

## Thomas M. O'Connell

San Diego, California  
Shareholder

P (619) 219-6330  
F (619) 235-5351  
[toconnell@buchalter.com](mailto:toconnell@buchalter.com)

### Areas of Practice & Industry Specialties

Appellate Law; Corporate Law; Labor & Employment; Litigation; e-Discovery; Franchise Law; Hospitality, Food and Beverage Industry Law



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Thomas (Tom) O'Connell is a Shareholder at Buchalter APC, where he serves as Chair of Litigation for the firm's San Diego office, Chair of the firm's Franchise Law Practice, and Chair of the firm's e-Discovery Practice.

Mr. O'Connell's litigation experience broadly encompasses all aspects and stages of litigation in negotiations, arbitrations, courts, and appellate courts throughout the country. While Mr. O'Connell's success in defending employment litigation on behalf of entities ranging from public entities to multi-national corporations is most notable, his clients also regularly call on him to aggressively defend and/or resolutely pursue complex business-to-business litigation and franchise-related litigation.

In addition to the above, Mr. O'Connell is widely regarded as an industry authority on a variety of franchise compliance issues. Mr. O'Connell takes the same proactive, business-minded approach he uses during litigation when he drafts various franchise documents—including franchise disclosure documents, single-unit franchise agreements, multi-unit franchise agreements, area development agreements, and master franchise agreements—and provides compliance advice for regional, national, and multi-national franchisors and franchisees.

### Representative Matters

#### Franchise Litigation Representative Matters

- Successfully defended franchisor against claims for wrongful termination and fraud seeking more than \$10 million.
- Successfully defended franchisor against claims that it provided unsubstantiated financial performance representations in Franchise Disclosure Document and seeking rescission of the franchise agreement.
- Successfully defended franchisor against claims that it failed to provide specified training and for wrongful termination after franchisee failed performance improvement plan.
- Successfully defended franchisor in breach of contract action where franchisee claimed that franchisor allowed another franchisee to encroach on its territory.
- Successfully defended franchisor against claim that it wrongfully refused to renew franchise agreement.
- Successfully defended franchisor against claims that it was accepting undisclosed rebates from vendors. *DirecTV, LLC et al. v. Marlon Hall*: Served as lead counsel on behalf of the American Hotel & Lodging Association, Asian American Hotel Owners Association, Coalition of Franchisee Associations, International Franchise Association and Restaurant Law Center in a matter brought before the United States Supreme Court regarding potential joint employer liability. A copy of their Amicus Curiae brief can be found [here](#).
- *McDonald's USA, LLC*, a joint employer, et al. and Fast Food Workers Committee, et al.: Successfully

defended McDonald's California franchisees involved in a multi-state action—the “largest case ever adjudicated” by the National Labor Relations Board—where a national labor union alleged that McDonald's franchisees were engaged in a variety of unlawful labor practices and were all joint employers with McDonald's USA, LLC. A copy of the National Labor Relations Board's published decision related to the resolution of this case can be found [here](#). The United States Court of Appeals for the District of Columbia's decision upholding National Labor Relations Board's decision can be found [here](#).

#### Franchise Advice Representative Matters

- Registered and renewed local, regional, national, and multi-national franchisors in many industries.
- Led trainings, workshops, and audits for franchisors and multi-unit franchisees related to joint employment and vicarious liability avoidance.
- Acted as outside general counsel to emerging and established franchisors as well as multi-unit franchisees providing compliance, labor and employment, and strategic growth advice.
- Provided due diligence advice and analysis to franchisors, franchisees, and lenders as part of mergers and acquisitions.

#### Labor & Employment Litigation Representative Matters

- Successfully defended an entity against claims brought by a former employee alleging whistleblowing and retaliation, seeking more than \$6 million.
- Successfully defended an entity against claims brought by multiple former employees alleging “me too” style sexual harassment and hostile work environment seeking more than \$10 million in damages.
- Successfully defended a company against claims of age and race discrimination brought by multiple employees who were laid off and seeking more than \$15 million in damages.
- Successfully defended an entity against claims brought by a former officer alleging whistleblowing and retaliation, seeking more than \$4 million.
- Successfully defended a company against multiple 8(a)(3) and 8(a)(1) claims brought by multiple employees who were terminated close in time to union activities.
- Successfully defended a company against multiple persons claiming to be employees of the entity as opposed to independent contractors.
- Successfully defended a company and its ownership against a \$15 million breach of contract claim and wrongful termination claim by an employee claiming ownership of company intellectual property.
- Successfully defended a company against a \$10 million breach of non-competition claim and successfully pursued a \$10 million counter-claim in an action regarding the parties' competing responses to a government entity's request for proposal.
- Successfully defended a company against claims brought by multiple employees against a supervisor and the owner of a company alleging a panoply of hostile work environment claims seeking more than \$20 million in damages.
- *Jesse Griego v. City of Barstow*: Successfully appealed a trial court's decision granting an employee's petition for writ of administrative mandate. Therein, the Court of Appeal issued a precedent-setting decision finding that even where a part of an employer's rationale for its decision to terminate an employee is not sustained, if the remainder of the employer's rationale is sustained and would leave no real doubt that the employer would terminate the employee, the termination should stand and not be remanded to the employer. A copy of the Court of Appeals' published decision can be found [here](#).
- *Maywood Police Officers Association, et al. v. City of Maywood*: Successfully defended an appeal brought by the City of Maywood Police Officers Association of the City's decision to void its Memorandum of Understanding and disband its police department in the wake of a financial crisis. A copy of the Court of Appeals' unpublished decision can be found [here](#).

- *Justin Vincent v. City of California City*: Successfully defended the City of California City against a \$5 million claim by a former department head for allegations of wrongful termination, discrimination, retaliation and violation of the department head's First Amendment rights. A copy of the Federal District Court's published decision can be found [here](#).

#### Labor & Employment Advice Representative Matters

- Acted as outside employment counsel for both private and public entities.
- Led trainings, workshops, and employment practice audits for both private and public entities in multiple jurisdictions.
- Restructured and redrafted human resources policies and statutes for the State of California.
- Provided advice related to negotiations with public and private labor units.

#### Complex Litigation Representative Matters

- Successfully represented a minority shareholder of a national developer against a fellow shareholder in an action seeking \$50 million for breach of contract, breach of fiduciary duty, and rescission of the sale of a \$450 million piece of real estate.
- *E-Commerce Lighting, Inc. v. E-Commerce Trade LLC, et al.*: Successfully appealed a trial court's decision to eliminate a setoff in an arbitrator's award. A copy of the Court of Appeal's published decision can be found [here](#).
- *Riverside County Transportation Commission v. Southern California Gas Company*: Successfully defended the Riverside County Transportation Commission in a precedent-setting action against Southern California Gas Company in a claim for approximately \$1 million and successfully defended against the Gas Company's counter-claim for \$1.5 million. A copy of the Court of Appeal's published decision can be found [here](#).

#### **Publications**

- Weathering a perfect storm: The evolution of the joint-employer inquiry and its implications post-COVID on the franchise industry, *Westlaw Today*, July 31, 2024
- National Labor Relations Board Publishes Final Rule Significantly Expanding Definition of Joint Employer, *Buchalter Client Alert*, October 26, 2023
- The Slow Down of the FAST Act: Surprise Deal Reached Which Ends Statutory Joint Employee Threat Until 2028 in California, *Buchalter Client Alert*, September 11, 2023
- California Assembly Appropriations Committee Passes AB5, *California Franchise Network*, May 16, 2023
- Staying in the FAST Lane: An Overview of New 2023 Employment Laws for California Franchisors and Franchisees, *Buchalter Client Alert*, February 13, 2023
- NLRB Dismisses Charges Against Starbucks in La Quinta, California Alleging Interference with Employee Collective Bargaining Rights, *Buchalter Client Alert*, December 9, 2022
- DOL's Joint Employer Rule Struck Down by Federal Court, *Legal Alert*, September 11, 2020
- Patel v. 7-Eleven, Inc.: Federal Court Finds that FTC Franchise Rule Preempts State ABC Independent Contractor Test, *California Franchise Network*, September 10, 2020
- A.B. v. Hilton Worldwide Holdings Inc.: A Must Read for Hotel Franchisors and Franchisees, *California Franchise Network*, September 8, 2020
- T.A.W. Performance, LLC v. Brembo, S.p.A.: Court of Appeal Provides Alternative Approach to Analyzing Jurisdictional Disputes by a Purported California Franchisee, *California Franchise Network*, August 17, 2020
- Esguerra-Aguilar, Inc. v. Shapes Franchising, LLC: Court Finds Incorporation of Arbitration Rules Allows

Arbitrator to Determine Arbitrability of Dispute, *California Franchise Network*, July 9, 2020

- Best in Law: AB5 and Franchisees, *JDSUPRA*, May 26, 2020
- BP Products North America Inc. v. Petroleum: Yet Another Lesson in the Need for Clarity for Potential Costs for Franchisees, *California Franchise Network*, April 27, 2020
- National Labor Relations Board Follows Department of Labor's Lead and Publishes Franchisor Friendly Joint Employer Rule, *California Franchise Network*, February 25, 2020
- Department of Labor Publishes Franchise Friendly Joint-Employer Rule, *California Franchise Network*, January 13, 2020
- Handel's Enterprises, Inc. v. Schulenburg: In Spite of a "Willful" Violation of the CFIL, a Federal Court Finds a Franchisee is not Entitled to Rescission, *California Franchise Network*, January 6, 2020
- Handoush v. Lease Finance Group, LLC: Predispute Waivers put a Forum Selection Clause at Issue Again, *California Franchise Network*, October 31, 2019
- Governor Signs AB5 into Law and Complicates California's Independent Contractor Analysis, *California Franchise Network*, September 12, 2019
- California Assembly Denies Procedural Vote Then Votes To Send AB5 To Governor's Desk, *California Franchise Network*, September 11, 2019
- California Senate Passes AB5, *California Franchise Network*, September 10, 2019
- AB5 Amendments Incentivize Union Bargaining and Expands Rights of Action, *California Franchise Network*, September 6, 2019
- California Senate Amends AB5 to Take Certain Industries Off The Hook Of The Dynamex "ABC" Test, *California Franchise Network*, August 30, 2019
- California Senate Appropriations Committee Passes AB5, Again, Along Party Lines, *California Franchise Network*, August 30, 2019
- AB5 Amendments Adds Industry Carve-Outs and Shifting Criteria for Independent Contractor Classification, *California Franchise Network*, July 11, 2019
- California Senate Labor, Public Employment and Retirement Committee Passes AB5 Without Amendment, *California Franchise Network*, July 10, 2019
- Campbell v. FAF, Inc. et al.: A Costly Lesson Related To Notice Pleading The Existence of a Franchise, *California Franchise Network*, June 20, 2019
- California Assembly Amendment Restyles AB5, but Narrowly Misses Franchise Exemption in Trimming the "ABC" Test, *California Franchise Network*, May 24, 2019
- California Assembly Appropriations Committee Makes Minor Changes to AB5 Related to Unemployment Insurance, *California Franchise Network*, May 1, 2019
- California Assembly' Labor and Employment Committee Passes AB5 on Party Lines, *California Franchise Network*, April 30, 2019
- California Assembly Passes AB5, *California Franchise Network*, April 29, 2019
- Salazar v. McDonald's Corp: A Much Needed Win for the Franchise Industry, *California Franchise Network*, April 5, 2019
- Department of Labor Introduces Proposed Rulemaking on Joint Employer Status Under FLSA Date, *California Franchise Network*, April 1, 2019
- California Assembly Proposes Carve Out of Certain Industries From "ABC" Test Through AB5 Amendment, *California Franchise Network*, March 26, 2019
- United Studios of Self Defense v. Rinehart: Lessons in Legal Jiu-Jitsu by a Franchisor Under Attack, *California Franchise Network*, February 22, 2019
- The Joint-Employer Dance, *Daily Journal*, January 26, 2019

- NLRB's Ruling on Independent Contractor Status and Implications for Labor Relations and the Franchise Industry, *California Franchise Network*, January 25, 2019
- California Assembly Introduces Bill To Codify Dynamex "ABC" Test, *California Franchise Network*, December 3, 2018
- Best in Law: Is it Time to Franchise Your Business, *Legal Alert*, June 18, 2018
- Best in Law: Joint Employer Standards Pose Threat to Businesses, *Legal Alert*, June 13, 2016
- Best In law: New Joint Employer Standards Pose Threat to Business, *The Press Enterprise*, February 20, 2016

## **Presentations**

- Speaker, "Addressing Leadership and Elected Official Related Claims," ERMA's 24th Annual Workshop, February 1, 2024
- Speaker, "Labor Wars: The Union Strikes," IFA's 55th Annual Legal Symposium, May 8, 2023
- Speaker, "Fear and Loathing in California," California Franchise Network's virtual conference, May 12, 2021
- Speaker, "Do the Smart Thing," California Franchise Network's Conference Series, April 14, 2021
- Speaker, "How I Learned to Stop Worrying and Love the FDD," California Franchise Network's Conference Series, February 3, 2021
- Speaker, "There Will Be Lawsuits," California Franchise Network's Conference Series, December 2, 2020
- Speaker, "Close Encounters of the Labor Kind," California Franchise Network's Conference Series, October 4, 2020

## **Education**

Mr. O'Connell earned his J.D. from Georgetown Law. He received his B.A. from the University of Southern California and his M.Ed. from Loyola Marymount. From each institution, Mr. O'Connell graduated with numerous honors. Mr. O'Connell is completing his Certified Franchise Expert certification through the International Franchise Association. As of 2023, Mr. O'Connell holds the distinction as the only amateur golfer worldwide to have advanced certifications from the Titleist Performance Institute in Golf, Junior Golf, Power, Fitness, and Medical.

## **Bar Admissions**

- California
- District of Columbia
- Maryland
- Virginia

## **Court Admissions**

- U.S. Supreme Court
- U.S. Court of Appeals for the Third Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. Court of Appeals for the District of Columbia Circuit
- U.S. District Court for the Central District of California

- U.S. District Court for the Eastern District of California
- U.S. District Court for the Northern District of California
- U.S. District Court for the Northern District of Florida
- U.S. District Court for the District of Maryland
- U.S. District Court for the Eastern District of Virginia
- U.S. District Court for the Western District of Virginia

## **Community**

### California Franchise Network

- Chairman, 2018-2022

### Center for Law and Education

- Clerk, 2008

### Futurus Foundation

- Chairman of the Board, 2018-2019

### Greater Riverside Chambers of Commerce

- Leadership Riverside, 2020-2021

### Hesperia Chamber of Commerce

- Chairman of the Board, 2018-2019
- Executive Committee Member, 2017-2018
- President's Award, 2017
- Board of Directors Member, 2016-2017
- Chairman of Hesperia 2034, 2014-2018

### High Desert Regional Chambers of Commerce

- Chairman of the Board, 2018-2019
- Board of Directors Member, 2017-2018

### International Franchise Association

- Advocate at Advocacy Summit, 2023
- Panelist at Legal Symposium, 2023
- Member of Legislative Action Group, 2023-Present
- Member of Membership Committee, 2019-Present
- Supplier Forum Member, 2016-Present

### International Mission on Business to China

- Representative and Team Leader, 2003-2004

### Teach for America

- Mentor, 2008-2015
- Corps Member Advisor, 2007
- Regional Finalist (Los Angeles Representative) for the Sue Lehman Excellence in Teacher Leadership Award (National Teacher of the Year), 2007
- Teach for America / Loyola Marymount Partnership Advisory Board Member, 2006-2007
- Curriculum Specialist, 2006
- Teacher, 2005-2007

Jesse M. Unruh Institute of Politics

- Staff, 2003-2005