

# Daily Journal

FEBRUARY 15, 2023



## TOP VERDICTS

THE LARGEST AND MOST SIGNIFICANT VERDICTS AND APPELLATE REVERSALS IN CALIFORNIA IN 2022.

### Burton v. Campbell et al.

When a plaintiff sought a court order to nullify the local power utility's 20-year gas and electric franchise agreements with the city of San Diego, Gibson, Dunn & Crutcher LLP lawyers moved to block the claim.

If the plaintiff had prevailed, the outcome would have voided a deal worth more than \$1 billion and threatened the provision of basic utility services to millions of customers.

Instead, lead counsel Maurice M. Suh and his Gibson Dunn colleagues prevailed on summary judgment for client Sempra LLC's San Diego Gas & Electric Co., resulting in dismissal of the case. *Burton v. Campbell et al.*, 37-2021-000-26209-CU-WM-CTL (S. Diego Co. Super. Ct., filed June 16, 2021).

"We have a happy client, which is the key to life — and the lights stayed on," said Suh. As of late January, no appeal had been filed.

The plaintiff and her lawyer were longtime figures in the local legal community. Plaintiff Kathryn S. Burton was

a deputy in the San Diego City Attorney's office when lead plaintiff lawyer Michael Aguirre was city attorney from 2004 to 2008.

In the petition for mandamus filed by Aguirre, Burton contended that a new 10-year franchise agreement between the city and the utility violated the city charter and was a bad deal and asked the court to declare it null and void.

"Mr. Aguirre has brought numerous pieces of litigation against San Diego," Suh said. "He fancies himself a public interest lawyer and there have long been claims by him of misconduct and failures to follow city council rules under the Brown Act and local government laws."

But the claims were flawed, Suh added. "There really was no evidence, just allegations." Then Suh and his team learned there were serious procedural errors in the complaint. "We learned during Ms. Burton's depo that contrary to what she had alleged, she had not fulfilled the standing



MAURICE SUH



JAMES L. ZELENAY

requirement to sue," Suh said. Burton had failed to exhaust her possible remedies with the council before going to court. "She failed to send a cure-and-correct letter to local government."

It's critical that those rules be observed in order to prevent meritless litigation from monkeywrenching municipal operations, said Suh, who is himself a former Los Angeles deputy mayor. "The plaintiffs said the exhaustion require-

ments didn't really matter, but if that were the case, it would have opened the ability of anyone to void city actions."

Aguirre did not respond to a message seeking comment.

Zachary C. Freund, who worked closely on the case with Suh, said, "It was really interesting to evolve our strategy as we learned the plaintiff had not fulfilled her Brown Act requirements."

— JOHN ROEMER

#### Case Details

CASE NAME

Burton v. Campbell et al.

TYPE OF CASE

Brown Act and city charter violations

COURT

San Diego County

JUDGE(S)

Judge Eddie C. Sturgeon

DEFENSE LAWYERS

Gibson, Dunn & Crutcher LLP, Maurice Suh, James L. Zelenay, Jr., Zachary C. Freund, Zathrina Z. Perez, Alayna Monroe

PLAINTIFFS' LAWYERS

Aguirre & Severson LLP, Michael J. Aguirre, Maria C. Severson