

And The Defense Wins

Paul Caleo and Katrina Durek



Congratulations to the **Burnham Brown** team of [Paul Caleo](#) and [Katrina Durek](#), both members of DRI, who, with the assistance of their team members, were suc-

cessful in obtaining judgment against the plaintiff on behalf of their client, Nordstrom, in the matter of *Corrie Johnson v. Nordstrom, Inc.*, in Santa Clara County Case No. 18CV323923. The motion for summary judgment filed by the Burnham Brown team was granted by Judge Pierce earlier in 2020. The plaintiff then twice filed unsuccessful motions seeking a new trial and to set-aside the judgment, which were all ultimately denied. Time has now run on the plaintiff filing an appeal, so the judgment against the plaintiff with costs—after pursuing litigation against Nordstrom in two states—is finally *final*.

This lawsuit arose out of an attempt by the plaintiff, Corrie Johnson, to use the California court system to make a collateral attack on a Georgia judgment from a lawsuit that she brought against Nordstrom that was finally upheld on appeal. The plaintiff's first amended complaint in the Santa Clara County California lawsuit alleged that she filed a complaint against Nordstrom for quantum meruit and unjust enrichment in Fulton County, Georgia, in 2014, claiming that she provided the idea to Nordstrom that ultimately became the "Nordstrom Rack App." The plaintiff alleged that Nordstrom owed her millions of dollars in damages based on the revenue and profits generated by its customers using the app, which was originally her idea. The plaintiff alleged in the California lawsuit that the summary judgment Nordstrom obtained in the Fulton County lawsuit in February 2015 was obtained or procured by extrinsic fraud and that this fraud was never the subject of the underlying suit. The plaintiff asked the California court to allow her to litigate the "fraud" on its merits in an attempt to offset the judgment obtained in the Georgia lawsuit.

The Burnham Brown team argued that although the plaintiff's first amended complaint stated a single cause of action for "extrinsic fraud," what was alleged appeared to be a claim for fraudulent concealment based on an alleged

duty to disclose information to an opponent in litigation. The team raised defenses of res judicata and/or collateral estoppel on behalf of Nordstrom and that the California lawsuit was time barred.

After the plaintiff filed two unsuccessful dispositive motions herself, the motion for summary judgment filed by the Burnham Brown team on behalf of Nordstrom relied on the Full Faith and Credit Clause of the U.S. Constitution in Art. IV, Section 1, to argue the collateral estoppel effect of the Georgia state judgment on the plaintiff's California lawsuit.

Relying on Evidence Code section 452(d), the motion included a detailed request for judicial notice of the content and legal effect of the ten critical documents and court orders in the Fulton County lawsuit, it argued that the plaintiff raised these identical issues of "fraud" in the Georgia lawsuit, and they were necessarily decided against her in a full and final judgment. Judge Mark Pierce of the Santa Clara County Superior Court agreed and granted the motion for summary judgment, concluding that the collateral estoppel effect of the Georgia judgment and post-judgment orders provided Nordstrom with a complete defense to the plaintiff's sole cause of action for extrinsic fraud. Judgment was entered against the plaintiff with costs and is now final.

Keep The Defense Wins Coming!

Please send 250–500 word summaries of your "wins," including the case name, your firm name, your firm position, city of practice, and e-mail address, in Word format, along with a recent color photo as an attachment (.jpg or .tiff), highest resolution file possible (*minimum* 300 ppi), to DefenseWins@dri.org. Please note that DRI membership is a prerequisite to be listed in "And the Defense Wins," and it may take several weeks for *The Voice* to publish your win.