



How To Stop Shakedown Lawsuits

**Predatory Lawsuits Against Small Business in the Age of
Covid-19**

Shakedown Lawsuits in California

- The “cost of doing business” anywhere must take include defending your business from lawsuits.
- That cost is even higher in California than other places.
<https://www.ocregister.com/2016/08/11/predatory-lawsuits-suck-the-life-out-of-california-businesses/>
- Why? In general, California Legislature and courts have written the laws in favor of customers (consumers) and employees.
- In particular, attorney’s fees clauses in various statutes.

Business Model of the Plaintiff's Attorney

- Almost always work on a contingency fee.
- No incentive to work hard.
- Built on many small settlements.
- Main concept: Costs businesses more to defend than to pay small settlements.
- Why: Billable hours.

The Impact of Covid-19 on Small Business

- As of July 24, 2020, there were 11,300 business closures in Los Angeles alone.
- Lock down.
- Fearful customers and employees.
- Reduced activity even for survivors.
- New costs for the survivors: PPE, lost productivity.
- Business finances even more fragile than before.

A New Strategy

- Old defense strategy: Make the plaintiff work.
- Positive – scared off some plaintiffs and their lawyers.
- Negative – prohibitively expensive for small business owners, i.e., \$25,000-\$50,000 cost.
- New defense strategy: Efficiency.
- Get to the heart of the case without doing make-work.
- Positive – prepares effective defense without running up unmanageable fees. Generally works.
- Caveat – costs will still increase if plaintiff fights hard.

Why Do I Care?

- I hate the billboard guys – they are bad lawyers and give the profession a bad name.
- Hurt small businesses, their employees, and their customers and only help themselves.
- My family's business.
- My business.
- My practice focuses on saving small businesses that are caught in this trap.

Shakedown Lawsuit

Type 1

ADA Cases

- Usually based on parking lot, counter, and/or bathroom.
- Disabled people hired by plaintiff's lawyer.
- Strict liability: Any violation = loss.
- No grandfather clause.
- Small penalty of \$2,000-\$4,000 + Attorney's fees
- The harder you fight, the higher the plaintiff's attorney's fee.

New Strategy Application
Scenario #1 – ADA Cases

Flat fee defense
(unless trial).

No extra cost to
defend, so less
pressure to settle.

Waiting game.

Game of chicken.

Final costs: Repairs,
attorney's fee,
settlement.

Goal: \$10,000
spread out over one
(1) year – including
settlement.

Example: Misplace
dumpster in
restaurant parking
lot.

Shakedown Lawsuit

Type 2

Wage & Hour Cases

- Usually based on “off the clock time,” OT, meal/rest breaks, or bad paystubs.
- Informality at small businesses is the norm.
- Can add up to astronomical amounts over time, e.g., penalty of 1 hour of pay per missed 10-minute rest break x 20 days per month x 12 months = \$3,420 (based on 2020 minimum wage for company with <25 employees in LA County).
- Plus attorney’s fees!!!
- The harder you fight, the higher the plaintiff’s attorney’s fee.

New Strategy Application
Scenario #2 – Wage & Hour Cases

Flat fee or fee cap
defense (unless
trial).

No extra cost to
defend, so less
pressure to settle.

Waiting
game/Game of
chicken.

Final costs:
Attorney's fee +
settlement.

Goal: \$10,000-
\$30,000 spread out
over one (1) year.

Example: The
waiter who
thought his tips
were being stolen.

Shakedown Lawsuit

Type 3

Prop 65 Cases

- Prop 65 requires business owners to list the full name of one or more of 900+ chemicals known to cause cancer or reproductive harm on labels.
- Applies equally to manufacturers, distributors and retailers.
- Failure to comply can result in fines of up to \$2,500 per day.
- Plus attorney's fees!!!

New Strategy Application
Scenario #3 – Prop 65 Cases

Indemnity by
the Big Fish

Flat fee or fee
cap defense
(unless trial).

No extra cost to
defend, so less
pressure to
settle.

Waiting
game/Game of
chicken.

Final costs:
Attorney's fee +
settlement.

Goal: \$5,000-
10,000 spread
out over one (1)
year.

Example: The
\$1 spice packet
seller (and
manufacturer).

An Ounce of Prevention

- **Form a corporation or LLC**
- **Avoid veil-piercing mistakes**
 - 1) **Commingling funds**
 - 2) **Corporate formalities**
 - 3) **Same owners/employees of related or successor employees**



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