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ARTICLES

FIAT LUX: TRACING A STANDARD OF REVIEW FOR CLASS-CERTIFICATION ORDERS

Curtis E.A. Karnow*

And you may ask yourself
*Well . . . How did I get here?***

I. INTRODUCTION: RULES AND REASONS

Trial judges are comforted by the usual standard of review, which is—in plain English—that their decisions are assumed to be right, if only in the sense that the appellant usually has the burden of showing otherwise. Doctrines of harmless error and others tend to focus on the result below and, if the record supports the result, urge affirmance. The record might be barren, it might reveal a trial judge's incorrect rationale, but if the result is otherwise supportable, the trial judge is usually affirmed.[1]

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**Talking Heads, *Once in a Lifetime*, *on Remain in Light* (Sire Records 1980).

1. *E.g.*, JON B. EISENBERG ET AL., CALIFORNIA PRACTICE GUIDE: CIVIL APPEALS AND WRITS ¶ 8:15 (noting that "[t]he most fundamental rule of appellate review is that an appealed judgment or order is presumed to be correct"), ¶ 8:224 (characterizing "general

But there are a few situations in which appellate courts focus on the reasons provided and will reverse if the reasons do not support the result or the reasoning is wrong—even if the result has support in the record. I came across this in California state law, as I was having a look at the standards of review of decisions to certify (or not to certify) class actions. This is the class-certification standard, distinguished from the usual rule:

> Under ordinary appellate review, we do not address the trial court's reasoning and consider only whether the result was correct. . . . But when denying class certification, the trial court must state its reasons, and we must review those reasons for correctness. . . . *We may only consider the reasons stated by the trial court and must ignore any unexpressed reason that might support the ruling*.[2]

We might call this the Rule of Stated Reasons.[3] It will be the focus of this article, but we begin by looking at two other rules from which the Rule of Stated Reasons must be differentiated.

A. Background: The Routine Rule

We must distinguish a different rule, which applies generally, including in the certification context: "A certification order generally will not be disturbed unless (1) it is unsupported by substantial evidence, (2) it rests on improper criteria, or (3) it rests on erroneous legal assumptions."[4] This rule is ordinary. It is routine to reverse if there is no factual support for a decision or the trial judge gets the law wrong. It is not this Routine Rule I

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rule" as "affirmance on *any* correct ground" (emphasis in original)) (Nov. 2016) [hereinafter PRACTICE GUIDE—CIVIL APPEALS].

2. *Knapp v. AT & T Wireless Servs., Inc.*, 195 Cal. App. 4th 932, 939 (Cal. Dist. Ct. App. 2011) (citations omitted; emphasis supplied).

3. *See generally, e.g.*, PRACTICE GUIDE—CIVIL APPEALS, *supra* note 1, at ¶ 8:225 (noting that "the appellate court must examine the trial court's reasons for the ruling"). This state rule does not appear to have a federal analogue. *Compare, e.g.*, WILLIAM B. RUBENSTEIN, NEWBERG ON CLASS ACTIONS § 7:53 (noting that standards of review for class actions "mirror ordinary standards of review"), § 14:19 (indicating that appellate courts "review trial courts' class action decisions (certification, final approval, and fee approval) under ordinary appellate rules") (Dec. 2016) [hereinafter NEWBERG]; Vallario v. Vandehey, 554 F.3d 1259, 1264 (10th Cir. 2009) (discussing appellate court's approach to petitions for interlocutory review of trial court's grant or denial of class certification).

4. Fireside Bank v. Super. Ct., 40 Cal. 4th 1069, 1089 (Cal. 2007).

am interested in here, although as we will see later, some courts rely on the Routine Rule as if it necessarily justified the Rule of Stated Reasons. It does not, however, for one may have the former without the latter.

B. Background: The Rule of Intendments

There is a third rule of review, also seemingly routine, that we should also distinguish: "We must '[p]resum[e] in favor of the certification order . . . the existence of every fact the trial court could reasonably deduce from the record.'"[5] This third rule is part of the broader and usual standard, which, if one enjoyed the sound of old fashioned words, one might call the Rule of Intendments.[6] Under this broad rule, when the record is silent, the order is generally affirmed.[7] In the certification context, the more general, broader Rule of Intendments is not effective. If nothing "illuminates the court's thinking" on the reasons for the determination, the case is reversed and remanded.[8] The Rule of Intendments does not apply.[9]

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5. Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1022 (Cal. 2012) (quoting Sav–on Drug Stores, Inc. v. Super. Ct., 34 Cal. 4th 319, 329 (Cal. 2004) (ellipses in original)).

6. From a case almost a century ago: "In an appeal on the judgment-roll alone every intendment possible is in favor of the judgment or order appealed from, and if error does not affirmatively appear, it will be sustained, if there is any possible ground on which it can be sustained." Myers v. Canepa, 37 Cal. App. 556, 560 (Cal. Dist. Ct. App. 1918) (citation omitted). A newer case to the same effect is Seibert v. City of San Jose, 247 Cal. App. 4th 1027, 1042 (Cal. Dist. Ct. App. 2016) (noting strong presumption that order entered below is correct).

7. *E.g.*, Elena S. v. Kroutik, 247 Cal. App. 4th 570, 574 (Cal. Dist. Ct. App. 2016) (indicating that a "judgment or order of the lower court is *presumed correct*" and that "[a]ll intendments and presumptions are indulged to support it on matters as to which the record is silent" (emphasis in original)); A.G. v. C.S., 246 Cal. App. 4th 1269, 1281 (Cal. Dist. Ct. App. 2016) (same).

8. Tellez v. Rich Voss Trucking, Inc., 240 Cal. App. 4th 1052, 1064 (Cal. Dist. Ct. App. 2015). The trial judge in *Tellez* found that a party failed to adhere to the court's procedures to contest tentative rulings, and was thus barred from argument, which (and here is the error) in the judge's view obviated the need to explain himself. *Id.* at 1060, 1064 n.12.

9. See, for example, Ayala v. Antelope Valley Newspapers, Inc., 59 Cal. 4th 522 (Cal. 2014), in which only the concurring justice suggested that the Rule of Intendments applied. *Id.* at 546 (Chin, J., concurring).

C. Our Primary Concern: The Rule of Stated Reasons

What then, is this narrower Rule of Stated Reasons that applies in the certification context? It is not clear; but it may just mean that when a judge does explain himself or herself in a way that suggests reliance on facts, the appellate court will indulge the trial court ruling if there is any basis in the record to do so.

I began by briefly outlining the various standards of review because the opinions that develop the Rule of Stated Reasons ultimately dissolve into the distant mists of the past, sometimes doing so by conflating the Rule of Stated Reasons with these other standards of review.

The Rule of Stated Reasons is an oddity, and has been repeatedly called out as different from the usual approach.[10] Why, then, did it develop? No one knows. This article provides a guided tour to its genealogy, and shows that its origins are lost to us. It ends with some thoughts as to why, nevertheless, the Rule of Stated Reasons is as it is, and also considers its implications for the work of judges and lawyers.

II. TRACING THE RULE OF STATED REASONS

One might start almost anywhere in the last few years with a decision reviewing a certification or decertification order, and then trace the citations back through the ages, or through the decades anyway. Significantly, this is one of the few areas of law in which one sees only the citation or repetition of the rule, never a discussion of its rationale. Despite frequently introducing the Rule of Stated Reasons as an exception to the usual standard of review, no court has felt an obligation to explain it. This both makes it relatively simple to trace the rule,

10. *E.g.*, Clothesrigger, Inc. v. GTE Corp., 191 Cal. App. 3d 605, 611–12 (Cal. Dist. Ct. App. 1987) (asserting that formulations like the Routine Rule, with their deference to lower courts, have "nothing to do with the standard of review" for certification orders in class actions because "[t]he right result is an inadequate substitute for an incorrect process" in that situation, and concluding that "appellate scrutiny should be on the reasons expressed by the trial court in the context of counsel's arguments, not merely whether the trial court reached a result which can be justified by implication"); Caro v. Procter & Gamble Co., 18 Cal. App. 4th 644, 655–56 (Cal. Dist. Ct. App. 1993) (calling Rule of Stated Reasons an "exception to the general rule" (citation omitted)); *Knapp*, 195 Cal. App. 4th at 939 (indicating that Rule of Stated Reasons "differs from ordinary appellate review").

and leads to the ultimate frustration of never discovering at least an historical explanation for its development.

Tables 1 and 2 in the Appendix walk the reader through scores of cases, starting with two recent cases and following them back in what might be termed the main sequence. That work is checked, as shown in Table 3, by using a number of other recent cases as starting points to retrace the same steps. In all of these tracings, we see that the citation chain usually touches down first on *Linder v. Thrifty Oil Co.*[11] and then, most significantly, proceeds through *Linder* to *Clothesrigger, Inc. v. GTE Corp.*[12]

For cases decided after 2000, *Linder* is probably the single most cited case in support of the Rule of Stated Reasons, with eight of the cases in what this article treats as the main sequence citing it directly. In a single paragraph, the California Supreme Court in *Linder* recites a series of standards that it means to apply, and explains their intended effect:

> Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification. The denial of certification to an entire class is an appealable order . . . , but in the absence of other error, a trial court ruling supported by substantial evidence generally will not be disturbed "unless (1) improper criteria were used . . .; or (2) erroneous legal assumptions were made . . . " . . . . Under this standard, an order based upon improper criteria or incorrect assumptions calls for reversal "'even though there may be substantial evidence to support the court's order.'" . . . Accordingly, we must examine the trial court's reasons for denying class certification. "Any valid pertinent reason stated will be sufficient to uphold the order."[13]

From this statement, we must extract the rules. First, note the premise of deferral to the trial judge, especially because of the practical aspect of the certification order. The initial use of the word "because" suggests, accurately, that this reason

11. 23 Cal. 4th 429, 435–36, 448 (Cal. 2000).

12. 191 Cal. App. 3d at 611–12. The *Linder* court cites both *Caro* and *Clothesrigger* in its discussion of this point, noting that *Caro* relies on *Clothesrigger*. *Linder*, 23 Cal. 4th at 435–36.

13. *Linder*, 23 Cal. 4th at 435–36.

explains the rules that are about to be recited.[14] Next, we see that the certification order is appealable; then we see the Routine Rule that looks to substantial evidence and a lack of legal error.[15] But then *Linder* seems to say that the next rule recited—our focus, the Rule of Stated Reasons—is either equivalent to the Routine Rule or is explained or justified by it.

We have already seen above that such an equivalence is false, and it is not at all obvious that the Routine Rule justifies or explains the Rule of Stated Reasons. *Linder*'s citation to *Richmond v. Dart Industries, Inc.*[16] gives it away: *Richmond* only recites the Routine Rule, not the Rule of Stated Reasons, making it a dead end in the search for the origin of the latter. *Occidental Land, Inc. v. Superior Court*[17] and *Fletcher v. Security Pacific National Bank*,[18] the cases on which *Richmond* relies, are also dead ends. And we need not look far for cases in which the Routine Rule patently applies without any suggestion that a failure to state reasons is fatal: An appellate court might well insist on substantial evidence but still indulge the lower court with the Rule of Intendments.[19] Indeed, the standard of review that insists on substantial evidence but nevertheless so indulges the trial court uses rules that are "natural and logical corollar[ies]" of each other; the tests actually go hand in hand.[20]

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14. *See infra* § IV.

15. *See* text accompanying note 4, *supra*.

16. 29 Cal. 3d 462 (1981). The *Richmond* court's discussion does not make reference to the Rule of Stated Reasons:

> For example, in the absence of other error, this court will not disturb a trial court ruling on class certification which is supported by substantial evidence unless (1) improper criteria were used (see *Occidental Land, Inc.* v. *Superior Court* (1976) 18 Cal.3d 355, 361 [134 Cal. Rptr. 388, 556 P.2d 750]); or (2) erroneous legal assumptions were made (*Fletcher v. Security Pacific National Bank* (1979) 23 Cal.3d 442, 446 [153 Cal. Rptr. 28, 591 P.2d 51]).

Id. at 470.

17. *See* note 16, *supra*.

18. *See* note 16, *supra*.

19. *See, e.g.*, *A.G.*, 246 Cal. App. 4th at 1281 (quoting rule).

20. Carbajal v. CWPSC, Inc., 245 Cal. App. 4th 227, 237 (Cal. Dist. Ct. App. 2016) (referring to "fundamental principles" of appellate review: presuming that judgment below is correct, indulging all "intendments and presumptions . . . in favor of correctness," and requiring appellant to prove error); *see also, e.g.*, Cypress Semiconductor Corp. v. Maxim Integrated Prods., Inc., 236 Cal. App. 4th 243, 266 (Cal. Dist. Ct. App. 2015) (same); Apex LLC v. Korusfood.com, 222 Cal. App. 4th 1010, 1017 (Cal. Dist. Ct. App. 2013) (referring to "normal rules of appellate review"); Wallis v. PHL Assocs., Inc., 220 Cal. App. 4th 814, 825 (Cal. Dist. Ct. App. 2013); Ellis v. Toshiba Am. Info. Sys., Inc., 218 Cal. App. 4th

At least as of *Linder*, then, we have no explanation for the quite distinct Rule of Stated Reasons.

So where can we turn after *Linder*? We follow its clues. It relies on *Caro*,[21] which as *Linder* notes, relies on *Clothesrigger*,[22] and *National Solar*.[23] There is no more to say about *National Solar*, because it just relies on *Richmond*, a dead end, and on *Clothesrigger*.

We have come then to *Clothesrigger*, the 1987 decision directly relied on by not only *Linder*, but also four other cases in the main sequence, and many other cases as well. The decision in *Clothesrigger* is the decisive moment in the development of the Rule of Stated Reasons.

Clothesrigger discusses standards of review twice. The first time, it recites the Rule of Stated Reasons, analogizing to

> non-statutory situations [that] involve issues where the appellate focus is on the *means* used by the trial court. The right result is an inadequate substitute for an incorrect process. Thus the appellate scrutiny *should be on the reasons expressed by the trial court* in the context of counsel's arguments not merely whether the trial court reached a result which can be justified by implication.[24]

In this connection *Clothesrigger* has a single, lonely citation to a treatise on procedure.[25] A few lines later, *Clothesrigger* recites a different standard: *Richmond*'s Routine Rule.[26] And indeed the result in *Clothesrigger* probably stems from the application of this last standard, the *Richmond* rule, because the court first tries to figure out what the trial judge probably meant and, second, criticizes what he did say.[27] It does not appear that the trial judge's result could have been rescued on appeal if only he had

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853, 882 (Cal. Dist. Ct. App. 2013) (using three-factor approach to judgment below: "presumed correct, all intendments and presumptions . . . indulged in its favor, and ambiguities . . . resolved in favor of affirmance" (citation omitted)).

21. 18 Cal. App. 4th at 655.

22. 191 Cal. App. 3d at 612.

23. Nat'l Solar Equip. Owners' Assn. v. Grumman Corp., 235 Cal.App.3d 1273, 1281 (Cal. Dist. Ct. App. 1991).

24. *Clothesrigger*, 191 Cal. App. 3d at 611–12 (second emphasis supplied).

25. *Id.* at 611 (citing B. WITKIN, CALIFORNIA PROCEDURE, Appeal § 262 (3d ed. 1985)).

26. *Id. at* 612.

27. *Id.* at 613. The opinion quotes the trial judge's reasons at some length. *Id.* at 610–11.

stated his thinking correctly or more explicitly. If this is correct, we have here the first of two wonderful twists: that the Rule of Stated Reasons—at least in the certification context—was born in a case to which it did not apply. But this is not shocking.[28]

We now turn to the second twist, and *Clothesrigger*'s novel articulation of the Rule of Stated Reasons. It is based on a citation to the Witkin treatise, part of a respected series on both California procedural[29] and substantive[30] law that is frequently cited by California's judges and lawyers as summarizing extant law.[31] The pages cited in the 1987 *Clothesrigger* opinion are no longer generally available, but through the kind assistance of the Witkin publishers,[32] I have reviewed the section that *Clothesrigger* referred to. The original 1985 hardback volume entry has nothing directly on point. It provides examples of situations in which judges must state their reasons, including those in which a statute requires it, such as a motion for a new trial, a motion for a nonsuit, and when a so-called statement of decision is mandated.[33] Then Witkin notes non-statutory bases:

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28. *See, e.g.*, Adam B. Badawi & Scott Baker, *Appellate Lawmaking in a Judicial Hierarchy*, 58 J.L. & ECON. 139, 141 (2015) (asserting that "the appellate court wants to set dicta at a level that optimizes the lower court's use of those statements"); Judith M. Stinson, *Why Dicta Becomes Holding and Why It Matters*, 76 BROOK. L. REV. 219, 219 (2010) (summarizing difficulties associated with differentiating holdings from dicta); Michael Abramowicz & Maxwell Stearns, *Defining Dicta*, 57 STAN. L. REV. 953, 956 n.4 (2005) (referring to "uncertainty" surrounding "holding-dicta line"). Sometimes what might have been thought of as a holding is set aside as dicta, Michael C. Dorf, *Dicta and Article III*, 142 U. PA. L. REV. 1997, 2012 (1994) (discussing holding in *Marbury*), and sometimes what is dicta is eagerly embraced as the foundation for a holding, Caroline Hatton, Comment, *TILA: The Textualist-Intentionalist Litmus Act?* 44 SETON HALL L. REV. 207, 237–38 (2014) (considering Third and Ninth Circuits' deferential approach to Supreme Court dicta); David Klein & Neal Devins, *Dicta, Schmicta: Theory Versus Practice in Lower Court Decision Making*, 54 WM. & MARY L. REV. 2021, 2021 (2013) (pointing out that "lower courts hardly ever refuse to follow a statement from a higher court because it is dictum").

29. B. E. WITKIN, CALIFORNIA PROCEDURE (5th ed. 2008).

30. B. E. WITKIN, SUMMARY OF CALIFORNIA LAW (10th ed. 2005).

31. Witkin has been celebrated as the "beloved giant in the California legal community." Thomas E. Hollenhorst, *Tentative Opinions: An Analysis of Their Benefit in the Appellate Court of California*, 36 SANTA CLARA L. REV. 1 n.1 (1995); *see also In Memoriam Bernard E. Witkin (1904–1995)*, CAL. SUP. CT. HISTORICAL SOC'Y (Dec. 3, 1996), http://www.cschs.org/history/special-sessions/special-sessions-in-memoriam-bernard-e-witkin/ (collecting a series of tributes by California Supreme Court justices and other state dignitaries).

32. My thanks to John K. Hanft of Thomson-Reuters for making a photocopy of the old text available.

33. See *infra* § III.

when a judge fails to rule on the merits,[34] and similar situations[35] in which the judge plainly misunderstood the rule,[36] or was biased. In these cases relied on by Witkin, the trial court expressly got the law wrong or expressly refused to rule. That is why the appellate court refused in each case to indulge the trial judge and refused to assume that he or she was right.

So the 1985 Witkin treatise sheds no light on the history that we seek. The cases it cites do not indicate that the Rule of Stated Reasons should be imported into the certification context. We don't know why the *Clothesrigger* court cited the Witkin treatise. It's a dead end. But in another wonderful example of the eternally self-reflexive nature of legal citation, here is a second twist: The 1987 update to this section of the Witkin treatise relies, without comment, on—*Clothesrigger*.[37]

We might speculate about how the Rule of Stated Reasons was quietly born in *Clothesrigger*. It is, after all, not too far a leap from (i) the Routine Rule[38] that reviews substantial evidence and legal error, but assumes that the criteria are met, to (ii) a new rule which, unable to determine if the lower court was aware of the evidence or the law, declines to assume that the criteria are met. A court might invoke the Routine Rule that so "long as that [trial] court applies proper criteria and its action is founded on a rational basis, its ruling must be upheld," but, finding no expression of correct reasons, reverse.[39] Later, that reasoning might look like the application of the Rule of Stated Reasons.

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34. The supporting citation is Gosnell v. Webb, 60 Cal. App. 2d 1, 5 (Cal. Dist. Ct. App. 1943) (characterizing this as when "it appears that the trial court has declined to pass upon the merits of a motion").

35. The supporting citation is Kyne v. Kyne, 60 Cal. App. 2d 326, 332 (Cal. Dist. Ct. App. 1943) (suggesting that it would be so if court expressly refused to rule on the issues).

36. The supporting citation is Lippold v. Hart, 274 Cal. App. 2d 24, 26 (Cal. Dist. Ct. App. 1969) (noting that court "misconceived" role at hearing and expressly used wrong test).

37. The citation to *Clothesrigger* was carried forward to the current edition, 9 B.E. WITKIN, CALIFORNIA PROCEDURE ch. XII—Appeal, § 349(8) (5th ed. 2008).

38. Recall the Routine Rule: "A certification order generally will not be disturbed unless (1) it is unsupported by substantial evidence, (2) it rests on improper criteria, or (3) it rests on erroneous legal assumptions." *Fireside Bank*, 40 Cal. 4th 1069 at 1089.

39. Rosack v. Volvo of Am. Corp., 131 Cal. App. 3d 741, 750, 763 (Cal. Dist. Ct. of App. 1982).

Too, there is a price to pay under the Routine Rule. The court of appeal must review the entire record without direction from the trial judge. And because trial judges are fact finders in certification motions,[40] the court of appeal may have to guess how the trial judge resolved conflicts in the evidence or weighed the evidence overall. But there is also this: Without some assurance that the trial judge has really thought about practicalities, the case might unfold into chaos and wasted years of litigation. It happens.[41] This allusion to practicality may then be a hint to the deeper reasons for the Rule of Stated Reasons.

III. THE RATIONALE FOR THE RULE OF STATED REASONS

If direct history sheds no light, we might reach to kindred areas of law to learn the reason for the Rule. As the Witkin treatise notes, some statutes simply require a statement of reasons.[42] Judges are required after a bench trial to provide a statement of decision to support the judgment.[43] California's Code of Civil Procedure requires a statement of reasons for a new trial.[44] (But the appellate remedy here is not, as it appears to be in the certification motion, to reverse and remand.[45] Rather the courts of appeal shift from an abuse of discretion standard[46] to a de novo review.[47]) Judges must make such a record when

40. *See infra* note 61.

41. *See, e.g.*, Duran v. U.S. Bank N.A., 59 Cal. 4th 1, 29 (Cal. 2014) (discussing importance of assessing—and reassessing—manageability of individual issues).

42. *See* text accompanying note 33, supra.

43. CAL. CODE CIV. P. § 632 (providing that on request the "court shall issue a statement of decision explaining the factual and legal basis for its decision"); CAL. R. CT. 3.1590 (setting out procedures governing the preparation of a statement of decision).

44. CAL. CODE CIV. P. § 657 (providing that order granting motion for new trial "must state the ground or grounds relied upon by the court, and may contain the specification of reasons").

45. *See, e.g., Tellez*, 240 Cal. App. 4th at 1062 (noting that any plausible reason will be sufficient to uphold order entered by court denying class certification, but court must state its reasons and reviewing court will review them for "correctness").

46. *E.g.*, Sprewell v. Jurjevic, Nos. A125569/A126272, 2011 WL 1260430, at *4 (Cal. Dist. Ct. App. Apr. 5, 2011) ("When the trial court grants a motion for new trial and provides a statement of reasons for its decision, the standard of review is abuse of discretion.") (unpublished).

47. *E.g.*, Oakland Raiders v. Nat'l Football League, 41 Cal. 4th 624, 628 (Cal. 2007) (affirming result based on independent review by court of appeals); Montoya v. Barragan, 220 Cal. App. 4th 1215, 1228 (Cal. Dist. Ct. App. 2013).

they dismiss criminal charges.[48] Federal courts are required to state their reasons when issuing preliminary injunctions,[49] but not, it seems, state courts—at least in California.[50] But California judges must issue orders explaining their reasons when deciding motions for summary judgment,[51] and without that record the case can be reversed and remanded to get it.[52] In the federal system, written findings are required when reviewing parole determinations[53] and when departing from sentencing guidelines.[54]

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48. CAL. PENAL CODE § 1385(a) (providing that "reasons for the dismissal shall be stated orally on the record" and that the judge "shall also set forth the reasons in an order entered upon the minutes if requested by either party or in any case in which the proceedings are not being recorded electronically or reported by a court reporter"); *see also, e.g.*, People v. Ray, No. C035003, 2001 WL 1627987, at *3 (Cal. Dist. Ct. App. Dec. 18, 2001) ("Notwithstanding the deferential standard of review, we must reverse and remand this matter to the trial court for two reasons. First, the court's minute order does not include a reviewable statement of reasons for its decision.") (unpublished).

49. FED. R. CIV. P. 65; *see also, e.g.*, Digital Equip. Corp. v. Emulex Corp., 805 F.2d 380, 382 (Fed. Cir. 1986) (acknowledging that Rule 65 requires a "statement of reasons").

50. Whyte v. Schlage Lock Co., 101 Cal. App. 4th 1443, 1450–51 (Cal. Dist. Ct. App. 2002) (indicating that the reviewing court's responsibility is to "review [the] order, not the court's reasons," that a trial court is "not required to prepare a statement of decision or explain its reasoning," and that the reviewing court will "presume the court considered every pertinent argument and resolved each one consistently with its minute order denying the preliminary injunction"); *see also* Am. Acad. of Pediatrics v. Van de Kamp, 214 Cal. App. 3d 831, 838 (Cal. Dist. Ct. App. 1989) (indicating that reviewing court indulges "all reasonable inferences in support of the trial court's order" (citation omitted)).

51. CAL. CODE CIV. P. § 437c(g) (providing that "[t]he court shall record its determination by court reporter or written order").

52. *E.g.*, Santa Barbara Pistachio Ranch v. Chowchilla Water Dist., 88 Cal. App. 4th 439, 448–499 (Cal. Dist. Ct. App. 2001) (indicating that "failure to provide a sufficient statement of reasons is not automatic grounds for reversal," but finding that failure in this case "was not harmless error"). There may be some disagreement about the consequences of a trial judge's failure to issue the required order. Oddly, relying on this *Santa Barbara* case that does reverse and remand, another case says there is no need to do so, perhaps because there was some explanation in the trial court. Hom v. Culinary Inst. of Am., No. A132499, 2012 WL 1107797, at *6 (Cal. Dist. Ct. App. Apr. 3, 2012) (indicating that appellate court reviews "the validity of the trial court's ruling, not the reasons," and that "a deficient statement of reasons presents no harm when the validity of a summary judgment has been established") (unpublished); *see also* Hasso v. Hasso, 148 Cal. App. 4th 329, 338 (Cal. Dist. Ct. App. 2007) (using de novo review and finding harmless error even with insufficient statement from trial judge).

53. *E.g.*, Misasi v. U.S. Parole Comm'n, 835 F.2d 754, 758 (10th Cir. 1987) (faulting stated reasons as "factually incorrect" and "non-specific").

54. *E.g.*, United States v. Salem, 597 F.3d 877, 888 (7th Cir. 2010) (noting that although requirement may be satisfied in several ways, "a pro forma checking of a box on a preprinted form" is insufficient); United States v. Baham, 215 F. App'x 258, 261 (4th Cir. 2007) (pointing out that "[a] sentence will be procedurally unreasonable . . . if the district

In the context of this inquiry into the Rule of Stated Reasons, it is especially interesting that court review of an administrative agency involves an evaluation of whether the agency has made a sufficient record—an "adequate statement of reasons."[55] With that statement of reasons, when the agency decision is plainly within the scope of the agency's expertise, courts defer to that expertise:

> In general . . . the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . . When making that inquiry, the "court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute."[56]

Reviewing administrative determinations involves the same ordinary Routine Rule, applied when the aim of the review is to determine if there is substantial evidence and if the correct law was employed.[57] Courts review for "legal error and substantial evidence."[58] In part, this is the result of the agencies' role in fact

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court provides an inadequate statement of reasons"); *cf.* United States v. Bell, 371 F.3d 239, 246 (5th Cir. 2004) (indicating that appellate court, unable to "resolve the uncertainty from the court's written statement, . . . decline[d] to proceed without a clearer understanding of the district court's reasons").

55. *E.g.*, Logan v. Principi, 71 F. App'x 836, 838 (Fed. Cir. 2003) (indicating that reviewing court is to determine, among other things, whether the conclusion below "is supported by an adequate statement of reasons or bases"); Donovan v. Local 6, Wash. Teachers' Union, 747 F.2d 711, 715 (D.C. Cir. 1984) (noting, in case under Labor-Management Reporting and Disclosure Act, that the required statement "should inform the court and the complaining union member of both the grounds of decision and the essential facts upon which the Secretary's inferences are based"); *see also* (Levi Family P'ship, L.P. v. City of L.A., 241 Cal. App. 4th 123, 131–32 (Cal. Dist. Ct. App. 2015) (indicating that agency must find facts "sufficient" to enable judicial review by "bridging the analytic gap between the raw evidence and ultimate decision or order" (citation omitted)).

56. Hi-Desert Med. Ctr. v. Douglas, 239 Cal. App. 4th 717, 730 (Cal. Dist. Ct. App. 2015) (quoting O.W.L. Found. v. City of Rohnert Park, 168 Cal. App. 4th 568, 585–86 (Cal. Dist. Ct. App. 2008)). But when the decision involves a "fundamental vested right" appellate review is more stringent. PRACTICE GUIDE—CIVIL APPEALS, *supra* note 1, at ¶ 8:127a (referring to reviewing court's examination of the record and exercise of independent judgment).

57. *See* text accompanying note 4, *supra*.

58. N. Cnty. Advocates v. City of Carlsbad, 241 Cal. App. 4th 94, 100 (Cal. Dist. Ct. App. 2015) (citation omitted); *see also, e.g.*, City of Hayward v. Bd. of Trs. of the Cal. St. Univ., 242 Cal. App. 4th 833, 839–40 (Cal. Dist. Ct. App. 2015).

finding;[59] the substantial evidence test is premised on the inferior tribunal's fact-finding powers.

Given the great deference provided to agencies, it is essential that the *process and methods* used by the agency are correct, for that likely ends up being the sole assurance of a legitimate determination. That is, the extent of deference correlates with the extent to which the agency's process of determination is procedurally correct. In some cases the harmless error standard is not applicable.[60]

So it is that in the context of administrative review we have a requirement of written reasons (as well as the routine rule of reversing when there is no substantial evidence, or the legal standards are mistaken). These are also the rules that apply when an appellate court reviews a trial judge's certification order. In

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59. Atieh v. Riordan, 797 F.3d 135, 138 (1st Cir. 2015) (describing "narrow" standard of review that permits appellate court to "set aside an agency's decision if it is 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law,' such as if it is 'unsupported by substantial evidence'" (citation omitted)); Organized Vill. of Kake v. U.S. Dep't of Agric., 795 F.3d 956, 966 (9th Cir. 2015) (noting that "a policy change violates the APA 'if the agency ignores or countermands its earlier factual findings without reasoned explanation for doing so'" (citation omitted)), *cert. denied sub nom.* Alaska v. Organized Vill. of Kake, ___ U.S. ___, 136 S. Ct. 1509 (2016); Battelle Mem'l Inst. v. DiCecca, 792 F.3d 214, 221 (1st Cir. 2015) (determining that record included "substantial evidence that support[ed] . . . findings and ensuing conclusions"); Berkeley Hillside Pres. v. City of Berkeley, 60 Cal. 4th 1086, 1114 (Cal. 2015) (recognizing that "the agency serves as 'the finder of fact'" (citation omitted)); Bowman v. Cal. Coastal Comm'n, 230 Cal. App. 4th 1146, 1150 (Cal. Dist. Ct. App. 2014) (noting that reviewing court's "task involves 'some weighing of the evidence'" (citation omitted)).

60. *City of Hayward*, 242 Cal. App. 4th at 839–40 (noting that review is "de novo" and that agency's departure from procedures required by statutory scheme makes its decision "presumptively prejudicial"); San Lorenzo Valley Cmty. Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist., 139 Cal. App. 4th 1356, 1375 (Cal. Dist. Ct. App. 2006) (indicating that questions of law—including those related to interpretation and application of statutory provisions—are reviewed de novo); State Water Res. Control Bd. Cases, 136 Cal. App. 4th 674, 723 (Cal. Dist. Ct. App. 2006) (noting that harmless error standard is "not applicable"); *but see* Fort Mojave Indian Tribe v. Dep't of Health Servs., 38 Cal. App. 4th 1574, 1601 (Cal. Dist. Ct. App. 1995) (finding error in required distribution of information not prejudicial); *compare* N. Pacifica LLC v. Cal. Coastal Comm'n, 166 Cal. App. 4th 1416, 1434 (Cal. Dist. Ct. App. 2008) (holding that to make out agency's violation of open meeting laws, prejudice must be shown). Under the federal APA, procedural error that affects public comment and other inputs to the record may not be harmless. CHARLES H. KOCH, JR., ET AL., ADMINISTRATIVE LAW AND PRACTICE § 9:29(3) (3d ed. Feb. 2017 update); *see also* Nina Golden & Carolyn Young, *Harmful Error: How the Courts' Failure to Apply the Harmless Error Doctrine Has Obstructed the ADA's Standing Spectators Rule*, 12 N.Y.U. J. LEGIS. & PUB. POL'Y 1, 35 (2008) (suggesting that harmless-error rule should not be used to eviscerate administrative process).

both situations, we have (i) an exceedingly important, usually decisive, order, and (ii) a very high level of deference, premised in part on (iii) the fact-finder role of the original forum (the agency or trial judge).[61] Those factors go far in explaining the use of these rules of review.

Most of the other situations mapped out above in which a statement of reasons is required also involve decisive moments in the case. Most obviously, summary judgment motions and the statement of decision required to support the ultimate determination in a case are of such import; so too is the decision to dismiss a criminal case. And there is considerable discretion involved in dismissing charges and sentencing (although not usually in the summary judgment context), and a very high level of discretion in deciding cases as a fact finder that results in a statement of decision. Both these factors—a decisive point and a high level of discretion—are present in certification motions.

As every lawyer who handles class actions knows, the certification motion is the decisive moment in a case. Very few of these cases actually go to trial: The moment of truth is the certification motion. Indeed, if the case is not certified, the "death knell" doctrine recognizes that it is in effect dead, and an immediate appeal may be taken.[62] For everyone but the class representative, the case is actually over if the class is not certified; for them, the order really is dispositive.[63]

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61. Trial judges are fact finders in certification motions and can weigh (and even disbelieve) evidence as they wish. For example, they may give little weight to boilerplate "identical and undetailed declarations," Mora v. Big Lots Stores, Inc., 194 Cal. App. 4th 496, 508 (Cal. Dist. Ct. App. 2011), and more weight to declarations with specific and individualized detail, *id.* at 509–10. *See generally* Mies v. Sephora U.S.A., Inc., 234 Cal. App. 4th 967, 981 (Cal. Dist. Ct. App. 2015) (noting great discretion accorded trial judge); Dailey v. Sears, Roebuck & Co., 214 Cal. App. 4th 974, 991 (Cal. Dist. Ct. App. 2013) (noting that trial judge "is permitted to credit one party's evidence over the other's"); In re Initial Pub. Offerings Sec. Litig., 471 F.3d 24, 41 (2d Cir. 2006) (indicating that trial judge is allowed considerable discretion), *clarified on denial of reh'g*, 483 F.3d 70 (2d Cir. 2007) (declining to revise initial decision); Sav-on Drug Stores, Inc. v. Super. Ct., 34 Cal. 4th 319, 333–34 (Cal. 2004) (referring to trial court's discretion in evaluating both "boilerplate" and "detailed, fact-specific" evidence).

62. *See generally* Curtis Karnow, *Complexity in Litigation: A Differential Diagnosis*, 18 U. PA. J. BUS. L. 1, 27 (2015).

63. In re Baycol Cases I & II., 51 Cal. 4th 751, 760, 248 P.3d 681, 686 (Cal. 2011) (noting that "the action has in fact and law come to an end, as far as the members of the alleged class are concerned"). If the class representative then fails to appeal the denial, he

It is also true that the deference accorded to trial judges making certification decisions is very high—at least, so read the opinions.[64] What is interesting here is the reason for the deference. It has to do with the practicalities of the situation, factors that only the trial judge is in a position to explore. It is the trial judge who will have to handle the trial, who must manage the case, who can determine the feasibility of trying the case as a class action, with or without bifurcation, use of subclasses, severance of certain issues, phasing, perhaps extracting issues for class treatment,[65] or the use of referees or special masters for damages calculation; and so on. Just as an administrative agency has a scope of expertise quite different from that of judges, so too trial judges have a presumed expertise on case and trial management that ought to be allowed as free a rein as possible: "Because trial courts are ideally situated to evaluate the efficiencies and practicalities of permitting group action, they are afforded great discretion in granting or denying certification."[66] Just as the Rule of Stated Reasons allows the reviewing court to observe that the agency's substantial discretion has been exercised, so too in the certification context the reviewing court wants assurance that the trial judge's enormous discretion has been exercised. In both cases the reviewing court is in a very poor position to decide whether the result is correct; it can only guard the process. And

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or she may forever lose the right to do so. Munoz v. Chipotle Mexican Grill, Inc., 238 Cal. App. 4th 291, 308 (Cal. Dist. Ct. App. 2015).

64. *E.g.*, *Brinker*, 53 Cal. 4th at 1022 (characterizing review on appeal as "narrowly circumscribed" and referring to "great deference" standard articulated in *Fireside Bank*).

65. For the federal provision, see Federal Rule of Civil Procedure 23(c)(4). *See generally* Joseph A. Seiner, *The Issue Class*, 56 B.C. L. REV. 121, 132 (2015) (discussing "'issue-class' certification"). California allows certification of "particular issues," CAL. R. CT. 3.765(b), although efforts at this kind of certification are very rare. *See, e.g.*, Downing v. San Diego Gas & Elec. Co., 2010 WL 4233033, at *5 (Cal. Dist. Ct. App. Oct. 27, 2010) (involving proposed "liability only" class) (unpublished); Evans v. Lasco Bathware, Inc., 178 Cal. App. 4th 1417, 1434–35 (Cal. Dist. Ct. App. 2009) (same).

66. Hale v. Sharp Healthcare, 232 Cal. App. 4th 50, 57 (Cal. Dist. Ct. App. 2014) (quoting *Sav-on Drug*, 34 Cal. 4th at 326); *see also* Lockheed Martin Corp. v. Super. Ct., 29 Cal. 4th 1096, 1132 (Cal. 2003) (Moreno, J., concurring and dissenting) (quoting Boughton v. Cotter Corp., 65 F.3d 823, 828 (10th Cir. 1995): "A trial court's class certification determination is discretionary because 'it is "a practical problem, and primarily a factual one with which a [trial] court generally has a greater familiarity and expertise than does a court of appeal."'"); *Tellez*, 240 Cal. App. 4th at 1062 (quoting *Linder*, 23 Cal. 4th at 435–46).

so it is that the process, the method, the procedures, are the focus when certification orders are reviewed.[67] That review is impossible absent the Rule of Stated Reasons. This standard is not, despite some language to the contrary,[68] in derogation of the trial judge's broad discretion; it is a concomitant.

IV. IMPLICATIONS

This look at the standard of review and its rationale has consequences for trial judges and the lawyers who brief certification motions before them. The implication is a focus on manageability—the *practical* stuff. Of course there are other factors that must be considered when evaluating a certification motion, such as numerosity, adequate representation by the plaintiff as well as by counsel, typicality, common questions, and so on,[69] but generally these factors—perhaps aside from common questions—usually are not hotly contested; more importantly the court of appeal can figure most of these out just as well as a trial judge. The difficult issues have to do with the superiority of the class action over individual cases, the very closely related issue of the extent to which common issues predominate over individual ones, and so the general issue of manageability, which embraces those matters.

In *Duran*, the California Supreme Court directed a very careful look at the manageability issues.[70] The call has been repeated in other cases, with instructions to look to "efficient

67. *E.g.*, PRACTICE GUIDE—CIVIL APPEALS, *supra* note 1, at ¶ 8:225 (quoting multiple cases on the "criteria" and "analysis" and "reasons" and "process"). See this language from the primogenitor, *Clothesrigger*: "*Our focus on correct process* requires us to reverse even though there may be substantial evidence to support the court's order." 191 Cal. App. 3d at 612 (emphasis supplied).

68. *Knapp*, 195 Cal. App. 4th at 939 ("*Despite* this grant of discretion" Rule of Stated Reasons imposed (emphasis supplied)); Wash. Mut. Bank, F.A. v. Super. Ct., 24 Cal. 4th 906, 914 (Cal. 2001) (noting that courts are "afforded great discretion" but "*nonetheless*" imposing Rule of Stated Reasons (emphasis supplied)); *Tellez*, 240 Cal. App. 4th at 1062 (noting review "*[d]espite* the great discretion" afforded trial courts (emphasis supplied)).

69. *See generally* ROBERT I. WEIL ET AL., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ch. 14 (2015) (discussing class actions) [hereinafter PRACTICE GUIDE—BEFORE TRIAL].

70. 59 Cal. 4th at 29.

and effective means" of resolving the underlying disputes.[71] The point in certification motions is not, exactly, whether there are common issues; it is whether the balance of common and individual issues makes the case manageable.[72] Individual issues are fine—as long as they can be managed.[73] This is the import of the predominance and superiority factors.[74]

Of course, this sort of practical evaluation is not done by comparing the raw number of common and individual issues. It is not an abstract weighing of "important" or "significant" issues (common or not) against issues that in some vague way are less important. Instead, the showing often will take the form of a trial plan—a practical outline of the number and types of witnesses likely to be testifying, matched to the elements of the claims and of the significant affirmative defenses.[75] If statistics will be used, the plan will demonstrate that the analysis can actually be accomplished, perhaps by way of a pilot study.[76] Presumably both sides contribute to the plan, plaintiffs in an effort to show how the class trial can be managed, and defendants hoping to demonstrate that it cannot.[77] If the class is certified, and later it appears the trial will not in fact be manageable, the court decertifies the class.[78]

The trial plan is the parties' forum for discussing the utility of the procedures noted above such as phasing, bifurcation, issue certification, and the rest,[79] together with various means to expedite (and so manage) trial, such as the use of summaries of

71. Martinez v. Joe's Crab Shack Holdings, 231 Cal. App. 4th 362, 384 (Cal. Dist. Ct. App. 2014).

72. Alberts v. Aurora Behavioral Health Care, 241 Cal. App. 4th 388, 394 (Cal. Dist. Ct. App. 2015) (noting that "the parties and the trial court focused almost exclusively on the existence of common issues, to the exclusion of the issue of manageability," and "[a]ccordingly, . . . revers[ing] and remand[ing]").

73. *E.g.*, Morgan v. Wet Seal, Inc., 210 Cal. App. 4th 1341, 1369 (Cal. Dist. Ct. App. 2012); *Ayala*, 59 Cal. 4th at 533 (quoting *Brinker*, 53 Cal. 4th at 1024); *Mies*, 234 Cal. App. 4th at 980.

74. *Hale*, 232 Cal. App. 4th at 65 n.3.

75. *Duran* spends considerable time speaking to trial plans, 59 Cal. 4th at 15–16, 31–48, and this is invoked in *Martinez*, 231 Cal. App. 4th at 384; *see also Ayala*, 59 Cal. 4th at 533 (quoting *Brinker*, 53 Cal. 4th at 1024); NEWBERG, *supra* note 3, at ch. 11 (addressing trials and trial methods in "aggregate litigation" and jury instructions in class actions).

76. *Duran*, 59 Cal. 4th at 22, 42.

77. E.g., *id.* at 56 (Liu, J., concurring).

78. *Sav-on Drug*, 34 Cal. 4th at 335.

79. *See* text accompanying note 65, *supra*.

voluminous documents, statistics,[80] stipulations, bench trials,[81] a focus (if appropriate) on aggregate and not individual damages,[82] summaries of noncontroversial depositions,[83] and so on. It is not enough to list these procedures; the trial plan must actually explain how in the specific context of the case they will solve a specific manageability problem.[84]

The parties and the trial judge may be handicapped in this, because the trial plan is proposed early in the life of the case: Certification is to be sought "*as soon as practicable*."[85] The timing of the motion is very much within the discretion of the trial court, so the judge, informed by the parties, should allow time for discovery sufficient to develop the trial plan. In the end, the parties should propose "innovative procedures"[86] and help the judge exercise his or her very broad discretion to determine whether trial is feasible, and so enable the judge to issue an

80. *Compare* Tyson Foods, Inc. v. Bouaphakeo, ___U.S.___, 136 S. Ct. 1036 (2016) (allowing use of statistics associated with a representative sample because employer had failed to maintain proper records that might otherwise have provided evidence of actual time each employee spent donning and doffing protective gear), *with* Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011) (disapproving use of sociological testimony about corporate culture and likelihood that supervisors relied on gender stereotypes because expert could not testify whether any portion of employees in putative class had been passed over for promotion because supervisors relied on gender stereotypes).

81. Karnow, *supra* note 62, at 59–63.

82. Bruno v. Super. Ct., 127 Cal. App. 3d 120, 129 n.4 (Cal. Dist. Ct. App. 1981) (explicitly approving use of aggregate calculations in lieu of "summing individual claims"); *see also Evans*, 178 Cal. App. 4th at 1430 (pointing out that "although a trial court has *discretion* to permit a class action to proceed where the damages recoverable by the class must necessarily be based on estimations, the trial court equally has discretion to deny certification when it concludes the fact and extent of each member's injury requires individualized inquiries that defeat predominance" (emphasis in original)); Bell v. Farmers Ins. Exch., 115 Cal. App. 4th 715, 758 (Cal. Dist. Ct. App. 2004) (indicating that "economist and statistician" was properly allowed to testify as expert in connection with employer's statistical evidence, but also noting that expert's testimony as to psychological phenomenon outside his area of expertise was properly excluded).

83. MANUAL FOR COMPLEX LITIGATION §§ 11.64, 12:332 (2016).

84. Dunbar v. Albertson's, Inc., 141 Cal. App. 4th 1422, 1432 (Cal. Dist. Ct. App. 2006) (pointing out that "the party seeking class certification must explain how the procedure will effectively manage the issues in question").

85. PRACTICE GUIDE—BEFORE TRIAL, *supra* note 69, at ¶ 14:98 (emphasis in original); CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 1785.3 (3d ed. 2016 update) (indicating that "[b]oth under the prior language of the rule and the current language, the general notion is that, when feasible, the certification decision should be made promptly").

86. *Linder*, 23 Cal. 4th at 440 (quoting Vasquez v. Super. Ct., 4 Cal. 3d 800, 821 (Cal. 1971)).

informed order of stated reasons—one likely to pass muster on appeal.

APPENDIX

I. THE RULE OF STATED REASONS: A GENEALOGY

These tables trace the development of the Rule of Stated Reasons. A zero after a case name means that the Rule of Stated Reasons is not discussed in the case, as "*Occidental* 1986-0," a dead end. Some such cases discuss nothing like the Rule of Stated Reasons; others discuss another rule, such as the Rule of Intendments. The significant lines of descent center on *Linder*, which focuses on *Clothesrigger*. To aid readability, only names and years appear in the tables. Full citations follow in Part III.

Table 1
The *Mies* Line

Mies 2015, which relies on
Knapp 2011, which relies on
Linder 2000, which relies on
Bartold 2000, which relies on
Clothesrigger 1987, which relies on
WITKIN, *supra* note 37
Richmond 1981-0 (dead end), which relies on
Fletcher 1979-0 (dead end)
Occidental 1986-0 (dead end)
National Solar 1991, which relies on
Clothesrigger 1987
Richmond 1981-0 (dead end)
Daniels 1993, which relies on
Clothesrigger 1987
National Solar 1991
Sav-On 2004, which relies on
Linder 2000
Lockheed 2003-0, which relies on
Linder 2000
Richmond 1981-0 (dead end)
Bufil 2008, which relies on
Linder 2000
Quacchia 2004, which relies on
Linder 2000
Corbett 2002, which relies on
Linder 2000
Bartold 2000
Washington Mutual 2001, which relies on
Linder 2000
Capital People 2007, which relies on
Linder 2000

Timeout for *Linder*, a significant ancestor case. It is directly relied on by *Knapp*, *Bufil*, *Capital People*, *Quacchia*, *Sav-On*, *Lockheed*, *Corbett*, *Washington Mutual*, and other cases that are outside the lines of descent included in this genealogy.

Table 2
The *Hataishi* Branch

Hataishi 2014, which relies on
- *Linder* 2000
- *Kaldenbach* 2009, which relies on
  - *Bartold* 2000, which relies on
    - *Clothesrigger* 1987, which relies on
      - WITKIN, *supra* note 37
      - *Richmond* 1981-0 (dead end), which relies on
        - *Fletcher* 1979-0 (dead end)
        - *Occidental* 1986-0 (dead end)
    - *National Solar* 1991, which relies on
      - *Clothesrigger* 1987
      - *Richmond* 1981-0 (dead end)
    - *Daniels* 1993, which relies on
      - *Clothesrigger* 1987
      - *National Solar* 1991
  - *Caro* 1993, which relies on
    - *Petherbridge* 1974-0, which relies on
      - *Gold Strike* 1970-0, which relies on
        - *City of New York* 1969-0 (dead end)
      - *Interpace* 1971-0 (dead end), which relies on
        - *Platt* 1964-0 (dead end)
    - *National Solar* 1991
    - *Daniels* 1993

Timeout for *Clothesrigger*, another significant ancestor. It is relied on directly by *Bartold*, *National Solar*, *Daniels*, *Caro*, and other cases. Through *Bartold*, *Clothesrigger* is the key case relied on by *Linder*.

II. TRIBUTARIES

Each recent citing case joins either the *Mies* Line or the *Hataishi* Branch or terminates in a dead end: *Jaimez* relies on *Linder* and *Ramirez* (which relies on *Kaldenbach*, *Bartold*, *Linder*, and *Caro*). *Weinstat* relies on *Bartold*, *Linder*, and *Capitol People*. *Ayala* and *Brinker* rely on *Linder*. *Dynamex* is a dead end.

Table 3
Other Recent Citations to Ancestor Cases

Citing Case	**Cited Case or Cases**
Benton 2013	*Jaimez* 2010
Jones 2013	*Linder* 2000, *Weinstat* 2010
Thompson 2013	*Linder* 2000, *Kaldenbach* 2009, *Sav-On* 2004
Williams 2013	*Weinstat* 2010, *Ramirez* 2013, *Jaimez* 2010, *Bufil* 2008
Cochran 2014	*Knapp* 2011
Hale 2014	*Thompson* 2013, *Ayala* 2014
Hendershot 2014	*Corbett* 2002, *Clothesrigger* 1987, *Brinker* 2012
Kight 2014	*Williams* 2013
Martinez 2014	*Ayala* 2014, *Benton* 2013, *Dynamex* 2014-0
Aguirre 2015	*Linder* 2000
Alberts 2015	*Bartold* 2000, *Bufil* 2008, *Jaimez* 2010
Cruz 2015	*Thompson* 2013
Tellez 2015	*Knapp* 2011, *Linder* 2000

III. RELEVANT CASES

Case Citations—Reverse Chronological Order
Mies v. Sephora U.S.A., Inc., 234 Cal. App. 4th 967, 981 (Cal. Dist. Ct. App. 2015) (citing *Knapp*)
Cruz v. Sun World Int'l, LLC, 243 Cal. App. 4th 367, 373 (Cal. Dist. Ct. App. 2015) (citing *Brinker*)
Alberts v. Aurora Behavioral Health Care, 241 Cal. App. 4th 388, 399 (Cal. Dist. Ct. App. 2015) (citing *Brinker* and *Linder*)
Tellez v. Rich Voss Trucking, Inc., 240 Cal. App. 4th 1052, 1062 (Cal. Dist. Ct. App 2015) (citing *Knapp* and *Linder*)
Aguirre v. Amscan Holdings, Inc., 234 Cal. App. 4th 1290, 1299 (Cal. Dist. Ct. App. 2015) (citing *Linder*)
Martinez v. Joe's Crab Shack Holdings, 231 Cal. App. 4th 362, 373 (Cal. Dist. Ct. App. 2014) (citing *Ayala*, *Benton*, and *Dynamex*)
Hataishi v. First Am. Home Buyers Protection Corp., 223 Cal. App. 4th 1454, 1462 (Cal. Dist. Ct. App. 2014) (citing *Linder* and *Kaldenbach*)
Hale v. Sharp Healthcare, 232 Cal. App. 4th 50, 58 (Cal. Dist. Ct. App. 2014) (citing *Ayala*)
Ayala v. Antelope Valley Newspapers, Inc., 59 Cal. 4th 522, 530 (Cal. 2014) (citing *Brinker* and *Linder*)
Cochran v. Schwan's Home Serv., Inc., 228 Cal. App. 4th 1137, 1143 (Cal. Dist. Ct. App. 2014) (citing *Knapp*)

Case Citations—Reverse Chronological Order (continued)
Dynamex Operations W., Inc. v. Super. Ct., 230 Cal. App. 4th 718, 725 (Cal. Dist. Ct. App. 2014) (citing *Ayala*), *review granted and opinion superseded sub nom.* Dynamex Operations W. v. S.C. (Lee), 341 P.3d 438 (Cal. 2015)
Kight v. CashCall, Inc., 231 Cal. App. 4th 112, 126 (Cal. Dist. Ct. App. 2014) (citing *Williams*)
Hendershot v. Ready to Roll Transp., Inc., 228 Cal. App. 4th 1213, 1221 (Cal. Dist. Ct. App. 2014) (citing *Knapp*, *Brinker*, *Corbett*, and *Clothesrigger*)
Williams v. Super. Ct., 221 Cal. App. 4th 1353, 1361 (Cal. Dist. Ct. App. 2013) (citing *Linder*, *Weinstat*, and WITKIN, *supra* note 37)
Jones v. Farmers Ins. Exch., 221 Cal. App. 4th 986, 995 (Cal. Dist. Ct. App. 2013) (citing *Sav-On* and *Fireside Bank*)
Benton v. Telecom Network Specialists, Inc., 220 Cal. App. 4th 701, 716 (Cal. Dist. Ct. App. 2013) (citing *Jaimez*)
Thompson v. Auto. Club of S. Cal., 217 Cal. App. 4th 719, 726 (Cal. Dist. Ct. App. 2013) (citing *Linder* and *Kaldenbach*)
Ramirez v. Balboa Thrift and Loan, 215 Cal. App. 4th 765, 776 (Cal. Dist. Ct. App. 2013) (citing *Kaldenbach*, *Bartold*, and *Caro*)
Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1022 (Cal. 2012) (citing *Fireside Bank* and *Hamwi*)
Knapp v. AT&T Wireless Servs., Inc., 195 Cal. App. 4th 932, 939 (Cal. Dist. Ct. App. 2011) (citing *Linder*)

Case Citations—Reverse Chronological Order (continued)
Weinstat v. Dentsply Int'l, Inc., 180 Cal. App. 4th 1213, 1223–24 (Cal. Dist. Ct. App. 2010) (citing *Bartold*, *Linder*, and *Capitol People*)
Jaimez v. DAIOHS USA, Inc., 181 Cal. App. 4th 1286, 1297–1298 (Cal. Dist. Ct. App. 2010) (citing *Linder*, *Sav-On*, *Bartold*, and *Bufil*)
Kaldenbach v. Mut. of Omaha Life Ins. Co., 178 Cal. App. 4th 830, 843 (Cal. Dist. Ct. App. 2009) (citing *Bartold* and *Caro*)
Bufil v. Dollar Fin. Group, Inc., 162 Cal. App. 4th 1193, 1204–05 (Cal. Dist. Ct. App. 2008) (citing *Linder*, *Capitol People,* and *Quacchia*)
Capitol People First v. Dep't of Dev. Servs., 155 Cal. App. 4th 676, 689 (Cal. Dist. Ct. App. 2007) (citing *Linder*)
Quacchia v. DaimlerChrysler Corp., 122 Cal. App. 4th 1442, 1447 (Cal. Dist. Ct. App. 2004) (citing *Linder*, *Washington Mutual*, and *Corbett*)
Sav-on Drug Stores, Inc. v. Super. Ct., 34 Cal. 4th 319, 326–27 (Cal. 2004) (citing *Linder* and *Lockheed*)
Lockheed Martin Corp. v. Super. Ct., 29 Cal. 4th 1096, 1106 (Cal. 2003) (citing *Linder*, *Washington Mutual*, and *Richmond*)
Corbett v. Super. Ct., 101 Cal. App. 4th 649, 658 (Cal. Dist. Ct. App. 2002) (citing *Linder* and *Bartold*)
Washington Mut. Bank, FA v. Super. Ct., 24 Cal. 4th 906, 914 (Cal. 2001) (citing *Linder*)
Linder v. Thrifty Oil Co., 23 Cal. 4th 429, 435 (Cal. 2000) (citing *Richmond*, *Caro*, and *National Solar*)

Case Citations—Reverse Chronological Order (continued)
Bartold v. Glendale Fed. Bank, 81 Cal. App. 4th 816, 828–29 (Cal. Dist. Ct. App. 2000) (citing *National Solar*, *Daniels*, and *Clothesrigger*), *superseded by legis. action*, 2001 Cal. Legis. Serv. Ch. 560
Caro v. Procter & Gamble Co., 18 Cal. App. 4th 644, 655 (Cal. Dist. Ct. App. 1993) (citing *National Solar*, *Clothesrigger*, and *Petherbridge*)
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