keller*, No. 10–CV–03372–LHK, 2011 WL 884042 (N.D. Cal. March 14, 2011) (granting the government's motion for summary judgment because plaintiff did not yet "satisfy the residency requirement"). I dismissed the other case for failure to exhaust administrative remedies. *See Jariwala v. Napolitano*, No. 10–CV–04383–LHK, 2011 WL 1260228 (N.D. Cal. Apr. 4, 2011) (granting government's motion to dismiss for lack of subject matter jurisdiction).

I also dismissed one case because I lacked jurisdiction to hear a habeas petition because it sought review of a final order of removal. *See Rosales v. Aitken*, No. 11–CV–4246–LHK, 2011 WL 4412654 (N.D. Cal. Sept. 21, 2011) (dismissing habeas petition for lack of jurisdiction over final orders of removal).

32. How many immigration related cases have you heard during your time on the District Court?

a. Please provide a detailed breakdown of the number of cases heard and decided.

b. Please include information about the types of immigration issues you heard (such as removal, asylum, adjustment of status, etc.)

c. Please indicate the most notable immigration cases you heard, and the specifics about why these cases were so notable to you.

Response: Please see my response to Question 31.

33. For asylum related cases, how often were you presented with claims for asylum?

a. Please provide a specific breakdown of the number of cases in which you ruled to grant asylum.

b. How did you evaluate these cases? Did it differ at all based on the type of asylum claim?

c. What is your understanding of the current asylum backlog, and what has been your experience with the backlog during your time on the District Court?

Response: The Illegal Immigration Reform and Responsibility Act of 1996 divested district courts of jurisdiction over appeals of asylum rulings and vested jurisdiction exclusively in the courts of appeals. *See* 8 U.S.C. § 1252(a)(5). Thus, I have not presided over any asylum claims.

34. How often were you presented with removal cases?

a. Please provide a specific breakdown of the number of cases in which you granted relief from removal.

b. How do you evaluate cases regarding removal?

c. Did you ever grant relief from removal for a criminal alien? Please provide a breakdown of the specific cases in which you granted relief for criminal aliens, and which crimes they were convicted or accused of including murders, sex crimes, drug trafficking, or violent crimes.

Response: The Illegal Immigration Reform and Responsibility Act of 1996 divested district courts of jurisdiction over appeals of deportation and removal orders and vested jurisdiction exclusively in the courts of appeals. *See* 8 U.S.C. § 1252(a)(5).

In 2005, Congress eliminated district court habeas jurisdiction over final orders of deportation or removal, and vested jurisdiction exclusively in the courts of appeals. *See* 8 U.S.C. § 1252(b)(9).

Accordingly, when a habeas petitioner asked me to review his removal order, I dismissed the case for lack of jurisdiction as set forth in my response to Question 31. *See Rosales v. Aitken*, No. 11–CV–4246–LHK, 2011 WL 4412654 (N.D. Cal. Sept. 21, 2011) (dismissing habeas petition for lack of jurisdiction over final orders of removal).

35. How often have you heard cases related to *Zadvydas v. Davis*?

Response: As the Ninth Circuit recently explained, "in *Zadvydas*, the Court considered a federal habeas challenge to detention pursuant to § 1231(a)(6) brought by aliens with criminal convictions whom the government had detained beyond § 1231(a)(2)'s initial

90-day mandatory detention period." *Aleman Gonzalez v. Barr*, 995 F.3d 762, 769 (9th Cir. 2020) (citing *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001)). Rejecting the government's construction of the statute, the United States Supreme Court stated that "[w]hen removal is no longer reasonably foreseeable, § 1231(a)(6) no longer authorizes continued detention." *Id.* The United States Supreme Court established that six months was a reasonable time period for detention "for the sake of uniform administration of federal courts." *Zadvydas*, 533 U.S. at 731. "Although *Zadvydas* concerned only § 1231(a)(6), that decision led this court to 'grapple[ ] in piece-meal fashion with whether the various immigration detention statutes may authorize indefinite or prolonged detention of detainees and, if so, may do so without providing a bond hearing.'" *Aleman Gonzalez*, 955 F.3d at 770 (citation omitted) (alteration in original). Thus, in *Casas-Castrillon v. Dep't of Homeland Sec.*, the Ninth Circuit concluded that § 1226(a) requires a bond hearing and that "an alien is entitled to be released on bond unless the government establishes that he is a flight risk or will be a danger to the community." 535 F.3d 942, 951 (9th Cir. 2008) (internal quotation marks and citation omitted).

Under *Casas-Castrillon*'s construction of § 1226(a), I have heard approximately 7 habeas petitions seeking individualized bond hearings as set forth in my response to Question 31.

a. How have you evaluated *Zadyvdas* cases? What is your understanding of the current state of the law in these cases?

Response: As a United States District Judge I am bound by the Ninth Circuit's construction of the relevant statutes. *See, e.g.*, *Aleman Gonzalez v. Barr*, 995 F.3d 762, 769 (9th Cir. 2020) (explaining that the United States Supreme Court decision in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), did not affect *Casa-Castrillon*'s conclusion that bond hearings are mandated under 8 U.S.C. § 1226(a)).

b. How would you evaluate a *Zadyvdas* case if you were to join the Circuit Court?

Response: I would follow United States Supreme Court and Ninth Circuit precedent.

c. Do you believe that the current *Zadyvdas* jurisprudence threatens public safety?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law. I will follow United States Supreme Court and Ninth Circuit precedent.

36. I believe very strongly that sanctuary city policies are misguided and dangerous. It is incomprehensible that we should be releasing dangerous criminal aliens back into our communities. For many years we have seen sheriffs across our nation, including

some in the State of North Carolina, who have ignored the notification and detainer requests made by federal ICE agents. For example in 2019, Mecklenburg County's Sherriff in North Carolina ignored over 200 detainer requests. These reckless actions have led to criminal aliens being released back into our communities and jeopardizing public safety.

a. How often have you encountered cases involving sanctuary city policies? How have you ruled in cases either supporting or challenging sanctuary policies?

Response: One case was originally assigned to me, but United States District Judge William Orrick found that my case was related to his earlier filed case, so my case was immediately reassigned to Judge Orrick. I did not issue any rulings in the case.

b. Do you agree that sanctuary city policies are a threat to public safety, and that it is unwise for sheriffs to ignore detainer requests which release criminal aliens back into our communities? If not, why?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law. I will follow United States Supreme Court and Ninth Circuit precedent.

c. Do you agree that Congress has the right to put in place a law which would give victims of sanctuary city policies the right to sue sanctuary jurisdictions for creating the conditions which enabled a crime?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law. I will follow United States Supreme Court and Ninth Circuit precedent.

d. If Congress did pass such a law, how would you evaluate the contours of this law, and ensure that victims of sanctuary city policies are protected?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. I would follow United States Supreme Court and Ninth Circuit precedent.

37. Is it your understanding of the law that the federal government has the authority to enforce federal law in areas, like immigration, which are solely federal in nature? If not, please explain why.

Response: In *Arizona v. United States*, the United States Supreme Court explained that "[t]he federal power to determine immigration policy, is well settled." 567 U.S. 387, 395

(2012) (holding that certain Arizona state laws were preempted because the statutes "conflict[ed] with federal immigration law and its objectives").

38. The Biden Administration has shown a willingness to use executive authority to expand pathways for illegal immigrants to gain status.

a. How much authority does the executive branch alone have to set immigration enforcement policy?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. I would follow United States Supreme Court and Ninth Circuit precedent.

b. How should the Courts respond when considering cases of the executive branch providing pathways to status for certain populations? Please list specific cases and why they should be considered.

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. I would follow United States Supreme Court and Ninth Circuit precedent.

First Amendment Issues

39. During the COVID-19 pandemic, Americans have needed their faith and the support that comes with their faith communities more than ever. However, some governors have prohibited faith communities from gathering to worship. In many cases, the restrictions on religious gatherings have been much stricter that the requirements to go to the local Walmart.

a. How many cases have you heard which related to COVID-19 restrictions on the right to worship? Please be specific about the number of cases and the outcome of these cases.

b. How have you evaluated these cases during your time as a District Court Judge? Would you evaluate these cases any differently if you were confirmed as a Circuit Court Judge? If so, how?

Response: I have heard only one case related to COVID-19 restrictions. In *Tandon v. Newsom*, 517 F. Supp. 3d 922 (N.D. Cal. 2021), individuals who wanted to hold bible studies, musical prayer, collective prayer, and theological discussions in their homes challenged the California government's restrictions prohibiting all gatherings inside the home and limiting outdoor gatherings at the home to three households during the widespread tier of the COVID-19 transmission under the Free Exercise Clause of the First Amendment. My ruling was initially affirmed by the Ninth Circuit, *Tandon v. Newsom*, 992 F.3d 916 (2021), but was subsequently reversed by the United States Supreme Court, *Tandon v. Newsom*, 141 S. Ct. 1294 (2021). I will fully and faithfully follow the United States Supreme Court's decision.

Although I understand that the United States Supreme Court's decision in *Tandon* is binding, I offer this explanation of my ruling in order to respond to your question. At the time I issued my ruling, the Ninth Circuit's decision in *S. Bay United Pentecostal Church v. Newsom*, 985 F.3d 1128, 1142-43 (9th Cir. 2021), established a multi-factor test for determining whether a COVID-19 restriction is narrowly tailored and survives strict scrutiny.

Applying that multi-factor test, I found that the government restrictions on all private gatherings at the home were narrowly tailored and survived strict scrutiny. *Id.* at 970-71. Because I also found that these restrictions on all private gatherings (religious or secular) were "neutral and generally applicable," I found that these restrictions also survived rational basis review. *Id.* at 975-77.

In *Tandon*, 141 S. Ct. at 1296, the United States Supreme Court clarified that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* "It is no

answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon,* the United States Supreme Court also clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* "Comparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

I will follow the United States Supreme Court precedent as a United States District Judge and if confirmed, as a Ninth Circuit Judge.

40. If you are confirmed, what will you do to protect Americans' right to practice their faith during this incredibly difficult time?

Response: I will follow the United States Supreme Court precedent.

41. Is there a difference between Americans' right to assemble and participate in peaceful protest and their right to practice their religion?

Response: The United States Supreme Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others." *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). The right to assemble and participate in peaceful protest is a part of the right of association. Protests, "if peaceful and orderly, fall[] well within the sphere of conduct protected by the First Amendment." *Gregory v. Chicago*, 394 U.S. 111, 112 (1969); *accord Edwards v. South Carolina*, 372 U.S. 229, 234 (1963).

The right to practice one's religion, otherwise known as the right to free exercise, makes unconstitutional laws that "discriminate against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons." *Church of Lakumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993).

42. Is there a line where a First Amendment activity or peaceful protesting becomes rioting and is no longer protected?

Response: Yes. In the context of the First Amendment, the United States Supreme Court has held that "[w]hen clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940).

a. If you agree there is a line, what is the line between a protected First Amendment peaceful protest and where activity becomes an unprotected riot?

Response: The United States Supreme Court has drawn the line between protest and riot when "clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears." *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940). That said, States may not "unduly suppress free communication of views." *Id.*

b. Do you agree that looting, burning property, and causing other destruction is not a protected First Amendment activity?

Response: I would follow United States Supreme Court and Ninth Circuit precedent on these issues and all other issues.

43. The Religious Freedom Restoration Act is the leading federal civil rights law that protects all Americans' religious freedom. For nearly three decades, it has protected the religious freedom of all Americans of all faiths. If confirmed, will you commit to protecting the Religious Freedom Restoration Act's protection for Americans of all faiths?

Response: If confirmed, I will faithfully interpret and apply all federal statutes, including the Religious Freedom Restoration Act.

44. How many cases have you heard or decided where there was a First Amendment claim? Please be specific about the number of cases and their disposition.

Response: On October 14, 2021 I ran a Westlaw search, which showed that I have issued 45 orders that appear to relate to the First Amendment. A list of these orders is attached.

a. In how many cases did you rule in favor of First Amendment rights compared to those in which you ruled in favor of restricting those rights?

Response: Please see my response to Question 44.

b. In those cases, did you rule any differently in cases regarding freedom of speech compared to cases related to freedom of religion? If so, explain why you ruled differently in those cases.

Response: In all First Amendment cases, I applied United States Supreme Court and Ninth Circuit precedent.

c. How do evaluate First Amendment cases? Please be specific based on the freedom of religion, freedom of speech, or freedom of assembly.

Response: Like all cases that come before me, I carefully consider the facts and the parties' arguments then apply United States Supreme Court and Ninth Circuit precedents. For example, in the context of freedom of religion First Amendment claims I consider the following:

In *Employment Division, Department of Human Resources of Oregon v. Smith*, the United States Supreme Court held that a law which incidentally burdens religion ordinarily is not subject to strict scrutiny under the Free Exercise Clause if the law is neutral and generally applicable. 494 U.S. 872, 878-82 (1990). If a law is neutral and generally applicable, rational basis scrutiny applies. *Id.*

Determining whether a law is neutral and generally applicable requires a two-part analysis. In turn, each part requires two steps.

First, a court must determine whether a law is neutral. That determination requires two steps. The first step asks whether the law is facially neutral. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S 520, 533-34 (1993). If the law is not facially neutral, the law is subject to strict scrutiny. *Id.* If the law is facially neutral, then the court must proceed to the second step. *Id.* at 534 ("Facial neutrality is not determinative.").

The second step asks whether the facially neutral law's enactment or enforcement was motivated by religious animus on the part of the governmental actor. A facially neutral law whose enactment or enforcement was motivated by religious animus is subject to strict scrutiny. Courts must review the record to determine whether there is any evidence of religious animus. *Lukumi*, 508 U.S. at 534-42 (facially neutral city ordinances were non-neutral because they were prompted by concern for Santeria religious practices). In *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018), the United States Supreme Court held that the government's application of a facially neutral public accommodations law violated the Free Exercise Clause because hostile statements by officials in public meetings showed that the application of the law was motivated by religious animus. *Id.* at 1729-31 (2018) (finding open expressions of hostility by state civil rights commissioners sufficient to show animus).

Second, a court must determine whether a law is generally applicable. That determination also requires two steps. The first step asks whether any exemptions to the

law invite "the government to consider the particular reasons for a person's conduct by providing a mechanism for individualized exemptions." *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). If the law makes such an invitation, the law is not generally applicable and is subject to strict scrutiny. If the law does not make such an invitation, then the court must proceed to the second step.

The second step asks whether the law is overbroad and underinclusive such that it "prohibits religious conduct while permitting secular conduct that undermines the government's asserted interests in a similar way." *Fulton*, 141 S. Ct. at 1877. To determine whether a restriction is overbroad and underinclusive, courts must compare religious conduct with comparable secular conduct. *See Lukumi*, 508 U.S. at 544-45. In *Tandon v. Newsom*, 141 S. Ct. 1294 (2021), the United States Supreme Court clarified that "whether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." *Id.* at 1296. Specifically, in *Tandon*, the Court held that, where a regulation prohibits activities because they are risky, "[c]omparability is concerned with the risks various activities pose, not the reasons why people gather" to engage in those activities. *Id.*

In *Tandon,* the United States Supreme Court also clarified that "government regulations are not neutral and generally applicable, and therefore trigger strict scrutiny under the Free Exercise Clause, whenever they treat *any* comparable secular activity more favorably than religious exercise." *Id.* The Court explained that "[i]t is no answer that a State treats some comparable secular businesses or other activities as poorly as or even less favorably than the religious exercise at issue." *Id.*

In *Tandon*, the United States Supreme Court further clarified that, where a regulation treats comparable religious and secular activities differently, the regulation survives strict scrutiny's narrow tailoring requirement only if the government "show[s] that the religious exercise at issue is more dangerous than [secular] activities even when the same precautions are applied." *Id.* at 1297. "The State cannot 'assume the worst when people go to worship but assume the best when people go to work.'" *Id.* (quoting *Roberts v. Neace*, 958 F.3d 409, 414 (6th Cir. 2020)).

However, not every application of "a valid and neutral law of generally applicability is necessarily constitutional under the Free Exercise Clause." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 n.2 (2017). For example, the United States Supreme Court has found a ministerial exception to Title VII employment discrimination laws. *See, e.g.*, *Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC*, 565 U.S. 171 (2012) (holding that Title VII's prohibition on employment discrimination does not apply to churches when they hire or fire ministers); *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049 (2020) (precluding two lay teachers who instructed students in religious studies and prepared students for participation in Church services from pursuing Title VII employment discrimination suits against religious schools).

d. If confirmed, will you continue to evaluate First Amendment cases in the same way you do as a District Court Judge? Or will you evaluate and rule on cases any differently?

Response: I will continue to faithfully apply United States Supreme Court and Ninth Circuit precedent.

Law Enforcement

45. In 2020, 47 law enforcement officers were murdered by criminals. In 2021, there have already been 59 law enforcement officers killed by criminals. The shocking calls to "defund the police" continue to devalue and dehumanize our brave men and women in blue. This is dangerous and it is unacceptable.

a. How many cases have you heard related to violence against law enforcement offices? Please be specific about the charges and the outcome of these cases.

Response: On October 14, 2021, I ran a Westlaw search to determine whether I had issued any orders in any such cases. The search did not result in any orders. To the best of my recollection, I have not presided over any such cases.

b. What was the average sentence you imposed on criminals who assaulted or killed law enforcement officers? What aggravating and mitigating factors did you consider when determining their sentences?

Response: Please see my response to Question 45(a).

c. Are there any notable cases you would like to point to where you sentenced a criminal who assaulted and killed a law enforcement officer?

Response: Please see my response to Question 45(a).

46. Do you believe that federal law currently goes far enough to punish those who assault law enforcement officers?

Response: Whether federal law adequately punishes those who assault law enforcement officers is an important issue for the executive and legislative branches to consider. As a United States District Judge, when imposing any criminal sentence, I follow United States Supreme Court and Ninth Circuit precedent; comply with the Federal Rules of Criminal Procedure; consider the factors set forth in 18 United States Code § 3553, the United States Sentencing Guidelines, the United States Probation Office's Pre-Sentence Investigation Report, the parties' sentencing memoranda, all the statements and arguments made at the sentencing hearing, and the record in the case.

47. Do you believe that the sentencing guidelines go far enough to punish those who assault and killed law enforcement officers? Please explain why or why not.

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law.

48. What have you done as a District Court Judge to support the brave men and women in blue who protect our communities? If you are confirmed, what specific actions will you take to support the law enforcement community?

Response: As a United States District Judge, I faithfully interpret and apply the law.

49. As a member of the criminal justice system, you should know the importance of adequate and appropriate funding. These deeply offensive calls to "defund the police" would have wide-ranging impacts in our criminal justice system writ-large.

a. Do you agree that efforts to "defund the police" would negatively impact public safety?

Response: How police departments are funded is an important issue for the executive and legislative branches of government to consider.

b. If these radical voices were successful and police were defunded, what would be the impact on your work as a judge?

Response: I could not speculate. How police departments are funded and how government resources are used are important issues for the executive and legislative branches of government to consider.

c. How specifically would reducing resources to police impact what cases are heard in your courtroom and the ability of prosecutors to go after dangerous criminals? Do you believe this would allow for more dangerous criminals to be on the streets?

Response: I could not speculate. How police departments are funded and how government resources are used are important issues for the executive and legislative branches of government to consider.

50. Qualified immunity is one of the most important legal protections available to our law enforcement community so that they are able to do their jobs and stay safe.

a. How many cases have you heard as a District Court Judge which involved a claim of qualified immunity by a law enforcement office or official?

Response: On October 14, 2021, I conducted a Westlaw search, which showed that I have issued 132 orders that appear to relate to qualified immunity and law enforcement. A list of the orders is attached.

b. What was the outcome in these cases? Be specific about the number of cases in which you ruled in favor or against providing qualified immunity protection.

Response: Please see my response to Question 50(a).

c. What is your process for considering cases of qualified immunity, and when must the court grant qualified immunity to law enforcement offices and officials?

Response: Under United States Supreme Court precedent, "officers are entitled to qualified immunity under [42 U.S.C.] § 1983 unless (1) they violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'" *District of Columbia v. Wesby*, 138 S. Ct. 577, 589 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)). For a law enforcement officer's conduct to violate a "clearly established" federal right, "existing law must have placed the constitutionality of the officer's conduct to be 'beyond debate.'" *Id.* (quoting *Ashcroft v. al-Kidd*, 563 U.S. 731, 735 (2011)). All officers "but the plainly incompetent or those who knowingly violate the law" are protected by qualified immunity. *Malley v. Briggs*, 475 U.S. 335, 341 (1986).

d. Will you follow the same process for considering qualified immunity cases if you are confirmed as a Circuit Court Judge?

Response: Yes.

Cybersecurity

51. Cybercrimes and cyber-attacks are becoming more and more frequent. To combat future cyberattacks, we need a coordinated, whole-of-government approach to this important issue, including engagement from the judicial system.

a. How many cases have you heard which related to the prosecution of cybercriminals?

Response: To the best of my knowledge, I have presided over seven cases relating to the prosecution of computer fraud and abuse.

b. What legal tools are prosecutors currently using to target cybercriminals?

Response: Based on the cases before me, the indictments charge violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030.

52. Do you believe that current laws and current sentencing guidelines sufficiently cover cybercrimes?

Response: As a United States District Judge, it is not appropriate for me to comment on issues that may come before me. In addition, my personal views, if any, are irrelevant to interpreting and applying the law.

a. As a District Court Judge, have you seen examples of where cybercriminals have been able to avoid prosecuting or receive leniency because our laws do not sufficiently cover their actions? Please provide specific examples of cases where this was the case.

Response: As a United States District Judge, I preside only over cases assigned to me and am not aware of what cases prosecutors choose not to file.

53. Do you have any other notable knowledge or experience with cybersecurity or cybercrime issues which you would apply if confirmed as a Circuit Court Judge?

Response: No.

International Parental Child Abduction

54. I have a specific interest in the issue of international parental child abduction, where one parent will unlawfully kidnap an American citizen child to another country. Many of these countries often refuse to return the children. This practice is devastating to left-behind parents, who must navigate international law to get their children returned.

a. How many cases of international parental child abduction have you heard as a District Court Judge?

Response: To the best of my recollection, I have not presided over any such cases.

b. What is the average sentence you have imposed on those convicted of IPCA crimes?

Response: To the best of my recollection, I have not presided over any such cases.

Victims' Rights

55. I am deeply concerned about the rights of crime victims, and ensuring that they have their day in court and receive proper compensation. What specific actions have you taken as a judge to ensure crime victims' rights?

Response: As a United States District Judge, I comply with the federal statutory provisions regarding crime victims' rights, such as ensuring that crime victims can exercise their "right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding." 18 U.S.C. § 3771(a)(4).

56. How many cases have you heard during your time as a District Court Judge which involved the rights of victims of crime? What was the outcome in these types of cases, and how did you evaluate their claims?

Response: To the best of my recollection, I have not presided over any crime victim's lawsuit against a criminal defendant. In my criminal cases, I order defendants to make restitution payments to victims and to have no contact with victims during the defendants' term of supervised release.

57. What work have you done inside and outside the courtroom to support crime victims? How will you support crime victims if you are confirmed to be a Circuit Court Judge?

Response: As a United States District Judge, I am fair and impartial to all parties and persons who appear before me. According to the Victims' Rights and Restitution Act, 34 U.S.C. § 20141, federal law enforcement officials are tasked with informing victims of places where they may receive medical and social services; informing victims of any restitution or other relief to which the victim may be entitled; informing victims of public and private programs that can provide victims counseling, treatment, and other support; assisting the victim with contacting services that could help the victim; arranging for the victim to receive protection from suspected offenders; and providing notice to the victim about the status of the investigation and prosecution of the suspected offenders, along with other helpful services. In the Northern District of California, the United States Attorney's Office's Victim Witness Advocates Office provides these services to crime victims.

Citing References (15)

Title	Date	NOD Topics	Type
1. UNITED STATES OF AMERICA, Plaintiff, v. MANUEL CEJA-MELCHOR, Defendant. 2021 WL 3616777, *1+ , N.D.Cal. On April 8, 2020, the Court granted Defendant Manuel Ceja-Melchor's ("Defendant") motion to dismiss Defendant's 8 U.S.C. § 1326 indictment. ECF No. 33. Before the Court is the...	Aug. 16, 2021	—	Case
2. United States v. Ceja-Melchor 445 F.Supp.3d 157, 157+ , N.D.Cal. IMMIGRATION — Jurisdiction. Notices of hearing that included address of Immigration Court failed to remedy jurisdictional defect resulting from defective notice to appear.	Apr. 08, 2020	73a. Date and location notice requirements, practice and procedure	Case
3. United States v. Nunez-Romero 2020 WL 1139642, *1+ , N.D.Cal. Before the Court is Defendant Luis Nunez-Romero's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8 U.S.C. § 1326. ECF No....	Mar. 09, 2020	—	Case
4. United States v. Rosas-Ramirez 424 F.Supp.3d 758, 759+ , N.D.Cal. IMMIGRATION — Deportation or Removal. Lack of jurisdiction was not cured by defendant's actual notice of address of Immigration Court or his physical presence at removal hearing.	Nov. 26, 2019	73. Notice to alien, practice and procedure	Case
5. United States v. Rosas-Ramirez 2019 WL 2617096, *1+ , N.D.Cal. Before the Court is Defendant Antonio Rosas-Ramirez's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8 U.S.C. § 1326 as to...	June 26, 2019	—	Case
6. United States v. Aguilar-Castaneda 2019 WL 2603300, *1+ , N.D.Cal. Before the Court is Defendant Juan Aguilar-Castaneda's motion to dismiss Plaintiff United States' ("government") indictment for illegal reentry following deportation in violation...	June 25, 2019	—	Case
7. United States v. Zuniga-Ramirez 2019 WL 2548791, *1+ , N.D.Cal. Before the Court is Defendant Armando Zuniga-Ramirez's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8 U.S.C. § 1326. ECF...	June 20, 2019	—	Case
8. United States v. Rosas-Ramirez 2019 WL 1518162, *1+ , N.D.Cal. On February 4, 2019, the Court denied Defendant Antonio Rosas-Ramirez's ("Defendant") motion to dismiss Defendant's 8 U.S.C. § 1326 indictment. ECF No. 23 ("2/4/19 Order")....	Apr. 08, 2019	—	Case
9. United States v. Rojas-Osorio 381 F.Supp.3d 1216, 1217+ , N.D.Cal. IMMIGRATION — Deportation or Removal. Defendant identified some evidentiary basis on which voluntary departure relief could have been granted in his prior removal proceedings.	Apr. 05, 2019	97a. ---- Duty to inform, collateral attack, practice and procedure 98a. ---- Notice deficiencies, collateral attack, practice and procedure	Case

Title	Date	NOD Topics	Type
10. **United States v. Pineda-Rodriguez** 2019 WL 1370359, *1+ , N.D.Cal. Before the Court is Defendant Salvador Heriberto Pineda-Rodriguez's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8...	Mar. 26, 2019	—	Case
11. **United States v. Rosas-Ramirez** 2019 WL 428783, *1+ , N.D.Cal. Before the Court is Defendant Antonio Rosas-Ramirez's ("Defendant") motion to dismiss the indictment for illegal reentry following deportation in violation of 8 U.S.C. § 1326. ECF...	Feb. 04, 2019	—	Case
12. **United States v. Rojas Osorio** 2019 WL 235042, *3+ , N.D.Cal. Before the Court is Defendant Jorge Arturo Rojas-Osorio's motion to dismiss indictment, filed on November 2, 2018. ECF No. 32 ("Mot."). In the motion, Defendant seeks to dismiss...	Jan. 16, 2019	—	Case
13. **United States v. Rojas Osorio** 2018 WL 6069935, *1+ , N.D.Cal. Before the Court is Defendant Jorge Arturo Rojas-Osorio's motion to withdraw guilty plea, filed on October 23, 2018. ECF No. 29 ("Mot."). The government opposed on November 2,...	Nov. 20, 2018	—	Case
14. **United States v. Ramirez** 2018 WL 424358, *2+ , N.D.Cal. Defendant Jose Bernal Ramirez ("Defendant") filed a Motion to Dismiss Indictment Due to Unlawful Deportation on November 1, 2017. ECF No. 22 ("Mot."). In the motion, Defendant...	Jan. 16, 2018	—	Case
17. **United States v. Cortez-Ruiz** 225 F.Supp.3d 1093, 1093+ , N.D.Cal. CRIMINAL JUSTICE — Immigration. Indictment charging alien defendant with illegal reentry warranted dismissal on ground that deportation on which indictment was based was invalid.	Dec. 02, 2016	88. ---- Prior convictions, defenses, practice and procedure	Case

1. Cruz-Zavala v. Barr

United States District Court, N.D. California, San Jose Division. | April 17, 2020 | 445 F.Supp.3d 571 | 2020 WL 1904469

IMMIGRATION — Bonds. Alien was entitled to constitutionally compliant bond hearing in removal proceedings.

Synopsis
Background: Alien filed petition for writ of habeas corpus, challenging his prolonged detention by Immigration and Customs Enforcement (ICE) during his removal proceedings, and he moved for temporary restraining order (TRO) seeking immediate release, or, alternatively, to secure his immediate release pending bond hearing.
Holding: The District Court, Lucy H. Koh, J., held that alien was entitled to constitutionally compliant bond hearing.
Petition granted in part and denied in part, and motion denied.

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 1, 5 LUCY H. KOH , United States District Judge On March 29, 2020, Petitioner Walter...

2. Cruz-Zavala v. Garland

United States District Court, N.D. California, San Jose Division. | March 29, 2021 | Slip Copy | 2021 WL 1192376

Before the Court is Petitioner Walter Cruz-Zavala's (“Petitioner”) petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. ECF No. 1 (“Pet.”). Petitioner is a native of El Salvador who is currently in civil immigration custody. See Pet. ¶¶ 9, 33. Petitioner named as Respondents William P. Barr,...

...WRIT OF HABEAS CORPUS Re: Dkt. No. 1 LUCY H. KOH , United States District Judge Before the Court is Petitioner Walter...

3. Villalta v. Sessions

United States District Court, N.D. California, San Jose Division. | October 02, 2017 | Not Reported in Fed. Supp. | 2017 WL 4355182

On September 18, 2017, Petitioner Moises Alexander Villalta (“Petitioner”) filed, through counsel, a petition for writ of habeas corpus under 28 U.S.C. §2241. See ECF No. 1 (“Petition”). Petitioner is a native and citizen of El Salvador who is currently detained in Immigration and Customs Enforcement...

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 1, 6 LUCY H. KOH , United States District Judge On September 18, 2017, Petitioner Moises...

4. Birru v. Barr

United States District Court, N.D. California, San Jose Division. | April 16, 2020 | Slip Copy | 2020 WL 1899408

On March 31, 2020, Petitioner Aylaliya Assefa Birru (“Petitioner”) filed a first amended petition for writ of habeas corpus under 28 U.S.C. § 2241. See ECF No. 4 (“Pet.”). Petitioner is a native of Ethiopia who is currently detained in Immigration and Customs Enforcement (“ICE”) custody. See Pet....

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 4, 5 LUCY H. KOH , United States District Judge On March 31, 2020, Petitioner Aylaliya...

5. Birru v. Barr

United States District Court, N.D. California, San Jose Division. | April 17, 2020 | Slip Copy | 2020 WL 1905581

On March 31, 2020, Petitioner Aylaliya Assefa Birru (“Petitioner”) filed a first amended petition for writ of habeas corpus under 28 U.S.C. § 2241. See ECF No. 4 (“Pet.”). Petitioner is a native of Ethiopia who is currently detained in Immigration and Customs Enforcement (“ICE”) custody. See Pet....

...has been vacated. Re: Dkt. Nos. 4, 5 LUCY H. KOH , United States District Judge On March 31, 2020, Petitioner Aylaliya...

6. Cruz v. Sessions

United States District Court, N.D. California, San Jose Division. | November 18, 2018 | Not Reported in Fed. Supp. | 2018 WL 6047287

On October 11, 2018, Petitioner Ricardo Vasquez Cruz (“Petitioner”) filed a petition for writ of habeas corpus under 28 U.S.C. §2241. See ECF No. 1 (“Petition”). Petitioner is a native and a citizen of El Salvador who is currently detained in Immigration and Customs Enforcement (“ICE”) custody. See...

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 1, 2 LUCY H. KOH , United States District Judge On October 11, 2018, Petitioner Ricardo...

7. Vasquez Cruz v. Barr

United States District Court, N.D. California, San Jose Division. | November 26, 2019 | Slip Copy | 2019 WL 6327576

On August 22, 2019, Petitioner Ricardo Vasquez Cruz (“Petitioner”) filed a verified petition for writ of habeas corpus under 28 U.S.C. § 2241. See ECF No. 1 (“Pet.”). Petitioner is a native and a citizen of El Salvador who is currently detained in Immigration and Customs Enforcement (“ICE”) custody. See Pet....

...TEMPORARY RESTRAINING ORDER Re: Dkt. Nos. 1-1 LUCY H. KOH , United States District Judge On August 22, 2019, Petitioner Ricardo...

1. Shropshire v. Canning

United States District Court, N.D. California, San Jose Division. | August 22, 2011 | 809 F.Supp.2d 1139 | 2011 WL 3667492

COPYRIGHTS - Music. Alleged act of infringement was not wholly extraterritorial to United States, as required to state claim under Copyright Act,

Synopsis
Background: Co-owner of copyright for holiday song “Grandma Got Run Over By A Reindeer” brought copyright infringement suit against alleged infringer. Defendant moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 plaintiff sufficiently alleged an act of copyright infringement that was not wholly extraterritorial to the United States, as required to state claim under Copyright Act, and
2 allegations stated claim under the Digital Millennium Copyright Act (DMCA).
Motion granted in part, and denied in part.

...DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT LUCY H. KOH , District Judge. “Grandma Got Run Over By A Reindeer” is...

2. Adobe Systems Incorporated v. Blue Source Group, Inc.

United States District Court, N.D. California, San Jose Division. | August 31, 2015 | 125 F.Supp.3d 945 | 2015 WL 5118509

ANTITRUST — Sales Practices. California's Unfair Competition Law reached distributor's conduct, even if distributor's sales of infringing products occurred outside California.

Synopsis
Background: Computer software developer brought action against competitors and distributors, alleging trademark infringement, false designation of origin, false or misleading advertising, unfair competition, trademark dilution, copyright infringement, and violation of unlawful, unfair, and fraudulent prongs of California's Unfair Competition Law (UCL). One distributor moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 distributor was subject to court's specific personal jurisdiction;
2 developer did not impermissibly lump together multiple defendants;
3 developer sufficiently alleged consumer confusion;
4 developer pled cause of action for false designation of origin, false or misleading advertising, and unfair competition under Lanham Act;
5 developer pled cause of action for trademark dilution under Lanham Act;
6 developer pled cause of action for copyright infringement;
7 UCL reached distributor's alleged conduct; and
8 developer pled theory of joint and several liability.
Motion denied.

...CO, for Defendant. ORDER DENYING MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff Adobe Systems Inc. (“Adobe”) brings...

3. Epikhin v. Game Insight North America

United States District Court, N.D. California, San Jose Division. | May 20, 2015 | Not Reported in Fed. Supp. | 2015 WL 2412357

Plaintiffs Evgeny Epikhin (“Epikhin”) and Dmitri Redlikh (“Redlikh”) (collectively, “Plaintiffs”) bring suit against defendants Game Insight North America, Game Insight, and GIGL (collectively, “Game Insight”) and Game Garden, LLC (“Game Garden”) (together, with Game Insight,...

...DISMISS THIRD, FOURTH, AND SEVENTH CAUSES OF ACTION LUCY H. KOH , United States District Judge Plaintiffs Evgeny Epikhin (“Epikhin”) and Dmitri...

4. Shropshire v. Canning

United States District Court, N.D. California, San Jose Division. | January 11, 2011 | Not Reported in F.Supp.2d | 2011 WL 90136

“Granma Got Run Over By A Reindeer” is a holiday song written by Randy Brooks in 1979 and performed by Elmo Shropshire and Patsy Trigg. In this copyright infringement suit, Plaintiff Elmo Shropshire claims that he co-owns the copyright to the musical composition of the song and that Defendant Aubrey Canning, Jr., who resides in eastern...

...for Plaintiff. ORDER GRANTING DEFENDANT'S MOTION TO DISMISS LUCY H. KOH , District Judge. “Granma Got Run Over By A Reindeer” is...

5. YZ Productions, Inc. v. Redbubble, Inc.

United States District Court, N.D. California, San Jose Division. | June 24, 2021 | --- F.Supp.3d ---- | 2021 WL 2633552

COPYRIGHTS — Online Services. Complaint failed to allege that online retailer had knowledge of infringing acts on its system required for contributory copyright infringement claim.

Synopsis
Background: Multimedia producer brought action against owner of e-commerce system for contributory copyright infringement, contributory trademark infringement, trade dress infringement, and unfair competition under California common law. Owner filed motion to dismiss for failure to state a claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 producer failed to adequately allege that owner had knowledge of third party's alleged infringing activity, as required for contributory copyright infringement claim;
2 producer failed to adequately allege that owner knew of acts of direct infringement, as required for contributory trademark infringement claim;
3 complaint failed to put owner on notice of producer's asserted trade dress, as required for trade dress infringement claim; and
4 producer failed to establish that owner was content provider or author of allegedly infringing content, thus, Communications Decency Act (CDA) immunity applied.
Motion granted.

...WITH LEAVE TO AMEND Re: Dkt. No. 29 LUCY H. KOH , United States District Judge YZ Productions, Inc. (“Plaintiff”) sues Redbubble...

6. DFSB Kollective Co., Ltd. v. Tran

United States District Court, N.D. California, San Jose Division. | December 21, 2011 | Not Reported in F.Supp.2d | 2011 WL 6730678

Plaintiffs DFSB Kollective Co., Ltd. (“DFSB”), Jungle Entertainment, Woolim Entertainment, Afternoon Music Entertainment, Inc., Boohwal Entertainment, and Loverock Company (collectively “Plaintiffs”), move for default judgment against Defendant Kenny Tran d/b/a ihoneyjoo.com and ihoneydew.com (“Defendant” or “Tran”). For the reasons set forth...

...21, 2011. ORDER GRANTING MOTION FOR DEFAULT JUDGMENT LUCY H. KOH , District Judge. Plaintiffs DFSB Kollective Co., Ltd. (“DFSB”), Jungle Entertainment...

7. Epikhin v. Game Insight North America

United States District Court, N.D. California, San Jose Division. | November 11, 2015 | 145 F.Supp.3d 896 | 2015 WL 6957491

COPYRIGHTS — Software. Source codes and images from unrelated application were not bona fide copies of original work for purposes of obtaining copyright registration.

Synopsis
Background: Application game developers brought action against competitors alleging copyright infringement, fraud, and breach of contract. Competitors moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 registration prerequisite was not met, and
2 balance of factors weighed against court exercising supplemental jurisdiction over fraud and breach of contract claims.
Motion granted.

...for Defendants. ORDER GRANTING DEFENDANTS' MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiffs Evgeny Epikhin (“Epikhin”) and Dmitri...

8. Art of Living Foundation v. Does 1-10

United States District Court, N.D. California, San Jose Division. | November 09, 2011 | Not Reported in F.Supp.2d | 2011 WL 5444622

Doe Defendant, specially appearing under the pseudonym “Skywalker,” moves for relief from Magistrate Judge Lloyd's order denying his motion to quash a subpoena intended to discover his identity from third-party Internet Service Providers. Having considered the parties' briefing and oral arguments, the Court finds that Skywalker's First Amendment...

...NONDISPOSITIVE PRE–TRIAL ORDER RE: MOTION TO QUASH LUCY H. KOH , District Judge. Doe Defendant, specially appearing under the pseudonym “Skywalker...

9. Luxul Technology Inc. v. Nectarlux, LLC

United States District Court, N.D. California, San Jose Division. | January 26, 2015 | 78 F.Supp.3d 1156 | 2015 WL 352048

COPYRIGHTS — Jurisdiction. Plaintiff satisfied purposeful direction test for specific jurisdiction over nonresident defendants in suit for, inter alia, copyright infringement.

Synopsis
Background: Producer of energy efficient light emitting diode (LED) products brought action against sales representative, marketing consulting firm, and firm's principal, alleging false designation of origin and false advertising under Lanham Act, copyright infringement, unfair competition and false advertising under California law, breach of contract, breach of implied covenant of good faith and fair dealing, and account stated. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 producer adequately pled Lanham Act claim for false designation of origin;
2 producer failed to adequately plead Lanham Act claim for false advertising;
3 producer adequately pled claim under unfair prong of California's Unfair Competition Law (UCL);
4 producer adequately pled copyright infringement claim;
5 producer adequately pled claims for breach of contract and breach of implied covenant of good faith and fair dealing;
6 producer adequately pled claim for account stated; and
7 producer satisfied test for court to exercise specific jurisdiction over nonresident defendants.
Motion granted in part and denied in part.

...PART MOTION TO DISMISS Re: Dkt. No. 21 LUCY H. KOH , United States District Judge Plaintiff Luxul Technology Inc. (“Plaintiff” or...

10. Michael Grecco Productions, Inc. v. Enthusiast Gaming, Inc.

United States District Court, N.D. California, San Jose Division. | December 08, 2020 | Slip Copy | 2020 WL 7227199

Before the Court is Plaintiff Michael Grecco Productions, Inc.’s (“Plaintiff”) renewed motion for default judgment. ECF No. 31. Having considered the parties’ submissions, the relevant law, and the record in this case, the Court GRANTS IN PART and DENIES IN PART Plaintiff's motion for default judgment. Plaintiff is a...

...MOTION FOR DEFAULT JUDGMENT Re: Dkt. No. 31 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Michael...

11. Shropshire v. Canning

United States District Court, N.D. California, San Jose Division. | January 04, 2012 | Not Reported in F.Supp.2d | 2012 WL 13658

“Grandma Got Run Over By A Reindeer” is a holiday song, written by Randy Brooks in 1979, and performed by Elmo Shropshire (“Shropshire” or “Plaintiff”) and Patsy Trigg (“Trigg”). In this copyright infringement suit, Plaintiff claims that he co-owns the copyright to the musical composition of the song and that Defendant Aubrey Canning, Jr....

...DEFENDANT'S SECOND MOTION TO DISMISS SECOND AMENDED COMPLAINT LUCY H. KOH , District Judge. “Grandma Got Run Over By A Reindeer” is...

12. Michael Grecco Productions, Inc. v. Enthusiast Gaming, Inc.

United States District Court, N.D. California, San Jose Division. | May 18, 2021 | Slip Copy | 2021 WL 1979202

Plaintiff Michael Grecco Productions, Inc. (“Plaintiff”) sued Defendant Enthusiast Gaming, Inc. (“Defendant”) for copyright infringement. On December 8, 2020, the Court granted in part and denied in part Plaintiff's motion for default judgment. ECF No. 35. Before the Court is Plaintiff's motion for attorney's fees, ECF No....

...MOTION FOR ATTORNEY'S FEES Re: Dkt. No. 37 LUCY H. KOH , United States District Judge Plaintiff Michael Grecco Productions, Inc. (“Plaintiff...

13. Adobe Systems Incorporated v. Nwubah

United States District Court, N.D. California. | June 23, 2020 | Slip Copy | 2020 WL 3432639

Before the Court is Plaintiff Adobe Systems Incorporated's (“Plaintiff”) motion for default judgment. ECF No. 45. Having considered the filings of Plaintiff, the relevant law, and the record in the instant case, the Court GRANTS Plaintiff's motion for default judgment. Plaintiff is a Delaware corporation with a principal place of...

...MOTION FOR DEFAULT JUDGMENT Re: Dkt. No. 45 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Adobe...

14. Broadcast Music, Inc. v. Kiflit

United States District Court, N.D. California, San Jose Division. | October 02, 2012 | Not Reported in F.Supp.2d | 2012 WL 4717852

On April 11, 2012, the Clerk of the Court entered default against Defendant Tedros Kiflit, individually and doing business as Arsimona (“Defendant” or “Arsimona”), after Defendant failed to appear or otherwise respond to the Summons and Complaint in this case within the time prescribed by the Federal Rules of Civil Procedure. See ECF No. 10. Before...

...for Plaintiffs. ORDER GRANTING MOTION FOR DEFAULT JUDGMENT LUCY H. KOH , District Judge. On April 11, 2012, the Clerk of the...

15. Epikhin v. Game Insight North America

United States District Court, N.D. California, San Jose Division. | March 31, 2016 | Not Reported in Fed. Supp. | 2016 WL 1258690

Plaintiffs Evgeny Epikhin (“Epikhin”) and Dmitri Redlikh (“Redlikh”) (collectively, “Plaintiffs”) sued Defendants Game Insight North America, Cooper Media Corp. d/b/a Game Insight, and Game Insight Global Limited d/b/a GIGL (collectively, “Game Insight”) and Game Garden, LLC (“Game...

...ATTORNEY'S FEES AND COSTS Re: Dkt. No. 87 LUCY H. KOH , United States District Judge Plaintiffs Evgeny Epikhin (“Epikhin”) and Dmitri...

16. Brocade Communications Systems, Inc. v. A10 Networks, Inc.

United States District Court, N.D. California, San Jose Division. | June 12, 2012 | 873 F.Supp.2d 1192 | 2012 WL 2150305

PATENTS - Computers and Electronics. Competitor's officers were not personally liable for inducing competitor's alleged infringement.

Synopsis
Background: Patentees brought action against competitor and several former employees, two of whom were competitor's officers, alleging that employees took their intellectual property with them to competitor, and competitor used their intellectual property to develop a competing product, which allegedly infringed several of their patents. Defendants moved for summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 officers were not personally liable for inducing competitor's alleged infringement;
2 genuine issue of material fact existed as to whether competitor directly infringed patent directed to a system and method for providing network route redundancy across layer 2 devices;
3 genuine issue of material fact existed as to whether competitor directly infringed patent directed to providing redundancy support for network address translation (NAT) devices in the event of a failover;
4 genuine issue of material fact existed as to whether competitor directly infringed patent relating to global server load-balancing;
5 genuine issue of material fact existed as to whether competitor directly infringed patent directed to a system for global server load-balancing;
6 genuine issue of material fact existed as to whether competitor directly infringed patent directed to a system and method for protecting a central processing unit of a router against remote access attacks; and
7 genuine issues of material fact existed, precluding summary judgment on patentees' trade secret misappropriation claim under California's Uniform Trade Secrets Act (UTSA).
Motion granted in part and denied in part.

...DENYING IN PART A10'S MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. On May 3, 2012, Defendants Lee Chen, Rajkumar...

17. Art of Living Foundation v. Does 1-10

United States District Court, N.D. California, San Jose Division. | May 01, 2012 | Not Reported in F.Supp.2d | 2012 WL 1565281

Plaintiff Art of Living Foundation (“Plaintiff” or “AOLF–US”), a California corporation and the United States branch of the international Art of Living Foundation based in Bangalore, India, brings this action for copyright infringement under 17 U.S.C. § 501 et seq., and misappropriation of trade secrets under California Civil Code § 3426 et seq.,...

...IN PART DEFENDANTS' SECOND SPECIAL MOTION TO STRIKE LUCY H. KOH , District Judge. Plaintiff Art of Living Foundation (“Plaintiff” or “AOLF...

18. Luxul Technology Inc. v. NectarLux, LLC

United States District Court, N.D. California, San Jose Division. | June 16, 2016 | Not Reported in Fed. Supp. | 2016 WL 3345464

Plaintiff and Counterdefendant Luxul Technology, Inc. (“Luxul”) moves for summary judgment and for sanctions against Defendants and Counterclaimants NectarLux LLC, JKenney Consulting, Inc., and James Keeney (collectively, “NectarLux”). ECF Nos. 85 (“Luxul Sanctions Mot.”), 94 (“Luxul Summ. J. Mot.”)....

...SANCTIONS Re: Dkt. Nos. 85, 92, 93, 94 LUCY H. KOH , United States District Judge Plaintiff and Counterdefendant Luxul Technology, Inc...

19. Brocade Communications Systems, Inc. v. A10 Networks, Inc.

United States District Court, N.D. California, San Jose Division. | August 16, 2011 | Not Reported in F.Supp.2d | 2011 WL 7762998

Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks, LLC (together, Brocade) filed an application for a temporary restraining order (TRO) based on alleged copyright infringement and trade secret theft by defendants (collectively, AIO). This matter was heard on August 12, 2011. For the reasons set forth below, this Motion is DENIED...

...Defendants. ORDER DENYING APPLICATION FOR TEMPORARY RESTRAINING ORDER LUCY H. KOH , District Judge. Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks...

20. Brocade Communications Systems Inc. v. A10 Networks Inc.

United States District Court, N.D. California. | August 16, 2011 | Not Reported in F.Supp.2d | 2011 WL 7563043

Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks, LLC (together, Brocade) filed an application for a temporary restraining order (TRO) based on alleged copyright infringement and trade secret theft by defendants (collectively, A10). This matter was heard on August 12, 2011. For the reasons set forth below, this Motion is DENIED...

...Ann Liroff , of Haight Brown & Bonesteel, San Francisco, for defendants. Koh , J. Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks, LLC...

21. Autodesk, Inc. v. Flores

United States District Court, N.D. California, San Jose Division. | January 31, 2011 | Not Reported in F.Supp.2d | 2011 WL 337836

COPYRIGHTS - Software. Permanent injunction preventing sellers of pirated software from infringing software company's copyrights in the future was warranted.

...ORDER GRANTING IN PART MOTION FOR DEFAULT JUDGMENT LUCY H. KOH , District Judge. Plaintiff Autodesk, Inc., moves for default judgment against...

22. Dei Gratia v. Stafford

United States District Court, N.D. California, San Jose Division. | January 23, 2015 | Not Reported in Fed. Supp. | 2015 WL 332633

Plaintiff Aubree Regina Dei Gratia, also known as Rosalie Guancione ("Plaintiff"), brings this action against Rodney J. Stafford, Judge of the Santa Clara County Superior Court, Jeffrey Rosen, District Attorney of the County of Santa Clara, and Alexis Causey, Deputy District Attorney of the County of Santa Clara (collectively,...

...CHANGE VENUE Re: Dkt. Nos. 28, 31, 205 LUCY H. KOH , District Judge Plaintiff Aubree Regina Dei Gratia, also known as...

23. Adlife Marketing & Communications Company, Inc. v. Popsugar, Inc.

United States District Court, N.D. California, San Jose Division. | March 26, 2020 | Slip Copy | 2020 WL 1478379

Before the Court is Plaintiff Adlife Marketing & Communications Company, Inc.'s ("Plaintiff") motion to dismiss with prejudice Plaintiff's own complaint alleging copyright infringement against Defendant Popsugar, Inc. ("Defendant"). ECF No. 45-1 ("Mot."); see also ECF No. 1 ("Compl."). For the...

...TO DISMISS WITH PREJUDICE Re: Dkt. No. 45 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Adlife...

24. DiscoverOrg Data, LLC v. Bitnine Global, Inc.

United States District Court, N.D. California, San Jose Division. | November 09, 2020 | Slip Copy | 2020 WL 6562333

Plaintiff DiscoverOrg Data, LLC ("Plaintiff") moves for default judgment against Defendant Bitnine Global, Inc. ("Defendant"), ECF No. 24. Having considered Plaintiff's motion, the relevant law, and the record in this case, the Court hereby GRANTS IN PART and DENIES IN PART Plaintiff's motion for default judgment. Plaintiff...

...JUDGMENT PUBLIC REDACTED VERSION Re: Dkt. No. 24 LUCY H. KOH , United States District Judge Plaintiff DiscoverOrg Data, LLC ("Plaintiff") moves...

25. Song v. Drenberg

United States District Court, N.D. California, San Jose Division. | May 06, 2019 | Not Reported in Fed. Supp. | 2019 WL 1998944

Plaintiffs James Song, FaircapX, Inc., Mithrandir Inc. ("Mithrandir Labs"), and Faircap Angels, Inc. (collectively, "Plaintiffs") bring suit against Defendants Aaron Drenberg, Alexa Pettinari, and Mark Pettinari (collectively, "Defendants") alleging multiple causes of action that originate from a soured business...

...GRANTING MOTION TO DISMISS Re: Dkt. No. 27 LUCY H. KOH , United States District Judge Plaintiffs James Song, FaircapX, Inc., Mithrandir...

26. Brocade Communications Systems, Inc. v. A10 Networks, Inc.

United States District Court, N.D. California, San Jose Division. | March 23, 2011 | Not Reported in F.Supp.2d | 2011 WL 1044899

Defendants A10 Networks, Inc., Lee Chen, Rajkumar Jalan, Ron Szeto, and Steven Hwang (together, A10) move to dismiss various claims pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons set forth below, this Motion is GRANTED in part and DENIED in part. On August 4, 2010, plaintiffs Brocade Communications Systems, Inc ., and Foundry...

...PART AND DENYING IN PART MOTION TO DISMISS LUCY H. KOH , District Judge. Defendants A10 Networks, Inc., Lee Chen, Rajkumar Jalan...

27. Erickson Productions, Inc. v. Kast

United States District Court, N.D. California, San Jose Division. | November 09, 2018 | Not Reported in Fed. Supp. | 2018 WL 5906076

Plaintiffs Erickson Productions, Inc. and Jim Erickson sued Defendant Kraig Kast for copyright infringement. Plaintiffs prevailed at trial and were awarded $450,000 in damages. Plaintiffs later moved to amend the judgment to add various corporate entities and trusts that Kast purportedly controlled. Plaintiffs also requested attorneys' fees and...

...STAYING CASE PENDING APPEALS Re: Dkt. No. 307 LUCY H. KOH , United States District Judge Plaintiffs Erickson Productions, Inc. and Jim...

28. Lynwood Investments Cy Limited v. Konovalov

United States District Court, N.D. California. | March 25, 2021 | Slip Copy | 2021 WL 1164838

Plaintiff Lynwood Investments CY Limited (“Lynwood”) sues Defendants Maxim Konovalov; Igor Sysoev; Andrey Alexeev; Maxim Dounin; Gleb Smirnoff; Angus Robertson; F5 Networks, Inc.; NGINX, Inc. (BVI); NGINX Software, Inc.; E. Venture Capital Partners II LLC; Runa Capital, Inc.; BV NGINX, LLC; and NGINX, Inc. (DE) (collectively,...

...No. 20-CV-03778-LHK 03/25/2021 LUCY H. KOH , United States District Judge ORDER GRANTING MOTIONS TO DISMISS WITH...

29. Gorski v. The Gymboree Corporation

United States District Court, N.D. California, San Jose Division. | July 16, 2014 | Not Reported in Fed. Supp. | 2014 WL 3533324

Plaintiff Elektra Printz Gorski (“Gorski”) alleges that Defendant The Gymboree Corporation (“Gymboree”) infringed Gorski's registered copyright and registered trademark in Gymboree's marketing and sale of clothing featuring the phrase “lettuce turnip the beet.” ECF No. 1 at 8–10. Before the...

...AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff Elektra Printz Gorski (“Gorski”) alleges...

30. Roman v. United States

United States District Court, N.D. California, San Jose Division. | September 14, 2021 | Slip Copy | 2021 WL 4170763

Before the Court is a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, filed by Petitioner Leslie Roman (“Petitioner”), acting pro se. ECF No. 1 (“Mot.”). Petitioner seeks to vacate, set aside, or correct his sentence in light of the United States Supreme Court's decision in Nelson v....

...Dkt. No. 717 (15-CR-00264-LHK-8) LUCY H. KOH , United States District Judge Before the Court is a motion...

31. Synopsys, Inc. v. InnoGrit, Corp.

United States District Court, N.D. California. | October 01, 2019 | Not Reported in Fed. Supp. | 2019 WL 4848387

Plaintiff Synopsys, Inc. (“Synopsys”) brings this action against Defendants InnoGrit, Corp. (“InnoGrit”) and Does 1–10. ECF No. 50 (“SAC”). Before the Court is InnoGrit's motion to dismiss the second amended complaint (“SAC”). ECF No. 52 (“Mot.”). Having considered the submissions of...

...DEFENDANT'S MOTION TO DISMISS Re: Dkt. No. 52 LUCY H. KOH , United States District Judge Plaintiff Synopsys, Inc. (“Synopsys”) brings this...

32. Lynwood Investments CY Limited v. Konovalov

United States District Court, N.D. California, San Jose Division. | March 30, 2021 | Slip Copy | 2021 WL 1198915

Plaintiff Lynwood Investments CY Limited (“Lynwood”) sues Defendants Maxim Konovalov; Igor Sysoev; Andrey Alexeev; Maxim Dounin; Gleb Smirnoff; Angus Robertson; F5 Networks, Inc.; NGINX, Inc. (BVI); NGINX Software, Inc.; e.venture Capital Partners II LLC; Runa Capital, Inc.; BV NGINX, LLC; and NGINX, Inc. (DE) (collectively,...

...WITH LEAVE TO AMEND Re: Dkt. No. 106 LUCY H. KOH , United States District Judge Plaintiff Lynwood Investments CY Limited (“Lynwood...

33. AF Holdings LLC v. Does 1-135

United States District Court, N.D. California, San Jose Division. | March 27, 2012 | Not Reported in F.Supp.2d | 2012 WL 1038671

Before the Court is Plaintiff AF Holdings LLC's ("AFH") Response, ECF No. 37, to the Court's January 19, 2012 Order to Show Cause why this case should not be dismissed for failure to timely serve the Doe Defendants pursuant to Federal Rule of Civil Procedure 4(m), ECF No. 35. The Court held a hearing on the Order to Show Cause on February 22, 2012....

...TO FEDERAL RULE OF CIVIL PROCEDURE 4(M) LUCY H. KOH , District Judge. Before the Court is Plaintiff AF Holdings LLC's...

34. Michael Grecco Productions, Inc. v. Enthusiast Gaming, Inc.

United States District Court, N.D. California, San Jose Division. | July 22, 2020 | Slip Copy | 2020 WL 4207445

Before the Court is Plaintiff Michael Grecco Productions, Inc.'s ("Plaintiff") motion for default judgment. ECF No. 23. Because Plaintiff has not established that Defendant was properly served, the Court DENIES Plaintiff's motion for default judgment without prejudice. Plaintiff is a photography agency with its principal place of...

...DEFAULT JUDGMENT WITHOUT PREJUDICE Re: Dkt. No. 23 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Michael...

35. Autodesk, Inc. v. Flores

United States District Court, N.D. California, San Jose Division. | May 18, 2011 | Not Reported in F.Supp.2d | 2011 WL 1884694

On January 31, 2011, the Court granted Plaintiff Autodesk, Inc.'s motion for default judgment against Defendants Guillermo Flores, Greg Flowers, and Gregorio Flores for copyright infringement, trademark infringement, false designation of origin, and violations of the circumvention technology provisions of the Digital Millennium Copyright Act...

...ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS LUCY H. KOH , District Judge. On January 31, 2011, the Court granted Plaintiff...

36. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | May 10, 2016 | Not Reported in Fed. Supp. | 2016 WL 2654410

On March 23, 2016, the defendants in this action filed pre-trial motions. See ECF Nos. 111, 112, 113, 114, 115, 116, 117, 119, 120, 121. The Government filed responses. ECF Nos. 124, 125, 126, 129, 130, 132, 133. The defendants filed replies. ECF Nos. 134, 135, 137, 138, 139, 140. This order addresses the motions contained in ECF Nos. 113, 114,...

...111, 113, 114, 116, 117, 119, 120, 121 LUCY H. KOH , United States District Judge On March 23, 2016, the defendants...

37. NetApp, Inc. v. Nimble Storage, Inc.

United States District Court, N.D. California, San Jose Division. | January 29, 2015 | Not Reported in Fed. Supp. | 2015 WL 400251

Plaintiff NetApp, Inc. (“NetApp”) has filed this suit against Defendants Nimble Storage, Inc. (“Nimble”), and Michael Reynolds (“Reynolds”) (collectively, “Defendants”). See ECF No. 71 (Second Am. Compl.). Defendants move to dismiss all the claims that NetApp asserts against Nimble and...

...MOTION TO DISMISS, AND GRANTING MOTION TO STRIKE LUCY H. KOH , District Judge Plaintiff NetApp, Inc. (“NetApp”) has filed this suit...

38. Epikhin v. Game Insight North America

United States District Court, N.D. California, San Jose Division. | May 12, 2015 | Not Reported in Fed. Supp. | 2015 WL 2229225

Plaintiffs Evgeny Epikhin (“Epikhin”) and Dmitri Redlikh (“Redlikh”) (collectively, “Plaintiffs”) bring suit against defendants Game Insight North America, Game Insight, and GIGL (collectively, “Game Insight”) and Game Garden, LLC (“Game Garden”) (together, with Game Insight,...

...for Defendants. ORDER GRANTING MOTION TO DISQUALIFY COUNSEL LUCY H. KOH , District Judge Plaintiffs Evgeny Epikhin (“Epikhin”) and Dmitri Redlikh (“Redlikh...

39. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | September 13, 2016 | Not Reported in Fed. Supp. | 2016 WL 4762274

Before the Court are separate motions to sever, filed by Defendant Camilo Rodriguez and Mario Ramirez. See ECF No. 212 (“Camilo Mot.”); ECF No. 217 (“Mario Mot.”). The Court finds these motions suitable for decision without oral argument and thus VACATES the motions hearing set for September 15, 2016, at 1:30 p.m. Having...

...REGARDING TRIAL GROUPING Re: Dkt. Nos. 212, 217 LUCY H. KOH , United States District Judge Before the Court are separate motions...

40. Factory Direct Wholesale, LLC v. iTouchless Housewares & Products, Inc.

United States District Court, N.D. California, San Jose Division. | October 23, 2019 | 411 F.Supp.3d 905 | 2019 WL 5423450

TRADEMARKS — Advertising. Seller on e-commerce platform stated claim for false advertising under Lanham Act against competitor.

Synopsis
Background: Seller on e-commerce platform brought action against competitor, alleging false advertising under Lanham Act, intentional interference with contract, intentional and negligent interference with prospective economic advantage, violations of California's Unfair Competition Law (UCL), and trademark infringement. Competitor moved to dismiss.

Holdings: The District Court, Lucy H. Koh, J., held that:
1 claim preclusion did not bar Lanham Act false advertising claim;
2 claim preclusion barred claim for violations of UCL;
3 claim preclusion barred tortious interference claims;
4 claim preclusion did not bar trademark infringement claim;
5 issue preclusion did not bar Lanham Act false advertising claim; and
6 seller stated claim for false advertising under Lanham Act.
Motion granted in part and denied in part.

...PART AND DENYING IN PART MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff Factory Direct Wholesale (“Plaintiff”) sued...

41. USA v. Shayota

United States District Court, N.D. California, San Jose Division. | October 19, 2016 | Not Reported in Fed. Supp. | 2016 WL 6093238

Before the Court are Adriana Shayota and Joseph Shayota's motion, ECF No. 270 (“Shayota Mot.”), and Mario Ramirez and Camilo Ramirez's motion, ECF No. 269 (“Ramirez Mot.”), to exclude the Government's noticed co-conspirator statements. Having considered the parties' briefing, the relevant law, and the record in this case,...

...STATEMENTS Re: Dkt. Nos. 269, 270, 295, 312 LUCY H. KOH , United States District Judge Before the Court are Adriana Shayota...

42. Coheso, Inc. v. Can't Live Without It, LLC

United States District Court, N.D. California, San Jose Division. | December 18, 2017 | Not Reported in Fed. Supp. | 2017 WL 10434396

Plaintiff Coheso, Inc., dba MIRA Brands (“Plaintiff”), brings this action against Defendant Can't Live Without It, LLC, dba S'well Bottle (“Defendant”). Plaintiff seeks declaratory relief regarding Defendant's trade dress rights and cancellation of Defendant's trademark registrations. Defendant moves to dismiss for lack of...

...DENYING MOTION TO DISMISS Re: Dkt. No. 9 LUCY H. KOH , United States District Judge Plaintiff Coheso, Inc., dba MIRA Brands...

43. Benedict v. Hewlett–Packard Company

United States District Court, N.D. California, San Jose Division. | January 21, 2014 | Not Reported in Fed. Supp. | 2014 WL 234207

This Order addresses a motion for sanctions pursuant to Federal Rule of Civil Procedure 11 arising in the context of a class action lawsuit brought by Plaintiffs Eric Benedict, Richard Bowders, and Kilricanos Vieira, on behalf of themselves and classes of those similarly situated, against Defendant Hewlett–Packard Company (“HP”)...

...SANCTIONS AGAINST HEWLETT–PACKARD AND HEWLETT–PACKARD'S COUNSEL LUCY H. KOH , United States District Judge This Order addresses a motion for...

44. Teeter-Totter, LLC v. Palm Bay International, Inc.

United States District Court, N.D. California, San Jose Division. | September 25, 2018 | 344 F.Supp.3d 1100 | 2018 WL 4660265

TRADEMARKS — Registration. Statement of alleged false date of first use in commerce in trademark applications did not constitute fraud which invalidated marks.

Synopsis
Background: Mark holder filed action against competitor alleging federal and state trademark infringement, federal and state unfair competition, common law trademark infringement, federal copyright infringement, cancellation of trademark registration, and inequitable conduct. Competitor filed counterclaims for a declaration of prior and superior trademark rights, cancellation of mark holder's design mark, and cancellation of word mark, U.S. design mark, and California design mark for fraud. Mark holder filed motion to dismiss cancellation counterclaims and requested attorney's fees.
Holdings: The District Court, Lucy H. Koh, D.J., held that:
1 assignment document was essentially a relinquishment of ownership rights rather than an assignment;
2 alleged assignment transferred all interests and thus did not violate Lanham Act's prohibition on assignment of intent-to-use applications; and
3 statement of alleged false date of first use in commerce in applications did not constitute fraud which invalidated marks.
Dismissed with leave to amend.

...AND THIRD AMENDED COUNTERCLAIMS Re: Dkt. No. 34 LUCY H. KOH , United States District Judge Plaintiff-Counterdefendant Teeter-Totter, LLC (“Teeter...

45. Art of Living Foundation v. Does

United States District Court, N.D. California, San Jose Division. | June 15, 2011 | Not Reported in F.Supp.2d | 2011 WL 2441898

It has long been settled that an author's decision to remain anonymous is an aspect of freedom of speech protected by the First Amendment. The right to speak anonymously, however, is not unlimited. This case centers on the contours of balancing the First Amendment rights of online authors' decisions to speak anonymously and critically of an...

...MOTION TO DISMISS AND DENYING MOTION TO STRIKE LUCY H. KOH , District Judge. It has long been settled that an author's...

46. United States v. Jamil

United States District Court, N.D. California, San Jose Division. | May 21, 2020 | Slip Copy | 2020 WL 2614877

Defendant Walid Jamil is currently in the custody of the Bureau of Prisons (“BOP”) and incarcerated at the federal correctional institution in Morgantown, West Virginia (“FCI Morgantown”). Defendant Jamil moves for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A), also known as compassionate release....

...ORDER GRANTING COMPASSIONATE RELEASE Re: Dkt. No. 765 LUCY H. KOH , United States District Judge Defendant Walid Jamil is currently in...

47. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | May 26, 2020 | Slip Copy | 2020 WL 2733993

Defendant Joseph Shayota is currently in the custody of the Bureau of Prisons ("BOP") and incarcerated at the Federal Correctional Institution's minimum security camp in Florence, Colorado ("FCI Florence"). Defendant Shayota moves for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A), also known as...

...ORDER DENYING COMPASSIONATE RELEASE Re: Dkt. No. 763 LUCY H. KOH , United States District Judge Defendant Joseph Shayota is currently in...

48. Adobe Systems Incorporated v. Nwubah

United States District Court, N.D. California, San Jose Division. | December 05, 2019 | Slip Copy | 2019 WL 6611096

Before the Court is Plaintiff Adobe Systems Incorporated's ("Plaintiff") motion for default judgment. ECF No. 34. Having considered the filings of Plaintiff, the relevant law, and the record in the instant case, the Court DENIES Plaintiff's motion for default judgment without prejudice. Plaintiff is a Delaware corporation with a...

...DEFAULT JUDGMENT WITHOUT PREJUDICE Re: Dkt. No. 34 LUCY H. KOH , United States District Judge Before the Court is Plaintiff Adobe...

49. Brocade Communications Systems, Inc. v. A10 Networks, Inc.

United States District Court, N.D. California, San Jose Division. | January 09, 2012 | Not Reported in F.Supp.2d | 2012 WL 70428

Before the Court is Brocade's motion to compel forensic inspection of Ron Szeto's computer hard drives. ECF No. 424. The Court previously denied Brocade's requested relief at a case management conference held on December 19, 2011, but invited Brocade to file a motion for reconsideration. ECF No. 416. Pursuant to the Court's order, Brocade filed its...

...FORENSIC INSPECTION OF RON SZETO'S COMPUTER HARD DRIVES LUCY H. KOH , District Judge. Before the Court is Brocade's motion to compel...

50. Corley v. Google, Inc.

United States District Court, N.D. California, San Jose Division. | August 19, 2016 | 316 F.R.D. 277 | 2016 WL 4411820

E-COMMERCE — Privacy. Consumers' Wiretap Act claims against provider of e-mail service did not arise from same transaction or occurrence, as would warrant permissive joinder.

Synopsis
Background: Consumers brought actions against provider of e-mail service, alleging that provider violated the Wiretap Act by intercepting and scanning their e-mails to develop individual profiles for commercial purposes. Following mass joinder, provider moved to sever claims of individual consumers.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 consumers' claims did not arise from same transaction or occurrence;
2 permissive joinder of 879 consumers would cause significant prejudice to provider;
3 permissive joinder would be impractical;
4 permissive joinder would result in unjustified burden on judicial resources; and
5 severance, rather than dismissal, was proper remedy for misjoinder.
Motion granted.

...Dkt. No. 20 (No. 16-CV-02553-LHK) LUCY H. KOH , United States District Judge Plaintiffs in these cases, Corley v...

51. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | October 21, 2016 | Not Reported in Fed. Supp. | 2016 WL 8732803

Before the Court are the Government's Motion Regarding Witness Unavailability, ECF No. 303 (“Gov't Mot.”), and Defendants Mario and Camilo Ramirez's (the “Ramirez defendants'”) objections concerning the unavailability of witnesses, ECF No. 319, 321. On May 14, 2015, a federal grand jury returned a three-count Indictment...

...CONCERNING WITNESS UNAVAILABILITY Re: Dkt. Nos. 303, 323 LUCY H. KOH , United States District Judge Before the Court are the Government's...

52. Ben Chang v. Biosuccess Biotech, Co.

United States District Court, N.D. California, San Jose Division. | May 30, 2014 | Not Reported in Fed. Supp. | 2014 WL 12703706

Before the Court is Defendants' motion to transfer. See ECF No. 24. The motion has been fully briefed. See ECF Nos. 34, 40. The Court finds this motion suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b) and hereby VACATES the hearing set for June 5, 2014 at 1:30 p.m. The Case Management Conference set for June 5, 2014...

...CA, for Defendants. ORDER GRANTING MOTION TO TRANSFER LUCY H. KOH , United States District Judge Before the Court is Defendants' motion...

53. Synopsys, Inc. v. InnoGrit, Corp.

United States District Court, N.D. California, San Jose Division. | June 26, 2019 | Not Reported in Fed. Supp. | 2019 WL 2617091

On April 23, 2019, the Court denied Plaintiff's ex parte application for a temporary restraining order. ECF No. 16 at 6. However, the Court also ordered Defendant to show cause why a preliminary injunction should not issue. Id. The Court permitted the parties to brief whether a preliminary injunction is appropriate here. Before the Court is the...

...Francisco, CA, for Defendant. ORDER GRANTING PRELIMINARY INJUNCTION LUCY H. KOH , United States District Judge On April 23, 2019, the Court...

54. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | May 08, 2017 | Not Reported in Fed. Supp. | 2017 WL 1833476

Before the Court are Adriana Shayota's motion for judgment of acquittal, ECF No. 499, Adriana Shayota's motion for a new trial, ECF No. 500, and Joseph Shayota's motion for a new trial, ECF No. 501. The government opposes all three motions. The Court held an evidentiary hearing on the issue of alleged juror misconduct on April 18, 2017. ECF No....

...OF ACQUITTAL Re: Dkt. Nos. 499, 500, 501 LUCY H. KOH , United States District Judge Before the Court are Adriana Shayota's...

55. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | May 09, 2017 | Not Reported in Fed. Supp. | 2017 WL 1861889

This order supersedes ECF No. 597. Before the Court are Adriana Shayota's motion for judgment of acquittal, ECF No. 499, Adriana Shayota's motion for a new trial, ECF No. 500, and Joseph Shayota's motion for a new trial, ECF No. 501. The government opposes all three motions. The Court held an evidentiary hearing on the issue of alleged juror...

...OF ACQUITTAL Re: Dkt. Nos. 499, 500, 501 LUCY H. KOH , United States District Judge This order supersedes ECF No. 597...

56. G & G Closed Circuit Events, LLC v. Nguyen

United States District Court, N.D. California, San Jose Division. | September 23, 2010 | Not Reported in F.Supp.2d | 2010 WL 3749284

Plaintiff G & G Closed Circuit Events, LLC, moves to strike Defendants' affirmative defenses. Pursuant to Local Civil Rule 7–1(b), the Court concludes that this motion is appropriate for determination without oral argument. Having considered the parties' submissions and the relevant law, the Court grants the motion in part and denies it in part....

...AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE LUCY H. KOH , District Judge. Plaintiff G & G Closed Circuit Events, LLC, moves...

57. LegalForce RAPC Worldwide P.C. v. GLOTRADE

United States District Court, N.D. California, San Jose Division. | October 23, 2019 | Slip Copy | 2019 WL 5423463

LegalForce RAPC Worldwide, P.C. (“Plaintiff”) sued eighteen defendants, including Worldwide Mail Solutions, Inc. (“Defendant”), for alleged violations of the Lanham Act, California's False Advertising

Law, and California's Unfair Competition Law, as well as a claim for intentional interference with prospective economic...

...WITH LEAVE TO AMEND Re: Dkt. No. 18 LUCY H. KOH , United States District Judge LegalForce RAPC Worldwide, P.C. (“Plaintiff”) sued...

58. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | October 04, 2016 | Not Reported in Fed. Supp. | 2016 WL 5786985

Defendants Joseph Shayota, Adriana Shayota, Walid Jamil, Kevin Attiq, Fadi Attiq, Mario Ramirez, and Camilo Ramirez (collectively, “Defendants”), were indicted on May 14, 2015. ECF No. 1. After the Court found that Counts Two and Three of the Indictment were “multiplicitous of each other,” ECF No. 144, the Government filed a...

...Re: Dkt. Nos. 229, 230, 231, 235, 236 LUCY H. KOH , United States District Judge Defendants Joseph Shayota, Adriana Shayota, Walid...

59. Be In, Inc. v. Google Inc.

United States District Court, N.D. California, San Jose Division. | October 09, 2013 | Not Reported in Fed. Supp. | 2013 WL 5568706

Plaintiff Be In, Inc. (“Be In”), the developer of http://camup.com and its associated software (“CamUp”), filed this action against Defendants Google, Inc. (“Google”), YouTube, LLC (“YouTube”), and Google UK Ltd. (“Google UK”) seeking damages and injunctive relief to remedy Defendants'...

...MOTION TO DISMISS PLAINTIFF'S THIRD CAUSE OF ACTION LUCY H. KOH , United States District Judge Plaintiff Be In, Inc. (“Be In...

60. ET Trading, Ltd v. ClearPlex Direct, LLC

United States District Court, N.D. California, San Jose Division. | March 02, 2015 | Not Reported in Fed. Supp. | 2015 WL 913911

On February 11, 2015, Plaintiff ET Trading, Ltd. (“Plaintiff” or “ET Trading”) filed an ex parte application for a temporary restraining order (“TRO”) to enjoin Defendants' sale, promotion, or distribution of any ClearPlex automotive film products in the People's Republic of China and the use of certain...

...PARTE APPLICATION FOR TRO Re: Dkt. No. 9 LUCY H. KOH , District Judge On February 11, 2015, Plaintiff ET Trading, Ltd...

61. Yahoo!, Inc. v. Does 1 Through 510, Inclusive

United States District Court, N.D. California, San Jose Division. | August 15, 2016 | Not Reported in Fed. Supp. | 2016 WL 4270264

Plaintiff Yahoo!, Inc. (“Yahoo”) brings this action against 510 Doe Defendants (“Defendants”). Before the Court is Yahoo's motion for relief from a discovery matter referred to U.S. Magistrate Judge Howard

Lloyd. ECF No. 22 (“Mot.”). Having considered the briefing, the relevant law, and the record in this case,...

...DOES 11 THROUGH 510 Re: Dkt. No. 22 LUCY H. KOH , United States District Judge Plaintiff Yahoo!, Inc. (“Yahoo”) brings this...

62. J & J Sports Productions, Inc. v. Barwick

United States District Court, N.D. California, San Jose Division. | May 14, 2013 | Not Reported in F.Supp.2d | 2013 WL 2083123

Before the Court is Plaintiff J & J Sports Productions, Inc.'s Motion to Strike the Affirmative Defenses set forth in the Answer of Defendant Michael Dennis Barwick's a/k/a Dennis Barwick, individually and doing business as Luxe Lounge (“Barwick” or “Defendant”). ECF No. 12 (“Mot.”). Pursuant to Civil Local Rule 7–1(b), the Court has determined...

...se. ORDER GRANTING MOTION TO STRIKE AFFIRMATIVE DEFENSES LUCY H. KOH , District Judge. Before the Court is Plaintiff J & J Sports...

63. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | October 19, 2016 | Not Reported in Fed. Supp. | 2016 WL 6093237

At the October 12, 2016 final pretrial conference, Defendants Joseph and Adriana Shayota argued that the Government was required to produce documents in its possession related to a tax fraud investigation of Walid Jamil conducted by the Internal Revenue Service. The Court ordered supplemental briefing on this issue. On October 13, 2016, Defendants...

...TO TAX FRAUD INVESTIGATION Re: Dkt. No. 306 LUCY H. KOH , United States District Judge At the October 12, 2016 final...

64. United States v. Shayota

United States District Court, N.D. California, San Jose Division. | October 04, 2016 | Not Reported in Fed. Supp. | 2016 WL 5791376

Before the Court are four motions to exclude evidence under Federal Rule of Evidence (“Rule”) 404(b). Camilo Ramirez, ECF No. 213 (“Camilo Ramirez Mot.”), Walid Jamil, ECF No. 216 (“Walid Jamil Mot.”), Mario Ramirez, ECF No. 218 (“Mario Ramirez Mot.”), and Joseph and Adriana Shayota, ECF No. 220...

...EVIDENCE Re: Dkt. Nos. 213, 213, 218, 220 LUCY H. KOH , United States District Judge Before the Court are four motions...

65. Cole-Parmer Instrument Company LLC v. Professional Laboratories, Inc.

United States District Court, N.D. California. | July 20, 2021 | Slip Copy | 2021 WL 3053201

Cole-Parmer Instrument Company LLC (“Plaintiff”) sues Professional Laboratories, Inc. (“Defendant”) for (1) trademark infringement under 15 U.S.C. § 1114(1); (2) federal unfair competition under 15 U.S.C. § 1125(a); (3) violation of the California Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code...

...WITH LEAVE TO AMEND Re: Dkt. No. 9 LUCY H. KOH , United States District Judge Cole-Parmer Instrument Company LLC (“Plaintiff...

66. Kane v. Chobani, Inc.

United States District Court, N.D. California, San Jose Division. | July 15, 2013 | Not Reported in Fed. Supp. | 2013 WL 3776172

Plaintiffs Katie Kane, Darla Booth, and Arianna Rosales (“Plaintiffs”) filed a motion for preliminary injunction to enjoin Defendant Chobani, Inc. (“Defendant”) from selling, advertising, and distributing Chobani Greek Yogurt products and ordering them to remove and recall all such products from their distributors and...

...for Defendant. ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION LUCY H. KOH , United States District Judge Plaintiffs Katie Kane, Darla Booth, and...

67. Ervin v. Davis

United States District Court, N.D. California, San Jose Division. | September 08, 2016 | Not Reported in Fed. Supp. | 2016 WL 4705691

In 1991, Petitioner Curtis Lee Ervin (“Petitioner”) was convicted of the murder of Carlene McDonald and sentenced to death. On September 7, 2007, Petitioner filed an amended petition for a writ of habeas corpus before this Court, which included 37 claims in total. ECF No. 97 (“Pet.”). Respondent filed a motion for summary...

...JUDGMENT ON CLAIM 25 Re: Dkt. No. 213 LUCY H. KOH , United States District Judge In 1991, Petitioner Curtis Lee Ervin...

68. Facebook, Inc. v. Power Ventures, Inc.

United States District Court, N.D. California, San Jose Division. | August 08, 2017 | Not Reported in Fed. Supp. | 2017 WL 3394754

On May 2, 2017, the Court entered judgment in the instant case. On May 16, 2017, Plaintiff Facebook, Inc. (“Facebook”) filed a motion for attorney's fees and a motion for contempt sanctions against Defendants Steve Vachani (“Vachani”) and Power Ventures, Inc. (“Power”). ECF Nos. 446–47. Defendants did not...

...FOR CONTEMPT SANCTIONS Re: Dkt. Nos. 446, 447 LUCY H. KOH , United States District Judge On May 2, 2017, the Court...

69. Brocade Communications Systems, Inc. v. A10 Networks, Inc.

United States District Court, N.D. California, San Jose Division. | January 06, 2012 | Not Reported in F.Supp.2d | 2012 WL 33251

Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks, LLC (collectively “Brocade”) bring this action against A10 Networks, Inc. (“A10”), and the following individuals: Lee Chen, Rajkumar Jalan, Ron Szeto, David Cheung, Liang Han, and Steve Hwang. Brocade asserts claims of patent and copyright infringement as well as trade secret...

...7,716,370 7,558,195 7,454,500 7,581,009 7,657,629 7,584,301 7,840,678 ; and 5,875,185 LUCY KOH , District Judge. Plaintiffs Brocade Communications Systems, Inc. and Foundry Networks...

70. Facebook, Inc. v. Vachani

United States District Court, N.D. California, San Jose Division. | August 31, 2017 | 577 B.R. 838 | 2017 WL 3782781

BANKRUPTCY — Discharge. Claim that Chapter 7 debtor's judgment debt was not dischargeable was a core bankruptcy proceeding.

Synopsis
Background: After social networking website brought action against website that offered to integrate users' various social media accounts into a single experience, defendant website's Chief Executive Officer (CEO) filed for bankruptcy. Following judgment in its favor in the civil action, social networking website filed adversary proceeding alleged that the debt owed by CEO as a result of that judgment was nondischargeable. Social networking website filed motion for withdrawal of reference of the adversary proceeding.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 claim that Chapter 7 debtor's judgment debt was not dischargeable was a “core” bankruptcy proceeding, and
2 remaining relevant factors weighed against withdrawing reference.
Motion denied.

...FOR WITHDRAWAL OF REFERENCE Re: Dkt. No. 1 LUCY H. KOH , United States District Judge The instant case arises from the...

71. AirWair International Ltd. v. Schultz

United States District Court, N.D. California, San Jose Division. | November 12, 2014 | 73 F.Supp.3d 1225 | 2014 WL 5871580

TRADEMARKS — Jurisdiction. Court had jurisdiction over foreign defendant in trademark infringement suit.

Synopsis
Background: Owner of “Dr. Martens” trademark used in conjunction with footwear, filed suit against competitor, based in England, and its United States importer/licensee, alleging federal trademark infringement, federal false designation of origin, trademark dilution, California statutory unfair competition, common law unfair competition, and California statutory trademark dilution. British defendant moved to dismiss for lack of personal jurisdiction.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 defendant purposefully directed its activities at residents of California;
2 plaintiff's trademark infringement claim arose from defendant's activities in California; and

3 court's exercise of specific personal jurisdiction over British defendant was reasonable.
Motion denied.

...CA, for Plaintiff. ORDER DENYING MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff AirWair International Ltd. (“AirWair”), brings...

72. Facebook, Inc. v. Power Ventures, Inc.

United States District Court, N.D. California, San Jose Division. | May 02, 2017 | 252 F.Supp.3d 765 | 2017 WL 1650608

E-COMMERCE — Social Media. Social networking website operator suffered irreparable harm because of third-party developer's unauthorized access to its data.

Synopsis
Background: Operator of social networking website brought action alleging that third party developer and its chief executive officer (CEO) violated Controlling the Assault of NonSolicited Pornography and Marketing Act (CANSPAM), Computer Fraud and Abuse Act (CFAA), and California law by employing its proprietary data without its permission and by unlawfully accessing its website to send unsolicited and misleading commercial e-mails to its users. The United States District Court for the Northern District of California, James Ware, Chief Judge, 844 F.Supp.2d 1025, entered summary judgment in plaintiff's favor, and imposed discovery sanctions against developer. Defendants appealed. The Court of Appeals, 844 F.3d 1058, affirmed in part, reversed in part, and remanded.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 operator revoked its authorization for developer to access its data on date it sent cease and desist letter;
2 district court's determination that operator's attorney fees and investigation and enforcement costs attributable to developer's unauthorized access to its data were compensable under CFAA was law of the case;
3 district court's determination as to amount of operator's damages was law of the case;
4 district court's determination that operator incurred approximately $5,000 in damages due to time its employee spent investigating and responding to developer's CFAA violations was law of the case;
5 expert's testimony was admissible to support operator's claim that its employee's work was worth $4,950;
6 operator suffered irreparable harm in past and was likely to suffer irreparable harm in future because of developer's violations;
7 balance of hardships weighed in favor of granting permanent injunction; and
8 permanent injunction was warranted.
Ordered accordingly.

...ORDER REGARDING REMEDIES AND DENYING MOTION FOR STAY LUCY H. KOH , United States District Judge On December 9, 2016, the Ninth...

73. Alejandro Fernandez Tinto Pesquera, S.l v. Fernandez Perez

United States District Court, N.D. California. | January 26, 2021 | Slip Copy | 2021 WL 254193

Plaintiffs Alejandro Fernandez Tinto Pesquera, S.L. (“AFTP”) and Folio Wine Company, LLC (“Folio”) (collectively, “Plaintiffs”) sue Defendants Alejandro Fernandez Perez (“Fernandez”) and individuals whose identities are unknown to Plaintiffs. Before the Court is specially appearing Defendant...

...TO DISMISS WITH PREJUDICE Re: Dkt. No. 35 LUCY H. KOH , United States District Judge Plaintiffs Alejandro Fernandez Tinto Pesquera, S.L...

74. Facebook, Inc. v. Power Ventures, Inc.

United States District Court, N.D. California, San Jose Division. | September 25, 2013 | Not Reported in Fed. Supp. | 2013 WL 5372341

Defendant Power Ventures, Inc. (“Power Ventures”) and Defendant Steve Vachani (“Vachani”) (collectively, “Defendants”) request leave to file a motion for reconsideration of the February 16, 2012 summary judgment order issued by Judge James Ware. Plaintiff, Facebook, Inc. moves for statutory and...

...LAW, AND GRANTING DAMAGES AND PERMANENT INJUNCTIVE RELIEF LUCY H. KOH , United States District Judge Defendant Power Ventures, Inc. (“Power Ventures...

75. Benedict v. Hewlett-Packard Company

United States District Court, N.D. California, San Jose Division. | January 21, 2014 | Not Reported in Fed. Supp. | 2014 WL 234218

This Order addresses a motion to dismiss which arises in the context of a class action lawsuit brought by Plaintiffs Eric Benedict, Richard Bowders, and Kilricanos Vieira, on behalf of themselves and classes of those similarly situated, against Defendant Hewlett–Packard Company (hereinafter “HP”) for violations of the Fair Labor...

...TO DISMISS HEWLETT-PACKARD'S COUNTERCLAIMS AGAINST ERIC BENEDICT LUCY H. KOH , United States District Judge This Order addresses a motion to...

76. Merritt v. JP Morgan

United States District Court, N.D. California, San Jose Division. | April 24, 2018 | Not Reported in Fed. Supp. | 2018 WL 1933478

Plaintiffs Salma and David Merritt (“Plaintiffs”) sued JPMorgan Chase, N.A., Jamie Dimon, David Gillis, Structured Asset Mortgage Investments II, Inc., John Costango, Aisling Desola, Specialized Loan Servicing, LLC, Tobey Wells, Ami McKernan, Michael Ward, Zieve Brodnax & Steele LLP, John Steele, Michael Busby, U.S. Bank N.A., Andrew...

...ERIC GREEN Re: Dkt. Nos. 58, 60, 62 LUCY H. KOH , United States District Judge Plaintiffs Salma and David Merritt (“Plaintiffs...

77. Apple, Inc. v. Samsung Electronics Co., Ltd.

United States District Court, N.D. California, San Jose Division. | December 02, 2011 | Not Reported in F.Supp.2d | 2011 WL 7036077

Plaintiff Apple, Inc. (“Apple”) brings this motion for a preliminary injunction seeking to enjoin Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Telecommunications

America, LLC (collectively “Samsung”) from “making, using, offering to sell, or selling within the United States, or importing into the United...

...for Defendants. ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION LUCH H. KOH , District Judge. Plaintiff Apple, Inc. (“Apple”) brings this motion for...

1. Diamond S.J. Enterprise, Inc. v. City of San Jose

United States District Court, N.D. California, San Jose Division. | December 30, 2019 | 430 F.Supp.3d 637 | 2019 WL 7312517

CIVIL RIGHTS — Free Speech. City's licensing scheme for public entertainment businesses did not target speech or expressive conduct, and thus did not violate First Amendment.

Synopsis
Background: Nightclub owner and operator brought 1983 action against city alleging free speech and due process violations under Federal and State Constitutions, challenging city ordinances and entertainment license suspension process after city suspended license following shooting in parking lot behind club. City moved for summary judgment and nightclub cross-moved for partial summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 law of the case doctrine applied to preclude nightclub from asserting First Amendment overbreadth and vagueness challenges to city ordinance requiring permitted public entertainment businesses to make certain arrangements for security;
2 nuisance provisions in city's licensing scheme for public entertainment businesses did not implicate nightclub's First Amendment rights;
3 city's licensing scheme for public entertainment businesses did not target speech or expressive conduct;
4 city ordinance which provided the definition of an “event promoter,” did not impose any restrictions on protected expression;
5 ordinance providing that each event promoter would be jointly and severally liable for violations of licensing scheme did not implicate the First Amendment; and
6 nightclub could not prevail on its claim that city's permitting scheme for event promoters, as a whole, violated the First Amendment.
Motion for summary judgment granted; cross-motion for partial summary judgment denied.

...DENYING PLAINTIFF'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT LUCY H. KOH , United States District Judge Before the Court is Defendant City...

2. Diamond S.J. Enterprise, Inc. v. City of San Jose

United States District Court, N.D. California, San Jose Division. | July 01, 2019 | 395 F.Supp.3d 1202 | 2019 WL 2744700

CIVIL RIGHTS — Free Speech. Substantive due process challenge to city entertainment ordinances was not cognizable insofar as more specific First Amendment applied to allegations.

Synopsis
Background: Nightclub owner and operator brought 1983 action against city alleging free speech and due process violations under Federal and State Constitutions, challenging city ordinances and entertainment license suspension process after city suspended license following shooting in parking lot behind club. City moved to dismiss for failure to state claim and moved to strike portions of complaint.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 challenged ordinances were not prior restraints on speech under First Amendment;
2 the District Court would strike immaterial portion of complaint;
3 the District Court would not strike portion of complaint bearing on issue in litigation;
4 substantive due process claims were not cognizable insofar as more specific First Amendment applied to plaintiff's allegations;
5 city did not deprive owner and operator of procedural due process;
6 claim preclusion barred free speech and due process claims under State Constitution.

Motion to dismiss granted; motion to strike granted in part and denied in part.

...PART MOTION TO STRIKE Re: Dkt. No. 55 LUCY H. KOH , United States District Judge Plaintiff Diamond S.J. Enterprise, Inc. brings...

3. Art of Living Foundation v. Does 1-10

United States District Court, N.D. California, San Jose Division. | November 09, 2011 | Not Reported in F.Supp.2d | 2011 WL 5444622

Doe Defendant, specially appearing under the pseudonym “Skywalker,” moves for relief from Magistrate Judge Lloyd's order denying his motion to quash a subpoena intended to discover his identity from third-party Internet Service Providers. Having considered the parties' briefing and oral arguments, the Court finds that Skywalker's First Amendment...

...NONDISPOSITIVE PRE–TRIAL ORDER RE: MOTION TO QUASH LUCY H. KOH , District Judge. Doe Defendant, specially appearing under the pseudonym “Skywalker...

4. Prager University v. Google LLC

United States District Court, N.D. California, San Jose Division. | March 26, 2018 | Not Reported in Fed. Supp. | 2018 WL 1471939

Plaintiff Prager University (“Plaintiff”) sues Defendants YouTube, LLC (“YouTube”) and Google LLC (“Google”) (collectively, “Defendants”) for allegedly censoring some of the videos that Plaintiff uploaded on YouTube based on Plaintiff's conservative political identity and viewpoint. Before the Court...

...A PRELIMINARY INJUNCTION Re: Dkt. Nos. 24, 31 LUCY H. KOH , United States District Judge Plaintiff Prager University (“Plaintiff”) sues Defendants...

5. Life Savers Concepts Association of California v. Wynar

United States District Court, N.D. California, San Jose Division. | May 16, 2019 | 387 F.Supp.3d 989 | 2019 WL 2144630

CIVIL RIGHTS — Searches and Seizures. Allowing corporation to bring Bivens suit on behalf of employees was new Bivens context for which there were alternative remedial structures.

Synopsis
Background: Corporation and individual employees brought action against federal agents and other individuals, asserting *Bivens* claims for violations of the First, Fourth, Fifth, and Fourteenth Amendments related to agent's actions during investigation and execution of search warrant at business's office, during which employees were detained. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 *Bivens* did not provide remedy for corporate plaintiff's claims;
2 individual plaintiffs lacked standing to assert First Amendment claim centered around agent's alleged appearance at a meeting;
3 individual plaintiffs failed to state First Amendment claim based on agent's alleged abusive conduct during execution of search warrant;

4 individual plaintiffs failed to state a claim for violation of their Fifth Amendment rights;
5 individual plaintiff plausibly alleged that agent forced an interrogation in violation of her constitutional rights; and
6 individual plaintiffs failed to allege with particularity that agent violated their Fourth Amendment rights with excessive force and unreasonable detentions.
Motion granted in part and denied in part.

...PART MOTION TO DISMISS Re: Dkt. No. 47 LUCY H. KOH , United States District Judge Plaintiffs Life Savers Concepts Association of...

6. Ryan v. Santa Clara Valley Transportation Authority

United States District Court, N.D. California, San Jose Division. | July 25, 2017 | Not Reported in Fed. Supp. | 2017 WL 3142130

Plaintiff Joseph Ryan (“Plaintiff”) sues Defendants Santa Clara Valley Transportation Authority (“SCVTA”) and Joseph Fabela (“Fabela”) (collectively, “Defendants”). ECF No. 37. Before the Court is Defendants' motion to dismiss and/or motion to strike the Third Amended Complaint (“TAC”)....

...DEFENDANTS' MOTION TO STRIKE Re: Dkt. No. 59 LUCY H. KOH , United States District Judge Plaintiff Joseph Ryan (“Plaintiff”) sues Defendants...

7. Federal Agency of News LLC v. Facebook, Inc.

United States District Court, N.D. California, San Jose Division. | July 20, 2019 | 395 F.Supp.3d 1295 | 2019 WL 3254208

CIVIL RIGHTS — Immunity. Social media company was an interactive computer service for purposes of immunity under the Communications Decency Act.

Synopsis
Background: Social media user brought action against social media company arising from social media company's removal of user's social media account, page, and content asserting *Bivens* claim for violation of First Amendment, damages under Title II of the Civil Rights Act and 1983, damages under the California Unruh Civil Rights Act, breach of contract, and breach of implied covenant of good faith and fair dealing. Company moved to dismiss for failure to state a claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 user failed to state a 1983 claim;
2 company was an interactive computer service, as required for immunity under Communications Decency Act;
3 user's deleted account, page, and content were information provided by another information content provider, not company, as required for immunity under Communications Decency Act;
4 user sought to hold company liable as publisher, as required for immunity under Communications Decency Act;
5 company was not a public form, as required for user's *Bivens* claim; and
6 company's actions did not amount to state action, as required for user's *Bivens* claim.
Motion granted.

...TO DISMISS WITHOUT PREJUDICE Re: Dkt. No. 25 LUCY H. KOH , United States District Judge Plaintiffs Federal Agency of News LLC...

8. Ryan v. Fabela

United States District Court, N.D. California, San Jose Division. | February 02, 2018 | Slip Copy | 2018 WL 10196531

Plaintiff Joseph Ryan (“Plaintiff”) brought this action against Defendant Santa Clara Valley Transportation Authority (“SCVTA”), Defendant Robert Fabela, in his individual and official capacities, and Defendant Nuria Fernandez, in her individual and official capacities. All claims against SCVTA and Fernandez have been...

...SUMMARY JUDGMENT Re: Dkt. Nos. 72, 76, 77 LUCY H. KOH , United States District Judge Plaintiff Joseph Ryan (“Plaintiff”) brought this...

9. Diamond S.J. Enterprise, Inc. v. City of San Jose

United States District Court, N.D. California, San Jose Division. | October 29, 2018 | Not Reported in Fed. Supp. | 2018 WL 5619746

Plaintiff Diamond S.J. Enterprise, Inc. brings suit against Defendant the City of San Jose (“San Jose” or “City”). Plaintiff owns and operates a nightclub called SJ Live in San Jose, California. The City issued notice to Plaintiff revoking Plaintiff's entertainment permit to operate as a nightclub. After attempts to appeal...

...DEFENDANT'S MOTION TO STRIKE Re: Dkt. No. 37 LUCY H. KOH , United States District Judge Plaintiff Diamond S.J. Enterprise, Inc. brings...

10. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | March 08, 2011 | Not Reported in F.Supp.2d | 2011 WL 846065

Plaintiff Berry Lynn Adams filed his First Amended Complaint (Dkt. No. 80, “FAC”) on December 6, 2010. Defendants Best, Bockman, Callison, Hauck, Kraft, Lingenfelter, Sipes, and Stone (collectively “Defendants”) move to dismiss Adams' FAC pursuant to Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 81 (“Mot.”); see also Dkt. No. 91 (“Reply”)....

...AND DENYING IN PART DEFENDANTS. MOTION TO DISMISS LUCY H. KOH , District Judge. Plaintiff Berry Lynn Adams filed his First Amended...

11. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | October 25, 2011 | 828 F.Supp.2d 1090 | 2011 WL 5079528

CIVIL RIGHTS - Attorney Fees. Genuine issue of material fact existed as to whether state park rangers had probable cause to arrest.

Synopsis

Background: Arrestee brought 1983 action against state park rangers, alleging violations of the First and Fourth Amendments, as well as the California Constitution. Rangers filed motion for summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 genuine issue of material fact existed as to whether state park rangers had probable cause to arrest;
2 genuine issue of material fact existed as to the nature and quality of intrusion against arrestee;
3 genuine issue of material fact existed as to whether arrestee was a threat to state park rangers;
4 genuine issue of material fact existed as to whether arrestee was actively resisting arrest;
5 genuine issue of material fact existed as to whether arrestee engaged in constitutional protected speech;
6 genuine issue of material fact existed as to whether state park ranger had retaliatory intent in performing arrest; and
7 genuine issue of material fact existed as to whether state park rangers acted with evil motive or intent, or with malice during arrest.
Motion granted in part and denied in part.

...DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff Berry Lynn Adams (“Adams”) brings this action...

12. Federal Agency of News LLC v. Facebook, Inc.

United States District Court, N.D. California, San Jose Division. | January 13, 2020 | 432 F.Supp.3d 1107 | 2020 WL 137154

E-COMMERCE — Social Media. Website was not willful participant in joint action with United States government, as would support imposing liability under § 1983.

Synopsis
Background: Russian corporation brought action against social network website after the website removed the corporation's account and page on the social network for alleged interference in United States presidential election. The social network moved to dismiss for failure to state a claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 the network was an interactive computer service, as required for the social network to be immune from liability for third-party content under Communications Decency Act;
2 Russian corporation's social media account, posts, and other content on the network's website was solely provided by the corporation, as required for the social network to be immune from liability for deleting the account;
3 the network did not engage in any functions exclusively reserved for the government, and thus was not a public forum for purposes of 1983 claims based on alleged First Amendment violations;
4 the network was not a willful participant in joint action with United States government, as would support imposing liability against the network under 1983; and
5 the network did not conspire with United States government to violate constitutional rights, as would support imposing liability against the network under 1983.
Motion granted.

...TO DISMISS WITH PREJUDICE Re: Dkt. No. 40 LUCY H. KOH , United States District Judge Plaintiffs Federal Agency of News LLC...

13. Quiroz v. Horel

United States District Court, N.D. California. | March 31, 2015 | 85 F.Supp.3d 1115 | 2015 WL 1485024

CIVIL RIGHTS — Prisons. Prison officials did not have retaliatory motive in stopping incoming letter to prisoner from his niece that was allegedly gang-related.

Synopsis
Background: State prisoner, proceeding pro se, brought action against prison officials, alleging, inter alia, that officials retaliated against prisoner for filing prior federal civil rights complaint and for participating in another inmate's civil rights suit. Officials moved for summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 officials did not have retaliatory motive in stopping incoming letter to prisoner from his girlfriend's cousin;
2 officials did not have retaliatory motive in stopping incoming letter to prisoner from his niece;
3 officials did not have retaliatory motive in stopping prisoner's outgoing letter to his friend;
4 officials did not have retaliatory motive in stopping prisoner's mail containing legal discovery documents;
5 officials' act of delaying prisoner's mail did not harm prisoner;
6 genuine issue of material fact existed as to whether official had retaliatory motive for issuing Rules Violation Report (RVR) against prisoner;
7 genuine issue of material fact existed as to whether officials had retaliatory motive when they searched prisoner's cell; and
8 genuine issue of material fact existed as to whether prison officials had agreement to retaliate against prisoner.
Motion granted in part and denied in part.

...CASE TO SETTLEMENT PROCEEDINGS (Docket Nos. 267, 291) LUCY H. KOH , District Judge Plaintiff, a state prisoner proceeding pro se, filed...

14. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | July 29, 2011 | Not Reported in F.Supp.2d | 2011 WL 3240598

Plaintiff Berry Lynn Adams filed his Second Amended Complaint (Dkt. No. 110–11, “SAC”) on April 7, 2011. Defendants Daniel L. Kraft (“Kraft”), Phillip Hauck (“Hauck”), Kirk Lingenfelter (“Lingenfelter”), K.P. Best (“Best”), J.I. Stone (“Stone”), Chip Bockman (“Bockman”), R. Callison (“Callison”), and Scott Sipes (“Sipes”) (collectively...

...AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS LUCY H. KOH , District Judge. Plaintiff Berry Lynn Adams filed his Second Amended...

15. Treglia v. Cate

United States District Court, N.D. California. | August 28, 2012 | Not Reported in F.Supp.2d | 2012 WL 3731774

Plaintiff, a state prisoner proceeding pro se, filed a complaint under 42 U.S.C. § 1983, arguing that Defendants violated his First and Fourth Amendments, as well as state law. On February 17, 2012, Defendants filed a motion for summary judgment. Plaintiff has filed an opposition, along with supporting documents, and Defendants have filed a reply....

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

16. Abdel-Shafy v. City of San Jose

United States District Court, N.D. California, San Jose Division. | February 12, 2019 | Not Reported in Fed. Supp. | 2019 WL 570759

Plaintiff Alison Yew Abdel-Shafy ("Plaintiff") brings suit against Defendants City of San Jose, San Jose Police Department, San Jose Police Officer Juan Garcia, and San Jose Police Officer Daniel Akery (collectively, "Defendants"). Before the Court is Defendants' motion to dismiss Plaintiff's Complaint. ECF No. 45...

...STATE CLAIMS WITHOUT PREJUDICE Re: Dkt. No. 45 LUCY H. KOH , United States District Judge Plaintiff Alison Yew Abdel-Shafy ("Plaintiff...

17. Loan Payment Administration LLC v. Hubanks

United States District Court, N.D. California, San Jose Division. | December 07, 2018 | Not Reported in Fed. Supp. | 2018 WL 6438364

Plaintiffs Nationwide Biweekly Administration, Inc.; Loan Payment Administration LLC; and Daniel Lipsky (collectively, "Nationwide") bring this suit against Defendants John Hubanks, Andres Perez, the Monterey County District Attorney's Office, and the Marin County District Attorney's Office (collectively, "Defendants")....

...TO DISMISS WITH PREJUDICE Re: Dkt. No. 110 LUCY H. KOH , United States District Judge Plaintiffs Nationwide Biweekly Administration, Inc.; Loan...

18. Tandon v. Newsom

United States District Court, N.D. California, San Jose Division. | February 05, 2021 | 517 F.Supp.3d 922 | 2021 WL 411375

CIVIL RIGHTS — Free Speech. COVID-19-related restrictions imposed by California and California county on private gatherings did not infringe on freedom of speech and assembly.

Synopsis
Background: Objectors, who included business owners and a political candidate, brought action in which they challenged validity of COVID-19-related restrictions imposed by California and California county. Objectors then moved for a preliminary injunction.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 objectors were not likely to succeed on claim that restrictions violated substantive due process;
2 rational-basis review applied to equal-protection challenge asserted by objectors who were business owners;
3 rational basis existed for the restrictions;
4 restrictions did not, based on both intermediate and strict scrutiny, infringe on First Amendment rights of free speech and assembly;
5 political candidate's claim that the restrictions violated First Amendment rights of free speech and assembly was not rendered moot by the occurrence of the general election;
6 rational-basis review applied to challenge to restrictions that was based on freedom of religion under the First Amendment; and
7 a preliminary injunction enjoining the restrictions would not be in the public interest.
Motion denied.

...MOTION FOR PRELIMINARY INJUNCTION Re: Dkt. No. 18 LUCY H. KOH , United States District Judge Plaintiffs Ritesh Tandon, Terry and Carolyn...

19. Parrish v. Solis

United States District Court, N.D. California, San Jose Division. | May 13, 2014 | Not Reported in Fed. Supp. | 2014 WL 1921154

Plaintiff Kaheal Parrish, a prisoner incarcerated at Salinas Valley State Prison ("SVSP"), filed this lawsuit on March 18, 2011 alleging violations of his civil rights by several prison officials. ECF No. 1. Plaintiff's original complaint named as defendants A. Solis, B. Hedrick, W. Muniz, K. Salazar, R. Machuca, B....

...MOTION FOR LEAVE TO FILE A SUR–REPLY LUCY H. KOH , United States District Judge Plaintiff Kaheal Parrish, a prisoner incarcerated...

20. Ryan v. Santa Clara Valley Transportation Authority

United States District Court, N.D. California, San Jose Division. | March 30, 2017 | Not Reported in Fed. Supp. | 2017 WL 1175596

Plaintiff Joseph Ryan ("Plaintiff") sues Defendants Santa Clara Valley Transportation Authority ("SCVTA") and Joseph Fabela ("Fabela") (collectively, "Defendants"). ECF No. 37. Before the Court is Defendants' motion to dismiss. ECF No. 41 ("Mot."). Having considered the submissions of the...

...PART MOTION TO DISMISS Re: Dkt. No. 41 LUCY H. KOH , United States District Judge Plaintiff Joseph Ryan ("Plaintiff") sues Defendants...

21. Rice v. Ramsey

United States District Court, N.D. California. | September 19, 2012 | Not Reported in F.Supp.2d | 2012 WL 4177438

Plaintiff Steven Rice, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility ("CTF"). Plaintiff alleged violations of his First Amendment free exercise rights, his Fourteenth Amendment equal protection rights, and the Religious Land Use and Institutionalized...

...MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff Steven Rice, proceeding pro se, filed a...

22. Loan Payment Administration LLC v. Hubanks

United States District Court, N.D. California, San Jose Division. | March 17, 2015 | Not Reported in Fed. Supp. | 2015 WL 1245895

Before the Court is a motion for preliminary injunction filed by Plaintiffs Nationwide Biweekly Administration, Inc., Loan Payment Administration LLC, and Daniel S. Lipsky (collectively, "Nationwide").

ECF No. 5 (“Motion”). Nationwide requests that the Court issue a preliminary injunction prohibiting Defendants...

...FOR PRELIMINARY INJUNCTION Re: Dkt. Nos. 5, 17 LUCY H. KOH , United States District Judge Before the Court is a motion...

23. Rice v. Curry

United States District Court, N.D. California. | October 12, 2012 | Not Reported in F.Supp.2d | 2012 WL 4902829

Plaintiff Steven Rice, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility (“CTF”). Plaintiff alleged violations of his First Amendment free exercise rights, his Fourteenth Amendment equal protection rights, and the Religious Land Use and Institutionalized...

...MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff 1 Steven Rice, proceeding pro se, filed...

24. Perkins v. Linkedin Corporation

United States District Court, N.D. California, San Jose Division. | November 13, 2014 | 53 F.Supp.3d 1222 | 2014 WL 6618753

E-COMMERCE — Social Media. Operator of social media website was “information content provider” that was not entitled to Communications Decency Act (CDA) immunity.

Synopsis
Background: Users of social media website brought putative class action against operator of website, alleging that operator misappropriated users' names and likenesses in e-mail reminding users' contacts of initial invitation users sent to contacts to connect on website. Operator moved to dismiss for failure to state claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 users failed to allege mental anguish, as required for minimum statutory damages;
2 operator was “information content provider” that was not entitled to Communications Decency Act (CDA) immunity;
3 users alleged that reminder e-mails constituted misleading commercial speech;
4 users alleged that reminder e-mails were not adjunct to underlying initial invitations; and
5 users alleged that operator's use of users' names and likenesses was not incidental to operator's commercial purposes.
Motion granted in part and denied in part.

...AND DENYING IN PART DEFENDANT' MOTION TO DISMISS LUCY H. KOH , United States District Judge Paul Perkins (“Perkins”), Pennie Sempell (“Sempell...

25. Quiroz v. Short

United States District Court, N.D. California. | March 31, 2015 | 85 F.Supp.3d 1092 | 2015 WL 1482744

CIVIL RIGHTS — Prisons. Prison official did not have retaliatory motive in investigating administrative grievance of prisoner who had previously filed civil rights lawsuit.

Synopsis
Background: State prisoner, proceeding pro se, brought action against prison officials, alleging, inter alia, that officials retaliated against prisoner for filing prior federal civil rights complaint and for participating in another inmate's civil rights suit. One official moved for summary judgment.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 official did not have retaliatory motive in investigating administrative grievance;
2 prisoner's assertion that one of official's duties was to monitor incoming and outgoing mail was insufficient to show that official destroyed two specific pieces of prisoner's mail;
3 genuine issue of material fact existed as to whether official acted with retaliatory motive when he sent to prisoner's fiance a letter intended for other woman;
4 genuine issue of material fact existed as to whether prison official acted with retaliatory motive when he issued rules violation report (RVR) against prisoner;
5 official was entitled to qualified immunity on prisoner's right to intimate association claim;
6 official's act of sending to prisoner's fiance a letter intended for other woman did not prevent prisoner from continuing to associate with fiance;
7 official's act of sending to prisoner's fiance a letter intended for other woman did not prevent prisoner from marrying fiance; and
8 genuine issue of material fact existed as to whether officials had agreement to retaliate against prisoner by issuing RVR against him.
Motion granted in part and denied in part.

...REFERRING CASE TO SETTLEMENT PROCEEDINGS (Docket No. 246) LUCY H. KOH , District Judge This order supersedes ECF Docket No. 308, which...

26. Furnace v. Giurbino

United States District Court, N.D. California. | November 22, 2013 | Not Reported in Fed. Supp. | 2013 WL 6157954

Plaintiff, a state prisoner proceeding pro se, filed a second amended civil rights complaint (“SAC”) against prison officials pursuant to 42 U.S.C. §1983. In his SAC, plaintiff alleges that defendants violated his right to due process, the Equal Protection Clause, plaintiff's First Amendment right to publications, and...

...for Defendants. ORDER GRANTING DEFENDANTS' MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff, a state prisoner proceeding pro...

27. Art of Living Foundation v. Does

United States District Court, N.D. California, San Jose Division. | June 15, 2011 | Not Reported in F.Supp.2d | 2011 WL 2441898

It has long been settled that an author's decision to remain anonymous is an aspect of freedom of speech protected by the First Amendment. The right to speak anonymously, however, is not unlimited. This case centers on the contours of balancing the First Amendment rights of online authors' decisions to speak anonymously and critically of an...

...MOTION TO DISMISS AND DENYING MOTION TO STRIKE LUCY H. KOH , District Judge. It has long been settled that an author's...

28. Steshenko v. Gayrard

United States District Court, N.D. California, San Jose Division. | September 29, 2014 | 70 F.Supp.3d 979 | 2014 WL 4904424

EDUCATION — Admission. Applicant alleged nexus between protected activity and denial of admission to graduate school program, supporting First Amendment retaliation claim.

Synopsis
Background: Applicant brought action against state university's board of trustees and heads of particular graduate programs at university, alleging age discrimination and retaliation based on denial of his admission into graduate programs. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 board could evoke Eleventh Amendment immunity;
2 board waived Eleventh Amendment immunity with respect to Age Discrimination Act claims;
3 applicant sufficiently pled his 1983 claim for First Amendment retaliation with respect to denial of admission into one program, but not with respect to second program;
4 applicant had no protected property interest in admission into programs, precluding his procedural due process claims under 1983;
5 applicant did not allege sufficient specific facts regarding alleged conspiracies under 1985; and
6 applicant did not adequately plead California-law intentional infliction of emotional distress claim.
Motion granted in part and denied in part.

...PART AND DENYING IN PART MOTION TO DISMISS LUCY H. KOH , United States District Judge Plaintiff Gregory Nicholas Steshenko (“Plaintiff”) brings...

29. Estate of Fuller v. Maxfield & Oberton Holdings, LLC

United States District Court, N.D. California, San Jose Division. | November 05, 2012 | 906 F.Supp.2d 997 | 2012 WL 5392626

TRADEMARKS - Name or Likeness. Manufacturer of “BuckyBalls” could not benefit from transformative use defense.

Synopsis
Background: Estate of inventor, for whom buckminsterfullerene molecule, commonly referred to as a “buckyball,” had been named, sued desk toy manufacturer for violation of Lanham Act, invasion of privacy under California common law, invasion of privacy under California statute, and violation of California Unfair Competition Law (UCL), alleging that manufacturer misappropriated inventor's name and likeness. Manufacturer moved to dismiss.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 District Court would take judicial notice of scientific article republished on website of institute named for inventor;
2 District Court would not take judicial notice of webpage and other items;
3 question whether product was named after molecule rather than inventor could not be resolved on motion to dismiss;
4 manufacturer could not benefit from transformative use defense;
5 question of manufacturer's decisionmaking process, for purposes of limitations period applicable to claim under California statute providing remedy for commercial misappropriation regarding deceased persons, could not be resolved on motion to dismiss;
6 use of inventor's name and identity was not subject to statutory exception to California right of publicity claims for matters of public affairs; and

7 complaint sufficiently alleged that manufacturer did something that suggested sponsorship or endorsement by trademark holder, as required to state cause of action under Lanham Act; and 8 estate stated cause of action under UCL.
Motion denied.

...CA, for Defendant. ORDER DENYING MOTION TO DISMISS LUCY H. KOH , District Judge. Plaintiff the Estate of Buckminster Fuller ("Plaintiff") filed...

30. Milliken v. Sturdevant

United States District Court, N.D. California, San Jose Division. | May 15, 2020 | Slip Copy | 2020 WL 2512381

Plaintiff is a California prisoner incarcerated at California State Prison, Sacramento ("CSP-Sac"). Plaintiff was previously incarcerated at Pelican Bay State Prison ("PBSP") and California State Prison, Corcoran ("CSP-Cor"). See Dkt. No. 1. Pursuant to 42 U.S.C. § 1983, plaintiff filed a pro se civil rights...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 45 LUCY H. KOH , UNITED STATES DISTRICT JUDGE Plaintiff is a California prisoner incarcerated...

31. United States v. Yang

United States District Court, N.D. California, San Jose Division. | October 25, 2019 | Slip Copy | 2019 WL 5536210

On October 15, 2019, Defendant Jennifer Yang filed two motions to dismiss portions of the superseding indictment (ECF Nos. 163, 165), which Defendant Daniel Wu joined (ECF No. 175, 176). In connection with those motions to dismiss, Defendants filed a request for judicial notice, which contained various exhibits. ECF No. 164. Because those exhibits...

...ADMINISTRATIVE MOTION TO SEAL Re: Dkt. No. 196 LUCY H. KOH , United States District Judge On October 15, 2019, Defendant Jennifer...

32. Haney v. Sullivan

United States District Court, N.D. California. | March 04, 2019 | Not Reported in Fed. Supp. | 2019 WL 1024409

Plaintiff is a California prisoner incarcerated at Salinas Valley State Prison ("SVSP"). He has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983. In the operative pleading, plaintiff asserts two claims. Plaintiff's first claim, for violation of the Eighth Amendment, is pled against five defendants: M....

...Re: Dkt. No. 40, 48, 49, 50, 55 LUCY H. KOH , UNITED STATES DISTRICT JUDGE Plaintiff is a California prisoner incarcerated...

33. Saif'ullah v. Albritton

United States District Court, N.D. California, San Jose Division. | June 30, 2017 | Not Reported in Fed. Supp. | 2017 WL 2834119

Plaintiffs Khalifah El-Amin Din Saif'ullah, Enver Karafili, Montshu Abdullah, Amir Shabazz, Abdullah Saddiq, Mujahid Ta'lib Din, Andre Lamont Batten, Hatim Fardan, Abdul Aziz, Anthony Bernard Smith, Jr., and Damian Mitchell are California state prisoners proceeding pro se. Each plaintiff filed a civil rights complaint under 42 U.S.C....

...FORMA PAUPERIS STATUS; GRANTING MOTION FOR SUMMARY JUDGMENT LUCY H. KOH , United States District Judge Plaintiffs Khalifah El-Amin Din Saif'ullah...

34. Rodriguez v. City of Salinas

United States District Court, N.D. California, San Jose Division. | January 07, 2011 | Not Reported in F.Supp.2d | 2011 WL 62500

In his First Amended Complaint, Plaintiff Carlos Rodriguez alleges violations of his First, Fourth, and Fourteenth Amendment rights in connection with a search of his home that resulted in his arrest and a third-party's conviction on criminal charges. Defendants moved to dismiss the First Amended Complaint pursuant to the doctrine articulated by...

...CA, for Defendants. ORDER DENYING MOTION TO DISMISS LUCY H. KOH , District Judge. In his First Amended Complaint, Plaintiff Carlos Rodriguez...

35. Patkins v. Koenig

United States District Court, N.D. California, San Jose Division. | April 23, 2021 | Slip Copy | 2021 WL 1599319

Plaintiff David Patkins (“Plaintiff”), who is incarcerated at the Correctional Training Facility (“CTF”) in Soledad, California, sues A. Lisk (“Lisk”), who was a correctional officer at CTF, and Craig Koenig (“Koenig”), who is the warden of CTF (collectively, “Defendants”). Before the...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 68 LUCY H. KOH , United States District Judge Plaintiff David Patkins (“Plaintiff”), who is...

36. Ferris v. City of San Jose

United States District Court, N.D. California, San Jose Division. | April 18, 2012 | Not Reported in F.Supp.2d | 2012 WL 1355715

Plaintiff Sam Ferris (“Ferris”) brings this action in propria persona under 42 U.S.C. §§ 1983 and 1985 and California Civil Code § 52.1 against the City of San Jose, the San Jose Chief of Police, and various unnamed police officers in their individual and official capacities (collectively the “City Defendants”), alleging violation of his Fourth...

...COMPLAINT; DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT LUCY H. KOH , District Judge. Plaintiff Sam Ferris (“Ferris”) brings this action in...

37. Smith v. Cruzen

United States District Court, N.D. California, San Jose Division. | October 26, 2017 | Not Reported in Fed. Supp. | 2017 WL 4865565

Plaintiff Anthony Bernard Smith, a California state prisoner proceeding pro se, filed an amended civil rights complaint under 42 U.S.C. §1983. On February 21, 2017, defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and defendants have filed a reply. For the reasons stated below, defendants' motion is...

...FOR SUMMARY JUDGMENT Re: Dkt. Nos. 64, 80 LUCY H. KOH , United States District Judge Plaintiff Anthony Bernard Smith, a California...

38. Larson v. Creamer–Todd

United States District Court, N.D. California. | February 25, 2014 | Not Reported in Fed. Supp. | 2014 WL 721953

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. §1983 alleging that prison officials at Central Training Facility in Soledad retaliated against him, in violation of the First Amendment. Defendants have moved for summary judgment. Although given an opportunity, plaintiff...

...CASE TO SETTLEMENT PROCEEDINGS (Docket No. 36, 50) LUCY H. KOH , United States District Judge Plaintiff, a state prisoner proceeding pro...

39. Saif'ullah v. Cruzen

United States District Court, N.D. California. | October 26, 2017 | Not Reported in Fed. Supp. | 2017 WL 4865601

Plaintiff Khalifah E.D. Saif'ullah, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. On May 9, 2017, defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and defendants have filed a reply. For the reasons stated below, defendants' motion is granted. The...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 44 LUCY H. KOH , United States District Judge Plaintiff Khalifah E.D. Saif'ullah, a California...

40. Diamond S.J. Enterprise, Inc. v. City of San Jose

United States District Court, N.D. California, San Jose Division. | March 02, 2018 | Slip Copy | 2018 WL 11009362

Plaintiff Diamond S.J. Enterprises, dba S.J. Live, brings this action against Defendant City of San Jose to prevent Defendant from enforcing a 30 day suspension of SJ Live's municipal entertainment

permit. The suspension of Plaintiff's entertainment permit begins on March 3, 2018. Before the Court is Plaintiff's motion for a temporary restraining...

...FOR TEMPORARY RESTRAINING ORDER Re: Dkt. No. 15 LUCY H. KOH , United States District Judge Plaintiff Diamond S.J. Enterprises, dba S.J...

41. Johnson v. San Benito County

United States District Court, N.D. California, San Jose Division. | December 03, 2013 | Not Reported in Fed. Supp. | 2013 WL 6248274

Plaintiff Brett Johnson ("Plaintiff") brings this action against Defendants San Benito County, Patrick Turturici, and Tony Lamonica ("Defendants") for alleged violations of 42 U.S.C. §1983. Before the Court are Defendants' Motions for Summary Judgment, which are fully briefed. After considering the...

...Defendants. ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT LUCY H. KOH , United States District Judge Plaintiff Brett Johnson ("Plaintiff") brings this...

42. Saif'ullah v. Albritton

United States District Court, N.D. California, San Jose Division. | December 21, 2017 | Not Reported in Fed. Supp. | 2017 WL 6558719

Plaintiff Khalifah E.D. Saif'ullah, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. On August 29, 2017, defendants Associate Warden S.R. Albritton ("Albritton") and Correctional Lieutenant R. Kluger ("Kluger") filed a motion for summary judgment. Plaintiff has...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 51 LUCY H. KOH , United States District Judge Plaintiff Khalifah E.D. Saif'ullah, a California...

43. Washington v. Sandoval

United States District Court, N.D. California. | March 22, 2012 | Not Reported in F.Supp.2d | 2012 WL 987291

Plaintiff, currently incarcerated at Corcoran State Prison and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants Sandoval, Sandquist, and Townsend were deliberately indifferent to his safety, and retaliated against him during his incarceration at Salinas Valley State Prison ("SVSP")....

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. KOH , District Judge. Plaintiff, currently incarcerated at Corcoran State Prison and...

44. Ardalan v. McHugh

United States District Court, N.D. California, San Jose Division. | November 27, 2013 | Not Reported in Fed. Supp. | 2013 WL 6212710

Plaintiff Ferial Karen Ardalan (“Ardalan”) brings this Complaint against Defendants John McHugh, Secretary of the Army (“McHugh”); United States Representative Sam Farr (“Farr”); and Carlton Hadden, Director of the Office of Federal Operations of the United States Equal Employment Opportunity...

...DISMISS AND DENYING PLAINTIFF'S MOTIONS FOR DEFAULT JUDGMENT LUCY H. KOH , United States District Judge Plaintiff Ferial Karen Ardalan (“Ardalan”) brings...

45. Steshenko v. Gayrard

United States District Court, N.D. California, San Jose Division. | May 20, 2014 | 44 F.Supp.3d 941 | 2014 WL 2120837

EDUCATION — Abuse and Harassment. Graduate school applicant's age discrimination claims were deniable as not actionable.

Synopsis
Background: Graduate school applicant filed civil rights suit against board of trustees for state university and two heads of graduate programs, claiming that denial of his application for two graduate programs was based on age discrimination in violation of Age Discrimination Act (ADA), Age Discrimination in Employment Act (ADEA), and California Fair Employment and Housing Act (FEHA), retaliation for speech in violation of First Amendment pursuant to 1983 and California's Bane Act, denial of due process and equal protection under Fourteenth Amendment pursuant to 1983 and Bane Act, conspiracy to interfere with civil rights, and intentional infliction of emotional distress. Defendants moved to dismiss for failure to state claim.
Holdings: The District Court, Lucy H. Koh, J., held that:
1 Eleventh Amendment immunity barred claims against board;
2 ADA claim was not actionable;
3 ADEA claim was not actionable;
4 First Amendment retaliation claim was not sufficiently alleged;
5 due process and equal protection claims were foreclosed; and
6 conspiracy claim was not sufficiently alleged.
Motion granted.

...CA, for Defendants. ORDER GRANTING MOTION TO DISMISS LUCY H. KOH , United States District Judge [1] [2] [3] Plaintiff Gregory Nicholas...

1. Chavez v. Wynar

United States District Court, N.D. California, San Jose Division. | November 08, 2019 | 421 F.Supp.3d 891 | 2019 WL 5864618

CRIMINAL JUSTICE — Searches and Seizures. Allegations that federal **agent** subjected employees to coerced questioning after search of business had concluded, alleged violation of clearly established right against unreasonable detention.

Synopsis
Background: Corporation and individual employees brought action against federal **agent**, asserting *Bivens* claims for violations of Fourth and Fifth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. **Agent** moved to dismiss for failure to state claim.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 employees failed to allege that **agent's** use of handcuffs to detain them while executing search warrant on business's premises violated any clearly established right against use of excessive force;
2 employees stated claim that **agent's** act of pointing gun at them after they were handcuffed, under control, and fully cooperative violated their clearly established right against use of excessive force;
3 employees stated claim that **agent's** act of detaining and subjecting them to coerced questioning after search of business had concluded violated their clearly established right against unreasonable detention;
4 employee failed to allege that **agent's** conduct in temporarily denying her access to her shoes and clothing during search violated her clearly established right against unreasonable detention; and
5 employee stated claim that **agent's** conduct in denying her use of her cell phone after search of business's premises had concluded violated her clearly established right against unreasonable detention.
Motion granted in part and denied in part.

...2019 Background: Corporation and individual employees brought action against federal **agent**, asserting Bivens claims for violations of Fourth and Fifth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. **Agent** moved to dismiss for failure to state claim. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) employees failed to allege that **agent's** use of handcuffs to detain them while executing search warrant...

...against use of excessive force; (2) employees stated claim that **agent's** act of pointing gun at them after they were handcuffed...

...against use of excessive force; (3) employees stated claim that **agent's** act of detaining and subjecting them to coerced questioning after...

2. Chavez v. Wynar

United States District Court, N.D. California, San Jose Division. | April 28, 2021 | --- F.Supp.3d ---- | 2021 WL 1668053

CRIMINAL JUSTICE — Arrest. **Agent's** act of handcuffing employees of business being investigated for fraudulent practices while employees had guns pointed at them did not constitute excessive force under Fourth Amendment.

Synopsis
Background: Employees of business being investigated for fraudulent practices brought action against federal **agent**, asserting *Bivens* claims for violations of Fourth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. **Agent** moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:

1 fact issues precluded summary judgment on claim that employee was detained incommunicado;
2 fact issues precluded summary judgment on claim that **agent** deprived employee of her cell phone;
3 employees failed to establish that detention was not conducted in reasonable manner; and
4 **agent's** act of handcuffing employees of business being investigated for fraudulent practices while employees had guns pointed at them did not constitute excessive force under Fourth Amendment.
Motion granted in part and denied in part.

...business being investigated for fraudulent practices brought action against federal **agent**, asserting Bivens claims for violations of Fourth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. **Agent** moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) fact issues precluded summary judgment on...

...incommunicado; (2) fact issues precluded summary judgment on claim that **agent** deprived employee of her cell phone; (3) employees failed to...

...that detention was not conducted in reasonable manner; and (4) **agent's** act of handcuffing employees of business being investigated for fraudulent...

3. Life Savers Concepts Association of California v. Wynar

United States District Court, N.D. California, San Jose Division. | May 16, 2019 | 387 F.Supp.3d 989 | 2019 WL 2144630

CIVIL RIGHTS — Searches and Seizures. Allowing corporation to bring Bivens suit on behalf of employees was new Bivens context for which there were alternative remedial structures.

Synopsis
Background: Corporation and individual employees brought action against federal **agents** and other individuals, asserting *Bivens* claims for violations of the First, Fourth, Fifth, and Fourteenth Amendments related to **agent's** actions during investigation and execution of search warrant at business's office, during which employees were detained. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 *Bivens* did not provide remedy for corporate plaintiff's claims;
2 individual plaintiffs lacked standing to assert First Amendment claim centered around **agent's** alleged appearance at a meeting;
3 individual plaintiffs failed to state First Amendment claim based on **agent's** alleged abusive conduct during execution of search warrant;
4 individual plaintiffs failed to state a claim for violation of their Fifth Amendment rights;
5 individual plaintiff plausibly alleged that **agent** forced an interrogation in violation of her constitutional rights; and
6 individual plaintiffs failed to allege with particularity that **agent** violated their Fourth Amendment rights with excessive force and unreasonable detentions.
Motion granted in part and denied in part.

...2019 Background: Corporation and individual employees brought action against federal **agents** and other individuals, asserting Bivens claims for violations of the First, Fourth, Fifth, and Fourteenth Amendments related to **agent's** actions during investigation and execution of search warrant at business's...

...Defendants moved to dismiss. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) Bivens did not provide remedy for...

...plaintiffs lacked standing to assert First Amendment claim centered around **agent's** alleged appearance at a meeting; (3) individual plaintiffs failed to state First Amendment claim based on **agent's** alleged abusive conduct during execution of search warrant; (4) individual...

4. Ciampi v. City of Palo Alto

United States District Court, N.D. California, San Jose Division. | May 11, 2011 | 790 F.Supp.2d 1077 | 2011 WL 1793349

CRIMINAL JUSTICE - Arrest. **Officers**' use of taser in drive-stun mode against arrestee did not violate arrestee's Fourth Amendment rights.

Synopsis
Background: Arrestee brought action against city and current and former employees of city police department, alleging under 1983 that **officers**' use of stun guns to subdue arrestee was excessive, in violation of Fourth Amendment, and asserting related state-law claims. Defendants moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 newspaper articles submitted by arrestee were relevant;
2 **officers**' use of ruse to remove arrestee from his van violated Fourth Amendment;
3 **officers** were entitled to **qualified immunity** from unlawful seizure claim arising out of **officers**' use of ruse to remove arrestee from van;
4 **officers** had reasonable suspicion that arrestee was under influence of controlled substances, so as to justify brief, investigatory detention;
5 **officers** were entitled to **qualified immunity** from excessive force claim arising out of their use of stun gun in dart mode;
6 **officers**' use of force in deploying stun gun in drive-stun mode was not excessive; and
7 arrestee could not sustain 1983 municipal liability claim.
Motion for summary judgment granted in part and denied in part.

...entity Lynne Johnson , an individual; Chief Dennis Burns , an individual; **Officer** Kelly Burger , an individual; **Officer** Manuel Temores , an individual; **Officer** April Wagner , an individual; **Agent** Dan Ryan Sergeant Natasha Powers, individual , Defendants. Case No.09...

...employees of city police department, alleging under §1983 that **officers**' use of stun guns to subdue arrestee was excessive, in...

...moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) newspaper articles submitted by arrestee were relevant; (2) **officers**' use of ruse to remove arrestee from his van violated Fourth Amendment; (3) **officers** were entitled to **qualified immunity** from unlawful seizure claim arising out of **officers**' use of ruse to remove arrestee from van; (4) **officers** had reasonable suspicion that arrestee was under influence of controlled...

5. Nunez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | May 23, 2019 | 381 F.Supp.3d 1192 | 2019 WL 2232673

CIVIL RIGHTS — Excessive Force. California city police **officers** who fatally shot individual did not deny him medical care in violation of Fourth Amendment.

Synopsis
Background: Father and estate of son brought action against California city and, individually and in their official capacities, city police **officers** following **officers**' fatal shooting of son, asserting 1983 claims against **officers** for excessive force and denial of medical care in violation of Fourth Amendment and deprivation of right to familial relationship in violation of Fourteenth Amendment, *Monell* claim against city, and California-law wrongful death negligence claim against **officers** and, vicariously, city. **Officers** and city moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 genuine issues of material fact precluded summary judgment on excessive force claim;
2 **officers** had not denied son medical care in violation of Fourth Amendment;
3 genuine issues of material fact precluded summary judgment on right to familial relationship claim;

4 city was not liable on *Monell* claim; but
5 genuine issues of material fact precluded summary judgment on wrongful death negligence claim.
Motion granted in part and denied in part.

...city and, individually and in their official capacities, city police **officers** following **officers**' fatal shooting of son, asserting § 1983 claims against **officers** for excessive force and denial of medical care in violation...

...against city, and California-law wrongful death negligence claim against **officers** and, vicariously, city. **Officers** and city moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) genuine issues of material fact precluded summary judgment on excessive force claim; (2) **officers** had not denied son medical care in violation of Fourth...

...held gun and had pointed it at California city police **officers** at time that **officers** had fatally shot him precluded summary judgment for **officers** on § 1983 claim by father and estate of son...

6. Hernandez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | March 14, 2017 | 241 F.Supp.3d 959 | 2017 WL 977047

CIVIL RIGHTS — Due Process. Attendees of presidential candidate's rally who were directed toward protesters sufficiently alleged that police violated their due process rights.

Synopsis
Background: Attendees of rally for presidential candidate brought putative class action against city, police chief, and police **officers** alleging that **officers** directed attendees towards a group of anti-candidate protesters and prevented them from proceeding away from protesters, asserting 1983 claims for deliberate indifference and municipal liability, and state law claims for violations of the Bane Act and negligence. Defendants moved to dismiss.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 attendees failed to allege that police chief acted with deliberate indifference in devising crowd-control plan for rally;
2 attendees sufficiently alleged that police **officers** took an affirmative action that exposed attendees to a danger that they would not have otherwise faced, for purposes of due process claim;
3 attendees sufficiently stated claim against **officers** for violation of due process under state-created danger doctrine;
4 **officers** were not entitled to **qualified immunity** from 1983 claims for violation of due process under state-created danger doctrine;
5 attendees failed to identify city policy of unconstitutionally exposing people to danger by third parties, as would support claim for municipal liability;
6 attendees failed to state claim for municipal liability under 1983 for failure to train;
7 allegations were sufficient to state claim that city was liable under 1983 for **officers**' allegedly unconstitutional actions in directing attendees along particular path after realizing that doing so placed attendees in danger; but
8 allegations were insufficient to state claim for violation of Bane Act.
Motion granted in part and denied in part.

...brought putative class action against city, police chief, and police **officers** alleging that **officers** directed attendees towards a group of anti-candidate protesters and...

...Defendants moved to dismiss. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) attendees failed to allege that police...

...control plan for rally; (2) attendees sufficiently alleged that police **officers** took an affirmative action that exposed attendees to a danger...

7. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | October 25, 2011 | 828 F.Supp.2d 1090 | 2011 WL 5079528

CIVIL RIGHTS - Attorney Fees. Genuine issue of material fact existed as to whether state park rangers had probable cause to arrest.

Synopsis
Background: Arrestee brought 1983 action against state park rangers, alleging violations of the First and Fourth Amendments, as well as the California Constitution. Rangers filed motion for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 genuine issue of material fact existed as to whether state park rangers had probable cause to arrest;
2 genuine issue of material fact existed as to the nature and quality of intrusion against arrestee;
3 genuine issue of material fact existed as to whether arrestee was a threat to state park rangers;
4 genuine issue of material fact existed as to whether arrestee was actively resisting arrest;
5 genuine issue of material fact existed as to whether arrestee engaged in constitutional protected speech;
6 genuine issue of material fact existed as to whether state park ranger had retaliatory intent in performing arrest; and
7 genuine issue of material fact existed as to whether state park rangers acted with evil motive or intent, or with malice during arrest.
Motion granted in part and denied in part.

...motion for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) genuine issue of material fact...

...1983 false arrest claim, a plaintiff must demonstrate that the **officers** lacked probable cause to arrest him. U.S.C.A. Const.Amend. 4 42...

...1983 [3] 35 Arrest 35II On Criminal Charges 35 63 **Officers** and Assistants, Arrest Without Warrant 35 63 . 4 Probable or Reasonable...

8. Obas v. County of Monterey

United States District Court, N.D. California, San Jose Division. | February 22, 2011 | Not Reported in F.Supp.2d | 2011 WL 738159

CIVIL RIGHTS - Arrest and Detention. Fact issue existed as to whether it was objectively unreasonable for the police **officers** to force the arrestee to walk to the patrol car.

...as to whether it was objectively unreasonable for the police **officers** to force the arrestee to walk to the patrol car...

...expressed pain when set upon his feet, repeatedly told the **officers** he could not walk, and experienced severe pain when forced...

...patrol car, the arrestee expressed so much pain that the **officers** took him to the hospital, where the hospital staff discovered...

9. Novin v. Fong

United States District Court, N.D. California, San Jose Division. | December 08, 2014 | Not Reported in Fed. Supp. | 2014 WL 6956923

Plaintiffs Abdol Novin and Pooya Pournadi (collectively, “Plaintiffs”) bring this case against Gail Fong, Robert Cook, and the California Department of Motor Vehicles (collectively, “Defendants”) for violations of 42 U.S.C. §1983 (“§1983”), intentional interference with prospective...

...CA, for Defendants. ORDER GRANTING MOTION TO DISMISS LUCY H. **KOH** , United States District Judge Plaintiffs Abdol Novin and Pooya Pournadi...

...the DMV's immunity under the Eleventh Amendment, Cook and Fong's **qualified** **immunity** to damages suits under §1983 , and state law licensing...

...named as the defendant, but also certain actions against state **agents** and state instrumentalities.” Regents of the Univ. of Cal. v...

10. Bermudez v. Ware

United States District Court, N.D. California, San Jose Division. | February 04, 2011 | Not Reported in F.Supp.2d | 2011 WL 445832

Plaintiff filed a “Criminal Complaint” against a number of current and former federal judges, United States Attorneys, Assistant United States Attorneys, and an IRS Special **Agent**. The United States of America, appearing as amicus curiae, now seeks dismissal of the action for failure to state a claim pursuant to Federal Rule of Civil Procedure...

...CA, for Defendants. ORDER DISMISSING CASE WITH PREJUDICE LUCY H. **KOH** , District Judge. Plaintiff filed a “Criminal Complaint” against a number...

...States Attorneys, Assistant United States Attorneys, and an IRS Special **Agent**. The United States of America, appearing as amicus curiae, now...

...States Attorneys Jeffrey Schenk and Brian Stretch; and IRS Special **Agent** Quyen Madrigal. The Complaint itself is entitled “Criminal Complaint, Affidavit...

11. Inman v. Anderson

United States District Court, N.D. California, San Jose Division. | February 27, 2018 | 294 F.Supp.3d 907 | 2018 WL 1071158

CIVIL RIGHTS — Immunity. County prosecutor was not entitled to absolute prosecutorial immunity from arrestee's § 1983 claim for illegal seizure.

Synopsis
Background: Arrestee brought 1983 action against city, city police **officers**, county, and Assistant District Attorney (ADA) employed by county, alleging that he was falsely arrested for annoying or molesting a child in violation of California law, and that defendants conspired to seize him and deny him substantive due process. Defendants moved to dismiss for failure to state claim, and city defendants moved for more definite statement.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 arrestee's 1983 claim that ADA's alleged continuation of prosecution with insufficient evidence violated his Fourth Amendment rights was barred by absolute prosecutorial immunity;
2 ADA was not entitled to absolute prosecutorial immunity from arrestee's 1983 claim based on failure to return property;
3 ADA's alleged conspiracy with **officers** to present false and misleading probable cause statement in support of warrant to search arrestee's home, if proven, was protected by absolute prosecutorial immunity;
4 arrestee failed to allege existence and content of county's investigatory policy that allegedly caused unconstitutional search and arrest of arrestee;

5 arrestee failed to allege that ADA's alleged failure to return arrestee's property was achieved by threats, intimidation, or coercion, as required to state claim under California's Bane Act;
6 arrestee failed to state claim against **officers** under Bane Act; and
7 arrestee's allegations against **officers** were not so vague or ambiguous as to justify more definite statement.
Motions granted in part and denied in part.

...Background: Arrestee brought § 1983 action against city, city police **officers**, county, and Assistant District Attorney (ADA) employed by county, alleging...

...for more definite statement. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) arrestee's § 1983 claim that ADA's...

...on failure to return property; (3) ADA's alleged conspiracy with **officers** to present false and misleading probable cause statement in support...

12. Bonty v. Ramsey

United States District Court, N.D. California. | December 19, 2011 | Not Reported in F.Supp.2d | 2011 WL 6330656

Plaintiff Miles O. Bonty, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at Salinas Valley State Prison ("SVSP"), including Defendants Correctional Sergeant Battles, Correctional Lieutenant J. Stevenson, and Correctional **Officers** J. Ramsey, N. Reese., and D. Vega. Plaintiff...

...States District Court, N.D. California. Miles O. BONTY , Plaintiff, v. **Officer** J. RAMSEY, et al., Defendants. No. C 10–5360 LHK...

...SURREPLY; AND GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Miles O. Bonty, proceeding pro se, filed...

...Defendants Correctional Sergeant Battles, Correctional Lieutenant J. Stevenson, and Correctional **Officers** J. Ramsey, N. Reese., and D. Vega. Plaintiff maintains that...

13. Nunez v. Santos

United States District Court, N.D. California, San Jose Division. | December 13, 2019 | 427 F.Supp.3d 1165 | 2019 WL 6828370

CIVIL RIGHTS — Excessive Force. Police **officers** who fatally shot victim did not have **qualified immunity** in § 1983 action alleging excessive force.

Synopsis
Background: Decedent's father and estate brought 1983 action against **officers** involved in fatal shooting of decedent, alleging excessive force and violation of right to familial relationship, and also alleging California wrongful death claim. After jury returned verdict in favor of estate on excessive force and wrongful death claims, **officers** filed renewed motion for judgment as a matter of law and alternative motion for new trial or remittitur.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 evidence was sufficient to support finding that victim did not point his gun at **officers**;
2 evidence did not compel finding that police **officers** made reasonable mistake of fact in perceiving that victim pointed a gun at **officers**;
3 **officers** did not have **qualified immunity**;
4 evidence sufficient to support jury finding that victim suffered significant pain and suffering; and
5 evidence did not establish that jury award of $2.6 million in pain and suffering damages was product of sympathy, passion, or prejudice.
Motions denied.

...Background: Decedent's father and estate brought § 1983 action against **officers** involved in fatal shooting of decedent, alleging excessive force and...

...favor of estate on excessive force and wrongful death claims, **officers** filed renewed motion for judgment as a matter of law...

...new trial or remittitur. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) evidence was sufficient to support finding that victim did not point his gun at **officers**; (2) evidence did not compel finding that police **officers** made reasonable mistake of fact in perceiving that victim pointed a gun at **officers**; (3) **officers** did not have **qualified immunity**; (4) evidence sufficient to support jury finding that victim suffered...

14. Belinda K. v. County of Alameda

United States District Court, N.D. California, San Jose Division. | July 08, 2011 | Not Reported in F.Supp.2d | 2011 WL 2690356

On December 21, 2010, Belinda K. (Plaintiff), proceeding pro se, filed a complaint alleging 20 causes of action against 23 named defendants on behalf of herself and her minor son, J.H. See Compl. (Dkt. No. 1). Plaintiff's Complaint alleges that her minor son was taken from her custody on the basis of falsified, misleading and incomplete information...

...filed under seal and served on the parties. LUCY H. **KOH** , District Judge. I. INTRODUCTION On December 21, 2010, Belinda K...

...San Leandro and City of San Leandro Police Department employees **Officer** Wong, Detective Luis Torres, Sergeant Decosta, and Kamilah Jackson. A...

...this information, employees of the San Leandro Police Department including **Officers** Wong, Jackson and DeCosta removed J.H. from his school and...

15. Hernandez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | September 17, 2019 | Not Reported in Fed. Supp. | 2019 WL 4450930

This case arises out of the June 2, 2016 rally for then-presidential candidate Donald J. Trump that took place at the McEnery Convention Center in downtown San Jose, California (the “Rally”). ECF No. 35 (“FAC”) ¶ 63. Twenty named plaintiffs bring this putative class action on behalf of themselves and all others...

...MOTION FOR CLASS CERTIFICATION Re: Dkt. No. 125 LUCY H. **KOH** , United States District Judge This case arises out of the...

...Plaintiffs”) against The City of San Jose and various individual **officers** of the San Jose Police Department (“SJPD”) (collectively, “Defendants”). Plaintiffs...

...are The City of San Jose (the “City”) and SJPD **officers** Loyd Kinsworthy, Lisa Gannon, Kevin Abruzzini, Paul Messier, Paul Spagnoli...

16. Bagley v. City of Sunnyvale

United States District Court, N.D. California, San Jose Division. | January 24, 2017 | Not Reported in Fed. Supp. | 2017 WL 344998

Plaintiff Lee Scott Bagley (“Plaintiff”) sued the City of Sunnyvale (“Sunnyvale”), **Officer** Jeromy Lima (“**Officer** Lima”) (collectively, the “Sunnyvale Defendants”), and the County of Santa Clara (“Santa Clara”) pursuant to 42 U.S.C. §1983 for violation of Plaintiff's...

...IN PART AND DENYING IN PART CITY OF SUNNYVALE AND **OFFICER** LIMA'S MOTION TO DISMISS LUCY H. **KOH** , United States District Judge Plaintiff Lee Scott Bagley (“Plaintiff”) sued the City of Sunnyvale (“Sunnyvale”), **Officer** Jeromy Lima (“ **Officer** Lima”) (collectively, the “Sunnyvale Defendants”), and the County of Santa...

...of Plaintiff's claims arise from the alleged actions of police **officers** during Plaintiff's arrest on December 22, 2012. The remainder of...

...arrest. 1.Plaintiff's Arrest On December 22, 2012, Sunnyvale police **officers** allegedly “came to arrest [Plaintiff] without a warrant” at Plaintiff's...

17. Ryan v. Santa Clara Valley Transportation Authority

United States District Court, N.D. California, San Jose Division. | March 30, 2017 | Not Reported in Fed. Supp. | 2017 WL 1175596

Plaintiff Joseph Ryan (“Plaintiff”) sues Defendants Santa Clara Valley Transportation Authority (“SCVTA”) and Joseph Fabela (“Fabela”) (collectively, “Defendants”). ECF No. 37. Before the Court is Defendants' motion to dismiss. ECF No. 41 (“Mot.”). Having considered the submissions of the...

...PART MOTION TO DISMISS Re: Dkt. No. 41 LUCY H. **KOH** , United States District Judge Plaintiff Joseph Ryan (“Plaintiff”) sues Defendants...

...5–13. Defendants also assert that Fabela is entitled to **qualified immunity**. Id. at 17 The Court first addresses whether Plaintiff has...

...and then the Court considers whether Fabela is entitled to **qualified immunity**. a.Whether Plaintiff has Stated a Plausible Claim against Fabela...

18. Gomez v. Fachko

United States District Court, N.D. California, San Jose Division. | April 30, 2021 | Slip Copy | 2021 WL 1721067

Plaintiff Omar Gomez brings this excessive force action against the City of Santa Clara and City of Santa Clara police **officer** Jordan Fachko (“Defendants”) under 42 U.S.C. § 1983. ECF No. 1. Before the Court is Defendants’ motion for summary judgment, ECF No. 50. Having considered the parties’ submissions, the relevant...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 50 LUCY H. **KOH** , United States District Judge Plaintiff Omar Gomez brings this excessive...

...City of Santa Clara and City of Santa Clara police **officer** Jordan Fachko (“Defendants”) under 42 U.S.C. § 1983 ECF No...

...3d 1167, 1171 (9th Cir. 2020) (at summary judgment on **qualified immunity**, requiring the Court to credit plaintiff's version of events unless...

19. Smith v. City of Santa Clara

United States District Court, N.D. California, San Jose Division. | January 15, 2013 | Not Reported in F.Supp.2d | 2013 WL 164191

Plaintiffs Josephine Smith and A.S., a minor appearing through her guardian ad litem, bring this action seeking damages against the City of Santa Clara, the City of Santa Clara Police Department, Detective Kenneth Henderson, Sergeant Greg Hill, and Clay Rojas pursuant to 42 U.S.C. § 1983, California Civil Code §§ 52.1–3, and several state common...

...IN PART DEFENDANTS' MOTIONS FOR PARTIAL SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiffs Josephine Smith and A.S., a minor appearing...

...Amendment rights. Finally, Plaintiff alleges that the conduct of the **officers** who searched her home constituted assault, battery, negligence, and negligent...

...Detective Michael Carlton (not a defendant here), one of the **officers** dispatched to respond to the stabbing incident, discovered that Justine...

20. Sandoval v. Lewis

United States District Court, N.D. California. | February 06, 2017 | Not Reported in Fed. Supp. | 2017 WL 487025

Plaintiff, a California prisoner proceeding pro se, has filed a civil rights complaint, pursuant to 42 U.S.C. §1983. In the complaint, plaintiff alleges that defendants were deliberately indifferent to his safety. Defendants J. Frisk, Warden G. Lewis, and D. Barneburg have filed a motion to dismiss based on the failure to exhaust....

...SUMMARY JUDGMENT; DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION LUCY H. **KOH** UNITED STATES DISTRICT JUDGE Plaintiff, a California prisoner proceeding pro...

...was finished, he was supposed to let the control booth **officer** know so that plaintiff could be released from his cell...

...next inmate to use. Compl. ¶14. The control booth **officer** is responsible for releasing inmates from their cells for purposes...

21. Hernandez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | October 13, 2016 | Not Reported in Fed. Supp. | 2016 WL 5944095

Plaintiffs Juan Hernandez, Nathan Velasquez, Frank Velasquez, Rachel Casey, Mark Doering, Mary Doering, Barbara Arigoni, Dustin Haines-Scrodin, Andrew Zambetti, Christina Wong, Craig Parsons, the minor I.P., Greg Hyver, and Todd Broome (collectively, “Plaintiffs”) bring this putative class action against Defendants the City of San Jose...

...PART MOTION TO DISMISS Re: Dkt. No. 6 LUCY H. **KOH** , United States District Judge Plaintiffs Juan Hernandez, Nathan Velasquez, Frank...

...were leaving the building, San Jose police and other police **officers** directed Plaintiffs from the east-northeast exit of the Convention...

...138–39, 145. During these attacks, Plaintiffs allege that police **officers** directed Plaintiffs into dangerous areas and deliberately did not intervene...

22. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | March 08, 2011 | Not Reported in F.Supp.2d | 2011 WL 846065

Plaintiff Berry Lynn Adams filed his First Amended Complaint (Dkt. No. 80, "FAC") on December 6, 2010. Defendants Best, Bockman, Callison, Hauck, Kraft, Lingenfelter, Sipes, and Stone (collectively "Defendants") move to dismiss Adams' FAC pursuant to Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 81 ("Mot."); see also Dkt. No. 91 ("Reply")....

...AND DENYING IN PART DEFENDANTS. MOTION TO DISMISS LUCY H. **KOH** , District Judge. Plaintiff Berry Lynn Adams filed his First Amended...

...maintain a § 1983 claim for retaliatory prosecutions against investigating **officers** who wrongfully caused the prosecution, 2 the Court is not...

...A] warrantless arrest satisfies the Constitution so long as the **officer** has probable cause to believe that the suspect has committed...

23. Smith v. County of Santa Cruz

United States District Court, N.D. California, San Jose Division. | June 17, 2019 | Not Reported in Fed. Supp. | 2019 WL 2515841

Plaintiffs Ian Smith, Thanh-Thanh Hoang and Savannah Smith (collectively, "Plaintiffs") brought suit against Defendants County of Santa Cruz, Santa Cruz Sheriff Jim Hart ("Sheriff Hart"), Santa Cruz County Sergeant Jacob Ainsworth ("Sergeant Ainsworth"), Santa Cruz Deputy Chris Vigil ("Deputy Vigil"),...

...Law Group, Scotts Valley, CA, for Defendants City of Capitola, **Officer** Pedro Zamora Noah G. Blechman , McNamara, Ney, Beatty, Slattery, Borges...

...FOR SUMMARY JUDGMENT Re: Dkt. Nos. 109, 111 LUCY H. **KOH** , United States District Judge Plaintiffs Ian Smith, Thanh-Thanh Hoang...

...and Defendants City of Capitola and Capitola Police Department ("CPD") **Officer** Pedro Zamora (" **Officer** Zamora") (collectively, "Capitola Defendants") for the shooting of Plaintiffs' son...

24. Quiroz v. Short

United States District Court, N.D. California. | March 31, 2015 | 85 F.Supp.3d 1092 | 2015 WL 1482744

CIVIL RIGHTS — Prisons. Prison official did not have retaliatory motive in investigating administrative grievance of prisoner who had previously filed civil rights lawsuit.

Synopsis
Background: State prisoner, proceeding pro se, brought action against prison officials, alleging, inter alia, that officials retaliated against prisoner for filing prior federal civil rights complaint and for participating in another inmate's civil rights suit. One official moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 official did not have retaliatory motive in investigating administrative grievance;

2 prisoner's assertion that one of official's duties was to monitor incoming and outgoing mail was insufficient to show that official destroyed two specific pieces of prisoner's mail;
3 genuine issue of material fact existed as to whether official acted with retaliatory motive when he sent to prisoner's fiance a letter intended for other woman;
4 genuine issue of material fact existed as to whether prison official acted with retaliatory motive when he issued rules violation report (RVR) against prisoner;
5 official was entitled to **qualified immunity** on prisoner's right to intimate association claim;
6 official's act of sending to prisoner's fiance a letter intended for other woman did not prevent prisoner from continuing to associate with fiance;
7 official's act of sending to prisoner's fiance a letter intended for other woman did not prevent prisoner from marrying fiance; and
8 genuine issue of material fact existed as to whether officials had agreement to retaliate against prisoner by issuing RVR against him.
Motion granted in part and denied in part.

...moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) official did not have retaliatory motive...

...violation report (RVR) against prisoner; (5) official was entitled to **qualified immunity** on prisoner's right to intimate association claim; (6) official's act...

...Good Faith and Probable Cause 78 1376 Government Agencies and **Officers** 78 1376(2) k. Good faith and reasonableness; knowledge and...

25. J.A.L. v. Santos

United States District Court, N.D. California, San Jose Division. | March 10, 2016 | Not Reported in Fed. Supp. | 2016 WL 913743

Plaintiff J.A.L. (“Plaintiff”), a minor, brings this action against Defendants Sergeant Michael Santos (“Sgt. Santos”) and **Officer** Frits Van der Hoek (“**Officer** Van der Hoek”) (collectively, “Defendants”). Before the Court is Defendants' motion for summary judgment. ECF No. 29. Having considered the...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 29 LUCY H. **KOH** , United States District Judge Plaintiff J.A.L. (“Plaintiff”), a minor, brings...

...this action against Defendants Sergeant Michael Santos (“Sgt. Santos”) and **Officer** Frits Van der Hoek (“ **Officer** Van der Hoek”) (collectively, “Defendants”). Before the Court is Defendants...

...at 50:2-3, 52:15-19, 53:5-6. **Officer** Van der Hoek arrived at the scene shortly thereafter, while...

26. Harrell v. City of Gilroy

United States District Court, N.D. California, San Jose Division. | February 05, 2019 | Not Reported in Fed. Supp. | 2019 WL 452039

Before the Court is Defendants City of Gilroy, Gilroy Police Department (“City Defendants”), Gilroy Police Chief Denise Turner, Captain Joseph Deras, Captain Kurt Svardal, Communications Supervisor Steven Ynzunza, and Human Resources Director/Risk Manager LeeAnn McPhillips' (“Individual Defendants”) (collectively,...

...DEFENDANTS' MOTION TO DISMISS Re: Dkt. No. 78 LUCY H. **KOH** , United States District Judge Before the Court is Defendants City...

...23. Harrell alleges a range of sexual misconduct, including police **officers** having sex with members of the Gilroy Explorers, a group...

...shift 14 minutes early because a call came in that **Officer** Ray Hernandez, a close friend of Harrell's, was unconscious and...

27. Wilkins v. Alameda County

United States District Court, N.D. California. | October 07, 2014 | Not Reported in Fed. Supp. | 2014 WL 5035445

Plaintiff, a California state prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. §1983. Plaintiff has been granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the court dismisses some defendants, and orders service upon the others. A federal court must...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , United States District Judge Plaintiff, a California state prisoner proceeding...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...provides a cause of action for preventing or impeding an **officer** of the United States from performing his or her duties...

28. Treglia v. Kernan

United States District Court, N.D. California. | August 15, 2013 | Not Reported in Fed. Supp. | 2013 WL 4427253

Plaintiff, a state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. §1983 challenging the conditions of his confinement at Pelican Bay State Prison ("PBSP"). The court screened plaintiff's amended complaint and found that plaintiff stated cognizable claims of: (1)...

...TO DISMISS; FURTHER BRIEFING (Docket Nos. 16, 31) LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...claim against him, for failure to exhaust, and based on **qualified immunity**. Plaintiff has filed an opposition, and Warden Lewis has filed...

...failure to state a claim against him, and based on **qualified immunity**. Plaintiff has filed an opposition. Although directed to do so...

29. Peoples v. Zeidan

United States District Court, N.D. California. | August 20, 2018 | Not Reported in Fed. Supp. | 2018 WL 3995917

Plaintiff, a California prisoner proceeding pro se, filed a second amended civil rights complaint, pursuant to 42 U.S.C. §1983. The court found that plaintiff stated the following cognizable claims: (1) defendants **Officer** Zeidan and **Officer** Branch used excessive force on plaintiff; (2) defendants Inspector Soler, Detective Wentz,...

...PROSECUTE Re: Dkt. Nos. 65, 68, 72, 73 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California prisoner proceeding pro...

...found that plaintiff stated the following cognizable claims: (1) defendants **Officer** Zeidan and **Officer** Branch used excessive force on plaintiff; (2) defendants Inspector Soler, Detective Wentz, Sergeant

Decious, Inspector Jung, **Officer** Zeidan, **Officer** Branch, and **Officer** Mandell violated plaintiff's Fourth Amendment right against unlawful arrest; (3) defendants Sergeant Decious, Inspector Jung, **Officer** Zeidan, **Officer** Branch, and **Officer**...

...car to drive away. Pl. Depo. at 30:4-5. **Officers** Branch, Zeidan, and Mandell were sent to the apartment complex...

30. Hernandez v. City of San Jose

United States District Court, N.D. California, San Jose Division. | May 15, 2017 | Not Reported in Fed. Supp. | 2017 WL 2081236

On March 14, 2017, the Court found that San Jose police **officers** Loyd Kinsworthy, Lisa Gannon, Kevin Abruzzini, Paul Messier, Paul Spagnoli, Johnson Fong, and Jason Ta were not entitled to **qualified immunity** and thus denied Defendants' motion to dismiss Plaintiffs' claim against these **officers** under 42 U.S.C. §1983. ECF No. 72, at 35....

...AND STAYING ACTION Re: Dkt. Nos. 82, 84 LUCY H. **KOH** , United States District Judge On March 14, 2017, the Court found that San Jose police **officers** Loyd Kinsworthy, Lisa Gannon, Kevin Abruzzini, Paul Messier, Paul Spagnoli, Johnson Fong, and Jason Ta were not entitled to **qualified immunity** and thus denied Defendants' motion to dismiss Plaintiffs' claim against these **officers** under 42 U.S.C. §1983 ECF No. 72, at 35...

...are the City of San Jose and San Jose police **officers** Loyd Kinsworthy, Lisa Gannon, Kevin Abruzzini, Paul Messier, Paul Spagnoli...

...rally for then-presidential candidate Donald Trump. Id. Individual police **officers** were not yet named in the original complaint, but instead...

31. Harris v. Simental

United States District Court, N.D. California. | July 15, 2013 | Not Reported in Fed. Supp. | 2013 WL 3733429

Plaintiff, a former pretrial detainee proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. §1983. Plaintiff alleges that Defendants **Officer** Juan Simental ("**Officer** Simental") and **Officer** G. Lombardi ("**Officer** Lombardi") used excessive force against him at the Pittsburg police station....

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff, a former pretrial detainee proceeding...

...pursuant to 42 U.S.C. §1983 Plaintiff alleges that Defendants **Officer** Juan Simental (" **Officer** Simental") and **Officer** G. Lombardi (" **Officer** Lombardi") used excessive force against him at the Pittsburg police...

...in a vehicle. (Compl. at 3.) At 11:10 p.m., **Officer** Lombardi noticed that the car had a broken right front...

32. Gonzalez v. Ahmed

United States District Court, N.D. California, San Jose Division. | September 09, 2014 | 67 F.Supp.3d 1145 | 2014 WL 4444292

CIVIL RIGHTS — Prisons. State inmate administratively exhausted his § 1983 Eighth Amendment claim as required by Prison Litigation Reform Act.

Synopsis
Background: State inmate brought 1983 action alleging that prison physicians and chief medical **officer** were deliberately indifferent to his serious medical needs, in violation of his Eighth Amendment rights. Chief medical **officer** moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 inmate administratively exhausted Eighth Amendment claim against chief medical **officer**, and
2 fact issues precluded summary judgment on Eighth Amendment claim against chief medical **officer**.
Motion denied.

...§ 1983 action alleging that prison physicians and chief medical **officer** were deliberately indifferent to his serious medical needs, in violation of his Eighth Amendment rights. Chief medical **officer** moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) inmate administratively exhausted Eighth Amendment claim against chief medical **officer**, and (2) fact issues precluded summary judgment on Eighth Amendment claim against chief medical **officer**. Motion denied. Motion for Summary Judgment West Headnotes [1] 78...

...appendicitis, encompassed inmate's § 1983 claim that prison's chief medical **officer** violated his Eighth Amendment rights when he declined to remove...

...him from physician's care, and thus claim against chief medical **officer** was administratively exhausted under the Prison Litigation Reform Act (PLRA); inmate's claim against chief medical **officer** was merely an aspect of inadequate medical treatment claim against...

33. Atterbury v. Daly

United States District Court, N.D. California. | September 20, 2012 | Not Reported in F.Supp.2d | 2012 WL 4343647

Plaintiff, a former civilly committed insanity acquitee, brought this case under 42 U.S.C. § 1983 against Napa State Hospital's (“NSH”) Chief of Police, Denise Daly (“Defendant”). The Court ordered service of Plaintiff's amended complaint (“AC”) upon Defendant. On February 22, 2012, Defendant filed a motion for summary judgment. Plaintiff filed an...

...Defendant. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a former civilly committed insanity acquitee, brought...

...argues that she is entitled to summary judgment based on **qualified immunity**. I. Retaliation A claim may be stated under § 1983...

...2006) (citation and internal quotation marks omitted). The defense of **qualified immunity** protects “government officials from liability for civil damages insofar as...

34. Abdel-Shafy v. City of San Jose

United States District Court, N.D. California, San Jose Division. | February 12, 2019 | Not Reported in Fed. Supp. | 2019 WL 570759

Plaintiff Alison Yew Abdel-Shafy (“Plaintiff”) brings suit against Defendants City of San Jose, San Jose Police Department, San Jose Police **Officer** Juan Garcia, and San Jose Police **Officer** Daniel Akery (collectively, “Defendants”). Before the Court is Defendants' motion to dismiss Plaintiff's Complaint. ECF No. 45...

...STATE CLAIMS WITHOUT PREJUDICE Re: Dkt. No. 45 LUCY H. **KOH** , United States District Judge Plaintiff Alison Yew Abdel-Shafy (“Plaintiff...

...of San Jose, San Jose Police Department, San Jose Police **Officer** Juan Garcia, and San Jose Police **Officer** Daniel Akery (collectively, “Defendants”). Before the Court is Defendants' motion...

...inside the Starbucks. Id. at ¶14. San Jose Police **Officers** Juan Garcia ("Garcia") and Daniel Akery ("Akery") (collectively, " **Officers** ") subsequently entered the Starbucks with Giendi. Id. Giendi identified Plaintiff...

35. Wilkerson v. Grounds

United States District Court, N.D. California. | September 11, 2012 | Not Reported in F.Supp.2d | 2012 WL 4005451

Plaintiff, currently incarcerated at Correctional Training Facility—Central, and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants were deliberately indifferent to his safety. Defendants have filed a motion for summary judgment. Plaintiff has filed an opposition and...

...Defendant. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, currently incarcerated at Correctional Training Facility—Central...

...judgment. Alternatively, Defendants also argue that they are entitled to **qualified immunity**. The defense of **qualified immunity** protects "government officials from liability for civil damages insofar as...

...L.Ed.2d 396 (1982) A court considering a claim of **qualified immunity** must determine: (1) whether the plaintiff has alleged the deprivation...

36. Craig v. County of Santa Clara

United States District Court, N.D. California, San Jose Division. | August 09, 2018 | Not Reported in Fed. Supp. | 2018 WL 3777363

Plaintiff Harue Craig ("Mrs. Craig") brings this suit against Defendants County of Santa Clara and Santa Clara Sheriff's Department Sergeant Douglas Ulrich ("Sgt. Ulrich") (collectively, "Defendants") for the shooting of Eugene Craig. Before the Court is Defendants' motion to summary judgment. ECF No. 49...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 49 LUCY H. **KOH** , United States District Judge Plaintiff Harue Craig ("Mrs. Craig") brings...

...Laguardia Dep. at 27:7-14. The Akimotos told the **officers** that Mrs. Craig sometimes went for walks by herself, but...

...and Reyes. Weyhrauch Dep. at 25:12-26:15. The **officers** requested that dispatch do a firearms check to determine whether...

37. Watkins v. City of San Jose

United States District Court, N.D. California, San Jose Division. | May 04, 2017 | Not Reported in Fed. Supp. | 2017 WL 1739159

Plaintiffs Deviny Buchanan, on behalf of herself and her minor daughter Laniyah Watkins; Sharon Watkins; and Sylvia Buchanan (collectively, "Plaintiffs") bring the instant suit against Defendants City of San Jose, Police **Officer** Ryan Dote, and Police **Officer** James Soh (collectively, "Defendants") for the shooting of Phillip...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 44 LUCY H. **KOH** , United States District Judge Plaintiffs Deviny Buchanan, on behalf of...

...the instant suit against Defendants City of San Jose, Police **Officer** Ryan Dote, and Police **Officer** James Soh (collectively, “Defendants”) for the shooting of Phillip Watkins...

...arises from the fatal shooting of Phillip Watkins (“Decedent”) by **Officers** Dote and Soh on February 11, 2015. 1.The Parties...

38. Novin v. Cook

United States District Court, N.D. California. | June 02, 2015 | Not Reported in Fed. Supp. | 2015 WL 3488559

Following the Court's Order Granting Defendant's Motion to Dismiss, Plaintiffs Abdol Novin and Pooya Pournadi (collectively, “Plaintiffs”) filed a First Amended Complaint against Gail Fong and Robert Cook (collectively, “Defendants”) for a violation of 42 U.S.C. §1983 (“§1983”). See...

...Defendants. ORDER GRANTING MOTION TO DISMISS WITH PREJUDICE LUCY H. **KOH** , United States District Judge Following the Court's Order Granting Defendant's...

...process violation; and (3) Cook and Fong are entitled to **qualified immunity**. The Court addresses each of these arguments below, and finds...

...Court finds that Cook and Fong would be entitled to **qualified immunity**. In addition, because Plaintiffs “fail[ed] to cure deficiencies by...

39. Tapia Carmona v. County of San Mateo

United States District Court, N.D. California. | July 02, 2021 | Slip Copy | 2021 WL 2778539

Plaintiff Oscar Tapia Carmona (“Plaintiff”) brought suit against Defendants County of San Mateo, Correctional **Officer** Jesse Ramirez, Correctional **Officer** Walter Daly, Correctional **Officer** Derek Hudnall, Correctional **Officer** James Byrnes, Correctional **Officer** Ryan Cardoza, Correctional **Officer** Berta Garcia, Correctional **Officer** John Ray...

...DENYING IN PART DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff Oscar Tapia Carmona (“Plaintiff”) brought suit against Defendants County of San Mateo, Correctional **Officer** Jesse Ramirez, Correctional **Officer** Walter Daly, Correctional **Officer** Derek Hudnall, Correctional **Officer** James Byrnes, 1 Correctional **Officer** Ryan Cardoza, Correctional **Officer** Berta Garcia, Correctional **Officer**...

...Plaintiff's behavior continued to deteriorate throughout the night. Id. Correctional **Officer** Walter Daly (“Daly”) recognized that Plaintiff primarily spoke Spanish, and so Daly asked Correctional **Officer** Jesse Ramirez (“Ramirez”), a bilingual Spanish-English speaker, to speak...

...point in the early morning hours of March 28, 2021, **officers** arrived at Plaintiff's cell and communicated with him in both...

40. Hadden v. Adams

United States District Court, N.D. California. | December 18, 2017 | Not Reported in Fed. Supp. | 2017 WL 6450460

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983, alleging that defendants were deliberately indifferent to his serious medical needs. Defendants Dr. Gamboa, Dr. M. Danial, Dr. K. Kumar, Chief Medical **Officer** (“CMO”) M. Sepulveda, Chief Executive **Officer**...

...MOTION FOR SANCTIONS Re: Dkt. Nos. 34, 45 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California state prisoner proceeding...

...Dr. Gamboa, Dr. M. Danial, Dr. K. Kumar, Chief Medical **Officer** (“CMO”) M. Sepulveda, Chief Executive **Officer** (“CEO”) G. Ellis, Chief of Inmate Appeals L.D. Zamora, Chief Medical Executive **Officer** (“CMEO”) A. Adams, and CEO D. Bright have filed a...

...Sullivan, 3 Dr. M. Danial, Dr. K. Kumar, Chief Medical **Officer** (“CMO”) M. Sepulveda, Chief Executive **Officer** (“CEO”) G. Ellis, Chief of Inmate Appeals L.D. Zamora, Chief Medical Executive **Officer** (“CMEO”) A. Adams, and CEO D. Bright were deliberately indifferent...

41. Washington v. Sandoval

United States District Court, N.D. California. | March 22, 2012 | Not Reported in F.Supp.2d | 2012 WL 987291

Plaintiff, currently incarcerated at Corcoran State Prison and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that Defendants Sandoval, Sandquist, and Townsend were deliberately indifferent to his safety, and retaliated against him during his incarceration at Salinas Valley State Prison (“SVSP”)....

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, currently incarcerated at Corcoran State Prison and...

...that time, Defendants Sandoval and Sandquist were employed as correctional **officers** at SVSP, and Defendant Townsend was a correctional plumber II...

...alerted staff on the second/watch shift, the unit floor **officers**, and Defendants Sandoval and Sandquist. Id. at 3A:6.) During...

42. Norton v. Hallock

United States District Court, N.D. California. | October 29, 2018 | Not Reported in Fed. Supp. | 2018 WL 5629345

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights action under 42 U.S.C. §1983 alleging that defendant L. Hallock violated plaintiff's First Amendment right to access the courts. Defendant has filed a motion to dismiss and motion for summary judgment. Plaintiff has filed an opposition, and defendant has...

...Defendant. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff, a California state prisoner proceeding...

...entitled to summary judgment on the merits and based on **qualified immunity**. The court agrees that defendant is entitled to summary judgment on the merits and on the basis of **qualified immunity**, and will address both arguments below. MOTION FOR SUMMARY JUDGMENT...

...entitled to summary judgment as a matter of law. III. **Qualified immunity** The defense of **qualified immunity** protects “government officials from liability for civil damages insofar as...

43. Gooden v. Baptista

United States District Court, N.D. California. | August 12, 2014 | Not Reported in Fed. Supp. | 2014 WL 3962644

Plaintiff, a state prisoner proceeding pro se, filed an amended complaint under 42 U.S.C. §1983, arguing that Correctional **Officers** Baptista, Mart, and Garza used excessive force upon him, and Baptista was deliberately indifferent to plaintiff's serious medical needs. Defendants have filed a motion for summary judgment....

...SE PRISONER SETTLEMENT PROGRAM; INSTRUCTIONS TO THE CLERK LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...amended complaint under 42 U.S.C. §1983 , arguing that Correctional **Officers** Baptista, Mart, and Garza used excessive force upon him, and...

...defendants argue that they are entitled to summary judgment and **qualified immunity** on the excessive force claim. 1 Defendants' motion for...

44. Sturgis v. Drollete

United States District Court, N.D. California. | January 24, 2012 | Not Reported in F.Supp.2d | 2012 WL 217820

Plaintiff, a state prisoner, filed an amended pro se prisoner complaint under 42 U.S.C. § 1983, arguing that Defendant Deputies Drollete and Fitzgerald used excessive force upon him, in violation of the Eighth Amendment. On June 23, 2011, Defendants filed a motion for summary judgment. Plaintiff filed an opposition. Defendants filed a reply, and...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner, filed an amended pro...

...attempting to restore discipline and protect the safety of the **officers**. The following facts are viewed in the light most favorable...

...Plaintiff to come to the door to be handcuffed for **officer** safety. Id. at ¶ 12; Decl. Fitzgerald at ¶ 8...

45. Morris v. Sandoval

United States District Court, N.D. California. | June 11, 2014 | Not Reported in Fed. Supp. | 2014 WL 2738264

Plaintiff, a state prisoner proceeding pro se, filed an amended complaint under 42 U.S.C. §1983, arguing that defendants used excessive force upon him, and were deliberately indifferent to his safety and to his serious medical needs. Defendants have filed a motion for summary judgment. Plaintiff has filed an opposition,...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...Docket No. 60.) BACKGROUND Plaintiff alleges that: (1) defendant Correctional **Officer** (“C/O”) Blair used excessive force against him; (2) defendants...

...defendants argue that they are entitled to summary judgment and **qualified immunity**. The following facts are taken in the light most favorable...

46. Hemsley v. Lunger

United States District Court, N.D. California. | January 24, 2012 | Not Reported in F.Supp.2d | 2012 WL 216471

Plaintiff, a California prisoner proceeding pro se, filed a second amended civil rights action pursuant to 42 U.S.C. § 1983 against Defendant **Officer** Lunger ("Defendant"). Defendant has filed a motion for summary judgment, arguing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. Although given...

...States District Court, N.D. California. John A. HEMSLEY, Plaintiff, v. **Officer** LUNGER, Defendant. No. C 09–6002 LHK (PR). Jan. 24...

...Defendant. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a California prisoner proceeding pro se, filed...

...rights action pursuant to 42 U.S.C. § 1983 against Defendant **Officer** Lunger ("Defendant"). Defendant has filed a motion for summary judgment...

47. Parrish v. Solis

United States District Court, N.D. California. | August 28, 2012 | Not Reported in F.Supp.2d | 2012 WL 3902689

Plaintiff, a state prisoner proceeding pro se, filed a complaint under 42 U.S.C. § 1983, arguing that Defendants used excessive force upon him, in violation of the Eighth Amendment. On December 5, 2011, Defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and Defendants have filed a reply. Having carefully considered...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...Plaintiff from committing suicide, and because they are entitled to **qualified immunity** The following facts are taken in the light most favorable...

...shield, and placed Plaintiff in handcuffs. Id. at 9.) Another **officer** placed handcuffs on Plaintiff's ankles while Plaintiff was lying on...

48. Saif'ullah v. Albritton

United States District Court, N.D. California, San Jose Division. | June 30, 2017 | Not Reported in Fed. Supp. | 2017 WL 2834119

Plaintiffs Khalifah El-Amin Din Saif'ullah, Enver Karafili, Montshu Abdullah, Amir Shabazz, Abdullah Saddiq, Mujahid Ta'lib Din, Andre Lamont Batten, Hatim Fardan, Abdul Aziz, Anthony Bernard Smith, Jr., and Damian Mitchell are California state prisoners proceeding pro se. Each plaintiff filed a civil rights complaint under 42 U.S.C....

...FORMA PAUPERIS STATUS; GRANTING MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiffs Khalifah El-Amin Din Saif'ullah...

...2016, defendants moved for judgment on the pleadings based on **qualified immunity** in all eleven cases; to revoke the in forma pauperis...

...Rule of Civil Procedure 12(c) on the basis of **qualified immunity** in all eleven cases. Defendants argue that, taking the factual allegations of the complaints as true, no reasonable **officer** would believe that enforcement of the June 3, 2014 order...

49. Chaparro v. Ducart

United States District Court, N.D. California. | February 09, 2016 | Not Reported in Fed. Supp. | 2016 WL 491635

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights complaint against prison officials at Pelican Bay State Prison ("PBSP"), pursuant to 42 U.S.C. § 1983. Plaintiff claims that defendants violated his right to free exercise of his religion. Defendants have moved for summary judgment on the merits, and on...

...Adrian Armando CHAPARRO , Plaintiff, v. Warden C.E. DUCART and Correctional **Officer** E. Contreras, Defendants. No. C 14-4955 LHK (PR) Docket...

...Defendant. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff, a California state prisoner proceeding...

...summary judgment on the merits, and on the basis of **qualified immunity**. 1 Plaintiff has filed an opposition, 2 and defendants have...

50. Quiroz v. Short

United States District Court, N.D. California. | March 26, 2015 | Not Reported in Fed. Supp. | 2015 WL 1395786

Plaintiff, a state prisoner proceeding pro se, filed a third amended complaint under 42 U.S.C. §1983, arguing that prison official defendants violated his federal and state law rights. Defendant Sgt. D. Short has filed a motion for summary judgment. Plaintiff has filed an opposition, and defendant has filed a reply....

...REFERRING CASE TO SETTLEMENT PROCEEDINGS (Docket No. 246.) LUCY H. **KOH** , District Judge Plaintiff, a state prisoner proceeding pro se, filed...

...defendant argues that he is entitled to summary judgment and **qualified immunity**. The following facts are taken in the light most favorable...

...¶58.) The lawsuit alleged that the IGI and other **officers** used excessive force against Sandoval. Id. ¶38.) On January...

51. Treglia v. Cate

United States District Court, N.D. California. | August 28, 2012 | Not Reported in F.Supp.2d | 2012 WL 3731774

Plaintiff, a state prisoner proceeding pro se, filed a complaint under 42 U.S.C. § 1983, arguing that Defendants violated his First and Fourth Amendments, as well as state law. On February 17, 2012, Defendants filed a motion for summary judgment. Plaintiff has filed an opposition, along with supporting documents, and Defendants have filed a reply....

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...claim. Alternatively, Defendants are entitled to summary judgment based on **qualified immunity**. The defense of **qualified immunity** protects government officials "from liability for civil damages insofar as...

...396 (1982) To determine whether an official is entitled to **qualified immunity**, the Court must decide whether the facts alleged show the...

52. Quiroz v. Horel

United States District Court, N.D. California. | March 31, 2015 | 85 F.Supp.3d 1115 | 2015 WL 1485024

CIVIL RIGHTS — Prisons. Prison officials did not have retaliatory motive in stopping incoming letter to prisoner from his niece that was allegedly gang-related.

Synopsis
Background: State prisoner, proceeding pro se, brought action against prison officials, alleging, inter alia, that officials retaliated against prisoner for filing prior federal civil rights complaint and for participating in another inmate's civil rights suit. Officials moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 officials did not have retaliatory motive in stopping incoming letter to prisoner from his girlfriend's cousin;
2 officials did not have retaliatory motive in stopping incoming letter to prisoner from his niece;
3 officials did not have retaliatory motive in stopping prisoner's outgoing letter to his friend;
4 officials did not have retaliatory motive in stopping prisoner's mail containing legal discovery documents;
5 officials' act of delaying prisoner's mail did not harm prisoner;
6 genuine issue of material fact existed as to whether official had retaliatory motive for issuing Rules Violation Report (RVR) against prisoner;
7 genuine issue of material fact existed as to whether officials had retaliatory motive when they searched prisoner's cell; and
8 genuine issue of material fact existed as to whether prison officials had agreement to retaliate against prisoner.
Motion granted in part and denied in part.

...moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) officials did not have retaliatory motive...

...Courts and Public Officials 310 264 k. Communication with courts, **officers**, or counsel. 310 Prisons 310II Prisoners and Inmates 310II(H...

...Good Faith and Probable Cause 78 1376 Government Agencies and **Officers** 78 1376(2) k. Good faith and reasonableness; knowledge and...

53. York v. Hernandez

United States District Court, N.D. California. | July 05, 2011 | Not Reported in F.Supp.2d | 2011 WL 2650243

Plaintiff, a California prisoner proceeding pro se, filed an amended civil rights action pursuant to 42 U.S.C. § 1983 against Defendant J. Hernandez. Defendant has filed his motion for summary judgment on November 24, 2010, arguing that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. Plaintiff has...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, a California prisoner proceeding pro se, filed...

...on February 16, 2005, Defendant returned to Plaintiff's cell with **Officer** Rodriguez. (Def. Decl. at ¶ 7; Rodriguez Decl. at ¶...

...6.) Defendant was concerned at Plaintiff's violence and anger, and **Officer** Rodriguez immediately summoned other **officers**. (Def. Decl at ¶ 12; Rodriguez Decl. at ¶ 6...

54. Rickleffs v. Terry

United States District Court, N.D. California. | July 19, 2018 | Not Reported in Fed. Supp. | 2018 WL 3496320

Plaintiff, a California state pretrial detainee proceeding pro se, has filed a civil rights complaint, pursuant to 42 U.S.C. §1983. In the complaint, plaintiff alleges that defendant Lieutenant Terry violated plaintiff's right to due process. Defendant has filed a motion for summary judgment. Plaintiff has filed an opposition, and...

...INSTRUCTIONS TO CLERK Re: Dkt. Nos. 12, 13 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California state pretrial detainee...

...moves for summary judgment on the merits and based on **qualified immunity**. In the alternative, defendant argues that plaintiff's requests for emotional...

...was intended for 60 days, but one of the other **officers** “corrected” the situation and moved plaintiff back to Pod 3B...

55. Abbott v. Tootell

United States District Court, N.D. California. | November 13, 2012 | Not Reported in F.Supp.2d | 2012 WL 5497999

Plaintiff, a state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 challenging the conditions of his confinement at San Quentin State Prison. Defendants have filed a motion to dismiss for failure to state a claim, and also for failing to exhaust in part. Plaintiff has filed an opposition, and...

...Defendants. ORDER DENYING MOTIONS TO DISMISS; FURTHER BRIEFING LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...Court also rejects Defendants' argument that they are entitled to **qualified immunity**. The **qualified immunity** inquiry is separate from the constitutional inquiry for a claim...

...were deliberately indifferent does not necessarily preclude a finding of **qualified immunity**. Id. For a **qualified immunity** analysis, the Court need not determine whether the facts alleged...

56. Johnson v. San Benito County

United States District Court, N.D. California, San Jose Division. | December 03, 2013 | Not Reported in Fed. Supp. | 2013 WL 6248274

Plaintiff Brett Johnson (“Plaintiff”) brings this action against Defendants San Benito County, Patrick Turturici, and Tony Lamonica (“Defendants”) for alleged violations of 42 U.S.C. §1983. Before the Court are Defendants' Motions for Summary Judgment, which are fully briefed. After considering the...

...Defendants. ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff Brett Johnson (“Plaintiff”) brings this...

...moving party). Plaintiff Brett Johnson is a San Jose police **officer** and a father of four. ECF No. 50–1 (“Johnson...

...U.S.C. §1983 against two San Benito County Sheriff's Department **Officers**, Undersheriff Patrick Turturici and Sergeant Tony Lamonica (collectively, “ **Officer** Defendants”), along with the County of San

Benito. ECF No. 1. Plaintiff alleges that **Officer** Defendants engaged in a conspiracy that resulted in the deprivation...

57. Smith v. Cruzen

United States District Court, N.D. California, San Jose Division. | October 26, 2017 | Not Reported in Fed. Supp. | 2017 WL 4865565

Plaintiff Anthony Bernard Smith, a California state prisoner proceeding pro se, filed an amended civil rights complaint under 42 U.S.C. §1983. On February 21, 2017, defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and defendants have filed a reply. For the reasons stated below, defendants' motion is...

...FOR SUMMARY JUDGMENT Re: Dkt. Nos. 64, 80 LUCY H. **KOH** , United States District Judge Plaintiff Anthony Bernard Smith, a California...

...On July 25, 2014, defendants Correctional Sergeant Jimmy Cruzen, Correctional **Officer** C. Caldera, Correctional **Officer** R. Christensen, and Correctional **Officer** David Ogle interrupted the prayer and surrounded the Muslim prisoners...

...in the alternative, defendants argue that they are entitled to **qualified immunity**. The court addresses each argument in turn. A. Substantial burden...

58. Navarro v. Sterkel

United States District Court, N.D. California, San Jose Division. | August 07, 2012 | Not Reported in F.Supp.2d | 2012 WL 3249487

Plaintiff Jon Derrick Navarro (“Plaintiff” or “Navarro”) brings this action seeking damages against **Officers** Bryan Sterkel, Chris Bell, Mike Garcia, and Chris Pilger of the Santa Clara Police Department, and the City of Santa Clara (“Defendants”) pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he was...

...N.D. California, San Jose Division. Jon Derrick NAVARRO , Plaintiff, v. **Officers** Bryan STERKEL, Chris Bell, Mike Garcia , and chris pilger Santa...

...ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Jon Derrick Navarro (“Plaintiff” or “Navarro”) brings this action seeking damages against **Officers** Bryan Sterkel, Chris Bell, Mike Garcia, and Chris Pilger of...

...judgment. I. BACKGROUND On the night of April 7, 2009, **Officer** Sterkel was contacted by dispatch and advised that an armed...

59. Milliken v. Sturdevant

United States District Court, N.D. California, San Jose Division. | May 15, 2020 | Slip Copy | 2020 WL 2512381

Plaintiff is a California prisoner incarcerated at California State Prison, Sacramento (“CSP-Sac”). Plaintiff was previously incarcerated at Pelican Bay State Prison (“PBSP”) and California State Prison, Corcoran (“CSP-Cor”). See Dkt. No. 1. Pursuant to 42 U.S.C. § 1983, plaintiff filed a pro se civil rights...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 45 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff is a California prisoner incarcerated...

...all PSBP employees, were responsible for these alleged wrongs: Correctional **Officers** C. Sturdevant (“ **Officer** Sturdevant”) and D. Bradbury (“ **Officer** Bradbury”); Sergeants M.K. Anderson (“Sergeant Anderson”) and J. Schrag (“Sergeant...

...Investigators”); Classification Staff Representative D. Garcia (“Representative Garcia”); Senior Hearing **Officer** Captain D. Wilcox (“Captain Wilcox”); and Chief Deputy Warden R.K...

60. Andrews v. Aurelio

United States District Court, N.D. California. | February 01, 2013 | Not Reported in F.Supp.2d | 2013 WL 431034

Plaintiff, a California prisoner proceeding pro se, filed a second amended civil rights complaint (“SAC”) pursuant to 42 U.S.C. § 1983 against prison officials. Plaintiff claims that Defendants violated his right to due process. Defendants have moved to dismiss for failure to exhaust and untimeliness and moved for summary judgment. Plaintiff has...

...DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a California prisoner proceeding pro se, filed...

...at PBSP, and contends that Aurelio conspired with Defendants Correctional **Officer** Oritz (“Ortiz”) and Classification Staff Representative Carriedo (“Carriedo”) to increase...

...to the underlying claim, and because they are entitled to **qualified immunity**. The remaining Defendants are Aurelio, Melton, and Walch. Summary judgment...

61. Sevey v. Soliz

United States District Court, N.D. California. | April 27, 2012 | Not Reported in F.Supp.2d | 2012 WL 1497515

Plaintiff, a state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that employees of the Lake County Sheriff's Department violated his constitutional rights. On July 5, 2011, the Court granted in part and denied in part Defendants' motion to dismiss for failure to state a claim, and ordered...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...of law. Alternatively, Defendants argue that they are entitled to **qualified immunity**. The defense of **qualified immunity** protects “government officials from liability for civil damages insofar as...

...L.Ed.2d 396 (1982) A court considering a claim of **qualified immunity** must determine: (1) whether the plaintiff has alleged the deprivation...

62. Carter v. Foulk

United States District Court, N.D. California. | September 11, 2012 | Not Reported in F.Supp.2d | 2012 WL 3987603

Plaintiff, a civilly committed patient proceeding pro se, filed an amended civil rights complaint (“AC”) pursuant to 42 U.S.C. § 1983 against officials at Napa State Hospital (“NSH”). In his AC, Plaintiff alleges that Defendants violated his right to due process under the Fourteenth Amendment. Defendants have moved for summary judgment. Plaintiff...

...se. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a civilly committed patient proceeding pro se...

...a matter of law, and that they are entitled to **qualified immunity**. The defense of **qualified immunity** protects “government officials from liability for civil damages insofar as...

...L.Ed.2d 396 (1982) A Court considering a claim of **qualified immunity** must determine: (1) whether the Plaintiff has alleged the deprivation...

63. Peasley v. Spearman

United States District Court, N.D. California, San Jose Division. | September 18, 2018 | Not Reported in Fed. Supp. | 2018 WL 4468823

Plaintiff David Scott Peasley (“plaintiff”), a California prisoner, has filed an amended civil rights complaint pursuant to 42 U.S.C. §1983. In the amended complaint, plaintiff alleges that defendants—all of whom were medical and correctional personnel at plaintiff's former prison, the Correctional Training Facility...

...THE PLEADINGS Re: Dkt. Nos. 238, 239, 242 LUCY H. **KOH** , United States District Judge Plaintiff David Scott Peasley (“plaintiff”), a...

...pleadings. Count 4 against Dr. Ahmed and Count 8 against **Officer** Lopez survive defendants' motion for summary judgment. I.BACKGROUND A...

...ECF No. 238-4 ¶2; Ellis, the Chief Executive **Officer** for Health Services at CTF, ECF No. 238-6 ¶...

64. Rice v. Ramsey

United States District Court, N.D. California. | September 19, 2012 | Not Reported in F.Supp.2d | 2012 WL 4177438

Plaintiff Steven Rice, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility (“CTF”). Plaintiff alleged violations of his First Amendment free exercise rights, his Fourteenth Amendment equal protection rights, and the Religious Land Use and Institutionalized...

...United States District Court, N.D. California. Steven RICE, Plaintiff, v. **Officer** J. RAMSEY, et al., Defendants. No. C 09–1496 LHK...

...MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Steven Rice, proceeding pro se, filed a...

...a matter of law, and that they are entitled to **qualified immunity**. Plaintiff has filed an opposition to the motion, and Defendants...

65. Larson v. Creamer–Todd

United States District Court, N.D. California. | February 25, 2014 | Not Reported in Fed. Supp. | 2014 WL 721953

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. §1983 alleging that prison officials at Central Training Facility in Soledad retaliated against him, in violation of the First Amendment. Defendants have moved for summary judgment. Although given an opportunity, plaintiff...

...CASE TO SETTLEMENT PROCEEDINGS (Docket No. 36, 50) LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...retaliation claim. Alternatively, defendants argue that they are entitled to **qualified immunity**. “Within the prison context, a viable claim of First Amendment...

...the merits. Alternatively, defendants argue that they are entitled to **qualified immunity**. Specifically, defendants argue that the law was not clear regarding...

66. Saif’ullah v. Cruzen

United States District Court, N.D. California. | October 26, 2017 | Not Reported in Fed. Supp. | 2017 WL 4865601

Plaintiff Khalifah E.D. Saif'ullah, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. On May 9, 2017, defendants filed a motion for summary judgment. Plaintiff has filed an opposition, and defendants have filed a reply. For the reasons stated below, defendants' motion is granted. The...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 44 LUCY H. **KOH** , United States District Judge Plaintiff Khalifah E.D. Saif'ullah, a California...

...On July 25, 2014, defendants Correctional Sergeant Jimmy Cruzen, Correctional **Officer** C. Caldera, Correctional **Officer** R. Christensen, and Correctional **Officer** David Ogle interrupted the congregational prayer and surrounded the Muslim...

...in the alternative, defendants argue that they are entitled to **qualified immunity**. The court addresses each argument in turn. A. Substantial burden...

67. Rice v. Curry

United States District Court, N.D. California. | October 12, 2012 | Not Reported in F.Supp.2d | 2012 WL 4902829

Plaintiff Steven Rice, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at the Correctional Training Facility (“CTF”). Plaintiff alleged violations of his First Amendment free exercise rights, his Fourteenth Amendment equal protection rights, and the Religious Land Use and Institutionalized...

...MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff 1 Steven Rice, proceeding pro se, filed...

...a matter of law, and that they are entitled to **qualified immunity**. Plaintiff has filed an opposition to the motion, and Defendants...

...them the right to file appeals alleging misconduct by correctional **officers**/officials. Id. § 3084.1(e) In order to exhaust...

68. Wright v. City of Santa Cruz

United States District Court, N.D. California, San Jose Division. | January 17, 2014 | Not Reported in Fed. Supp. | 2014 WL 217089

Before the Court is Defendant City of Santa Cruz's ("City") Motion to Dismiss Plaintiffs' First Amended Complaint and Motion for a More Definite Statement. ECF No. 19. Defendant County of Santa Cruz ("County") joins the City's Motion in part. ECF No. 20. Plaintiffs Haley Wright ("Haley...

...DISMISS AND MOTION FOR A MORE DEFINITE STATEMENT LUCY H. **KOH** , United States District Judge Before the Court is Defendant City...

...94 Moreover, both cases involved the question of whether individual **officers** may be held liable as a group in the absence...

...states that "[m]uch like the immunity afforded to law enforcement **officers** under state law for effecting an arrest pursuant to a...

69. Roe v. San Jose Unified School District Board

United States District Court, N.D. California. | January 28, 2021 | Slip Copy | 2021 WL 292035

The Fellowship of Christian Athletes ("FCA") and two of its pseudonymous former student members (collectively, "Plaintiffs") allege that the San Jose Unified School District and its officials (collectively, "Defendants") discriminated against FCA's religious viewpoint and unlawfully derecognized FCA's student...

...PART MOTION TO DISMISS Re: Dkt. No. 25 LUCY H. **KOH** , United States District Judge The Fellowship of Christian Athletes ("FCA...

...drug, alcohol and tobacco-free life? ____ Yes ____ No As an **officer**, I will be accountable to the other **officers**, Huddle Coach(es) and FCA staff. I understand that if...

...law—and that regardless, the individual Defendants are entitled to **qualified immunity**. Lastly, Defendants argue that the Coverdell Teacher Protection Act, 20...

70. Patten v. Stone

United States District Court, N.D. California. | October 05, 2012 | Not Reported in F.Supp.2d | 2012 WL 4761908

Plaintiff, a state prisoner proceeding pro se, filed a second amended civil rights complaint ("SAC") pursuant to 42 U.S.C. § 1983 challenging the conditions of his confinement at San Quentin State Prison ("SQSP"). For the reasons stated below, the Court orders the SAC served upon named Defendants. A federal court must conduct a preliminary...

...REGARDING SUCH MOTION; DENYING MOTION TO APPOINT COUNSEL LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...broke while eating. Id. at 4.) Plaintiff informed Defendant Correctional **Officer** R. Upshaw and requested treatment. Id. Upshaw responded with laughter...

71. Saif'ullah v. Albritton

United States District Court, N.D. California, San Jose Division. | December 21, 2017 | Not Reported in Fed. Supp. | 2017 WL 6558719

Plaintiff Khalifah E.D. Saif'ullah, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. On August 29, 2017, defendants Associate Warden S.R. Albritton ("Albritton") and Correctional Lieutenant R. Kluger ("Kluger") filed a motion for summary judgment. Plaintiff has...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 51 LUCY H. **KOH** , United States District Judge Plaintiff Khalifah E.D. Saif'ullah, a California...

...housing units can be intimidating to other inmates, can overwhelm **officers** in the event of an emergency, and can block access...

...2014, Kluger received a phone call from a third shift **officer** performing a cell search on the third tier at West Block. Kluger Decl. ¶5. The **officer** reported to Kluger that the **officer** could hear the Muslim evening prayer from the third tier...

72. Sunnergren v. Tootell

United States District Court, N.D. California. | January 22, 2014 | Not Reported in Fed. Supp. | 2014 WL 261530

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. §1983 alleging that several San Quentin State Prison ("SQSP") officials were deliberately indifferent to his serious medical needs. Defendants have moved for summary judgment. Plaintiff has filed an opposition,...

...CASE TO SETTLEMENT PROCEEDINGS (Docket Nos. 30, 38) LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...Ex. L; Wu Decl. at ¶6.) Defendant Chief Medical **Officer** Tootell ("CMO Tootell") denied plaintiff's appeal complaining of Dr. Wu's...

...to address defendants' argument that Dr. Wu is entitled to **qualified immunity**. 2. Dr. Espinoza Plaintiff claims that Dr. Espinoza was deliberately...

73. Parrish v. Solis

United States District Court, N.D. California, San Jose Division. | November 11, 2014 | Not Reported in Fed. Supp. | 2014 WL 5866935

Plaintiff Kaheal Parrish ("Parrish") brings this action under 42 U.S.C. §1983 and §1985(5) against defendants Gregorio Salazar, Raul Machuca, Jr., Brandon Powell, Adrian Machuca, Jason Sanudo (the "Extraction Defendants") and Maurice Haldeman (collectively, "Defendants"). All...

...DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiff Kaheal Parrish ("Parrish") brings this...

...Defendants") and Maurice Haldeman (collectively, "Defendants"). All Defendants are correctional **officers** at Salinas Valley State Prison. Parrish has alleged violations of...

...Id . At some point, Raul Machuca and five other correction **officers** entered Parrish's cell to conduct a cell extraction. Id It...

74. Brown v. Tubbs

United States District Court, N.D. California, San Jose Division. | March 20, 2019 | Not Reported in Fed. Supp. | 2019 WL 1284504

Plaintiff is a California state prisoner incarcerated at Pelican Bay State Prison ("PBSP"). Plaintiff, proceeding pro se, has filed an amended civil rights complaint under 42 U.S.C. §1983. Plaintiff named as defendants PBSP correctional **officers** B. Tubbs, C. Case, C. Hamilton, M. Douglas, A. Escobar, A. Deere, and M....

...MOTION IS UNWARRANTED Re: Dkt. Nos. 1, 2 LUCY H. **KOH** , United States District Judge Plaintiff is a California state prisoner...

...42 U.S.C. §1983 Plaintiff named as defendants PBSP correctional **officers** B. Tubbs, C. Case, C. Hamilton, M. Douglas, A. Escobar, A. Deere, and M. Stouffer ("Correctional **Officers** "); PBSP sergeant B. Chaucer ("Sergeant Chaucer"); PBSP warden J. Robertson...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

75. Tatum v. Puget

United States District Court, N.D. California. | March 08, 2012 | Not Reported in F.Supp.2d | 2012 WL 762084

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against various Pelican Bay State Prison ("PBSP") officials, including Defendants T. Puget, D. Bradbury, R. Cox, and D. Rothchild. Plaintiff maintains Defendants denied him due process by placing him in administrative segregation without the...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...Plaintiff's due process rights, and that they are entitled to **qualified immunity**. See Docket no. 49. Plaintiff filed his opposition. Defendants filed...

...Johnson. (Compl. at 6; Marvin Decl. ¶ 7(c).) An **officer** who arrived at the scene observed Johnson with "cuts and...

76. Abbott v. Tootell

United States District Court, N.D. California. | February 25, 2014 | Not Reported in Fed. Supp. | 2014 WL 726561

Plaintiff, proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. §1983 against prison officials at San Quentin State Prison ("SQSP"). Plaintiff alleges that defendants Chief Medical **Officer** ("CMO") Dr. Tootell, Dr. Grant, Dr. Jones, Lieutenant Arnold, and Sergeant Seman...

...SETTLEMENT PROCEEDINGS (Docket Nos. 88, 103, 105, 122) LUCY H. **KOH** , United States District Judge Plaintiff, proceeding pro se, filed an...

...Quentin State Prison ("SQSP"). Plaintiff alleges that defendants Chief Medical **Officer** ("CMO") 1 Dr. Tootell, Dr. Grant, Dr. Jones, Lieutenant Arnold...

...indifference). Alternatively, defendants argue that Dr. Grant is entitled to **qualified immunity**. The defense of **qualified immunity** protects “government officials from liability for civil damages insofar as...

77. Patkins v. Koenig

United States District Court, N.D. California, San Jose Division. | April 23, 2021 | Slip Copy | 2021 WL 1599319

Plaintiff David Patkins (“Plaintiff”), who is incarcerated at the Correctional Training Facility (“CTF”) in Soledad, California, sues A. Lisk (“Lisk”), who was a correctional **officer** at CTF, and Craig Koenig (“Koenig”), who is the warden of CTF (collectively, “Defendants”). Before the...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 68 LUCY H. **KOH** , United States District Judge Plaintiff David Patkins (“Plaintiff”), who is...

...Soledad, California, sues A. Lisk (“Lisk”), who was a correctional **officer** at CTF, and Craig Koenig (“Koenig”), who is the warden...

...7, 10; Kela Decl. (“I, Aprim Kela also witnessed corrections **officer** A. Lisk confiscate the lunch of inmate David C. Patkins...

78. Gonzalez v. Ahmed

United States District Court, N.D. California. | September 11, 2012 | Not Reported in F.Supp.2d | 2012 WL 3987583

Plaintiff, a state prisoner proceeding pro se, filed an amended complaint (“AC”) under 42 U.S.C. § 1983, arguing that Defendants retaliated against him, and were deliberately indifferent to his serious medical needs, in violation of the First and Eighth Amendments. On November 14, 2011, Defendants filed a motion for summary judgment. Plaintiff has...

...REFERRING CASE TO PRO SE PRISONER SETTLEMENT PROGRAM LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...their actions were reasonable, and because they are entitled to **qualified immunity**. The following facts are taken in the light most favorable...

...¶ 2.) Defendant Dr. Chudy (“Dr.Chudy”) was the Chief Medical **Officer** at CTF. (AC at 7.) 2 The page numbers...

79. Cole v. Cate

United States District Court, N.D. California. | January 24, 2012 | Not Reported in F.Supp.2d | 2012 WL 243327

Plaintiff, proceeding pro se, filed an amended civil rights complaint (“AC”) pursuant to 42 U.S.C. § 1983 against prison officials at Pelican Bay State Prison (“PBSP”). Plaintiff alleges that Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Plaintiff also raises several related state law...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, proceeding pro se, filed an amended civil...

...sues Dr. Sayre in his supervisorial capacity as Chief Medical **Officer** of PBSP. Specifically, Plaintiff alleges that Dr. Sayre was aware...

...will be granted in favor of each such Defendant. B. **Qualified Immunity** Defendants claim, in the alternative, that **qualified immunity** would protect them from liability on Plaintiff's deliberate indifference claim. The defense of **qualified immunity** protects “government officials from liability for civil damages insofar as...

80. Ryan v. Fabela

United States District Court, N.D. California, San Jose Division. | February 02, 2018 | Slip Copy | 2018 WL 10196531

Plaintiff Joseph Ryan (“Plaintiff”) brought this action against Defendant Santa Clara Valley Transportation Authority (“SCVTA”), Defendant Robert Fabela, in his individual and official capacities, and Defendant Nuria Fernandez, in her individual and official capacities. All claims against SCVTA and Fernandez have been...

...SUMMARY JUDGMENT Re: Dkt. Nos. 72, 76, 77 LUCY H. **KOH** , United States District Judge Plaintiff Joseph Ryan (“Plaintiff”) brought this...

...legal services to SCVTA's Administrative Services department, including Chief Administrative **Officer** Bill Lopez, Deputy Director Robert Escobar, and Labor Relations Manager...

...even if Plaintiff's rights were violated, Defendant is entitled to **qualified immunity** because Plaintiff's rights were not clearly established. The Court finds...

81. York. v. Hernandez

United States District Court, N.D. California. | February 25, 2011 | Not Reported in F.Supp.2d | 2011 WL 768794

Plaintiff, a state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that employees of Salinas Valley State Prison (“SVSP”) violated his constitutional rights. After screening the amended complaint, the Court dismissed one defendant, and ordered that the amended complaint be served on...

...FOR CONTINUANCE; GRANTING DEFENDANT'S MOTION TO STAY DISCOVERY LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...ordered that the amended complaint be served on Defendant Correctional **Officer** J. Hernandez. On November 24, 2010, Defendant filed a motion...

...construed Plaintiff's opposition to Defendant's motion to stay and for **qualified immunity** (docket no. 26) as Plaintiff's opposition to Defendant's motion for...

82. Wilkes v. Magnus

United States District Court, N.D. California. | October 11, 2012 | Not Reported in F.Supp.2d | 2012 WL 4857816

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights action under 42 U.S.C. § 1983. For the reasons stated below, the Court dismisses the amended complaint in part, and orders service. According to the amended complaint, on August 21, 2011, Richmond Police **Officer** Brown detained Plaintiff and began kicking and...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...to the amended complaint, on August 21, 2011, Richmond Police **Officer** Brown detained Plaintiff and began kicking and beating him. Richmond Police **Officer** K. Tong joined **Officer** Brown, and began using his taser on Plaintiff even though...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

83. Collier v. Garcia

United States District Court, N.D. California. | January 31, 2018 | Not Reported in Fed. Supp. | 2018 WL 659014

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights complaint under 42 U.S.C. §1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the court dismisses the complaint for failure to state a claim. A federal court must conduct a preliminary screening in...

...Collier, Calipatria, CA, pro se. ORDER OF DISMISSAL LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California state prisoner proceeding...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...alleges that Sergeants P. Garcia and G. Ramey and Correctional **Officer** W. Fox were deliberately indifferent to plaintiff's safety. Plaintiff...

84. Nungaray v. Rowe

United States District Court, N.D. California. | August 30, 2011 | Not Reported in F.Supp.2d | 2011 WL 3862093

Plaintiff Mario Alexander Nungaray, proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Doctors Rowe and Adams at Pelican Bay State Prison ("PBSP"). Defendants have moved for summary judgment. Plaintiff has opposed Defendants' motion, and Defendants have filed a reply. Having carefully considered the papers...

...Defendants. ORDER DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Mario Alexander Nungaray, proceeding pro se, filed...

...Amendment, the Court next addresses whether he is entitled to **qualified immunity**. A court considering a claim of **qualified immunity** must determine whether the plaintiff has alleged the deprivation of...

...established such that it would be clear to a reasonable **officer** that his conduct was unlawful in the situation he confronted...

85. Treglia v. Kernan

United States District Court, N.D. California. | September 07, 2012 | Not Reported in F.Supp.2d | 2012 WL 3909219

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights action under 42 U.S.C. § 1983, against prison officials. Plaintiff has been granted leave to proceed in forma pauperis in

a separate order. For the reasons stated below, the Court will serve the amended complaint. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...right to free speech. The following day, Defendant Lewis ordered **officers** to distribute a memo, authored by Defendant Scott Kernan, that...

86. Briones v. California

United States District Court, N.D. California. | November 08, 2010 | Not Reported in F.Supp.2d | 2010 WL 4860676

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 raising violations of her constitutional rights while incarcerated at Salinas Valley State Prison ("SVSP"). Plaintiff is granted leave to proceed in forma pauperis in a separate order. A federal court must conduct a preliminary screening in...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...housed only male inmates. At an unspecified date, Defendant Correctional **Officer** Rocha moved Plaintiff into Building 4, the building in which he was the second watch floor **officer**. Plaintiff alleges that Rocha asked Plaintiff to expose her breasts...

87. Wilkes v. Magnus

United States District Court, N.D. California. | June 25, 2012 | Not Reported in F.Supp.2d | 2012 WL 2395663

Plaintiff, a California state prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court dismisses the complaint in part, and orders service. According to the complaint, on August 21, 2011, Richmond...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...According to the complaint, on August 21, 2011, Richmond Police **Officer** Brown detained Plaintiff for "no good reason" and began kicking and beating him. Richmond Police **Officer** K. Tong joined **Officer** Brown, and began using his taser on Plaintiff while Plaintiff...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

88. Frost v. Hallock

United States District Court, N.D. California, San Jose Division. | March 08, 2019 | Not Reported in Fed. Supp. | 2019 WL 1102379

Plaintiff Shawn Frost (“plaintiff”) is a California prisoner housed at Pelican Bay State Prison (“PBSP”). Plaintiff filed a pro se civil rights complaint, pursuant to 42 U.S.C. §1983. He sued J. Hallock, a sergeant at PBSP (“Sergeant Hallock”); J. Hunt, correctional lieutenant at PBSP...

...TO STRIKE Re: Dkt. Nos. 35, 49, 57 LUCY H. **KOH** , United States District Judge Plaintiff Shawn Frost (“plaintiff”) is a...

...Warden Ducart”); and D.W. Bradbury, correctional administrator and chief disciplinary **officer** (“CDO”) at PBSP (“CDO Bradbury”) (collectively, “defendants”). Plaintiff alleged defendants...

...Decl., Ex. A (“OP 228”) at 1. OP 228 instructed **officers** to “[e]nsure disciplinary action is taken against participating inmates in...

89. Furnace v. Giurbino

United States District Court, N.D. California. | November 22, 2013 | Not Reported in Fed. Supp. | 2013 WL 6157954

Plaintiff, a state prisoner proceeding pro se, filed a second amended civil rights complaint (“SAC”) against prison officials pursuant to 42 U.S.C. §1983. In his SAC, plaintiff alleges that defendants violated his right to due process, the Equal Protection Clause, plaintiff's First Amendment right to publications, and...

...for Defendants. ORDER GRANTING DEFENDANTS' MOTION TO DISMISS LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...judicata and collateral estoppel, failure to state a claim, and **qualified immunity**. Plaintiff has filed an opposition, and defendants have filed a...

...additional arguments of a failure to state a claim or **qualified immunity**. Under the Federal Full Faith and Credit Statute, 28 U.S.C...

90. Adams v. Kraft

United States District Court, N.D. California, San Jose Division. | July 29, 2011 | Not Reported in F.Supp.2d | 2011 WL 3240598

Plaintiff Berry Lynn Adams filed his Second Amended Complaint (Dkt. No. 110–11, “SAC”) on April 7, 2011. Defendants Daniel L. Kraft (“Kraft”), Phillip Hauck (“Hauck”), Kirk Lingenfelter (“Lingenfelter”), K.P. Best (“Best”), J.I. Stone (“Stone”), Chip Bockman (“Bockman”), R. Callison (“Callison”), and Scott Sipes (“Sipes”) (collectively...

...AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS LUCY H. **KOH** , District Judge. Plaintiff Berry Lynn Adams filed his Second Amended...

...to dismiss the SAC, aside from certain claims against certain **officers** as explained below. See Dkt. No. 116. Plaintiff filed a...

...claimed Plaintiff was lodging baseless complaints about State Park Peace **Officers** and consuming the **officers**' time, and that Plaintiff was causing disturbances, which Lingenfelter believed...

91. Perry v. McFarland

United States District Court, N.D. California. | January 21, 2011 | Not Reported in F.Supp.2d | 2011 WL 227651

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 seeking damages for alleged civil rights violations. On October 7, 2010, the Court dismissed Plaintiff's complaint with leave to amend to cure several deficiencies. On November 1, 2010, Plaintiff file the instant amended complaint. For the...

...Court, N.D. California. Gregory PERRY, Plaintiff, v. C. McFARLAND, Correctional **Officer**, Defendant. No. C 10–2882 LHK (PR). Jan. 21, 2011...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

92. Jones v. Grounds

United States District Court, N.D. California. | October 05, 2012 | Not Reported in F.Supp.2d | 2012 WL 4761910

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint against prison officials at Correctional Training Facility—North ("CTF—North"), pursuant to 42 U.S.C. § 1983. For the reasons stated below, the Court dismisses two Defendants, and orders service upon the remaining two Defendants. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...2012, Plaintiff was waiting on the first tier while Correctional **Officers** R. Roque and S.A. Handley searched Plaintiff's cell, located on...

93. Rickleffs v. Senior Deputy Ward

United States District Court, N.D. California. | September 21, 2015 | Not Reported in Fed. Supp. | 2015 WL 5609995

Plaintiff, a California state pretrial detainee proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. §1983. For the reasons stated below, the court directs the clerk to send a waiver of service to defendant, and directs defendant to file a dispositive motion or notice regarding such motion. A federal court...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** United States District Judge Plaintiff, a California state pretrial detainee...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If defendant is...

94. York v. Hernandez

United States District Court, N.D. California. | August 26, 2010 | Not Reported in F.Supp.2d | 2010 WL 3447743

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Prison Guard J. Hernandez and Inmate Appeals **Officer** N. Grannis violated his constitutional rights. For the reasons that follow, the Court dismisses N. Grannis and serves J. Hernandez. A federal court must conduct a preliminary...

...SUCH MOTION; DENYING REQUEST FOR APPOINTMENT OF COUNSEL LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...1983 alleging that Prison Guard J. Hernandez and Inmate Appeals **Officer** N. Grannis violated his constitutional rights. For the reasons that...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

95. Tatum v. Puget

United States District Court, N.D. California. | August 27, 2010 | Not Reported in F.Supp.2d | 2010 WL 3447733

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various Pelican Bay State Prison ("PBSP") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. A federal court must conduct a preliminary screening in any case...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...all attachments thereto, and copies of this order on CORRECTIONAL **OFFICERS** C. UPTERGROVE, D. JAMES, T. PUGET, D. BRADBURY, R. COX...

96. Montoya v. Holland

United States District Court, N.D. California. | November 08, 2010 | Not Reported in F.Supp.2d | 2010 WL 4919480

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various Pelican Bay State Prison ("PBSP") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders service on the...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...19, 2010, he was coming out of the shower when **Officer** Whitman opened the door of another inmate, resulting in Plaintiff...

97. Douglas v. Banks

United States District Court, N.D. California. | April 25, 2011 | Not Reported in F.Supp.2d | 2011 WL 1576770

Plaintiff Bryan Anthony Douglas, proceeding pro se, filed a second amended civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at San Quentin State Prison ("SQSP"), where he was formerly housed, and at Salinas Valley State Prison ("SVSP"), where he is currently housed. SQSP Defendants have moved to dismiss Plaintiff's...

...DEFENDANTS' MOTION FOR SUMMARY JUDGMENT; FURTHER SCHEDULING ORDER LUCY H. **KOH** , District Judge. Plaintiff Bryan Anthony Douglas, proceeding pro se, filed...

...Decl., Ex. C.) In one instance, when Plaintiff notified an **officer** on duty, the **officer** took the offensive food product away, but refused to replace...

...at SVSP Defendant Dr. Sepulveda has been the Chief Medical **Officer** for SVSP since October 12, 2009. (Decl. Sepulveda at ¶...

98. Delacruz v. State Bar of California

United States District Court, N.D. California, San Jose Division. | January 15, 2020 | Slip Copy | 2020 WL 227237

Plaintiff Daniel Delacruz, Sr. brings suit against a number of individuals and entities related to the denial of his license to practice law. Before the Court are two motions to dismiss: a motion to dismiss filed by Defendants City of Fresno, the Fresno Police Department, Steven Card, Cathy Sherman, and the law firm Ferguson, Praet, & Sherman APC...

...SANCTIONS Re: Dkt. Nos. 33, 34, 35, 49 LUCY H. **KOH** , United States District Judge Plaintiff Daniel Delacruz, Sr. brings suit...

...of action against 54 defendants, including the State Bar, various **officers** of the State Bar, and numerous other individuals and entities...

...at 1–2. Delacruz's allegations begin in February 1997, when **Officer** Steven Card arrested Delacruz for domestic violence on the basis...

99. Maldonado v. Clamon

United States District Court, N.D. California. | September 27, 2010 | Not Reported in F.Supp.2d | 2010 WL 3814313

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders service on the Defendants. A federal court must conduct a preliminary screening in any case in which a prisoner seeks...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...unit. Plaintiff was subsequently charged with assault on a peace **officer**. Liberally construed, Plaintiff raises a cognizable claim that Defendants used...

100. Soto v. Henessy

United States District Court, N.D. California. | November 10, 2010 | Not Reported in F.Supp.2d | 2010 WL 4919485

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various San Francisco County Jail ("SFCJ") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders service on...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...is improper). Either personal involvement or integral participation of the **officers** in the alleged constitutional violation is required before liability may...

101. Treglia v. Cate

United States District Court, N.D. California. | March 22, 2012 | Not Reported in F.Supp.2d | 2012 WL 987295

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against various Pelican Bay State Prison ("PBSP") officials, including Defendants Matthew Cate, Francisco Jacquez, Ranell Chisman, Glenn Kelley, O'Donnell, Clancy, Scott Kernan, Maureen McLean, Carbrera, Dahard (incorrectly referred to as...

...FOR SUMMARY JUDGMENT; DENYING OTHER MOTION AS MOOT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...of Plaintiff's constitutional rights, and that Defendants are entitled to **qualified immunity**. See Docket no. 86.) Plaintiff filed his opposition. Defendants filed...

...motions for summary judgment, declarations have been filed by Correctional **Officers** R. Graves, D. O'Donnell, and F. Vanderhoofven, with supporting exhibits...

102. Easley v. County of San Benito

United States District Court, N.D. California. | November 24, 2010 | Not Reported in F.Supp.2d | 2010 WL 4922691

Plaintiff, formerly housed at the San Jose Jail and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various San Benito County officials violated his constitutional rights. Plaintiff alleges that on December 11, 2008, Defendants engaged in the false arrest of Plaintiff and illegally searched his car,...

...TO FILE DISPOSITIVE MOTION OR NOTICE REGARDING MOTION LUCY H. **KOH** , District Judge. Plaintiff, formerly housed at the San Jose Jail...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendants are advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendants are...

103. Perry v. McFarland

United States District Court, N.D. California. | November 03, 2011 | Not Reported in F.Supp.2d | 2011 WL 5295308

Plaintiff, proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983 against Defendant Correctional **Officer** C. McFarland. Defendant has moved for summary judgment. Although given an opportunity, Plaintiff has not filed an opposition. Having carefully considered the papers submitted, the Court hereby GRANTS Defendant's...

...se. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, proceeding pro se, filed an amended civil...

...complaint pursuant to 42 U.S.C. § 1983 against Defendant Correctional **Officer** C. McFarland. Defendant has moved for summary judgment. Although given...

...unnecessary to discuss Defendant's assertion that he is entitled to **qualified immunity**. CONCLUSION Defendant's motion for summary judgment is GRANTED. Judgment shall...

104. Rios v. Sayre

United States District Court, N.D. California. | November 13, 2012 | Not Reported in F.Supp.2d | 2012 WL 5503544

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against Defendant Chief Medical **Officer** Michael C. Sayre at Pelican Bay State Prison. In his complaint, Plaintiff alleges that Defendant was deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Defendant...

...Defendant. ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...pursuant to 42 U.S.C. § 1983 against Defendant Chief Medical **Officer** Michael C. Sayre at Pelican Bay State Prison. In his...

...to address Defendant's argument that he is also entitled to **qualified immunity**. IT IS SO ORDERED....

105. Peasley v. Spearman

United States District Court, N.D. California. | March 06, 2017 | Not Reported in Fed. Supp. | 2017 WL 878236

Plaintiff, a California prisoner proceeding pro se, has filed an amended civil rights complaint, pursuant to 42 U.S.C. §1983. In the amended complaint, plaintiff alleges that defendants were deliberately indifferent to his serious medical needs by failing to adequately treat his Type-I diabetes. Defendants Warden Spearman, Chief Medical...

...JUDGMENT; REFERRING CASE TO SETTLEMENT; INSTRUCTIONS TO CLERK LUCY H. **KOH** UNITED STATES DISTRICT JUDGE Plaintiff, a California prisoner proceeding pro...

...treat his Type-I diabetes. Defendants Warden Spearman, Chief Medical **Officer** Ellis, Dr. Bright, **Officer** Orozco, **Officer** Gibson, and Dr. Ahmed have filed a motion to dismiss...

...case to settlement proceedings, and stays the case. Defendant **Officer** Maria L. Lopez has not entered an appearance in this...

106. Sevey v. Broughas

United States District Court, N.D. California. | November 08, 2010 | Not Reported in F.Supp.2d | 2010 WL 4942564

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Deputy Broughas, an employee of the Lake County Sheriff's Department, violated his constitutional rights. Plaintiff's motions for leave to proceed in forma pauperis are granted in a separate order. For the reasons stated below,...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

107. Derossett v. Correctional Training Facility

United States District Court, N.D. California. | December 20, 2010 | Not Reported in F.Supp.2d | 2010 WL 5388002

Plaintiff, proceeding pro se, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 against the Correctional Training Facility. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court will serve the complaint upon Defendant. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, proceeding pro se, filed a pro se...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

108. Morrison v. O'Reilly

United States District Court, N.D. California. | July 05, 2011 | Not Reported in F.Supp.2d | 2011 WL 2633858

Plaintiff, a California state prisoner, currently housed at California State Prison—Solano, and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. On May 31, 2011, the Court dismissed

this action without prejudice based on Plaintiff's failure to timely submit an application to proceed in forma pauperis (“IFP”), or pay...

...MOTION FOR RECONSIDERATION; REOPENING CASE; ORDER OF SERVICE LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner, currently housed at...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

109. Avery v. County of Santa Clara

United States District Court, N.D. California, San Jose Division. | November 13, 2012 | Not Reported in F.Supp.2d | 2012 WL 5522554

Before the Court is Defendants County of Santa Clara and Jim Lanz's (“Defendants”) Motion for Summary Judgment pursuant to Federal Rule of Civil Procedure 56 (“Motion”). ECF No. 27. Having considered the parties' submissions and the relevant case law, the Court GRANTS the Motion. Plaintiffs Preston and Lois Avery...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Before the Court is Defendants County of Santa...

...concludes that this document is properly authenticated. The Hearing **Officer's** decision names only Mr. Avery. See Clerk's Transcript at 156...

...will refer to “Plaintiffs,” plural, in connection with the Hearing **Officer's** decision. During the administrative hearings, Plaintiffs argued that Division 37...

110. R.H. v. Los Gatos Union School District

United States District Court, N.D. California, San Jose Division. | April 02, 2014 | 33 F.Supp.3d 1138 | 2014 WL 1347764

EDUCATION — Athletics. Alleged conduct in falsifying student wrestler's weight did not amount to deliberate indifference.

Synopsis
Background: Middle school student and his father brought action against school district and school's athletic director and wrestling coach, among others, alleging that student suffered injuries during a school-sponsored wrestling match as a result of defendants' negligence and misconduct in violation of his constitutional rights and state law. Defendants moved for summary judgment.
Holdings: The District Court, Lucy H. **Koh**, J., held that:
1 defendants' alleged conduct in falsifying student's weight did not amount to deliberate indifference;
2 release signed by student's father barred student's negligence claims.
3 defendants' alleged conduct in falsifying student's weight did not amount to gross negligence; and
4 defendants' alleged conduct did not support a claim for intentional infliction of emotional distress.
Motion granted.

...moved for summary judgment. Holdings: The District Court, Lucy H. **Koh** , J., held that: (1) defendants' alleged conduct in falsifying student's...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , United States District Judge Plaintiffs R.H. and his father and...

...F.3d 198, 201 (5th Cir.1994) In Wood, an **officer** pulled over the plaintiff at 2:30 a.m., impounded her car, and abandoned her in an area the **officer** knew to have the second-highest rate of crime in...

111. Stutes v. Parrish

United States District Court, N.D. California, San Jose Division. | December 15, 2015 | Not Reported in Fed. Supp. | 2015 WL 8770720

Plaintiff David Stutes ("Plaintiff") brings this action under 42 U.S.C. § 1983 against Defendants Santa Clara County Sheriff's Deputies Jessica Parrish ("Parrish"), Shannon Catalano, Michael Leslie, and Eric Barton (collectively, the "Defendant Deputies"), and the County of Santa Clara (collectively,...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 64 LUCY H. **KOH** , United States District Judge Plaintiff David Stutes ("Plaintiff") brings this...

...Defendants additionally argue that summary judgment is appropriate based on **qualified immunity** because no clearly established law provides that the evidence available...

...cause requires only that those 'facts and circumstances within the **officer's** knowledge are sufficient to warrant a prudent person to believe...

112. Harmon v. Mack

United States District Court, N.D. California. | November 24, 2010 | Not Reported in F.Supp.2d | 2010 WL 4920837

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various Salinas Valley State Prison ("SVSP") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders service on the...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendants are advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendants are...

113. Peasley v. Spearman

United States District Court, N.D. California, San Jose Division. | November 14, 2017 | Not Reported in Fed. Supp. | 2017 WL 5451709

Plaintiff David Scott Peasley ("Plaintiff"), a California prisoner, filed an amended pro se civil rights complaint pursuant to 42 U.S.C. §1983. ECF No. 31. In the amended complaint, Plaintiff alleged that defendants were deliberately indifferent to his serious medical needs by failing to adequately treat his Type-I diabetes....

...ORDER DENYING STIPULATION Re: Dkt. No. 197, 203 LUCY H. **KOH** , United States District Judge Plaintiff David Scott Peasley ("Plaintiff"), a...

...treat his Type-I diabetes. Defendants Warden Spearman, Chief Medical **Officer** Ellis, Dr. Bright, **Officer** Orozco, **Officer** Gibson, and Dr. Ahmed have filed a motion to dismiss...

...and motion for summary judgment. Defendants' motion also lists **Officer** Maria L. Lopez as a moving defendant, but Lopez cannot...

114. Law v. Johnson

United States District Court, N.D. California, San Jose Division. | July 13, 2012 | Not Reported in F.Supp.2d | 2012 WL 2906570

On February 14, 2011, Defendant Robert Johnson, Deputy District Attorney for the County of Santa Clara ("Defendant"), filed a motion to dismiss Plaintiff's complaint with prejudice. ECF No. 8 ("MTD"). On March 7, 2012, Plaintiff Audry Wayne Law ("Plaintiff") opposed the motion. ECF No. 2. On March 14, 2012, Defendant filed a reply. ECF No. 16. On...

...TO DISMISS; DENYING PLAINTIFF'S MOTION TO APPOINT COUNSEL LUCY H. **KOH** , District Judge. On February 14, 2011, Defendant Robert Johnson, Deputy...

...11 (9th Cir.2010) "However, prosecutors are entitled to only **qualified immunity** when they perform investigatory or administrative functions, or are essentially functioning as police **officers** or detectives." Waggy, 594 F.3d at 710–11 (internal...

...The Court agrees with Defendant. Claims for damages against state **officers** for actions performed in their official capacities are barred under...

115. Parrish v. Solis

United States District Court, N.D. California, San Jose Division. | May 13, 2014 | Not Reported in Fed. Supp. | 2014 WL 1921154

Plaintiff Kaheal Parrish, a prisoner incarcerated at Salinas Valley State Prison ("SVSP"), filed this lawsuit on March 18, 2011 alleging violations of his civil rights by several prison officials. ECF No. 1. Plaintiff's original complaint named as defendants A. Solis, B. Hedrick, W. Muniz, K. Salazar, R. Machuca, B....

...MOTION FOR LEAVE TO FILE A SUR–REPLY LUCY H. **KOH** , United States District Judge Plaintiff Kaheal Parrish, a prisoner incarcerated...

...Correctional Sergeant at SVSP, and the remaining defendants are Correctional **Officers** at SVSP. Id. at ¶¶14–18, 20. According to...

...of the Inspector General, by 2003 a group of correctional **officers** at SVSP formed a gang called "The Green Wall" which...

116. Larson v. Cate

United States District Court, N.D. California. | April 11, 2013 | Not Reported in F.Supp.2d | 2013 WL 1502024

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights action under 42 U.S.C. § 1983. For the reasons stated below, the Court dismisses the complaint in part, and orders service upon named Defendants. A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendants are advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendants are...

117. Estrada v. Sayre

United States District Court, N.D. California. | July 28, 2014 | Not Reported in Fed. Supp. | 2014 WL 3728161

Plaintiff, proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. §1983 against Dr. Michael Sayre ("Dr.Sayre") and Nurse Practitioner C. Malo–Clines ("Malo–Clines") at Pelican Bay State Prison ("PBSP"). Plaintiff alleges that both defendants were...

...Nos. 45, 55, 73, 80, 81, 84, 85.) LUCY H. **KOH** , United States District Judge Plaintiff, proceeding pro se, filed an...

...being escorted back to his cell, one of the escorting **officers** asked plaintiff why plaintiff was continuing to litigate Estrada I...

...this claim, it is unnecessary to address defendants' argument for **qualified immunity**. 3. Retaliation Plaintiff claims that, on November 14, 2011, plaintiff...

118. Blackburn v. Monterey County Jail

United States District Court, N.D. California. | August 30, 2010 | Not Reported in F.Supp.2d | 2010 WL 3448385

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Physician's Assistant Terry Whiting and the Monterey County Jail violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

119. Montoya v. Holland

United States District Court, N.D. California. | March 08, 2012 | Not Reported in F.Supp.2d | 2012 WL 762112

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against prison officials at Pelican Bay State Prison ("PBSP"). Plaintiff alleges that Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Defendants have moved for...

...Defendants. ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...Plaintiff was coming out of the shower when a correctional **officer** opened the door of another inmate, resulting in Plaintiff and...

...hand. Id. at ¶ 17.) Plaintiff believes that the correctional **officer** told RN Holland to minimize Plaintiff's injuries. Id. at ¶...

120. Estrada v. Malo-Clines

United States District Court, N.D. California. | December 27, 2010 | Not Reported in F.Supp.2d | 2010 WL 5422576

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that two Pelican Bay State Prison ("PBSP") officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court denies Plaintiff's motion...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

121. Sunnergren v. Ahern

United States District Court, N.D. California. | October 27, 2010 | Not Reported in F.Supp.2d | 2010 WL 4366189

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 against employees of the Alameda County Sheriff's Department. Plaintiff's motion for leave to proceed in forma pauperis is granted in a separate order. The procedural history of this action is a bit unusual. Normally, when a pro se prisoner...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...liable under a respondeat superior theory, Ahern is entitled to **qualified immunity**, and Plaintiff fails to allege that Ahern had a role...

122. Douglas v. Banks

United States District Court, N.D. California. | March 09, 2012 | Not Reported in F.Supp.2d | 2012 WL 822824

Plaintiff Bryan Anthony Douglas, proceeding pro se, filed a second amended complaint ("SAC") pursuant to 42 U.S.C. § 1983 against prison officials at San Quentin State Prison ("SQSP") and Salinas Valley State Prison ("SVSP"), where he was formerly housed. In an Order dated April 25, 2011, the Court granted SVSP Defendants' motion for summary...

...ORDER GRANTING SQSP DEFENDANTS' MOTION FOR SUMMARY JUDGMENT LUCY H. **KOH** , District Judge. Plaintiff Bryan Anthony Douglas, proceeding pro se, filed...

...arriving at SQSP he “could not instruct dining staff nor **officers** that allergens were to be avoided due to lack of...

...with him to the dining hall to show the food **officers** in order to make them aware of his food allergy...

123. Sunnergren v. Cate

United States District Court, N.D. California. | June 25, 2012 | Not Reported in F.Supp.2d | 2012 WL 2395768

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that several Pelican Bay State Prison (“PBSP”) officials violated his constitutional rights. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court orders...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...1202, 1207 (9th Cir.2011) Supervisory defendants are entitled to **qualified immunity** where the allegations against them are simply “bald” or “conclusory...

124. Larson v. Cate

United States District Court, N.D. California. | January 08, 2013 | Not Reported in F.Supp.2d | 2013 WL 123632

Plaintiff, a California state prisoner proceeding pro se, filed a civil rights action under 42 U.S.C. § 1983. Plaintiff is granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the Court dismisses the complaint in part, and orders service upon named Defendants. A federal court must conduct a preliminary...

...FILE DISPOSITIVE MOTION OR NOTICE REGARDING SUCH MOTION LUCY H. **KOH** , District Judge. Plaintiff, a California state prisoner proceeding pro se...

...which a prisoner seeks redress from a governmental entity or **officer** or employee of a governmental entity. See 28 U.S.C. §...

...Defendants are advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendants are...

125. Patten v. Stone

United States District Court, N.D. California. | March 03, 2014 | Not Reported in Fed. Supp. | 2014 WL 878836

Plaintiff, a state prisoner proceeding pro se, filed a second amended civil rights complaint (“SAC”) pursuant to 42 U.S.C. §1983 against defendants at San Quentin State Prison (“SQSP”). In his SAC, plaintiff alleges that defendants were deliberately indifferent to his serious dental needs in violation of...

...JUDGMENT (Docket Nos. 159, 161, 175, 178, 192) LUCY H. **KOH** , United States District Judge Plaintiff, a state prisoner proceeding pro...

...No. 162 ("Pl.Decl.") at ¶4.) Plaintiff told defendant Correctional **Officer** Upshaw about it, and she merely laughed. (SAC at 4...

...did not exhibit deliberate indifference; and defendants are entitled to **qualified immunity**. Plaintiff was transferred out of SQSP on April 3...

126. Brown v. Flores

United States District Court, N.D. California. | October 03, 2018 | Slip Copy | 2018 WL 9838120

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff was granted leave to proceed in forma pauperis ("IFP"). On May 22, 2018, the court dismissed plaintiff's complaint with leave to amend because it failed to state a claim. The court advised...

...LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California state prisoner proceeding...

...plaintiff's cell flooded. Plaintiff alleged that he informed defendants Correctional **Officers** C. Flores, A. Chavez, T. Grady, and T. Guiterrez about...

...0337, 2006 WL 1049739 (E.D. Cal. April 20, 2006) (granting **qualified immunity** to defendants when prisoner slipped and fell in puddle of...

127. Hadden v. Adams

United States District Court, N.D. California. | December 07, 2018 | Not Reported in Fed. Supp. | 2018 WL 6438362

Plaintiff, a California prisoner proceeding pro se, has filed a civil rights complaint, pursuant to 42 U.S.C. §1983. In the complaint, plaintiff alleges that defendants Dr. Gamboa, Dr. E. Sullivan, Dr. M. Danial, and Dr. K. Kumar were deliberately indifferent to his serious medical needs by failing to provide appropriate medications and...

...MOTION FOR SUMMARY JUDGMENT Re: Dkt. No. 64 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff, a California prisoner proceeding pro...

...medications and pain relief to plaintiff, and defendants Chief Medical **Officer** ("CMO") M. Sepulveda, Chief Executive **Officer** ("CEO") G. Ellis, California Correctional Health Care Services ("CCHSC") Chief L.D. Zamora, Chief Medical Executive **Officer** ("CMEO") A. Adams, and Chief Primary Health Care Provider D...

...not exhibit deliberate indifference, and that defendants are entitled to **qualified immunity**. The court views the facts in the light most favorable...

128. Blackburn v. Whiting

United States District Court, N.D. California. | January 11, 2011 | Not Reported in F.Supp.2d | 2011 WL 90113

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that Physician's Assistant Terry Whiting and the Monterey County Jail violated his constitutional

rights. On August 30, 2010, this Court dismissed the Monterey County Jail, granted Plaintiff leave to amend, and ordered that Defendant...

...DIRECTING DEFENDANT TO FILE DISPOSITIVE MOTION OR NOTICE LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...noted that "[w]ithout the possibility of some relief, the administrative **officers** would presumably have no authority to act on the subject...

...Defendant is advised that summary judgment cannot be granted, nor **qualified immunity** found, if material facts are in dispute. If Defendant is...

129. Estrada v. Sayre

United States District Court, N.D. California. | July 30, 2013 | Not Reported in Fed. Supp. | 2013 WL 3957752

Plaintiff, a California state prisoner proceeding pro se, filed an amended civil rights complaint ("AC") pursuant to 42 U.S.C. § 1983. In his AC, Plaintiff alleges that Defendants were deliberately indifferent to his serious medical needs (Claims 1 and 3), Defendants violated state law by failing to provide necessary medical...

...SCHEDULING (Docket Nos. 16, 22, 26, 27, 29) LUCY H. **KOH** , United States District Judge Plaintiff, a California state prisoner proceeding...

...amended complaint. Defendant Michael Sayre ("Dr.Sayre") is the Chief Medical **Officer** at Pelican Bay State Prison ("PBSP"). (AC at 2.) Defendant...

...the right to file administrative appeals alleging misconduct by correctional **officers**. Cal.Code Regs. tit. 15, § 3084.1(e) In order...

130. Treglia v. Sayre

United States District Court, N.D. California. | March 22, 2012 | Not Reported in F.Supp.2d | 2012 WL 1029372

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 alleging that various Pelican Bay State Prison ("PBSP") medical personnel violated his constitutional rights. Specifically, Plaintiff alleges that Defendants Dr. M.C. Sayre, Warden Lewis, Dr. Nancy Adam, (incorrectly referred to as "Adams" in...

...FOR SUMMARY JUDGMENT; DENYING REMAINING MOTIONS AS MOOT LUCY H. **KOH** , District Judge. Plaintiff, a state prisoner proceeding pro se, filed...

...the SHU pursuant to the policy from the Chief Medical **Officer**. Id., ¶ 69.) Dr. Williams prescribed Naprosyn 5 at 500...

...When he brought it to the attention of the supervising **officers**, he was directed to submit a medical slip. Id. Plaintiff...

131. Mugno v. Hazel Hawkins Memorial Hospital

United States District Court, N.D. California, San Jose Division. | May 25, 2017 | Not Reported in Fed. Supp. | 2017 WL 2289222

Plaintiff Diana Mugno (“Plaintiff”) sues Defendants Hazel Hawkins Memorial Hospital (“Hazel Hawkins”), San Benito Health Care District (“the District”), and Kenneth Underwood (“Underwood”) (collectively, “Defendants”) for causes of action arising out of Plaintiff's termination. ECF No. 5...

...MOTIONS TO DISMISS Re: Dkt. Nos. 15, 16 LUCY H. **KOH** , United States District Judge Plaintiff Diana Mugno (“Plaintiff”) sues Defendants...

...FAC ¶¶6, 9, 11. Underwood is the Chief Executive **Officer** (“CEO”) of the District. Id. ¶12. District Defendants...

...March 31, 2016, Plaintiff sent an email to Chief Nursing **Officer** Lois Owens (“Owens”), and reported to Owens the fact that...

132. Haney v. Sullivan

United States District Court, N.D. California. | March 04, 2019 | Not Reported in Fed. Supp. | 2019 WL 1024409

Plaintiff is a California prisoner incarcerated at Salinas Valley State Prison (“SVSP”). He has filed a pro se civil rights complaint pursuant to 42 U.S.C. §1983. In the operative pleading, plaintiff asserts two claims. Plaintiff's first claim, for violation of the Eighth Amendment, is pled against five defendants: M....

...Re: Dkt. No. 40, 48, 49, 50, 55 LUCY H. **KOH** , UNITED STATES DISTRICT JUDGE Plaintiff is a California prisoner incarcerated...

...the right to file administrative appeals alleging misconduct by correctional **officers**. See id. Under the regulations, as amended effective January 28...

...if plaintiff were entitled to damages, defendants are entitled to **qualified immunity**. Finally, defendants argue plaintiff failed to exhaust his Eighth Amendment...

