

By Don Willenburg

Just over one year ago, the U.S. Supreme Court announced new limits on awards of punitive damages. In *State Farm Mutual Insurance Co. v. Campbell*,¹ the Court acted to rein in “runaway” punitive awards by downplaying the roles of the defendant’s wealth and of harm to anyone other than the plaintiffs in a particular suit. In California and elsewhere, however, considerable latitude remains. California courts responded to *Campbell* in a variety of ways: by applying the limits; by extending them to new areas; and by apparently ignoring, while pretending to apply, the new limits. *Campbell* reversed a punitive damages award that was 145 times the compensatory award. The Court recommended punitive damages in an amount “at or near” the compensatory damages in the case, and no more than a “single-digit multiple” generally.² *Campbell* and its progeny are now required reading for plaintiff and defense counsel.

Campbell began as a car insurance claim. The Campbells caused an accident that left one person dead and another paralyzed. Their insurer assumed their defense but, against the advice of its investigator, refused to settle within the \$50,000 policy limits. A much larger

judgment was entered, and the insurer refused to pay the excess for 18 months. The Campbells sued the insurer for bad faith. The trial court found that the treatment the family had received was part of a nationwide, decades-long policy by State Farm to defraud insureds and courts by not paying legitimate claims. The insurer targeted this scam at those most vulnerable, such as the poor, the elderly, and the sick. The jury awarded, and the Utah Supreme Court approved, \$1 million in compensatory damages and \$145 million in punitive damages. The U.S. Supreme Court reversed and remanded to determine a “reasonable and proportionate” award pursuant to three “guideposts”: “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.”³

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California courts are struggling to apply reasonable limits on punitive damage awards in light of *State Farm v. Campbell*

Fixing the Damage



The first guidepost is reprehensibility. In particular, according to *Campbell*, when determining an award a court should consider only the reprehensible conduct that is closely related to the plaintiff's particular harm. A defendant may only be punished for its actions toward the plaintiffs in a particular case, not the defendant's actions toward other people.⁴ Although the Court agreed that this insurer's conduct "merits no praise," the Court objected to using the case "as a platform to expose, and punish, the perceived deficiencies of State Farm's operations throughout the country," which "bore no reasonable relation" to the Campbells' harm. "A defendant's dissimilar acts, independent from the acts upon which liability was premised, may not serve as the basis for punitive damages." The Court also noted: "A defendant should be punished for the conduct that harmed the plaintiff, not for being...unsavory..." This clear language should limit the applicability and the amount of punitive damages.

The Court also discounted the relevance of acts outside the state in which the action was brought. The "conduct [justifying punitives] must have a nexus to the specific harm suffered by the plaintiff. A jury must be instructed...that it may not use evidence of out-of-state conduct to punish a defendant for conduct that was lawful in the jurisdiction where it occurred."⁵

This may mean that in-state conspiracies can be fully vetted and punished, but decisions made in a remote corporate office that affect multiple states may not. Nevertheless, the Court did allow the use of evidence of nationwide acts to establish "deliberateness and culpability" of the in-state acts.⁶ It is not specified how, as a practical matter, courts are to distinguish between these uses of such evidence.

The second guidepost is proportionality between punitive damages and the compensatory award. The *Campbell* Court declined to "impose a bright-line ratio which a punitive award cannot exceed," but held that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process."⁷ The Court surveyed prior decisions, including *Pacific Mutual Life Insurance Company v. Haslip*,⁸ which allowed punitive damages four times greater than compensatory damages, and observed: "Single-digit multipliers are more likely to comport with due process, while still achieving the state's goals of deterrence and retribution, than awards with ratios in the range of 500 to 1...or, in this case, of 145 to 1."⁹ The Court did not fix the proper amount but remanded with a recommendation of "a punitive damages award at or near the amount of compensatory damages...In the context of this case, we have no doubt that there is a presumption against an award that has a 145-to-1 ratio."¹⁰

The Court announced a general principle that "courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." "Reasonable and proportionate," or variants thereof, is a phrase repeated throughout the decision. "Reasonable" lends little guidance, however, considering that the Utah Supreme Court considered the award reasonable. The Court therefore recognizes the primacy of the "proportionality" prong of the test: "In the context of this case, we have no doubt that there is a presumption against an award that has a 145-to-1 ratio."¹¹

The context in *Campbell* included several significant factors. The compensatory award in this case was substantial: The Campbells were awarded \$1 million for a year and a half of emotional distress. The harm arose from an economic problem, not from physical assault or trauma; there were no physical injuries; and State Farm paid the excess verdict before the complaint was filed, so the Campbells suffered only minor economic injuries for the 18-month period in which State Farm refused to resolve the claim against them.¹²

The Court indicated that the "compensatory damages for the injury suffered here, moreover, likely were based on a component which was duplicated in the punitive award," such as "distress," "out-

rage," and "humiliation."¹³ The Court did not find that punitive elements were actually present but held that because such elements as humiliation may be considered in a compensatory award, punitive elements were "likely" present.¹⁴ The Court justified its holding on the basis of this likelihood rather than any specific evidence as to whether in fact punitive damages in this case were counting for something already awarded in compensatory damages. Defendants in future cases may similarly seek to rely on this likelihood for justifying lower punitive awards.

This presumption puts plaintiffs in a box. If they win only a small compensatory award, then regardless of the reprehensibility or widespread nature of the defendant's acts, the punitive award must be small as well to satisfy the Court's concern about proportionality. If plaintiffs win a large award, then the Court says that it is likely that the award includes punitive elements, so the punitive award should be limited to avoid duplication.

The Supreme Court may have complicated the "proportionality" analysis when it held that the "wealth of the defendant cannot justify an otherwise unconstitutional punitive damages award." This pronouncement has been widely quoted, but it is of uncertain effect. On the one hand, the Court held that the reference to State Farm's assets "had little to do with the actual harm sustained by the Campbells."¹⁵ This will almost always be true, so this seems to say that wealth should not be considered. But the Court also recognized that deterrence and retribution are permissible purposes of punitive damage awards, and wealth is relevant to both.¹⁶ Wealth is not, however, relevant to a proportionality analysis, which simply compares the size of the compensatory and punitive damage awards.

The third guidepost in *Campbell* looks to the relation between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. The Court found that the "most relevant sanction under Utah state law for the wrong done to the Campbells appears to be a \$10,000 fine...an amount dwarfed by the \$145 million punitive damages award."¹⁷ The Court discounted the Utah Supreme Court's consideration of other possible penalties, such as the loss of business license, disgorgement of profits, and imprisonment, as speculation.¹⁸

Campbell should be comforting to some potential targets of punitive damage actions. For example, most conduct will be, or can be made to appear, far less reprehensible than the decades-long, nationwide scheme that was proven in the *Campbell* trial. So defendants can always argue that the awards in their cases should not exceed the ratio of punitive to compensatory damages that the Court recommended, which in the case of *Campbell* was "at or near" one to one. But the Court's language leaves plaintiffs to argue that each state can decide whether wealth is relevant in deciding punitive damages.

CALIFORNIA CASES

California punitive damages law has already felt the effect of *Campbell*. Several pending cases were remanded or otherwise rebriefed specifically to address *Campbell*. The first decisions to apply *Campbell* show a wide range of results.

In *Diamond Woodworks, Inc. v. Argonaut Insurance Company*,¹⁹ the first California appellate court to interpret *Campbell* held that it limited punitive awards to no more than four times compensatory damages. The court reduced a punitive award from 13 to 3.8 times compensatory damages.

In *Diamond Woodworks*, a worker cut off four fingers on his first day on the job. Argonaut insured BSC, which leased employees to Diamond under an agreement that BSC's insurance would cover worker-related claims. When this worker was injured, BSC said that his paperwork had not been completed and contested his employment status. Argonaut agreed, refused to defend Diamond, and denied

coverage to the worker for 18 months, even in the face of a contrary court decision in virtually identical circumstances, plus a substantial likelihood of damages in excess of the policy limits.²⁰ The court found that this insurer bad faith justified “significant punitive damages,” but that in light of *Campbell* the jury’s award of punitives of 13 times compensatories was unconstitutional. Because the court found the insurer’s conduct particularly reprehensible, it awarded punitives of about 3.8 times compensatories, near *Haslip*’s upper limit of 4 times compensatories.²¹

In *Romo v. Ford Motor Company*, a wrongful death and physical injury case, the U.S. Supreme Court vacated judgment and remanded for determination in light of *Campbell*.²² On remand, the California Court of Appeal reduced a \$290 million punitive award from 59 times compensatories to “approximately five times.”²³ *Romo* applied the *Campbell* limits to a case that (unlike *Campbell*) involved physical injury, and in the process overruled longstanding California punitive damages law.

Romo arose from an accident in which a sport utility vehicle rolled over. The roof could not support the weight of the car, and three of four family members inside (who were wearing seat belts) were killed. The passengers who escaped death were thrown from the car and seriously injured.²⁴ The court of appeal had no problem finding reprehensibility:

[T]he design and production of the car was the despicable conduct: we think it obvious that putting on the market a motor vehicle with a known propensity to roll over and, while giving the vehicle the appearance of sturdiness, consciously deciding not to provide adequate crush protection to properly belted passengers (in the words of a corporate memo introduced in evidence, ‘penalizing’ passengers for wearing a seatbelt) constitutes despicable conduct.”²⁵

In addition, the court observed:

[D]efendant ignored its own internal safety standards while leaving the Bronco with the appearance of incorporating a roll bar into the vehicle’s roof structure. Defendant declined to test the strength of the Bronco’s roof before placing the vehicle in production, and when it did test the roof strength [years later], defendant concluded the roof in fact failed to meet its own standards.²⁶

Ford modified later models but did not recall or warn purchasers of earlier, weak-roofed models.

Even with this evidence of reprehensibility, and the tremendous losses to the plaintiffs, *Romo* stayed within *Campbell*’s “single-digit mul-



tiplier” limit on punitive damages. In part this was because *Romo* interpreted *Campbell* to overrule longstanding California law as set forth in *Grimshaw v. Ford Motor Company*,²⁷ and *Rufo v. Simpson*.²⁸ *Grimshaw*, and traditional California punitive damages law, held that the amount of an award should be enough to deter the same conduct against consumers other than the plaintiffs. But *Romo* found that *Campbell* “disapproved of this broad view” and required that courts focus primarily on what the defendant did to the present plaintiff, rather than the wealth of the defendant or the defendant’s general incorrigibility.²⁹ The same focus also effectively overruled traditional California punitive damages law, as stated in *Rufo*, that the defendant’s wealth is one of the “three main factors” in determining the proper amount of punitive damages.³⁰

Romo did not, however, follow *Campbell*’s lead in presuming that a large

compensatory award must include punitive elements: “[T]he extreme reprehensibility of defendant’s actions and the undercompensation of plaintiffs’ individual losses [addressed in a separate portion of the opinion] outweigh the punitive element already contained to some extent in the individual compensatory awards.”³¹ *Romo* holds that “the deathly harm component of the punitive award in the present case is [not] strictly constrained by the single-digit multiplier” set forth in *Campbell*. But *Romo* nevertheless reduced the award to within that range—“about five times” the compensatory damages.³²

A third case, *Henley v. Philip Morris*,³³ raises the issue of extreme reprehensibility as a justification of a 6-to-1 ratio of punitive to compensatory damages. The California Supreme Court remanded *Henley* with express directions to reconsider the punitive damages award in light of *Campbell*.³⁴ The court of appeal reduced the pre-*Campbell* punitive award but stretched the limits used by the California decisions in *Diamond Woodworks* and *Romo*.

Henley was brought by a smoker for tobacco-related injuries. *Henley* reduced a punitive damages award from 17 times compensatory damages to 6 times compensatories. (The compensatory damages were \$1.5 million. *Henley* reversed subject to remittitur, reducing the punitive award from \$25 million to \$9 million.) *Henley*’s reduction of the punitive award is noteworthy in several respects.

First, *Henley* applied the *Campbell* single-digit limits in a case involving physical injury, not just economic injury (as in *Campbell*). Second, *Henley* went beyond the 4-to-1 ratio that *Campbell* held would be the normal limit for punitive awards but stayed within the single-digit ratio beyond which *Campbell* found awards particularly sus-



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pect. The court reduced the 17-to-1 verdict: "[A] double-digit ratio will be justified rarely, and perhaps never in a case where the plaintiff has recovered an ample award of compensatory damages."³⁵ *Henley* went beyond 4 to 1, however, because of the extreme reprehensibility of marketing tobacco to children, and because the "plaintiff's injuries were not merely economic, but physical."

Third, *Henley* declined to address the significance of the defendant's wealth as a factor in determining the size of the award, on the rationale that the court had already reduced the award. This argument, however, seems circular. Either wealth played a role in the final award or it did not.

Fourth, unlike *Campbell*, *Henley* found "no reason to believe that compensatory damages were inflated" by punitive components—even though the award was significantly larger than the one in *Campbell* that prompted the U.S. Supreme Court to presume that the compensatories included a punitive component. Fifth, *Henley* acknowledges and dismisses the argument that punitive damages should be limited because of a potential multiplicity of punitive awards for the same conduct. The court did not find this a real, rather than hypothetical, problem, and held that in any event *Campbell* limits served to restrain the likelihood and harm of such awards.³⁶ Indeed, it would be disingenuous for a defendant to argue that the award should relate solely to the conduct as to a particular plaintiff and that there is a potential for duplication.

The fourth reported California case interpreting *Campbell* seems even more distant from *Campbell*. In *Simon v. San Paolo U.S. Holding Co., Inc.*, the court concluded that "wealth is still useful in determining a punitive amount."³⁷ While paying *Campbell* lip service, *Simon* approved punitive damages of \$1.7 million when compensatory damages were \$5,000 (a ratio of 3,400 to 1 rather than 4 to 1). This departure may be why the California Supreme Court recently granted review of this decision.³⁸

In *Campbell*, the U.S. Supreme Court arguably rejected the notion that punitive damages may take into consideration the defendant's wealth, holding: "The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award."³⁹ Therefore, under *Campbell*, the "wealth of a defendant has been all but removed from the damages equation."⁴⁰ Tellingly, the first California punitive damages cases after *Campbell* did not discuss the three traditional factors of California punitive damages, which included wealth.⁴¹ Instead, they discussed the three "guideposts" set forth in *Campbell*, which do not include wealth.⁴² "Under *Campbell*, finances are no longer in play" and

should not even be subject to discovery.⁴³

But wealth is relevant to deterrence and retribution, which the Court acknowledged are permissible goals of punitive damages.⁴⁴ Unless the Constitution requires courts and juries to act on the assumption that a given award will have the same deterrent effect regardless of the defendant's wealth, then a lower multiple for less wealthy defendants should pass constitutional muster.

In *Simon*, the plaintiff was defrauded in his attempt to purchase real property. The defendant's officer misled the plaintiff pursuant to a "continuous and intricate...pattern of deceit that continued into his trial testimony," including redating documents, filing false declarations, and lying to the trial court about wrongful conduct.⁴⁵ In *Simon*, the court noted that "a defrauded purchaser of real property...may recover only his or her out-of-pocket losses, not benefit-of-the-bargain losses."⁴⁶ "[T]he use of ratios becomes 'troublesome, if not unworkable,' where the actual award comes in the form of an offset, nominal damages, or equitable relief."⁴⁷ Even *Campbell* recognizes that "ratios greater than those we have previously upheld may comport with due process where 'a particularly egregious act has resulted in only a small amount of economic damages.'"⁴⁸ *Simon* relied on "California authority holding that a punitive-damage award should not be so small 'that it can be...written off as a part of doing business.'"⁴⁹

After all this rationalization for an award greatly in excess of any single-digit award ratio established by *Campbell*, *Simon* nevertheless claimed that the punitive award was within the lower, 4-to-1 ratio. *Simon* cited pre-*Campbell* cases saying that the focus should be not on some "bottom-line amount of an award of compensatory damages but on the nature and degree of the actual harm suffered by the plaintiff."⁵⁰ *Simon* measured the actual harm as the benefit of the bargain, or the difference between the proposed purchase price and the appraised value. Here, that difference was \$400,000, and "[t]he ratio of punitive damages to that loss was just over 4 to 1."⁵¹

Thus, *Simon* presents the anomaly of a decision that espouses the lowest limits of any California decision since *Campbell* (with *Diamond Woodworks*, 4 to 1) but affirms an award with a great disparity between the actual compensatory and punitive awards—3,400 to 1. Counting as damages those amounts that were not recoverable by law seems disingenuous lip service to *Campbell* that employs an extralegal rationale to impose significant punitive damages.

The California Supreme Court may have granted review of *Simon* to address the issue of whether punitive damages should be mea-

sured against compensatory damages or against all the harm that a plaintiff may suffer, even if not legally compensable. The court may also address whether a merely economic injury, as in *Simon*, should merit any multiple of compensatory damages rather than an award "at or near" compensatory damages as suggested by *Campbell*.⁵² The court may also address whether *Simon*'s insistence that punitive damages be large enough that "they cannot simply be written off as a cost of doing business"⁵³ can be squared with *Campbell*'s holding that "wealth...cannot justify an otherwise unconstitutional punitive damages award."⁵⁴ Thus, the California Supreme Court's review of *Simon* has the potential to clarify a broad range of issues under California law after *Campbell*.

In the fifth and most recent reported California decision interpreting *Campbell*, *People ex rel. Lockyer v. R. J. Reynolds Tobacco Company*,⁵⁵ the State of California won sanctions against a tobacco company for violating a consent decree by targeting advertising to minors. The court of appeal reversed a \$20 million sanctions award because it was "improperly based [upon] (1) Reynolds's national advertising spending rather than on Reynolds's advertising spending in California and (2) Reynolds's wealth."⁵⁶ In *Lockyer*, the

people argued that the punitive award was reasonable because that amount represented "about 10 percent" of what "Reynolds spent on magazine advertising during the relevant...period, and...less than one percent of Reynolds's cash on hand."⁵⁷

The court of appeal, citing *Campbell* and other federal decisions, held that punitive damage awards based on conduct in one state cannot be based on "nationwide financial figures without violating...due process rights."⁵⁸ Because "a State cannot punish a defendant for conduct that may have been lawful where it occurred,"⁵⁹ and because states may not impose "punitive damages...for unlawful acts committed outside of the State's jurisdiction,"⁶⁰ using national advertising spending as a guideline was impermissible.

Lockyer assumes, without discussing or citing authority, that "the principles applicable to punitive damage awards are applicable to the sanctions imposed in this case."⁶¹ *Campbell* and the other federal cases that *Lockyer* cites involved torts, with both compensatory and punitive damages awarded. *Lockyer*, on the other hand, involved violation of a contractual duty, for which sanctions were the only award. Because there were no compensatory damages to which the sanction award could be compared, the limits that

Campbell imposes on punitive awards seem inapplicable. Further, enforcing a voluntarily assumed contractual duty does not implicate due process concerns at the same level as a state court making punishable what is otherwise, and in other states, lawful. There was no evidence that Reynolds's youth-targeted advertising was lawful or unlawful anywhere else or that the consent decree obligations stopped at the state line.

One could argue that *Lockyer*'s \$20 million sanctions award was not based on either nationwide spending or the defendant's wealth but that it was reasonable in light of such factors. A true evaluation of the harm, even restricted to one state, would likely result in a far higher figure than the sanctions that were originally awarded, perhaps even higher than the company's national advertising expenses. Comparing the \$20 million requested to the national figures was a matter of advocacy by counsel, not a finding of causation by the trial court. Perhaps it is true that neither sanctions nor punitive awards should be based solely on wealth, and that the mention by counsel of wealth in assessing whether an award is reasonable should not be by itself a basis for reversal.

Lockyer did not decide the ultimate question of what would be an appropriate amount

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for sanctions. To do so, it might have been forced to confront the poor analogy between punitive damages and sanctions. The California Court of Appeal remanded *Lockyer* on damages without specifying how that amount should be determined and without suggesting or setting a maximum.

OUTSIDE CALIFORNIA

California courts are not alone in stretching *Campbell*'s limits. Although *Campbell* holds that punitives "at or near" compensatories are appropriate in the ordinary case (with *Campbell* itself belonging to that category),⁶² state courts have not followed this prescrip-

tion. Other states are awarding significant punitive damages even after *Campbell*, although most of these awards use a single-digit multiplier. In fact, since *Campbell*, no reported appellate decision from any state has limited a punitive award to "at or near" the compensatories, even when it otherwise reduces an award in light of *Campbell*.⁶³

Campbell and subsequent California decisions provide fodder for both sides in an argument over the size of punitive awards in any particular case. Defendants seeking to limit the size of awards may consider how the following points may apply to their cases. First, is the conduct in the present case as repre-

hensible as it was in *Campbell*? In that case, a mammoth insurer could have settled a claim against its insured arising out of a horrific accident for a relative pittance within policy limits, ignored the advice of its own advisers and chose not to settle, and exposed its older, ill, and impecunious insureds to a judgment of over \$1 million and the threatened loss of their home. Most plaintiffs are not as vulnerable, and most defendants are not so heavy-handed or unreasonable.

Second, the compensatory award already includes some punitive elements, so the punitive award should be lower to avoid what the U.S. Supreme Court called "double counting."⁶⁴ This argument will most likely succeed in cases in which tangible damages are slight and "soft" damages, such as emotional distress or damage to reputation, are high.

Third, evidence of acts against parties other than the plaintiffs, acts outside the jurisdiction,⁶⁵ and the defendant's wealth⁶⁶ should not be considered in making an award. If evidence relating to these matters is presented at trial, a good ground for appeal may exist. A comparatively impecunious defendant may want to introduce financial condition evidence, however, to limit the punitive award to a reasonable percentage of net worth.

Fourth, the U.S. Supreme Court held that a 1-to-1 ratio was proper in *Campbell* and that the ratio should generally be no higher than 4 to 1 and almost never more than 9 to 1. The *Campbell* ruling effectively declares that the days of super-sized punitive damage awards are constitutionally over.

On the other hand, plaintiffs arguing for a large punitive award after *Campbell* are not bereft of points to emphasize. First, it may be that a defendant's conduct was more reprehensible than it was in *Campbell*, e.g., because it lasted longer or involved physical harm.⁶⁷ *Campbell* involved purely economic harm, and only 18 months of uncertainty before State Farm paid the entire underlying judgment owed by its insured. Second, despite the U.S. Supreme Court's pronouncements, the trend in post-*Campbell* decisions among lower courts is to award punitive damages significantly more than "at or near" compensatories, and in fact at multiples of four or greater.

Third, plaintiffs may also argue that their actual harm exceeds the limited amount that is recoverable as damages. Under *Simon*, the higher amount may be used to compute an acceptable punitive award.⁶⁸

Fourth, plaintiffs may argue that the amount of any punitive award should be enough to serve the twin purposes of deterrence and retribution. Evidence of wealth is necessary to determine what amount of damages might be sufficient to deter and punish. While a defendant's wealth may not jus-

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tify an award of 100 times compensatory damages or more, wealth may still mean the difference between awarding punitives at, for example, 2 or 9 times compensatories.

Fifth, if the compensatory damages are small or pro forma, the *Campbell* limits should simply not apply. If they do, however, it is more likely that the award does not include any punitive elements, so a higher multiple of compensatories may therefore be appropriate.⁶⁹

The U.S. Supreme Court has announced significant new limits on punitive damage awards. The post-*Campbell* decisions have explored ways to apply, or perhaps evade, these limits. *Campbell* may have ended punitive damage awards dozens or hundreds of times greater than the actual damages suffered by plaintiffs. But recent decisions suggest that "reasonable and proportionate" punitive awards may still be a significant multiple of compensatory damages. ■

¹ State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S. Ct. 1513 (2003).

² *Id.* at 1524.

³ *Id.* at 1520 (citing BMW of North Am., Inc. v. Gore, 517 U.S. 560, 575 (1996) (reversing \$2 million punitive award accompanying a \$4,000 compensatory verdict)).

⁴ *Id.* at 1524.

⁵ *Id.* at 1521-24.

⁶ *Id.* at 1522.

⁷ *Id.* at 1524.

⁸ Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1 (1991).

⁹ *Campbell*, 123 S. Ct. at 1524.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 1524-25.

¹⁴ *Id.* at 1525 (citing RESTATEMENT (SECOND) OF TORTS §908 cmt. c.).

¹⁵ *Id.* at 1525.

¹⁶ *Id.* at 1519.

¹⁷ *Id.* at 1526.

¹⁸ *Id.*

¹⁹ Diamond Woodworks, Inc. v. Argonaut Ins. Co., 109 Cal. App. 4th 1020 (2003).

²⁰ *Id.* at 1054.

²¹ Nonparties unsuccessfully petitioned the California Supreme Court to depublish this opinion. Their lack of success indicates that the court does not find the result outrageous, but neither does it indicate that the court supports the decision.

²² Ford Motor Co. v. Romo, 123 S. Ct. 2072 (2003); see also Ford Motor Co. v. Smith, 123 S. Ct. 2072 (2003) (vacating and remanding similar case with a 5-to-1 ratio).

²³ Romo v. Ford Motor Co., 113 Cal. App. 4th 738, 763 (2003).

²⁴ Romo v. Ford Motor Co., 99 Cal. App. 4th 1115, 1124 (2002).

²⁵ *Id.* at 1141.

²⁶ *Id.* at 1148.

²⁷ Grimshaw v. Ford Motor Co., 119 Cal. App. 3d 757 (1981).

²⁸ Rufo v. Simpson, 86 Cal. App. 4th 573, 623 (2001).

²⁹ Romo v. Ford Motor Co., 113 Cal. App. 4th 738, 749 (2003).

³⁰ Rufo, 86 Cal. App. 4th at 623.

³¹ Romo, 113 Cal. App. 4th at 763; cf. State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S. Ct. 1513, 1524-25 (2003).

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³² Romo, 113 Cal. App. 4th at 763.
³³ Henley v. Philip Morris, 114 Cal. App. 4th 1429 (2004).
³⁴ See Henley v. Philip Morris, 112 Cal. App. 4th 198 (2003), *remanded to* 114 Cal. App. 4th 1429 (2004). The court of appeal followed the California Supreme Court's directions on remand, whereupon the California Supreme Court granted review and the opinion was depublished. See Henley v. Philip Morris, 81 P. 3d 223 (2003). The court required only a technical correction, however, and did not revisit the substance of the court of appeal's opinion. The court of appeal corrected the matter and "reiterate[d] our previous decision." Henley, 114 Cal. App. 4th at 1437.
³⁵ Henley, 114 Cal. App. 4th at 1480.
³⁶ *Id.* at 1477-81.
³⁷ Simon v. San Paolo U.S. Holding Co., Inc., 2003 WL 22847318, at *26 n.12 (2003).
³⁸ *Id.*, *rev. granted*, 2004 CAL LEXIS 2548 (Mar. 24, 2004).
³⁹ State Farm Mut. Auto. Ins. Co. v. Campbell, 123 S. Ct. 1513, 1525 (2003).
⁴⁰ Smith, *Generous Punitives Are Trumped*, CALIFORNIA LAWYER, Apr. 2003, at 37, 39 [hereinafter Smith].
⁴¹ See, e.g., Rufo v. Simpson, 86 Cal. App. 4th 573, 623 (2001).
⁴² Diamond Woodworks, Inc. v. Argonaut Ins. Co., 109 Cal. App. 4th 1020, 1057 (2003) (reducing punitives from 13 to 3.8 times compensatories); Henley v. Philip Morris, 114 Cal. App. 4th 1429 (2004).
⁴³ Smith, *supra* note 40, at 39.
⁴⁴ Campbell, 123 S. Ct. at 1519.
⁴⁵ Simon v. San Paolo U.S. Holding Co., Inc., 2003 WL 22847318, at *19 (2003), *rev. granted*, 2004 CAL LEXIS 2548 (Mar. 24, 2004).
⁴⁶ Simon, 2003 WL 22847318, at *24 (citing CIV. CODE §3343).

⁴⁷ *Id.* at *25 (citation omitted).
⁴⁸ *Id.* (quoting Campbell, 123 S. Ct. at 1524; quoting BMW of North Am., Inc. v. Gore, 517 U.S. 560, 582 (1996)).
⁴⁹ *Id.* at *26 (citations omitted).
⁵⁰ *Id.* at *27 (citations omitted).
⁵¹ *Id.* at *28.
⁵² Campbell, 123 S. Ct. at 1524.
⁵³ Simon, 2003 WL 22847318, at *26.
⁵⁴ Campbell, 123 S. Ct. at 1525.
⁵⁵ People ex rel. Lockyer v. R. J. Reynolds Tobacco Co., 2004 Cal. App. LEXIS 354 (4th Dist. 2004).
⁵⁶ *Id.* at *44.
⁵⁷ *Id.*
⁵⁸ *Id.* at *52.
⁵⁹ *Id.* at *53 (quoting Campbell, 123 S. Ct. at 1522).
⁶⁰ *Id.* at *53.
⁶¹ *Id.* at *54.
⁶² Campbell, 123 S. Ct. at 1524.
⁶³ See, e.g., Hollock v. Erie Ins. Exch., ___ A.2d ___ (Pa. Super. 2004), 2004 WL 100468, 2004 Pa. Super. 13 (2004) (affirming punitive damages of slightly more than 10 times compensatory damages); Daka, Inc. v. McCrae, 839 A.2d 682 (D.C. App. 2003) (remanded punitive award 26 times compensatories with the suggestion that punitives not exceed five times compensatories in employment harassment case); Bocci v. Key Pharm., Inc., 190 Or. App. 407, 79 P. 3d 908 (Or. App. 2003) (approving a 7-to-1 award); Waddill v. Anchor Hocking, Inc., 190 Or. App. 172, 78 P. 3d 570 (Or. App. 2003) (reduced a 10-to-1 award to 4 to 1); Votto v. American Car Rental, Inc., 2003 WL 21716003, 35 Conn. L. Rept. 17 (Conn. Super. 2003) (allowing almost 6-to-1 award in car rental dispute); Hudson v. Cook, 82 Ark. App. 246, 105 S.W. 3d 821 (Ark. App. 2003) (enforced 7-to-1 award; overturned remittitur to smaller

amount); Advocat, Inc. v. Sauer, 353 Ark. 29, 111 S.W. 3d 346 (Ark. 2003) (allows 4-to-1 ratio for nursing home elder abuse); see also Roth v. Farner-Bocken Co., 667 N.W. 2d 651 (S.D. 2003) (reversed a 20-to-1 punitive award and remanded for retrial without specifying appropriate ratio); Roberie v. Vonbokern, 2003 WL 22976126 (Ky. App. 2003) (remanded award because jury not instructed on the three Campbell-Gore guideposts). Unpublished California decisions have also reduced punitive awards but nevertheless awarded amounts exceeding "at or near" compensatories. See, e.g., Taylor Woodrow Homes, Inc. v. Acceptance Ins. Co., 2003 WL 21224088, 2003 Cal. App. Unpub. LEXIS 5208 (2003) (reducing award from 16 times compensatories to almost 4 times); Johnson v. Ford Motor Co., 2003 WL 22794332, 2003 Cal. App. Unpub. LEXIS 11038 (2003) (on \$17,000 compensatory damages, reduced punitive award from \$10 million to \$53,000, or about three times compensatories), *rev. granted*, 2004 CAL LEXIS 2549 (Mar. 24, 2004). *But see* Laursen v. Pope, 2003 WL 22766141, 2003 Cal. App. Unpub. LEXIS 11064 (2003) (reducing punitive award already less than double compensatories when disproportionate to defendant's net worth); Brandstetter v. Holiday Retreats, Inc., 2003 WL 22391270, 2003 Cal. App. Unpub. LEXIS 9863 (2003) (considering wealth and affirming punitive award less than compensatories).
⁶⁴ Campbell, 123 S. Ct. at 1524-25.
⁶⁵ *Id.* at 1522-24.
⁶⁶ Lockyer, 2004 Cal. App. LEXIS 354, at **52-54.
⁶⁷ See, e.g., Romo v. Ford Motor Co., 113 Cal. App. 4th 738 (2003).
⁶⁸ Simon v. San Paolo U.S. Holding Co., Inc., 2003 WL 22847318 (2003).
⁶⁹ See, e.g., Henley v. Philip Morris, 2004 WL 79075, at **32-33 (2004).

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