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## Edwards v. Arthur Andersen LLP: There is Not a "Narrow-Restraint" Exception to California's Prohibition of Noncompetition Agreements, and a General Release May Not Mean What It Says

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## CASENOTE

# *EDWARDS v. ARTHUR ANDERSEN LLP:* THERE IS NOT A “NARROW- RESTRAINT” EXCEPTION TO CALIFORNIA’S PROHIBITION OF NONCOMPETITION AGREEMENTS, AND A GENERAL RELEASE MAY NOT MEAN WHAT IT SAYS

BRADFORD P. ANDERSON\*

### INTRODUCTION

On August 7, 2008, the California Supreme Court issued a vital enunciation of State Law in the decision of *Edwards v. Arthur Andersen LLP*.<sup>1</sup> The court explicitly rejected the existence of any “narrow-restraint” exception to California’s prohibition against noncompetition agreements<sup>2</sup> under California Business and Professions Code section 16600.<sup>3</sup>

The majority also stated that a general release “does not encompass nonwaivable statutory protections, such as the employee indemnity protection of [Labor Code section] 2802,”<sup>4</sup> even if the express language

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<sup>1</sup> *Edwards v. Arthur Andersen LLP*, 189 P.3d 285 (Cal. 2008).

<sup>2</sup> *Id.* at 292-93.

<sup>3</sup> CAL. BUS. & PROF. CODE § 16600 (Westlaw 2008).

<sup>4</sup> *Edwards*, 189 P.3d at 296.

of the contract is all-encompassing.<sup>5</sup>

The *Edwards* Court's rejection of a "narrow-restraint" exception brings needed certainty to interpretation of Business and Professions Code section 16600. However, the court's construction of the general release in *Edwards* may prove to dilute the benefit of nonwaivable protections, as employees could find it too time-consuming and costly to litigate what is, and what is not, effectively and actually released.<sup>6</sup>

#### I. THERE IS NOT A NARROW-RESTRAINT EXCEPTION TO CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 16600

In 1872, the California legislature enacted the predecessor provision to today's Business and Professions Code section 16600,<sup>7</sup> which states: "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void."<sup>8</sup> This allows an employee to leave one employer for another, even if the new employer is a competitor.<sup>9</sup> The only exceptions to section 16600 are clearly expressed by statutory provisions that permit "noncompetition agreements in the sale or dissolution of corporations ([California Business and Professions Code] § 16601), partnerships (*ibid.*; [California Business and Professions Code] § 16602), and limited liability corporations ([California Business and Professions Code] § 16602.5)."<sup>10</sup>

Prior to the California Supreme Court decision in *Edwards*, the United States Court of Appeals for the Ninth Circuit had clouded the clear statutory language of section 16600 by peppering its interpretation of the statute with a "narrow-restraint" exception.<sup>11</sup> The Ninth Circuit asserted that "narrow restraints" on employment were permissible,<sup>12</sup> and

<sup>5</sup> See *id.* at 294 (text of release).

<sup>6</sup> *Id.* at 299 (Kennard, J., concurring and dissenting).

<sup>7</sup> CAL. BUS. & PROF. CODE § 16600 (Westlaw 2008).

<sup>8</sup> *Id.*

<sup>9</sup> See *Reeves v. Hanlon*, 95 P.3d 513, 517 (Cal. 2004) ("[I]t has long been the public policy of our state that '[a] former employee has the right to engage in a competitive business for himself and to enter into competition with his former employer . . . provided such competition is fairly and legally conducted'" (quoting *Continental Car-Na-Var Corp. v. Moseley*, 148 P.2d 9, 13 (Cal. 1944)).

<sup>10</sup> *Edwards*, 189 P.3d at 290-91.

<sup>11</sup> *Id.* at 292-93.

<sup>12</sup> *Id.*; see also *IBM Corp. v. Bajorek*, 191 F.3d 1033 (9th Cir.1999) (upholding agreement mandating that employee would forfeit stock options if employed by competitor within six months of leaving employment); *Campbell v. Trs. of Leland Stanford Jr. Univ.*, 817 F.2d 499, 502 (9th Cir. 1987) (stating that CAL. BUS. & PROF. CODE § 16600 is inapplicable "where one is barred from pursuing only a small or limited part of the business, trade or profession").

that section 16600 precludes only an absolute, total, and complete restriction on employment.<sup>13</sup> The Ninth Circuit's "narrow-restraint" exception is akin to a thesis that "a little bit of violating the law is okay."<sup>14</sup>

In *Edwards*, Mr. Edwards was a certified public accountant and served as a Tax Manager for the Los Angeles office of Arthur Andersen.<sup>15</sup> At the time of joining Arthur Andersen in 1997, Mr. Edwards's employment offer was made contingent upon signing a noncompetition agreement that stated as follows:<sup>16</sup>

If you leave the Firm, for eighteen months after release or resignation, you agree not to perform professional services of the type you provided for any client on which you worked during the eighteen months prior to release or resignation. This does not prohibit you from accepting employment with a client.

For twelve months after you leave the Firm, you agree not to solicit (to perform professional services of the type you provided) any client of the office(s) to which you were assigned during the eighteen months preceding release or resignation.

You agree not to solicit away from the Firm any of its professional personnel for eighteen months after release or resignation.<sup>17</sup>

The U.S. government indicted Arthur Andersen, Mr. Edwards's employer, in March 2002. Thereafter, Andersen announced that it would halt its accounting practice and sell off other practice groups, and that HSBC USA, Inc., would purchase a portion of Andersen's tax practice, including Mr. Edwards's group.<sup>18</sup>

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<sup>13</sup> See *IBM*, 191 F.3d at 1040 ("Although [Cal. Bus. & Prof. Code § 16600] does not except 'reasonable' restraints of trade, it 'only makes illegal those restraints which preclude one from engaging in a lawful profession, trade, or business.' Thus a contract is valid, despite a restriction on competition, if the promisor is 'barred from pursuing only a small or limited part of the business, trade or profession . . . .") (quoting *Boughton v. Socony Mobil Oil Co.*, 41 Cal. Rptr. 714, 716 (Ct. App. 1964)).

<sup>14</sup> Bradford P. Anderson, *Complete Harmony or Mere Detente? Shielding California Employees from Non-Competition Covenants*, 8 U.C. DAVIS BUS. L.J. 8, 27 (2007) (Nowhere does Section 16600 allow seemingly minor or narrow restraints. Nowhere does Section 16600 contain a bright line of an absolute, total, and complete preclusion from a lawful trade or profession. Instead, the language of the statute prohibits one from being "restrained from engaging in a lawful profession, trade, or business of any kind . . . .").

<sup>15</sup> *Edwards*, 189 P.3d at 288.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

When Mr. Edwards was offered employment by HSBC in July 2002, the offer was coupled with a requirement to sign a “Termination of Non-compete Agreement” (hereinafter TONC). The TONC included a general release of Andersen from “any and all” claims. The arrangement was that in exchange for the TONC, Andersen would agree to Edwards’s employment by HSBC and release him from the noncompetition agreement.<sup>19</sup>

“Andersen would not release Edwards, or any other employee, from the noncompetition agreement unless that employee signed the TONC.”<sup>20</sup> When Mr. Edwards signed the offer letter from HSBC, but did not sign the TONC,<sup>21</sup> “Andersen terminated Edwards’s employment and withheld severance benefits. HSBC withdrew its offer of employment to Edwards.”<sup>21</sup> Edwards then filed a complaint against Andersen and HSBC for intentional interference with prospective economic advantage.<sup>22</sup>

The trial court determined that the TONC did not effectuate a release of Mr. Edwards’s right to indemnity under the Labor Code, and that “the noncompetition agreement fell within a ‘narrow restraint’ exception to section 16600 . . . .”<sup>23</sup> The trial court stated that “*there were more than enough of these wealthy folks . . . in L.A. for all CPA’s to do the kind of work [Edwards] was doing. So there wasn’t any significant restriction on his ability to work*”.<sup>24</sup>

On appeal, the court of appeal refused to allow section 16600 to be whittled away by imposition of a “narrow-restraint” exception and also found that the TONC “purported to waive Edwards’s indemnification rights under the Labor Code and was therefore in violation of public

<sup>19</sup> *Id.* at 289.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

Edwards’s reasons for refusing to sign the TONC included the fact that he believed it required him to give up his right to indemnification, which he felt was particularly important in light of the government’s investigation into the company. Edwards also believed several of Andersen’s clients for whom he did work would sue Andersen and name him as a defendant, and if that were the case he wanted to ensure he retained his right to indemnification.

*Id.* at 289 n.2.

<sup>22</sup> *Id.* at 289. The complaint included Wealth and Tax Advisory Services (WTAS), an affiliate of HSBC, as a defendant, and also included a cause of action for anticompetitive business practices under the Cartwright Act, CAL. BUS. & PROF. CODE §§ 16720-16761 (Westlaw 2008). The trial court sustained a demurrer to the Cartwright Act claims, which was upheld by the court of appeal. The Cartwright Act claims were not raised in the appeal to the California Supreme Court. *Id.*

<sup>23</sup> Edwards v. Arthur Andersen LLP, 47 Cal. Rptr. 3d 788, 794 (Ct. App. 2006), *aff’d in part, rev’d in part*, 189 P.3d 285 (Cal. 2008). The commentary from the trial court was not included in the California Supreme Court opinion, and therefore is quoted from the Court of Appeal opinion.

<sup>24</sup> *Id.* at 798 (emphasis added).

policy and an independently wrongful act . . . .”<sup>25</sup>

The California Supreme Court agreed with the court of appeal on the topic of the “narrow-restraint” issue and unanimously rejected the existence of any narrow-restraint exception to section 16600. “Noncompetition agreements are invalid under section 16600 in California even if narrowly drawn, unless they fall within the applicable statutory exceptions of sections 16601, 16602, or 16602.5.”<sup>26</sup>

[W]e are of the view that California courts “have been clear in their expression that section 16600 represents a strong public policy of the state which should not be diluted by judicial fiat.” Section 16600 is unambiguous, and if the Legislature intended the statute to apply only to restraints that were unreasonable or overbroad, it could have included language to that effect. We reject Andersen’s contention that we should adopt a narrow-restraint exception to section 16600 and leave it to the Legislature, if it chooses, either to relax the statutory restrictions or adopt additional exceptions to the prohibition-against-restraint rule under section 16600.<sup>27</sup>

Although Edwards signed the noncompetition agreement at the beginning of his employment, the California Supreme Court noted that if Andersen demanded that Edwards subsequently execute the TONC as consideration for releasing the invalid terms in the noncompetition agreement, it could be deemed a wrongful act for purposes of the claim of interference with prospective economic advantage.<sup>28</sup> An employer “cannot lawfully make the signing of an employment agreement, which contains an unenforceable covenant not to compete, a condition of continued employment . . . . [A]n employer’s termination of an

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<sup>25</sup> Edwards v. Arthur Andersen LLP, 189 P.3d 285, 290 (Cal. 2008).

<sup>26</sup> *Id.* at 297. The court also stated, “We do not here address the applicability of the so-called trade secret exception to section 16600, as Edwards does not dispute that portion of his agreement or contend that the provision of the noncompetition agreement prohibiting him from recruiting Andersen’s employees violated section 16600.” *Id.* at 291 n.4.

<sup>27</sup> *Id.* at 293 (footnote and citations omitted).

<sup>28</sup> *Id.* at 294.

In order to prove a claim for intentional interference with prospective economic advantage, a plaintiff has the burden of proving five elements: (1) an economic relationship between plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) defendant’s knowledge of the relationship; (3) an intentional act by the defendant, designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant’s wrongful act, including an intentional act by the defendant that is designed to disrupt the relationship between the plaintiff and a third party.

*Id.* at 290.

employee who refuses to sign such an agreement constitutes a wrongful termination in violation of public policy.”<sup>29</sup>

In a footnote, the court stated, “We do not here address the applicability of the so-called trade secret exception to section 16600 . . . .”<sup>30</sup> There is absolutely no statutory provision that establishes a trade-secret exception to California’s prohibition on noncompetition agreements.<sup>31</sup> References to a trade-secret exception occur in situations where courts have confused an employer’s right to prevent misappropriation of proprietary information owned by the employer with a former employee’s right to be employed by a competitor.<sup>32</sup> The California Supreme Court’s careful selection of language in this footnote—“so-called trade secret exception”—is perhaps a signal that this misnomer may, and indeed should, face the same demise as the so-called “narrow-restraint” exception.

## II. A RELEASE OF ANY AND ALL CLAIMS DOES NOT INCLUDE NONWAIVABLE STATUTORY RIGHTS

The TONC contained the following language, by which Edwards would have agreed to a general release of Andersen from the following:

any and all actions, causes of action, claims, demands, debts, damages, costs, losses, penalties, attorneys’ fees, obligations, judgments, expenses, compensation or liabilities of any nature whatsoever, in law or equity, whether known or unknown, contingent or otherwise, that Employee now has, may have ever had in the past or may have in the future against any of the Released Parties by reason of any act, omission, transaction, occurrence, conduct, circumstance, condition, harm, matter, cause or thing that has occurred from the beginning of time up to and including the date hereof, including, without limitation, claims that in any way arise from or out of, are based upon or relate to

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<sup>29</sup> *Id.* at 294 (quoting *D’sa v. Playhut, Inc.*, 102 Cal. Rptr. 2d 495, 497 (Ct. App. 2000)).

<sup>30</sup> *Id.* at 291 n.4.

<sup>31</sup> Neither the statutory exceptions to Business and Professions Code section 16600 nor California’s enactment of the Uniform Trade Secrets Act (UTSA) embody “trade secret” exception provisions to override California’s statutory protection against noncompetition provisions. See generally CAL. BUS. & PROF. CODE §§ 16601, 16602, 16602.5 (Westlaw 2008); CAL. CIV. CODE §§ 3426-3426.11 (Westlaw 2008).

<sup>32</sup> See generally Bradford P. Anderson, *Complete Harmony or Mere Detente? Shielding California Employees from Non-Competition Covenants*, 8 U.C. DAVIS BUS. L.J. 8, 20-25 (2007); see also *Gordon v. Landau*, 321 P.2d 456, 459 (Cal. 1958) (“It clearly appears from the terms of the contract that it did not prevent defendant from carrying on a weekly credit business or any other business. He merely agreed not to use plaintiffs’ confidential lists to solicit customers for himself for a period of one year following termination of his employment.”) (emphasis added).

Employee's employment by, association with or compensation from [Andersen] or any of its affiliated firms, except for claims (i) arising out of [Andersen's] obligations set forth in this agreement or (ii) for any accrued and unpaid salary or other employee benefit or compensation owing to Employee as of the date hereof.<sup>33</sup>

The only exceptions from the release were "claims (i) arising out of [Andersen's] obligations set forth in this agreement or (ii) for any accrued and unpaid salary or other employee benefit or compensation owing to Employee as of the date hereof."<sup>34</sup>

The *Edwards* majority held, despite the all-encompassing and comprehensive release language, that the TONC did not serve to release nonwaivable statutory protections, such as the right to indemnity under California's Labor Code.<sup>35</sup> The majority focused on the words "any and all" as being common to most release agreements.<sup>36</sup> However, the majority did not address the remaining language in the TONC, such as the words releasing "claims that in any way arise from or out of, are based upon or relate to Employee's employment by, association with or compensation from [Andersen] or any of its affiliated firms,"<sup>37</sup> which one could easily construe to include indemnity rights that arose from the employment relationship. The majority further reasoned that "the indemnity rights in the present case are nonwaivable under Labor Code section 2802, and any waiver that attempts to waive those rights is unlawful."<sup>38</sup> The court supported its rationale by indicating that it was seeking an interpretation to make the TONC lawful and capable of being enforced.<sup>39</sup>

The court expressly preserved the right of Edwards to offer proof at trial that Andersen specifically intended for the TONC to release

<sup>33</sup> *Edwards*, 189 P.3d at 294.

<sup>34</sup> *Id.*

<sup>35</sup> See CAL. LAB. CODE § 2802 (Westlaw 2008).

<sup>36</sup> *Edwards*, 189 P.3d at 295-96.

<sup>37</sup> *Id.* at 294.

<sup>38</sup> *Id.* at 295-96; see also CAL. LAB. CODE § 2804 (Westlaw 2008) ("Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.").

<sup>39</sup> *Edwards*, 189 P.3d at 296. The court explained its approach by stating:

Where the language of a contract is clear and not absurd, it will be followed. But if the meaning is uncertain, the general rules of interpretation are to be applied. Here the meaning is in dispute and uncertain; we must therefore decide what the phrase "any and all" means. If a contract is capable of two constructions courts are bound to give such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect.

*Id.* (citations and internal quotation marks omitted).



Edwards's indemnity rights, a circumstance that would enable him to proceed with his associated claims. The court stated:

Our holding that contracts ordinarily are presumed to incorporate statutory requirements and that the TONC here was not per se unlawful, does not preclude Edwards from offering proof on remand of facts that might prove the exception to the general rule based on Andersen's conduct. We express no opinion concerning the merits of such a claim, which alleges a factual theory that is independent of the legal theory the trial court resolved and that we review in this opinion.<sup>40</sup>

In an effort to prove that Andersen was attempting to procure an unlawful release of nonwaivable claims, upon remand Mr. Edwards might elect to offer evidence related to the negotiation of the TONC, as well as Andersen's procurement of an unenforceable noncompetition agreement from Edwards when he commenced his employment.

### III. CONCURRING AND DISSENTING OPINION

Justice Kennard penned a separate concurring and dissenting opinion, joined by Justice Werdegar. Both justices agreed with the majority that the noncompetition agreement was invalid, and that there is no narrow-restraint exception to Section 16600. However, the dissenting portion eloquently identified concerns with the majority's interpretation of the release language in the TONC.

In a well-reasoned dissent, Justice Kennard pointed out that

[T]he majority fails to analyze the language of the TONC that most strongly supports Edwards's argument. The TONC did not merely require Edwards to release Andersen from "any and all" claims; it specifically required Edwards to release Andersen from "any and all . . . losses [or] . . . expenses . . . including . . . claims that . . . arise from . . . employment . . ." (Italics added.) This language closely tracks Labor Code section 2802, subdivision (a), which requires an employer to indemnify an employee "for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . ." (Italics added.) Thus, although it is true that the TONC did not use the words "indemnity claims" and did not mention Labor Code section 2802, it unambiguously required Edwards to release the precise indemnity

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<sup>40</sup> *Id.* at 297 n.7.

rights that Labor Code section 2802 grants him.<sup>41</sup>

Justice Kennard's opinion further nailed down the important policy issue of potential employee oppression by stating that:

[T]his court should not lightly dismiss the Court of Appeal's conclusion that Andersen may have wanted its employees to *think* they had released their indemnity rights, although it knew that any release of such rights was void. As the Court of Appeal explained, quoting from *Latona v. Aetna U.S. Healthcare Inc.* (1999) 82 F.Supp.2d 1089, 1096: "[D]efendant's argument, that the Agreement cannot violate public policy because . . . it is simply a nullity, ignores the realities of the marketplace. . . . Employees, having no reason to familiarize themselves with the specifics of California's employment law, will tend to assume that the contractual terms proposed by their employer . . . are legal, if draconian. . . . Thus, the *in terrorem* effect of the Agreement will tend to secure employee compliance with its illegal terms in the vast majority of cases."<sup>42</sup>

Justice Kennard's opinion is solidly reasoned.<sup>43</sup> For example, using a similar line of logic, one California Court of Appeal has articulated that "[t]he intent of the parties *as expressed in the release* is controlling."<sup>44</sup> Another California Court of Appeal, in its determination that a release encompassed all claims, reasoned that "the parties declared their intention to release each other from *all* claims . . ."<sup>45</sup> A commentator has noted that, "[g]enerally, a release should expressly designate the scope of the claims and rights that are being released and those that are being retained."<sup>46</sup> Burdening an employee with the duty of proving what

<sup>41</sup> *Id.* at 299.

<sup>42</sup> *Id.*

<sup>43</sup> See generally, *Petro-Ventures, Inc. v. Takessian*, 967 F.2d 1337, 1342 (9th Cir., 1992) ("There is no doubt that the language of the release is unambiguous in conveying the intent of the parties to release all . . . claims . . ."); *Mardan Corp. v. C.G.C. Music, Ltd.*, 804 F.2d 1454, 1463 (9th Cir. 1986) ("The . . . Release firmly evidences the parties' intent to end their various disputes . . . once and for all."); and *Edwards v. Comstock Insurance Company*, 205 Cal.App.3d 1164, 1169 (1988) (" . . . we agree with the trial court that parol evidence of the Edwards' undisclosed intention to retain the right to sue their insurer is inadmissible to contradict a release in which the Edwards unambiguously relinquish their right to pursue *all* claims, actions and causes of action . . .") (emphasis in original).

<sup>44</sup> *McCall v. Four Star Music Co.*, 59 Cal. Rptr. 2d 829, 832 (Ct. App. 1996) (emphasis added).

<sup>45</sup> *Winet v. Price*, 4 Cal. App. 4th 1159, 1162 (1992) (The trial court granted summary judgment in Price's favor, and the Court of Appeal affirmed, observing that in "no fewer than three distinct places the parties declared their intention to release each other from *all* claims . . .").

<sup>46</sup> Howard J. Weg, *Enforcing a Prebankruptcy Release of Claims and Rights*, 23 LOS ANGELES LAWYER 21 (Feb. 2001).

is, and is not, encompassed in a release of “all” claims runs counter to the underlying public policy of prohibiting releases or waivers of certain rights.<sup>47</sup>

As Justice Kennard’s dissent indicated, an employee wishing to challenge an overreaching release will be forced to engage counsel and undertake the time and expense of litigation. If the employee loses his or her challenge to the release, he or she may also be subject to paying the employer’s legal fees and costs if the underlying contract contains a “loser pays” legal-fee provision.<sup>48</sup>

#### IV. CONCLUSION

In *Edwards*, the California Supreme Court preserved important rights of competition and unmistakably made it clear that there is no such thing as a “narrow-restraint” exception to California’s prohibition of noncompetition agreements under Business and Professions Code section 16600. Under the *Erie* doctrine, which requires federal courts to accept a decision of the California Supreme Court as definitive on a matter of substantive California law, the *Edwards* decision should once and for all resolve the issue in federal court as well.<sup>49</sup>

The majority’s ruling that a contract provision releasing “any and all” claims does not encompass nonwaivable statutory protections may generate future ambiguity in the interpretation of general releases, causing both employers and employees to lack certainty about exactly what is, and what is not, being released. The majority rejected the imposition of a requirement that general releases in the employment

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<sup>47</sup> See generally *D’Sa v. Playhut, Inc.*, 85 Cal.App.4th 927 (2000) (In the context of evaluating an unenforceable noncompete covenant, the court examined important policy underpinnings. This reasoning applies to similar statutory protections, such as other rights which cannot be waived or released: “Therefore, if we were to agree to the construction defendants ask for, we would undermine the protection given to employees . . . since many, if not most, employees . . . might act according to their interpretation rather than consult an attorney to find out if their interpretation is correct.”) *Id.* at 935.

<sup>48</sup> A “loser pays” provision provides that in the event of a dispute, the loser will pay the legal fees of the winning party. This is another form of oppressive conduct to prevent employees from asserting their rights. See, e.g., *Gordon v. Landau*, 321 P.2d 456, 458 (Cal. 1958):

In the event that the Employer is successful in any suit or proceeding brought or instituted by the Employer to enforce any of the provisions of the within agreement or on account of any damages sustained by the Employer by reason of the violation by the Collector-Salesman of any of the terms and/or provisions of this Agreement to be performed by the Collector-Salesman, Collector-Salesman agrees to pay to the Employer reasonable attorneys’ fees to be fixed by the Court.

<sup>49</sup> See *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938); see generally 17A JAMES WM. MOORE ET AL., *MOORE’S FEDERAL PRACTICE* § 124.20 (3d ed. 2008).

context contain a specific list of nonwaivable statutory protections, or to include language such as “except as otherwise prohibited by law”<sup>50</sup> to clarify that nonwaivable statutory protections are outside the scope of a release. However, including language to make it clear that nonwaivable statutory protections are excluded from the scope of a release may help to clarify that it is not intended to overreach and extend to nonwaivable rights, bringing greater mutuality and certainty to the meaning of the release for all parties.

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<sup>50</sup> *Edwards*, 189 P.3d at 297.