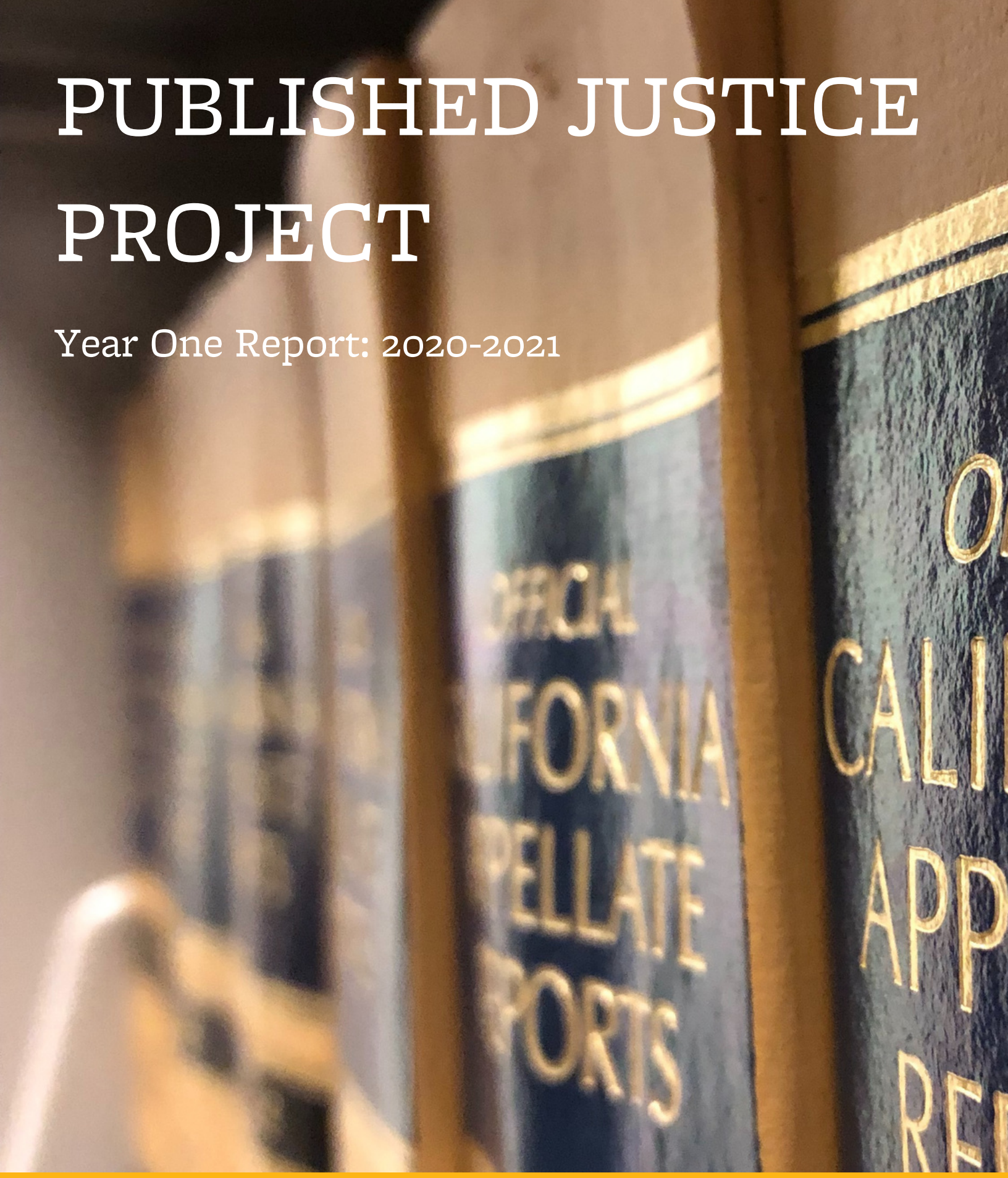
PUBLISHED JUSTICE PROJECT

Year One Report: 2020-2021



Berkeley Law | Center for Consumer Law & Economic Justice

Introduction

The Published Justice Project works to produce precedential opinions from the California Courts of Appeal that aid in the development of consumer law and economic justice. The Project is spearheaded by Center staff attorney Eliza Duggan and generously funded by Justice Catalyst. In the Project's first year, Spring 2020 - Spring 2021, the UC Berkeley Center for Consumer Law & Economic Justice successfully sought publication of eight previously unpublished cases, ranging in subject matter from tenants' rights to solar panel contracts to mandatory arbitration. These decisions, which could not be cited when they were issued, are now fully citable precedent. Each will help to shape the law.

How It Works

The California Courts of Appeal constitute the intermediate appellate courts for the largest court system in the United States. They produce dozens of opinions every day. The justices of the Courts of Appeal designate most of their decisions "not for publication"; those opinions resolve the case at hand, but they cannot be relied on in later cases. The small minority of opinions that are designated "for publication" enter the casebooks. The rest essentially disappear.

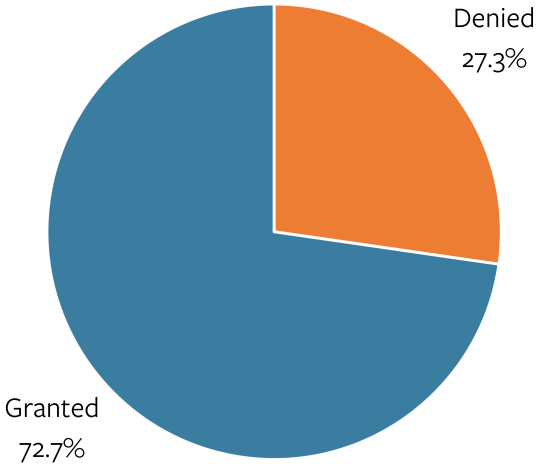
But there is a way that an opinion that starts out unpublished can become a published decision. For a short period of time after an unpublished opinion is issued, a party or an interested member of the public may petition the court to change its mind and to rule that the decision is significant enough to merit inclusion in the official case reports. The Court of Appeal may not have been aware, for example, of the potentially significant ramifications of a given decision in clarifying the law for trial courts, or in establishing a new rule of law for the benefit of the public.

That's where we come in. The Center closely monitors unpublished decisions of the Courts of Appeal in cases that, if published, can and should influence future decisions. In each such case, we draft a letter explaining to the issuing court why we believe a given opinion merits publication. And we are frequently successful – almost three quarters of the time, so far – in convincing the court that its handiwork deserves to see the light of day.

Our Success

In the first year of the program, we found eleven decisions that we believed, if published, would significantly advance protections for consumers. Of the eleven publication requests we sent, the court of appeal granted eight. That makes for a batting average of .727 — and 150 pages of consumer protection law that can be relied on by courts and litigants.

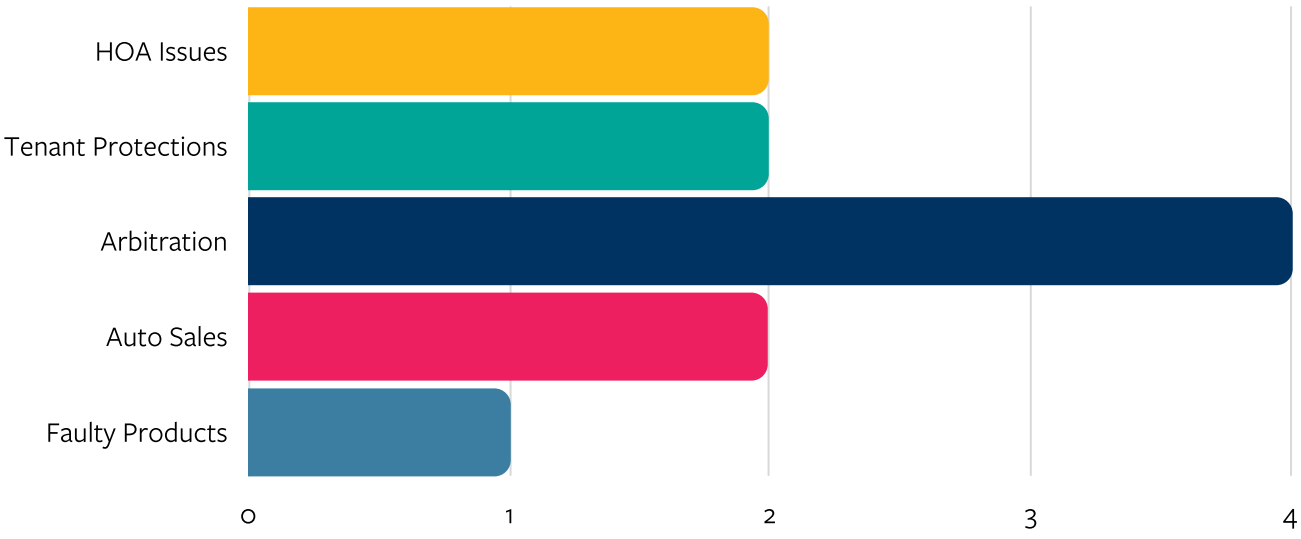
Publication Request Results



150 Pages

added to the California Reports

Topics Addressed



Case Spotlight: Cabatit v. Sunnova

These cases matter. In February 2021, the Center successfully sought publication of Cabatit v. Sunnova Energy Corp. (2021) 60 Cal.App.5th 317, a decision holding that the arbitration clause in a door-to-door solar panel contract was unconscionable and therefore unenforceable.

The case presented an all-too-common factual scenario: a salesman signed up a family for solar panels on their home, scrolling through an electronic contract without explaining the terms of the agreement. The homeowners didn't speak fluent English and had no chance to review the contract. After discovering damage to their home, they sued the company – and were met with a petition to compel arbitration under the sales contract.
The trial court, however, found the contract unconscionable and denied the petition. The court of appeal affirmed, holding the sales agreement procedurally unconscionable because it was a "take-it-or-leave-it" contract that the Cabatits had no opportunity to review or negotiate, and substantively unconscionable since it was so clearly one-sided.

The Cabatits' story is a familiar one to legal services advocates in California, whose low-income clients in recent years have experienced serious financial harm as a result of solar and other energy efficiency projects peddled by door-to-door salespeople. Whether it is physical damage to their home (as in this case), or financial hardship in trying to pay back the loan that financed the project, too many low-income consumers have encountered too many critical problems — including the loss of their homes.

The Center was joined in requesting publication by an outstanding group of legal services providers including Bet Tzedek, Community Legal Services in East Palo Alto, Elder Law and Advocacy, Housing and Economic Rights Advocates, Public Law Center, UC Irvine School of Law, and Watsonville Law Center.

After being granted, the Center's publication request was contested by the solar company, which also later filed a letter to request that the California Supreme Court depublish the case. In both instances, the courts rebuffed the defendant's efforts.

Plaintiffs' attorneys who litigate similar cases have informed the Center that courts and arbitrators are already relying on the published Cabatit opinion to protect consumers.

Case Spotlight: **Peviani v. Arbors at California Oak**

The newly published opinions change the law in significant ways. One decision published at the Center's request represents one of the very few times that tenants claiming uninhabitable conditions in their apartment complex have been certified as a class. Peviani v. Arbors at California Oak (2020) 60 Cal.App.5th 317 now provides precedent for the proposition that tenants may bring a class action to seek a remedy for filthy common spaces, uncollected garbage on the grounds, and substandard facilities.

The published opinion provides hope for tenants around California who face similar predicaments: they reside in an apartment complex that was falsely advertised as clean, safe, and luxurious, with many amenities. Too often these are empty promises. In Peviani, according to the complaint, the complex actually featured overly full dumpsters, dog feces littering the grounds, pests in the apartments, and a lack of security that left the property vulnerable to violence and drug use. The plaintiffs also alleged that their security deposits were retained in bad faith. In almost all such cases, landlords have managed to convince courts that each of the plaintiffs' complaints is sui generis, fact specific, and not susceptible to class treatment.

Not here. Peviani is, as far as we know, the first reported California opinion to grant class certification to tenants claiming breach of the implied warranty of habitability and unfair and deceptive practices. The Court of Appeal here noted that the plaintiffs' case focused on common areas – parts of the complex shared by all residents. The warranty of habitability claim, for example, was typical of and common to all members of the class because the condition of the common areas was the same for any resident of the apartment complex. The court concluded that the claims for retention of the security deposits also had commonality because the allegedly illegal deductions were made by one person.

The published opinion embodies an important principle: that claims shared by tenants in a single apartment complex can be tried together. California has been suffering a housing crisis that has only been exacerbated by the COVID-19 pandemic. At a time when tenants are particularly vulnerable, and an avalanche of evictions is awaiting the courts, class actions may now represent a viable means for helping tenants get access to justice

Successful Publication Requests

Third Laguna Hills Mutual v. Joslin (2020) 49 Cal.App.5th 366 — Fourth Dist., Div. Three

Helps protect homeowners' rights by providing important guidance on the appropriate application of "anti-SLAPP" motions brought by homeowner associations against individual homeowners. The opinion helps to push back against the inappropriate use of powerful procedural tools that were designed to help consumers and small organizations but are increasingly used to deter individuals from asserting their rights.

Coley v. Eskaton (2020) 51 Cal.App.5th 943 — Third Dist.

Establishes that homeowner association (HOA) directors can be held personally liable for their misconduct and self-dealing in managing an association, and that HOA directors owe fiduciary duties both to the association and to the individual homeowners.

Graylee v. Castro (2020) 52 Cal.App.5th 1107 — Fourth Dist., Div. Three

Holds that, in certain circumstances, even when a landlord and tenant have agreed to a settlement providing that the tenant will pay back any rent allegedly owed, that provision may be considered an unenforceable penalty.

Mejia v. DACM Inc. (2020) 54 Cal.App.5th 691 — Fourth Dist., Div. Three

Provides that the arbitration clause in a consumer credit contract used to finance a vehicle purchase may be unenforceable because it bars purchasers from pursuing representative claims in any forum. This case bolsters consumers' ability to enforce their rights — even if a business tries to make them sign those rights away.

Swain v. LaserAway Medical Group (2020) 57 Cal.App.5th 59 — Second Dist., Div. Seven

Holds that a consumer may not be forced to arbitrate her injury claims if the claim arises from the arbitration clause's procedural and substantive unconscionability. While arbitration clauses are found in the majority of contracts consumers agree to, this opinion makes clear that, if those agreements are sufficiently one-sided and unfair, they will not be upheld.

Cabatit v. Sunnova Energy Corp. (2021) 60 Cal.App.5th 317 — Third District

Holds that the arbitration clause in a door-to-door sales contract was unconscionable and therefore unenforceable. The opinion will help to protect vulnerable Californians who are targeted by door-to-door salesmen from being held to terms that diminish their rights and increase their financial fragility.

Successful Publication Requests (cont.)

Maldonado v. Fast Auto Loans (2021) 60 Cal.App.5th 710 — Fourth Dist., Div. Three

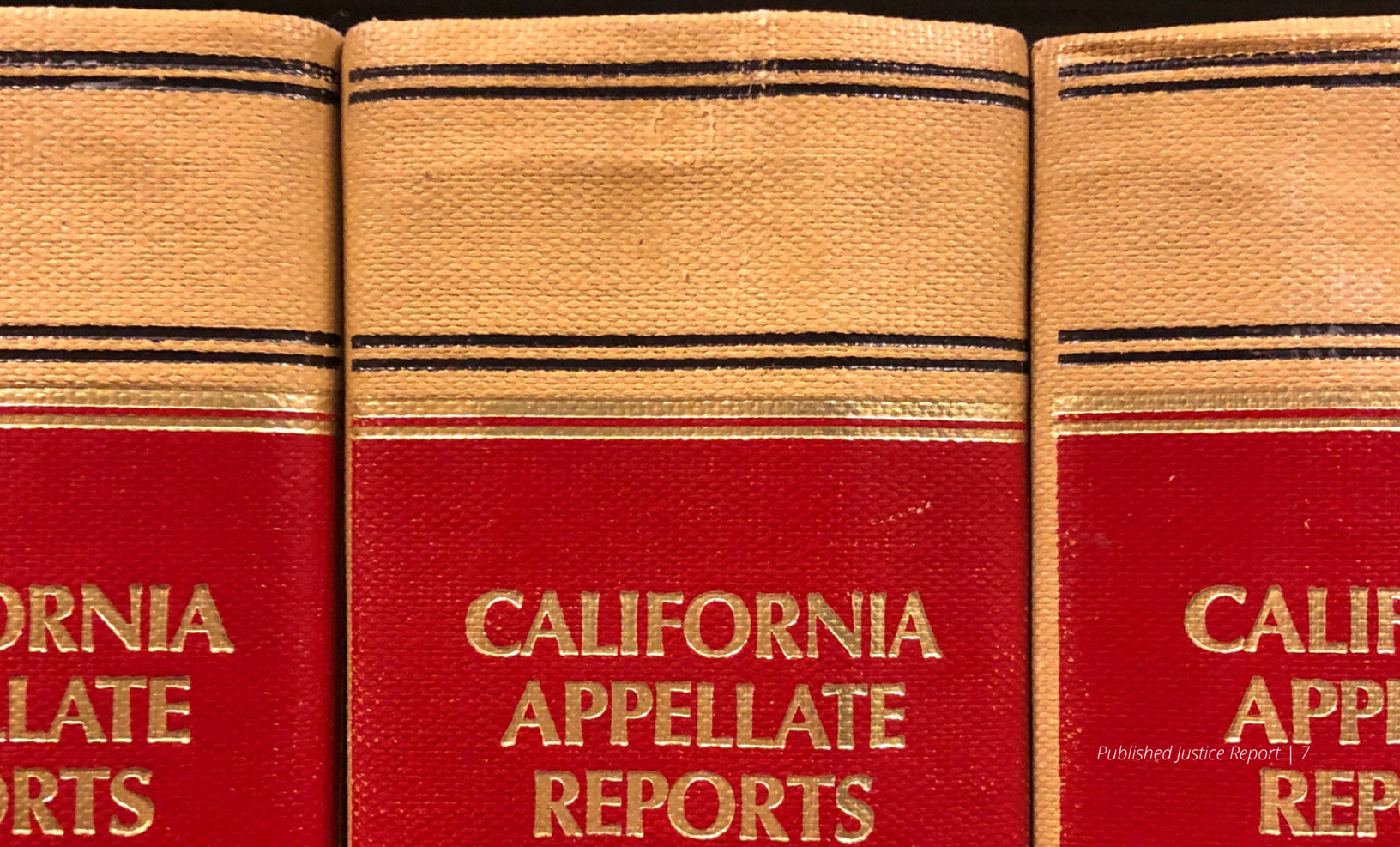
Establishes that a lender charging unconscionable interest rates may not compel arbitration of a class action that would provide broad-based protection against future harm to consumers.

Peviani v. Arbors at California Oak (2021) 62 Cal.App.5th 874 — Fourth District, Div. Two

Allows a group of tenants to bring a class action for breaches of the implied warranty of habitability, false advertising, and other causes of action32wwwe. The opinion is, we believe, among the first to apply class action principles to these types of claims, making clear that tenants of a single apartment complex experiencing the same problems in the same places can try their cases together.

Ongoing Work

Building on the success of the Project's first year, we continue to seek publication of unpublished California appellate decisions that help shape consumer law and further economic justice.



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