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## Protected but Prejudiced: Redefining a Corporation's Ability to Pursue or Defend Litigation Without Counsel

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# PROTECTED BUT PREJUDICED: REDEFINING A CORPORATION'S ABILITY TO PURSUE OR DEFEND LITIGATION WITHOUT COUNSEL

*Nazgole Hashemi\**

*This Article touches on a major issue faced in litigation by corporations that are owned and operated by a single individual; specifically, the well-established rule that a corporation must be represented by a licensed attorney in litigation, subject to some exceptions. As a business litigation attorney, the author represents corporations and businesses in various types of disputes and has seen first-hand the prejudice that results to a small, single-owner corporation or limited liability company as a result of the well-established rule. While there may be reasonable and valid justifications for the rule for large or multi-owner companies, these justifications do not carry the same weight in the context of single-person entities. Therefore, this Article advocates for an additional exception to the rule for a single-person corporation, so that the owner does not have to choose between shielding corporate income and assets from liability and being able to represent the business in a court of record.*

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## I. INTRODUCTION: THE BAN ON CORPORATE SELF-REPRESENTATION

Jane Bennet is the sole shareholder, director, and officer of a for-profit corporation that is registered and incorporated in the State of California. She established the entity to safeguard her personal income and assets from corporate liabilities. Jane knows that she has the protection of the corporate shield, but she is about to learn that she has also been prejudiced by it. A disgruntled third-party vendor claiming, albeit without legitimate basis, breach of contract by the corporation sues it to recover damages. The corporation's financial circumstance is grave, routinely underperforming in the last year or so following a decline in its industry. After the corporation is served with the lawsuit, its response is due within thirty days, but it does not have sufficient capital to retain an attorney to file pleadings on its behalf or to defend it in the litigation. However, without representation by a licensed attorney, the corporation cannot file a response to the lawsuit and indeed the court will strike any pleadings filed by a non-attorney following notice to the corporation of the ban on self-representation and an opportunity to retain counsel.<sup>1</sup>

Although the corporation is running in the best interest of Jane and only Jane, as the sole shareholder,<sup>2</sup> she is prohibited from representing the corporation in the litigation and from filing pleadings on behalf of the corporation. This would be true even if the amount in controversy were low enough to place the case in limited jurisdiction court, meaning the amount in controversy does not exceed \$25,000.00.<sup>3</sup> Jane has two options: spend her own personal funds to hire an attorney to represent the corporation, an option that she cannot afford and does not desire, or enable the plaintiff to initiate default proceedings, an option that is unfair given the corporation's good faith and meritorious defense to the vendor's claim. This result stems from California's well-established rule that a corporation must be represented by a licensed attorney in litigation, subject to some exceptions, none of which apply to this scenario.<sup>4</sup>

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1. *CLD Constr., Inc. v. City of San Ramon*, 16 Cal. Rptr. 3d 555, 561 (Ct. App. 2004); *Gamet v. Blanchard*, 111 Cal. Rptr. 2d 439, 444 n.5 (Ct. App. 2001).

2. “[C]orporate directors owe a fiduciary duty to the corporation and its shareholders and . . . must serve ‘in good faith, in a manner such director believes to be in the best interests of the corporation and its shareholders.’” *Berg & Berg Enters., LLC v. Boyle*, 100 Cal. Rptr. 3d 875, 890 (Ct. App. 2009) (quoting CAL. CORP. CODE § 309 (West 2014)).

3. CAL. CIV. PROC. CODE § 85(a) (2022).

4. *Merco Constr. Eng'rs, Inc. v. Mun. Ct.*, 581 P.2d 636, 638–40 (Cal. 1978).

Section 28043 of the California Corporations Code defines the term “person” as “any natural person, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, limited liability company, government, agency of any government, or any other organization.”<sup>5</sup> Under the statute, a corporate entity is considered to be a “person” and thus has all the rights, responsibilities, and remedies of a person under the law, except as otherwise prohibited by the legislature or judiciary.<sup>6</sup> One such limitation is the ability for the corporation to be represented in litigation by an unlicensed attorney, whether an agent, shareholder, officer, director, or employee of the corporation. That a corporation must be represented by a licensed attorney in litigation is a common law rule that dates all the way back to 1824, when the United States Supreme Court stated in the case of *Osborn v. Bank of the United States*<sup>7</sup> that “[a] corporation . . . can appear only by attorney.”<sup>8</sup> This requirement is unlike the rights of a “natural person,” who “may represent himself and present his own case to the court although he is not a licensed attorney.”<sup>9</sup> While a corporation is a “person,” it is not a “natural person.”<sup>10</sup>

In California, that a corporation must be represented by counsel in civil actions has been established through case law. The California Supreme Court discusses this rule in great detail in the case of *Merco Construction Engineers v. Municipal Court*.<sup>11</sup> There, the petitioner, Merco Construction Engineers, Inc., appealed from a judgment denying its petition for writ of mandate directing the respondent, Long Beach Municipal Court, to allow Merco to appear in a civil action through a corporate officer who was not an attorney.<sup>12</sup> In affirming the trial court’s judgment, the California Supreme Court gave various justifications for why a corporation cannot be represented by a non-attorney in litigation, including maintaining the distinction between a corporation and its shareholders, preventing negative effects on the legal profession, and creating an unfair advantage for corporations in the courtroom.<sup>13</sup>

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5. CAL. CORP. CODE § 28043 (West 2006).

6. *Id.*

7. 22 U.S. (9 Wheat.) 738 (1824).

8. *Id.* at 830.

9. *Paradise v. Nowlin*, 195 P.2d 867, 867 (Cal. Ct. App. 1948).

10. *Id.*

11. 581 P.2d 636 (Cal. 1978).

12. *Id.* at 637.

13. *Id.* at 640–41.

California's rule for corporations is not unique to the state, but rather appears to be the rule throughout the nation, both statewide and federally, for civil cases.<sup>14</sup> Unforgivingly, even "financial hardship is no excuse for permitting a nonlawyer to represent a corporation."<sup>15</sup> Indeed, it has been routinely held, both at the state and federal level, that the rule does not "violate constitutional rights as a denial of equal protection or a denial of due process."<sup>16</sup> "In other words, there is nothing unfair, illegal, or unconstitutional in requiring corporations to be represented by licensed attorneys in court proceedings."<sup>17</sup> While

[a] corporation may try to avoid the rule requiring appearance by an attorney by assigning the claim that is the basis of the complaint to an individual, usually the sole shareholder of the corporation[,] . . . this practice has been rejected by courts as a device that is no more than a procedural subterfuge to avoid court rules prohibiting corporations from appearing without legal representation.<sup>18</sup>

This Article explores California's well-established rule that a corporation must be represented by an attorney in litigation. Part II lays out the federal counterparts for the rule in the California district courts and Ninth Circuit, and prohibitions on circumventing the rule through assignment of corporate rights to a natural person. Part III describes the judiciary's rationales for the rule, including preventing the unauthorized practice of law by corporate representatives, preserving the integrity of the legal profession, preserving efficiency in the administration of justice, and maintaining the distinction between the entity and its shareholders, directors, and officers.<sup>19</sup> Part IV details exceptions to the rule for small claims cases, administrative proceedings, *de novo* appeals from administrative decisions, and judgment debtors examinations. Part V explores the effect of a non-attorney filing paperwork on behalf of the corporation, and Part VI explores an attorney's ability to withdraw in the midst of proceedings without offending the rule. Part VII advocates for an additional exception to the rule for corporations that are owned and operated by a single individual, i.e., one

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14. 9A WILLIAM MEADE FLETCHER ET AL., FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 4463 (perm. ed., rev. vol. 2008). "Corporation to make appearance through attorney." *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *CLD Constr., Inc. v. City of San Ramon*, 16 Cal. Rptr. 3d 555, 557–58 (Ct. App. 2004).

individual serves as the sole shareholder, director, and officer of the corporation, such as Jane Bennet's corporation.

Ultimately, in an effort to prevent undue prejudice to a natural person who sets up an entity, which in turn shields him or her from personal liability, this Article proposes to limit the well-established rule for single-individual for-profit corporations. The owners of these types of corporations should have the ability to represent the corporation in litigation, just as natural persons have the right to appear in *propria persona*. While smaller corporations, such as those comprising two or three shareholders who run the business, may also benefit from limiting the well-established rule, this Article does not advocate for an additional exception in those cases because the corporate ownership and structure is not analogous to a single, natural person, unlike a corporation that is owned and operated by a single shareholder. Because Jane's corporation need act in the best interest of Jane and only Jane, it follows that Jane should have the right to represent the corporation in litigation, just as she would have the right to represent herself had she operated the business as a sole proprietorship.

## II. SIMILAR RULES IN CALIFORNIA DISTRICT COURTS AND THE NINTH CIRCUIT

The well-established rule that a corporation must be represented by a licensed attorney applies not only to cases filed in California state courts, but also to cases filed in federal courts in the State of California. While the state's rule appears in case law, the United States District Courts have established the requirement via their Local Rules per the authority granted to them by Federal Rules of Civil Procedure, Rule 83, which allows a majority of the district judges to adopt and amend rules that are consistent with the federal statutes and rules.<sup>20</sup> Moreover, consistent with California, the Ninth Circuit's rule appears in case law.

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20. Local Rule 3-9(b) for the Northern District of California states, "A corporation, unincorporated association, partnership or other such entity may appear only through a member of the bar of this Court." N.D. Cal. R. 3-9(b). Local Rule 183 of the Eastern District states, "A corporation or other entity may appear only by an attorney." E.D. Cal. R. 183(a). Local Rule 83-2.2.2 of the Central District states, "No organization or entity of any other kind (including corporations, limited liability corporations, partnerships, limited liability partnerships, unincorporated associations, trusts) may appear in any action or proceeding unless represented by an attorney permitted to practice before this Court . . ." C.D. Cal. R. 83-2.2.2. Local Rule 83.3(j) of the Southern District states, "All other parties, including corporations, partnerships and other legal entities, may appear in court only through an attorney permitted to practice . . ." S.D. Cal. R. 83.3(j).

In the Ninth Circuit case *Highlander, Inc. v. Rothman (In re Highley)*,<sup>21</sup> the appellant sought to have an involuntary adjudication of bankruptcy of a corporation set aside on grounds that the bankruptcy court lacked jurisdiction over the proceedings.<sup>22</sup> The corporation and attorneys filed an application to appoint the attorneys as counsel for the corporation, but this was subsequently denied due to conflict of interest.<sup>23</sup> The corporation and attorneys then tried to attack the order denying the application, but failed to do so in a timely manner.<sup>24</sup> Therefore, that order became final and could not be challenged.<sup>25</sup> The Ninth Circuit indicated that because the law firm did not represent the corporation or otherwise have an independent interest in the bankruptcy proceedings that would render it an “aggrieved person” with standing, the corporation was not properly before the court because it was not being represented by counsel.<sup>26</sup> The Ninth Circuit dismissed the appeals, affirming the adjudication of the bankruptcy.<sup>27</sup> In reaching its decision that “[a] corporation can appear in a court proceeding only through an attorney at law,” the Ninth Circuit cited to multiple cases for the rule, all of which were from different circuits.<sup>28</sup> Specifically, the rule was previously found in the Second, Third, Sixth, and Tenth Circuits, dating back to 1966.<sup>29</sup>

Moreover, while both the district courts and Ninth Circuits have made it clear that only “individuals” or “natural persons” may represent themselves *pro se*,<sup>30</sup> a corporation has no right to assign its claims to an individual to circumvent the rule.<sup>31</sup> In *Global eBusiness Services, Inc. v. Interactive Brokers LLC*,<sup>32</sup> Syed Nazim Ali appealed *pro se* “from the district court’s judgment denying a petition to vacate an

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21. 459 F.2d 554 (9th Cir. 1972).

22. *Id.* at 554–55.

23. *Id.* at 555.

24. *Id.*

25. *Id.*

26. *Id.* at 555–56.

27. *Id.* at 556.

28. *Id.* at 555.

29. *Id.* (first citing *United States v. 9.19 Acres of Land*, 416 F.2d 1244, 1245 (6th Cir. 1969); then citing *Shapiro, Bernstein & Co. v. Cont’l Rec. Co.*, 386 F.2d 426, 427 (2d Cir. 1967); then citing *Simbraw, Inc. v. United States*, 367 F.2d 373 (3d Cir. 1966); and then citing *DeVilliers v. Atlas Corp.*, 360 F.2d 292, 294 (10th Cir. 1966)).

30. N.D. Cal. Civ. R. 3-9(b); E.D. Cal. R. 183(s); C.D. Cal. R. 83-2.2.2.; S.D. Cal. Civ. R. 83.3(j).

31. *See Global eBusiness Servs., Inc. v. Interactive Brokers LLC*, 741 F. App’x 450, 451 (9th Cir. 2018).

32. *Id.*



arbitration award entered against Global eBusiness Services, Inc., and granting Interactive Brokers LLC's motion to confirm the award."<sup>33</sup> After warning new counsel for Global eBusiness Services, also an appellant, to file a notice of appearance within fourteen days, the Ninth Circuit dismissed the appeal for failure to prosecute as to Global eBusiness Services because no new counsel had filed a notice of appearance.<sup>34</sup> The Ninth Circuit had warned in its order that failure to comply would result in the automatic dismissal of the appeal by the Clerk of the Court.<sup>35</sup> After dismissing the appeal, the court did not consider the individual appellant Ali's contentions on behalf of Global eBusiness Services, because Ali, who was appearing *pro se*, could not represent a corporation.<sup>36</sup>

### III. THE JUDICIARY'S AUTHORITY OVER AND RATIONALE BEHIND THE CALIFORNIA RULE

In *Merco Construction Engineers v. Municipal Court*, the Supreme Court of California made it abundantly clear that the determination as to who is qualified to practice law is an inherent power of the judiciary, whose rules and requirements as to this matter take precedence over any contradicting statute.<sup>37</sup> There, the court struck down section 90 of the California Code of Civil Procedure, which provided in relevant part: "Where a corporation is a party in the municipal court it may appear through a director, an officer, or an employee, whether or not such person is an attorney at law."<sup>38</sup> Merco had relied on this statute in arguing that it should be allowed to appear in the action via a corporate officer who was not an attorney.<sup>39</sup> The California Supreme Court held that the trial court did not err in denying Merco's petition for writ of mandate because section 90 violated the California Constitution's separation of powers clause and therefore was of no force and effect.<sup>40</sup> The court reasoned that the separation of powers clause of the California Constitution precluded the legislature from "designating those persons who are authorized to practice law."<sup>41</sup> The court stated,

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33. *Id.* at 450.

34. *Id.* at 450–51.

35. *Id.* at 451.

36. *Id.* (citing *C.E. Pope Equity Tr. v. United States*, 818 F.2d 696, 697 (9th Cir. 1987)).

37. *Merco Constr. Eng'rs, Inc. v. Mun. Ct.*, 581 P.2d 636, 637–38 (Cal. 1978).

38. *Id.* at 637 n.2.

39. *Id.* at 637.

40. *Id.*

41. *Id.*

“[t]he exclusive right to determine who is qualified to practice law is claimed to be an inherent power of the judiciary.”<sup>42</sup> While the legislature may regulate admission to the bar, the courts have authority to require more than legislative regulations demand.<sup>43</sup> Furthermore, such legislative regulations “are valid only to the extent they do not conflict with rules for admission adopted or approved by the judiciary.”<sup>44</sup>

The court rejected Merco’s argument that the legislature, by enacting section 90, expanded the legal “personhood” of a corporation to include the right to appear in court in *propria persona*.<sup>45</sup> Citing to various cases, the court stated that, prior to enactment of section 90, it was well established that a corporation could not appear in court in *propria persona*.<sup>46</sup> The basis for this rule was that a “corporation is a distinct legal entity separate from its stockholders and from its officers.”<sup>47</sup> “If [the court] were to hold that a corporation represents itself when appearing through a ‘director, an officer, or an employee’ (Code Civ. Proc., § 90), then it would necessarily follow that the corporate ‘self’ is comprised of directors, officers, or employees . . . .”<sup>48</sup> This was “contrary to the authorities” noted by the court.<sup>49</sup>

Indeed, this distinction between a corporation and its shareholders, directors, and officers was also mentioned by the First Circuit in *In re Victor Publishers, Inc.*<sup>50</sup> There, the appellant, Pace, a non-lawyer, moved to appear on behalf of Victor Publishers, Inc., a debtor in Chapter XI proceedings in bankruptcy court.<sup>51</sup> The bankruptcy judge denied the motion on the grounds that Pace was a non-lawyer, who therefore could not represent the corporation.<sup>52</sup> Pace appealed and the district court dismissed the appeal for want of prosecution.<sup>53</sup> In affirming the dismissal, the First Circuit stated that the rule is rooted in both

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42. *Id.* at 637–38.

43. *Id.* at 638.

44. *Id.*

45. *Id.* at 639.

46. *Id.* at 638–39 (first citing *Vann v. Shilleh*, 126 Cal. Rptr. 401, 406 (Ct. App. 1975); then citing *Roddiss v. Strong*, 58 Cal. Rptr. 530 (Ct. App. 1967); then citing *Himmel v. City Council*, 336 P.2d 996 (Cal. Ct. App. 1959); and then citing *Paradise v. Nowlin*, 195 P.2d 867 (Cal. Ct. App. 1948)).

47. *Id.* at 639 (quoting *Maxwell Cafe, Inc. v. Dep’t of Alcoholic Beverage Control*, 298 P.2d 64, 68 (Cal. Ct. App. 1956)).

48. *Id.*

49. *Id.*

50. 545 F.2d 285 (1st Cir. 1976).

51. *Id.* at 286.

52. *Id.*

53. *Id.*

common law and the practical consideration that “[s]ince a corporation can appear only through its agents, they must be acceptable to the court.”<sup>54</sup> The First Circuit noted that “attorneys at law, who have been admitted to practice, are officers of the court and subject to its control.”<sup>55</sup>

Accordingly, while the *Merco* court noted the exception that corporations are permitted to be represented by non-attorneys in small claims court,<sup>56</sup> as discussed in detail below, it declined to expand such permission to other settings in the interest of the integrity of the legal profession and officers of the court.<sup>57</sup> The court reasoned that to expand the rule would have negative effects on the legal profession by allowing practice by disbarred attorneys, disincentivizing formal education, licensing, and observation of the professional rules of conduct, and creating an unfair advantage for corporations in the courtroom.<sup>58</sup> Section 90 did “not . . . serve the general welfare in that it would authorize the appearance, in behalf of a corporation, of almost any person selected by a corporation regardless of the length of his association or employment, his position with the corporation, or his training, character and background.”<sup>59</sup> Under section 90, the representative “could be a paraprofessional who, while having failed to pass a bar examination, is nevertheless not precluded from practicing law so long as he confines his client/employer to corporations and his practice to justice and municipal courts.”<sup>60</sup> The court did not agree to essentially allow “[s]uch persons [to] hire themselves out on a part time basis to a number of corporations, creating a cadre of unprofessional practitioners.”<sup>61</sup> Indeed, “[u]nlike members of the State Bar, they would not be subject to professional rules of conduct nor be required to adhere to ethical standards established by any governmental or professional agency.”<sup>62</sup> Allowing corporations to be “represented by persons not subject to ethical restraints” would afford them “an opportunity to take unfair advantage in particular situations—as in debt collections on claims of

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54. *Id.* (alteration in original).

55. *Id.*

56. *Merco Constr. Eng'rs, Inc. v. Mun. Ct.*, 581 P.2d 636, 640 (Cal. 1978) (citing *Prudential Ins. Co. of Am. v. Small Claims Ct.*, 173 P.2d 38 (Cal. Ct. App. 1946)).

57. *Id.*

58. *Id.* at 640–41.

59. *Id.*

60. *Id.* at 641.

61. *Id.*

62. *Id.*

little or no merit against persons of low income who are inclined to default even against such unmeritorious claims.”<sup>63</sup>

#### IV. CURRENT EXCEPTIONS TO THE CALIFORNIA RULE

California’s well-established rule for corporations is already subject to some exceptions. The current exceptions relate to small claims cases (for which an attorney actually *cannot* appear on behalf of a corporation), administrative proceedings, *de novo* appeals from administrative decisions, and judgment debtor examinations.

##### A. *The Small Claims Exception*

A small claims action in California is one where the amount of the demand does not exceed \$10,000, if the claim is brought by a natural person, and \$5,000, if the claim is brought by an entity.<sup>64</sup> Section 116.530 of the Code of Civil Procedure, formerly codified as Code of Civil Procedure section 117(g), states that “no attorney may take part in the conduct or defense of a small claims action,” except if the attorney is appearing to maintain or defend an action:

- (1) By or against himself or herself;
- (2) By or against a partnership in which he or she is a general partner and in which all the partners are attorneys; [or]
- (3) By or against a professional corporation of which he or she is an officer or director and of which all other officers and directors are attorneys.<sup>65</sup>

Accordingly, section 116.540(a) states that “no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.”<sup>66</sup> For a corporation, it “may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected for purposes other than solely representing the corporation in small claims court.”<sup>67</sup>

In *Prudential Insurance Co. of America v. Small Claims Court*,<sup>68</sup> the court analyzed the statute prohibiting an attorney from appearing for a corporation in small claims court. There,

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63. *Id.*

64. CAL. CIV. PROC. CODE §§ 116.220–.221 (West 2006 & Supp. 2021).

65. *Id.* § 116.530.

66. *Id.* § 116.540(a).

67. *Id.* § 116.540(b).

68. 173 P.2d 38 (Cal. Ct. App. 1946).

Prudential Insurance Company of America appeal[ed] from a judgment of the Superior Court denying to appellant a writ of prohibition by which it sought to restrain the Small Claims Court of the City and County of San Francisco from proceeding with an action pending before it in which appellant was the defendant.<sup>69</sup>

The appellant was a New Jersey corporation conducting insurance business in California. The company had offices throughout California and regularly retained counsel in various cities in the state.<sup>70</sup> “In May of 1945 an action was commenced in the [s]mall [c]laims [c]ourt by a holder of a Prudential life policy with disability benefits naming appellant as defendant.”<sup>71</sup> By order that was served on the company’s manager in San Francisco and agent for service of process in the state, “appellant was directed by the court to appear and answer on a specified date.”<sup>72</sup> The court explained that:

Before the date fixed in the order appellant specially appeared in the [s]mall [c]laims [c]ourt and moved to quash the service of summons, urging . . . that that court had no jurisdiction over appellant. The motion was denied, whereupon appellant sought a writ of prohibition in the [s]uperior [c]ourt. An alternative writ was issued and a full hearing had. The [s]uperior [c]ourt denied the application and appellant . . . appealed.<sup>73</sup>

In the petition, the company asserted that its legal counsel was its only agent or representative in California with knowledge of all of the facts of the case or authority to appear on behalf of the company.<sup>74</sup> The trial court, however, found that the attorney’s “only knowledge of the case [came] from having possession of the files of the company relating to the case, that he ha[d] no other knowledge of the facts, and that these files were forwarded to him by the eastern counsel of the company.”<sup>75</sup> The petition alleged that, because the small claims court would not permit the attorney to appear and defend the action, the

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69. *Id.* at 38–39.

70. *Id.* at 39.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

court would deprive the company of its constitutional rights.<sup>76</sup> The court noted that “[t]he appeal present[ed] several interesting and difficult questions of first impression involving the constitutionality and interpretation of the statutes creating the [s]mall [c]laims [c]ourt, particularly as those statutes apply to corporations.”<sup>77</sup>

“The first question presented [was] whether the prohibition against the appearance of lawyers renders § 117g unconstitutional.”<sup>78</sup> Appellant “urged that depriving a litigant of the right of counsel is a violation of due process.”<sup>79</sup> The court noted, “[t]here can be little doubt but that in both civil and criminal cases the right to a hearing includes the right to appear by counsel, and that the arbitrary refusal of such right constitutes a deprivation of due process.”<sup>80</sup> “But that does not mean that the legislature cannot create a Small Claims Court where informal hearings may be held without the assistance of counsel, as long as the right to appear by counsel is guaranteed in a real sense somewhere in the proceeding.”<sup>81</sup> The court reasoned that, obviously, “the plaintiff cannot object, although he has no right of appeal, because he has elected to commence the action in the [s]mall [c]laims [c]ourt.”<sup>82</sup> If the plaintiff desires to have an attorney, then the plaintiff “can sue, even on these small claims, in the [j]ustices or [m]unicipal [c]ourts.”<sup>83</sup> “The defendant has no legal cause for complaint because if he is dissatisfied with the judgment of the [s]mall [c]laims [c]ourt he has a right of appeal to the [s]uperior [c]ourt where he is entitled to a trial *de novo*.”<sup>84</sup> “In that court he and the plaintiff can, of course, appear by counsel.”<sup>85</sup> The court concluded that the process “satisfies the due process requirement.”<sup>86</sup>

The court went on to analogize the deprivation of an attorney in small claims court to the deprivation of a jury trial in small claims court or conciliation court, which had been upheld by the U.S.

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76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* (first citing *Roberts v. Anderson*, 66 F.2d 874, 876 (10th Cir. 1933); then citing *Powell v. Alabama*, 287 U.S. 45, 69 (1932); then citing *Cooke v. United States*, 267 U.S. 517 (1925); and then citing *Steen v. Bd. of Civ. Serv. Comm’rs*, 160 P.2d 816, 822 (Cal. 1945)).

81. *Id.* at 40.

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.*

Supreme Court in the leading case of *Capital Traction Co. v. Hof*.<sup>87</sup> In that case,

[i]t was there held that the right to a common-law jury trial as guaranteed by the seventh amendment to the United States Constitution was not violated by a statutory provision allowing the primary trial of civil cases of moderate amount by a justice of the peace with or without a non-common-law jury, where the statute also allowed the parties the right to appeal to a court of record where a common-law jury could be had.<sup>88</sup>

The court further noted that the same result was reached by the Supreme Court of Minnesota in *Flour City Fuel & Transfer Co. v. Young*,<sup>89</sup> which upheld “the constitutionality of the statute of that state creating the conciliation and small debtor’s court, in which juries were barred.”<sup>90</sup> “The constitutional guaranty is satisfied if a party is afforded a jury trial on appeal though not in the tribunal of primary jurisdiction.”<sup>91</sup> In analogizing the cases, the court noted that “[c]ertainly the constitutional guaranty of a jury trial is as important as the constitutional right to appear and prosecute or defend by counsel.”<sup>92</sup> Therefore, “[i]f the one constitutional right is not violated as long as a jury trial may be had upon appeal, the right to an appeal where a trial *de novo* with counsel may be had satisfies the other constitutional requirement.”<sup>93</sup>

The next question in the case was “whether the statutes applicable to such small claims courts apply to corporations, i.e., may they sue or be sued in such courts?”<sup>94</sup> The court examined whether a corporation was a “person” within the meaning of section 117(g), which stated that “[n]o attorney at law or other person than the plaintiff and defendant shall take any part in the prosecution or defense of such litigation.”<sup>95</sup> While the court did acknowledge that the word “person” includes a corporation under California Code of Civil Procedure section 17, it focused on the appellant’s argument that a “corporation is an artificial entity separate and distinct from its officers or agents, and since

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87. 174 U.S. 1 (1899); *Prudential Ins. Co. of Am.*, 173 P.2d at 40.

88. *Prudential Ins. Co. of Am.*, 173 P.2d at 40.

89. 185 N.W. 934 (Minn. 1921).

90. *Prudential Ins. Co. of Am.*, 173 P.2d at 40.

91. *Id.* (quoting *Flour City*, 185 N.W. at 936).

92. *Id.*

93. *Id.*

94. *Id.* at 41.

95. *Id.* (quoting CAL. CIV. PROC. CODE § 117(g) (repealed 1990)).

[section] 117g prohibits any ‘other person’ than the plaintiff or defendant from appearing, if a corporation is a ‘person’ within the meaning of the section it is in fact prohibited from appearing at all.”<sup>96</sup> “In other words, it [wa]s argued that the officers, agents, representatives and employees of a corporation are ‘other’ persons within the meaning of section 117g.”<sup>97</sup> The court reasoned that “[i]f this contention is sound the section would deprive corporations of the opportunity to appear and defend such actions, since the artificial entity cannot itself speak, and this would deprive corporations of due process.”<sup>98</sup>

In denying this contention, the court stated that “[t]he legislature could not have intended such a strict and unreasonable construction of the words ‘other person’ in the section.”<sup>99</sup> The court explained that this is made apparent by various constitutional and statutory provisions.<sup>100</sup> It noted that:

Article XII, [section] 4 of the Constitution, provides, in part, that “all corporations shall have the right to sue and shall be subject to be sued, in all [c]ourts, in like cases as natural persons.” Section 341(1) of the Civil Code provides that every corporation has power “to sue and be sued in any court.” In 6A [California Jurisprudence], [page] 1378, [section] 805, the problem, amply supported by case authority, is discussed as follows: “The Code of Civil Procedure, § 17, declares that the word ‘person’ includes a corporation as well as a natural person. By that code the law of procedure is general and not divisible into special schemes of procedure, one where a corporation is a party and another where natural persons are parties.” In the same volume at [page] 1380, [section] 806, it is stated: “Jurisdiction, which in its broad sense is the power to hear and determine, and in its applied sense is the power to hear and determine the particular case as regards the parties therein, exists over actions by or against corporations in the same cases, and to the same extent, and is to be acquired in the same ways, as over actions between natural persons. The jurisdiction of courts is not made to depend upon the

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96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*



incorporate character of the parties and the venue is not jurisdictional, if no objection be made that it is improper.”<sup>101</sup>

The court concluded, therefore, that:

[W]hen [section] 117g provide[d] that only the plaintiff and defendant may prosecute or defend such actions, and prohibit[ed] any “other person” from so appearing, it did not intend to exclude, and by its language it [did] not exclude, a proper representative of the corporation from appearing or defending such actions. The contended for interpretation would disregard the provisions of the Constitution and the Civil Code above quoted. Since corporations can only appear through some natural person it is obvious that the proper natural person may appear to prosecute or defend such claims, and that such a proper person is not an “other person” excluded by [section] 117g.<sup>102</sup>

In consolidating this conclusion with California’s well-established rule that a corporation must appear via counsel in litigation, the court noted that this rule involved “cases [that] dealt with courts of record and dealt with general common-law principles.”<sup>103</sup> In other words, “[t]hey all resolve around the general rule that a corporation in the absence of statutory authority, even in its own behalf, cannot practice law.”<sup>104</sup> Accordingly, none of the cases “dealt with a statutory situation” as involved in the small claims context.<sup>105</sup> In such context, the court indicated that:

[Section] 117g . . . expressly confers on corporations, as well as on other persons, the right to prosecute or defend such actions. At the same time it denies to corporations as well as to other litigants the right to appear in such actions by attorneys. Since a corporation can only speak through a natural person, it is apparent, therefore, that [section] 117g must be interpreted as conferring on corporations the right to appear through some representative other than an attorney.<sup>106</sup>

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101. *Id.*

102. *Id.* at 41–42.

103. *Id.* at 42.

104. *Id.*

105. *Id.*

106. *Id.*

That meant that in the context of small claims cases, “there is express statutory authorization for a corporation to appear *in propria persona* through some proper representative other than an attorney.”<sup>107</sup>

After resolving the two issues, the court went on to determine “who is a proper representative that may lawfully appear in such cases.”<sup>108</sup> According to the court:

Obviously, the members of the board of directors and other officers should be permitted to so appear, and this is so whether or not they are attorneys. This follows because in such cases they are not appearing as an attorney but in their capacity as an officer, and represent the corporation in the same sense as an individual attorney may appear to defend or prosecute such actions as a plaintiff or defendant in such courts. In the present case the foreign corporation did not have an officer or member of its board in California. It did have, however, a manager of its life business, who was also its statutory agent for service of all legal process, in this state.<sup>109</sup>

The court reasoned that the manager “quite clearly, can appear on behalf of the corporation to defend the action.”<sup>110</sup> But this did not answer the question as to “who else should be permitted to appear on behalf of the corporation,” which the court noted “could well be a subject for legislative action.”<sup>111</sup> However,

[i]n the absence of such action it would appear just and proper that any regular employee, not directly employed as a lawyer, but whose duties give him peculiar knowledge of the facts of such cases, could appear to represent the corporation, and this is so whether or not he is an attorney.<sup>112</sup>

The court also answered the question of whether any “such a limitation on the corporate right to appear is unfair in that a large part of the time of busy and highly paid executives may be consumed in defending small claims asserted against their companies.”<sup>113</sup> In rejecting this position, the court reasoned that “[t]he same argument could be

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107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

made against forcing the individual to appear personally and thus consuming a portion of his valuable time that he might think could be more profitably spent elsewhere.”<sup>114</sup> The court concluded that “the legislature of this state, drawing on the experience of many European countries and of many American states, has determined that the social benefits to the poor litigant far outweigh the slight inconveniences to the wealthy one.”<sup>115</sup> The Court states that “[t]he determination of such a problem is for the legislature, and as long as that body stays within constitutional limitations, the courts cannot and should not interfere.”<sup>116</sup>

### *B. The Administrative Proceedings Exception*

An administrative proceeding is a non-judicial mechanism that is adjudicatory in nature in order to determine fault or wrongdoing.<sup>117</sup> In *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Board*,<sup>118</sup> petitioner “Caressa Camille, Inc. . . . petitioned for judicial review of an order of the Alcoholic Beverage Control Appeals Board . . . affirming a decision of the Department of Alcoholic Beverage Control . . . revoking Caressa’s liquor license for a bar it owns known as Joey’s.”<sup>119</sup> At the department’s administrative hearing, where it revoked the corporation’s license, the corporation was represented by its president, not by counsel.<sup>120</sup> The corporation sought an annulment of the order and decision on grounds that “the department lacked jurisdiction to proceed against Caressa’s license because Caressa was not represented by counsel during the hearing.”<sup>121</sup> The court held that “the general common law rule in this state requiring corporations to be represented by counsel in proceedings before courts of record other than small claims courts does not extend to proceedings before administrative agencies and tribunals.”<sup>122</sup>

In reaching this conclusion, the court noted that an administrative hearing does not take place in a “court of record” and that the general

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114. *Id.*

115. *Id.*

116. *Id.* at 43.

117. 48 C.F.R. § 9.101 (2020).

118. 121 Cal. Rptr. 2d 758 (Ct. App. 2002).

119. *Id.* at 760.

120. *Id.* at 761.

121. *Id.* at 760.

122. *Id.*

rule only applied to “courts of records.”<sup>123</sup> The Court referred to Article VI, section 1 of the California Constitution, which states, “[t]he judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts, all of which are *courts of record*.”<sup>124</sup> While the California Constitution does confer limited judicial power to the Department of Alcoholic Beverage Control to revoke or suspend licenses for good cause, an administrative tribunal nevertheless is not defined as a “court of record.”<sup>125</sup> Unlike administrative tribunals, “courts of record are entitled to expect to be aided in resolution of contested issues by presentation of causes through qualified professionals rather than a lay person [sic].”<sup>126</sup> For administrative proceedings, “those problems which are likely to arise when a lay[person] serves as the legal representative for a corporation in a proceeding in a court of record are greatly minimized in the more informal setting of a proceeding in a court which is not of record.”<sup>127</sup> The court further noted that “a decision rendered by an administrative body following a hearing at which a corporation was not represented by counsel would be voidable at the option of the opposing party, rather than void for lack of jurisdiction.”<sup>128</sup>

### C. *The Notice of Appeal from Administrative Ruling Exception*

Another exception to the general rule is that a nonlawyer agent of a corporation can file a notice of appeal from an administrative ruling to secure a *de novo* hearing in the trial court that is statutorily permitted.<sup>129</sup> In *Rogers v. Sonoma County Municipal Court*,<sup>130</sup> a corporation filed a notice of appeal, through its president who was not an attorney, from an award of back wages by the Labor Commissioner pursuant to section 98.2 of the California Labor Code.<sup>131</sup> Thereafter, the “[p]etitioner, represented by the[L]abor [C]ommissioner, filed a motion to dismiss the appeal on the ground that the notice of appeal was not signed by a licensed attorney.”<sup>132</sup> The municipal court denied the

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123. *Id.* at 765.

124. *Id.* (quoting CAL. CONST. art. VI, § 1).

125. *Id.*

126. *Id.* (citing *Merco Constr. Eng’rs, Inc. v. Mun. Ct.*, 581 P.2d 636, 732 (Cal. 1978)).

127. *Id.* (alteration in original) (quoting *Eckles v. Atlanta Tech. Grp., Inc.*, 485 S.E.2d 22, 25 (Ga. 1997)).

128. *Id.* (citing *Jardine Ests., Inc. v. Koppel*, 133 A.2d 1, 3 (N.J. 1957)).

129. *Rogers v. Sonoma Cnty. Mun. Ct.*, 243 Cal. Rptr. 530, 531–32 (Ct. App. 1988).

130. 243 Cal. Rptr. 530.

131. *Id.* at 530–31.

132. *Id.* at 531.

motion, and the employee filed a petition for a writ of mandate with the superior court directing the municipal court to dismiss the appeal, but the superior court denied the petition.<sup>133</sup> The court of appeal treated the employee's appeal from the superior court's order denying such petition as a petition to the court of appeal for an extraordinary writ, but denied the writ.<sup>134</sup> The court held that the notice of appeal was filed in a valid manner, as an appeal from a decision of the Labor Commissioner differs from a conventional appeal in that it calls for a hearing de novo, and that a nonlawyer agent of a corporation may file a notice of appeal from an administrative ruling to secure a de novo hearing.<sup>135</sup> "Although the notice of appeal may, in a general sense, be thought of as an initial trial pleading," the court held that "any similarity with a usual civil complaint ends there," as its sole purpose is to give notice of the de novo hearing request.<sup>136</sup>

The petitioner argued that "since the notice of appeal triggers a de novo review in the municipal court, it operates as an initial pleading, and, as such, it can only be signed by an attorney."<sup>137</sup> The court, however, indicated that

[a]lthough the notice of appeal may, in a general sense, be thought of as an initial trial pleading, any similarity with a usual civil complaint ends there. The notice of appeal is a form document which contains only the names of the parties and the dates of the administrative action. Its sole purpose is to give notice to the losing party of the de novo hearing request.<sup>138</sup>

The court concluded that the notice of appeal "requires no legal training or acumen to prepare and file" and "imparts no information to the opposing side which will affect the trial of the issues."<sup>139</sup> Indeed, "[t]he legal position of the responding party cannot be prejudiced by anything contained in that document."<sup>140</sup> "Generally, that party is not required to make any kind of a response in order to protect its rights, nor is the notice of appeal subject to a demurrer or motion to strike."<sup>141</sup>

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133. *Id.*

134. *Id.* at 531, 533.

135. *Id.* at 531–32.

136. *Id.* at 532.

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

Therefore, “[t]he corporate officer who signs the notice of appeal is not engaging in the practice of law.”<sup>142</sup>

Accordingly, the court concluded that “[n]one of the harmful consequences of unlicensed law practice are evident” in the context of an appeal from an administrative ruling.<sup>143</sup> “[T]he client corporation is not prejudiced by the lack of legal education or experience of the officer, as it would be if he were permitted to appear in court on the corporation’s behalf.”<sup>144</sup> There is also “no confusion aris[ing] because of unintelligible, untimely or inappropriate documents drawn by the layman; which is often a problem even when a natural person appears in propria persona.”<sup>145</sup>

Contrarily, in *Paradise v. Nowlin*,<sup>146</sup> the California Court of Appeal deemed the defendant-appellant’s notice of appeal “void by reason of the corporation’s lack of power to represent itself in an action in court.”<sup>147</sup> There, the plaintiffs-respondents “moved to dismiss the appeal of defendant-appellant Federated Income Properties, Inc., a corporation, on the ground that appellant failed to pay the filing fee within 20 days after being notified by the clerk of the Supreme Court to pay the same.”<sup>148</sup> According to the court, there was a “more important reason for the dismissal of the appeal,” that is, “that the defendant corporation filed the notice of appeal in the superior court and its opposition to the dismissal in th[e] [appellate] court in propria persona.”<sup>149</sup> Although the corporation was represented by an attorney at the trial, the attorney’s “services apparently terminated with the entry of judgment in favor of plaintiffs.”<sup>150</sup>

In reaching its conclusion and dismissing the appeal, the court cited in part to the case of *Mullin-Johnson Co. v. Penn Mutual Life Insurance Co. of Philadelphia*.<sup>151</sup> While *Mullin-Johnson* did not involve a notice of appeal, its reasoning and citation in the *Paradise* case suggests that the filing of a notice of appeal qualifies as the act of “managing a case,” which can only be performed by a member of the

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142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. 195 P.2d 867 (Cal. Ct. App. 1948).

147. *Id.* at 867.

148. *Id.*

149. *Id.*

150. *Id.*

151. 9 F. Supp. 175 (N.D. Cal. 1934).

state bar.<sup>152</sup> In *Mullin-Johnson*, the District Court for the Northern District of California noted that “[i]t is settled in California that there are certain professional occupations which a corporation is functionally incapable of engaging in, such as the practice of the law.”<sup>153</sup> Therefore, the “[p]laintiff corporation [wa]s not, and could not be, a member of the bar of California.”<sup>154</sup> The court noted, “[o]bviously plaintiff corporation could not plead and manage its case personally.”<sup>155</sup>

#### D. The Judgment Debtor Examination Exception

Sections 708.110 *et seq.* of the California Code of Civil Procedure governs the rules for judgment debtor examinations. This is a formal court proceeding whereby a creditor obtains information for purposes of collecting on a judgment about a judgment debtor’s sources of income and assets, such as personal property, real property, bank accounts, stocks, and investments. Section 708.150(d) states that “[a] corporation, partnership, association, trust, limited liability company, or other organization, whether or not a party, may appear at an examination through any authorized officer, director, or employee, whether or not the person is an attorney.”<sup>156</sup>

In analyzing this statute, in its order that a third-party limited liability company appear for the examination, in its order that a third-party limited liability company appear for the examination, the United States District Court for the Southern District of California noted that the third party was “required to designate and produce a representative who is knowledgeable about Debtors’ property for examination.”<sup>157</sup> Similarly, in *Gutierrez v. Vantia Properties, LLC*,<sup>158</sup> the United States District Court for the Eastern District of California noted that because the judgment creditor did not specify an individual to appear in the examination proceeding in their application, the judgment debtor LLC was required to “designate to appear and be examined one or more

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152. *Paradise*, 195 P.2d at 868; *see also Mullin-Johnson*, 9 F. Supp. at 175 (adjudicating whether a corporation may file a previously-dismissed state court complaint in federal court and holding it could not because a corporation cannot plead and manage its own case personally or through an agent who is not licensed to practice law).

153. *Mullin-Johnson*, 9 F. Supp. at 175.

154. *Id.*

155. *Id.*

156. CAL. CIV. PROC. CODE § 708.150(d) (West 2009 & Supp. 2021).

157. *Gavrieli Brands LLC v. Soto Massini (USA) Corp.*, No. 20-MC-01221, 2020 WL 7226169, at \*2 (S.D. Cal. 2020).

158. No. 13-cv-00642, 2015 U.S. Dist. LEXIS 18164 (E.D. Cal. Feb. 12, 2015).

officers, directors, managing agents, or other persons who [were] familiar with its property and debts.”<sup>159</sup>

## V. EFFECTS OF NON-ATTORNEY FILINGS

The case of *Paradise v. Nowlin*, whereby the court dismissed the appeal when the corporate appellant’s notice of appeal was filed in propria persona, was decided when “there was no uniform rule regarding the consequence of a corporation’s failure to be represented by an attorney.”<sup>160</sup> Since *Paradise*, there has since been a trend toward lenience.<sup>161</sup> In *CLD Construction v. City of San Ramon*,<sup>162</sup> decided in 2004, the California Court of Appeal noted that “[i]n federal courts there has been a consistent pattern during the last 40 years to dismiss a corporation that initially appears via a nonattorney officer or shareholder only after the corporation has been given a reasonable time to secure counsel.”<sup>163</sup> For example, in *Gamet v. Blanchard*,<sup>164</sup> after “a nonlawyer shareholder/director noticed an appeal on behalf of the corporation[,] . . . [w]ithout any mention of *Paradise*, the Court of Appeal, Fourth District, Division Three, notified the corporation that its appeal would be dismissed unless it retained counsel, which it did.”<sup>165</sup>

Accordingly, since *Paradise*, where a non-attorney files pleadings on behalf of a corporation, the court should “liberally” grant leave to amend the pleadings where a “defect raised by a motion to strike or by a demurrer is reasonably capable of cure.”<sup>166</sup> In *CLD Construction v. City of San Ramon*, the plaintiff CLD Construction, Inc. (“CLD”) filed a complaint against the defendant for breach of contract, appearing “pro per,” which was signed by the president of CLD, a non-lawyer.<sup>167</sup> Nearly two months after the original filing, CLD filed a substitution of attorney that was executed by its president and which substituted a lawyer as its attorney of record.<sup>168</sup> The defendant “moved to strike CLD’s complaint in its entirety on the grounds a corporation

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159. Order for Appearance and Examination of Judgment Debtor Vantia Properties at 3, *Gutierrez v. Vantia Props*, No. 13-cv-00642 (E.D. Cal. Feb. 12, 2015), ECF No. 50 (quoting CAL. CIV. PROC. CODE § 708.150(a) (West 2009 & Supp. 2021)).

160. *CLD Constr., Inc. v. City of San Ramon*, 16 Cal. Rptr. 3d 555, 559 (Ct. App. 2004).

161. *Id.*

162. 16 Cal. Rptr. 3d 555.

163. *Id.* at 559.

164. 111 Cal. Rptr. 2d 439 (Ct. App. 2001).

165. *CLD Constr., Inc.*, 16 Cal. Rptr. at 560.

166. *Id.* at 558.

167. *Id.* at 556–57.

168. *Id.* at 557.



cannot file a pleading in propria persona.”<sup>169</sup> Alternatively, the defendant “demurred on the grounds the court lacked subject matter jurisdiction because a complaint filed in propria persona on behalf of a corporation is void, and no valid complaint was filed within the requisite six months.”<sup>170</sup> “The trial court granted the motion to strike without leave to amend” on the basis that “CLD’s complaint was filed by a corporation without legal representation” and therefore “was a ‘nullity.’”<sup>171</sup> “The trial court reasoned that because the substitution of attorney . . . occurred after the statute of limitations for filing the complaint had run, the court lacked ‘original jurisdiction.’ It then dismissed the action with prejudice, and entered judgment and awarded costs to the [defendant].”<sup>172</sup>

On appeal, the corporation-appellant argued that the trial court erred in granting the motion to strike without leave to amend.<sup>173</sup> In reversing the trial court’s ruling, the court of appeal referred to the well-established rule that courts should “liberally” grant leave to amend pleadings where a “defect raised by a motion to strike or by a demurrer is reasonably capable of cure.”<sup>174</sup> That is because “[p]lead- ing[s] may only be stricken upon terms . . . that are ‘just.’”<sup>175</sup> The court reasoned that if “the defect raised by a motion to strike or by demurrer is reasonably capable of cure, ‘leave to amend is routinely and liberally granted to give the plaintiff a chance to cure the defect in question.’”<sup>176</sup> “It is generally an abuse of discretion to deny leave to amend, because the drastic step of denial of the opportunity to correct the curable defect effectively terminates the pleader’s action.”<sup>177</sup> “[T]he absence of legal representation at the threshold step of a law- suit—filing the complaint—rarely prejudices the opposing party.”<sup>178</sup> “To the extent the opposing party is burdened by having to bring a motion to strike the complaint of a corporation not represented by counsel, the court, as a condition for granting leave to amend, may

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169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *See id.* at 562.

174. *Id.* at 558.

175. *Id.*

176. *Id.* (quoting *Price v. Dames & Moore*, 112 Cal. Rptr. 2d 65, 69 (Ct. App. 2001)).

177. *Id.*

178. *Id.* at 561.

order the corporation to pay the opposing party's expenses for bringing the motion."<sup>179</sup>

The court went on to cite to various cases that set forth exceptions to the rule that a corporation must always be represented by an attorney in California courts.<sup>180</sup> This included the small claims exception, the administrative proceedings exception, and the appeal from an administrative ruling exception.<sup>181</sup> Considering the "increasing acceptance of the view that representation of the corporation by an attorney is not an absolute prerequisite to the court's fundamental power to hear or determine a case," the court concluded that "it is more appropriate and just to treat a corporation's failure to be represented by an attorney as a defect that may be corrected."<sup>182</sup> The holding aligned with the policies that "in furtherance of justice, complaints are to be liberally construed (§ 452) and disputes should be resolved on their merits."<sup>183</sup> "To deem a pleading void because the corporation on whose behalf it was filed, although statutorily authorized to be a party, did not have an attorney sign the pleading, elevates the attorney to a role akin to that of an indispensable party."<sup>184</sup> Moreover, the court's flexibility in no way served to impair "the court's ability to assure that trained legal professionals participate[d] in the presentation of the corporation's case . . . [and] the court retain[ed] authority to dismiss an action if an unrepresented corporation d[id] not obtain counsel within reasonable time."<sup>185</sup>

## VI. EFFECTS OF ATTORNEY WITHDRAWALS

Counsel for a corporation may seek to withdraw from representation during the litigation "without offending the rule against corporate self-representation."<sup>186</sup> Indeed, "[t]he ban on corporate self-representation does not prevent a court from granting a motion to withdraw as attorney of record, even if it leaves the corporation without representation."<sup>187</sup> In the case of uncooperative corporate clients, granting a motion to withdraw "put[s] extreme pressure on [the corporation] to

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179. *Id.*

180. *Id.* at 560.

181. *Id.*

182. *Id.* at 560–61 (emphasis omitted).

183. *Id.* at 561.

184. *Id.*

185. *Id.*

186. *Thomas G. Ferruzzo, Inc. v. Superior Ct.*, 163 Cal. Rptr. 573, 575 (Ct. App. 1980).

187. *Gamet v. Blanchard*, 111 Cal. Rptr. 2d 439, 444 n.5 (Ct. App. 2001).

obtain new counsel of record for should it fail to do so it risks forfeiture of its rights through nonrepresentation.”<sup>188</sup>

This forfeiture, however, may only take place after adequate notice of such from the trial court to the corporation.<sup>189</sup> In *Van Gundy v. Camelot Resorts, Inc.*,<sup>190</sup> the court of appeal reasoned that “[w]hen a corporation seeks to appear without the benefit of counsel . . . it is the duty of the trial court to advise the representative of the corporation of the necessity to be represented by a licensed lawyer.”<sup>191</sup> If, after advising the corporate representative of such, no licensed attorney appears on behalf of the corporation the court has authority to “(1) hear a motion for continuance; or (2) enter the corporation’s default for nonappearance at trial.”<sup>192</sup>

Accordingly, in reiterating the duty imposed on the trial court by *Van Gundy*, almost twenty years later, in *Gamet v. Blanchard*, the appellate court concluded that, if the record is devoid of proper and adequate notice from the trial court advising the corporation of its need to retain counsel following a withdrawal, then the trial court is not authorized to, for example, dismiss the corporation’s complaint with prejudice, strike the corporation’s answer to a cross-complaint, or otherwise enter a default for non-appearance.<sup>193</sup> This means that “[a] judgment entered without notice is void and can be attacked at any time” by the corporation.<sup>194</sup> In other words, a corporation that is not provided notice by the trial court will be able to set aside such a judgment as void.<sup>195</sup>

## VII. PROPOSAL TO LIMIT THE RULE FOR SINGLE-PERSON CORPORATIONS

For businesses that are owned and operated by a single individual, the main purpose of setting up an entity, rather than conducting business as a sole proprietor with a fictitious business name, is to gain protection. An entity, such as a corporation or limited liability company, serves to shield one’s personal income and assets from liability to business creditors. Unless Jane Bennet signed a personal guarantee in

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188. *Thomas G. Ferruzzo, Inc.*, 163 Cal. Rptr. at 575.

189. *Van Gundy v. Camelot Resorts, Inc.*, 199 Cal. Rptr. 771, 772 (App. Dep’t Super. Ct. 1983).

190. 199 Cal. Rptr. 771 (App. Dep’t Super. Ct. 1983).

191. *Id.* at 772.

192. *Id.*

193. *Gamet v. Blanchard*, 111 Cal. Rptr. 2d 439, 446 (Ct. App. 2001).

194. *Id.* at 447.

195. *Id.* at 446–47.

her contract with the disgruntled vendor or otherwise engaged in conduct that would pierce the corporate veil, her own money and assets are not subject to any suit or judgment obtained by vendor. In addition, as far as Jane's taxes, she has no incentive to set up as a sole proprietor because she has the option to classify the corporation as an s-corporation to prevent double taxation. For LLCs, these entities are automatically conferred pass-through taxation or can apply to be taxed as an s-corporation. Therefore, it makes sense for Jane to register her business as a corporation, even if for the sole purpose of protecting herself from personal liability. However, Jane essentially has to choose between being protected from personal liability and being able to represent her business in litigation. To circumvent this result while continuing to afford Jane the liability protections of the Corporations Code, there should be an additional exception to the well-established rule for corporations that are owned and operated by a single individual, that is, one individual serves as the sole shareholder, director, and officer of the corporation.

A single-individual corporation is essentially, in practical terms, the equivalent of a natural person, except the individual also has protection against personal liability. The court reasoned in *Merco* that expanding the well-established rule would have negative effects on the legal profession by allowing practice by disbarred attorneys; disincentivizing formal education, licensing, and observation of the professional rules of conduct; and creating an unfair advantage for corporations in the courtroom.<sup>196</sup> However, natural persons have the right to appear in propria persona in litigation, regardless of their lack of legal training, respect for legal processes, or level of sophistication.<sup>197</sup> While there is an “interest in assistance of counsel and maximum procedural efficiency . . . corporations appearing in propria persona will [not] unduly handicap a court of record.”<sup>198</sup> “Individuals have long been permitted to proceed in propria persona” and “the legal system has not been left in shambles.”<sup>199</sup>

Moreover, while the corporate shareholder “could be a paraprofessional who, while having failed to pass a bar examination, is nevertheless not precluded from practicing law,”<sup>200</sup> this could be the

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196. *Merco Constr. Eng'rs, Inc. v. Mun. Ct.*, 581 P.2d 636, 640–41 (Cal. 1978).

197. *Id.* at 638.

198. *Id.* at 643 (Tobriner, J., dissenting).

199. *Id.*

200. *Id.* at 641 (majority opinion).

same result where unlicensed individuals or even disbarred attorneys are sued personally, for whatever reason, and decide to represent themselves. Also, while “[u]nlike members of the State Bar, they would not be subject to professional rules of conduct nor be required to adhere to ethical standards established by any governmental or professional agency,”<sup>201</sup> the same result could flow from an individual’s representation of himself or herself. Lack of ethical restraints are of no concern under the current standards, which allow an individual with deep pockets to bring claims that are “of little or no merit against persons of low income who are inclined to default even against such unmeritorious claims.”<sup>202</sup> Therefore, the potential for abuse and unethical conduct should not be a driving factor in preventing an additional exception to the well-established rule. “In the past, trial courts have proven quite capable of handling any abuse of in propria persona privileges that may arise in the course of actual litigation,” and thus should be able to “adequately protect the public in the context of corporate pro. per. representation.”<sup>203</sup>

Accordingly, to allow a natural person who is the sole owner and operator of the corporation to appear on behalf of the corporation in litigation would have no more of a negative impact on the legal profession than the current status of the law, which allows a natural person to appear in propria persona. As Justice Tobriner noted in his dissent of the majority opinion in *Merco*, “[t]he abstract distinction between sole proprietorships and partnerships, which ostensibly constitute ‘natural’ persons, and corporations, which constitute ‘artificial’ persons, has little bearing on the practical effect of nonattorney representation.”<sup>204</sup> He further noted, “[b]oth the nonattorney who represents his own business or his partnership, and the nonattorney who represents his corporate employer perform exactly the same functions both in and out of court.”<sup>205</sup> There has been no showing by the courts or otherwise “how corporate in propria persona representation [would] have a more deleterious judicial effect.”<sup>206</sup> This is especially true for a single-individual corporation, which is in effect the same as a natural person with a sole proprietorship.

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201. *Id.*

202. *Id.*

203. *Id.* at 643–44 (Tobriner, J., dissenting).

204. *Id.* at 643.

205. *Id.*

206. *Id.*

In addition, allowing self-representation for a single-person entity would not create the threat of authorizing “the appearance, [on] behalf of a corporation, of almost any person selected by a corporation regardless of the length of his association or employment, his position with the corporation, or his training, character and background.”<sup>207</sup> Rather, the person authorized to appear on behalf of the corporation would be the only individual who owns an interest in the corporation and who runs the operations of the corporation, both as a director and officer. As in the small claims context, a director or officer would appear not as an attorney, but rather in his or her capacity as the corporate owner and officer.<sup>208</sup> In fact, this would help make the litigation more efficient and straightforward, as the corporate owner would very likely have “peculiar knowledge of the facts” of the case, “whether or not he is an attorney,”<sup>209</sup> just as a natural person would for his or her own case.

In this respect, the proposed limitation will be especially effective in ensuring efficiency, fairness, and even consistency for those cases where the owner, director, officer, or managing agent of a corporation can be held liable for the acts of the corporation. For example, Labor Code section 558.1, subdivision (a), holds responsible for certain labor code violations not only the employer, but also any “other person acting on behalf of the employer.”<sup>210</sup> Subdivision (b) defines the term “other person acting on behalf of an employer” as “a natural person who is an owner, director, officer, or managing agent of the employer.”<sup>211</sup> This means that an owner may be held responsible for the acts of the corporation, regardless of whether there is a personal guarantee in the employment contract or the plaintiff can pierce the corporate veil. Therefore, it seems only fair for the owner, who is also the sole director and officer, to be able to appear on behalf of the corporation to represent the interests of the corporation. By doing so, the owner also represents his or her own interests since the owner’s responsibility to the plaintiff is inherently tied to the corporation’s liability. This is because, in the context of the cited Labor Code and any other statute that operates like it, the owner’s individual interest in striking down liability is reliant on the corporation’s ability to do so.

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207. *Contra id.* at 640–41 (majority opinion).

208. *Prudential Ins. Co. of Am. v. Small Claims Ct.*, 173 P.2d 38, 42 (Cal. Ct. App. 1946).

209. *Id.*

210. CAL. LAB. CODE § 558.1(a) (West 2020).

211. *Id.* § 558.1(b).

The current status of the law lacks consistency by requiring a single-person corporation to retain an attorney to defend the corporation, while also allowing the owner to represent him or herself as an individual defendant.

This same inconsistency results where, for example, a corporation defaults on a loan agreement that is backed by a personal guarantee by the corporate owner. In this instance, the creditor will sue the corporation and the corporate owner personally to recover on the loan. While the corporate owner is allowed to represent him or herself, counsel must be retained for the corporation. This is true even though he or she is the sole owner and operator of the corporation, and also despite the two sharing a common interest in defending against the lawsuit. The proposed limitation will resolve this paradoxical result that arises in the context of individual suit or liability against a shareholder of a single-person corporation.

#### VIII. CONCLUSION

“Justice should not be a rich man’s luxury.”<sup>212</sup> In Jane Bennet’s situation, the corporation does not have sufficient funds to defend against the vendor’s lawsuit, but it does have a good faith and meritorious defense. However, the expense incident to the litigation has the effect of discouraging, and even preventing, redress against an unmeritorious claim.<sup>213</sup> Per Justice Tobriner’s dissent in *Merco*, “corporate entities, as well as individuals, are often engaged in . . . disputes and should be entitled as much as individuals to an economical adjudication of their rights.”<sup>214</sup> Just as “in propria persona representation by corporations in small claims” is authorized, there should be some degree by which corporations can appear in propria persona in municipal courts.<sup>215</sup> Specifically, the owner of a single-person for-profit corporation should be allowed to represent the company in litigation. Such an exception to the well-established rule will promote “efforts to facilitate more procurable, accessible and equal justice.”<sup>216</sup> At this time, Jane is protected from personal liability but prejudiced in litigation. With the proposed limitation, Jane will not have to choose between

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212. *Prudential Ins. Co. of Am.*, 173 P.2d at 40.

213. *See id.*

214. *Merco Constr. Eng’rs, Inc. v. Mun. Ct.*, 581 P.2d 636, 643 (Cal. 1978) (Tobriner, J., dissenting).

215. *Id.*

216. *Id.* at 644.

shielding her own income and assets from liability and being able to represent her business in a court of record.



