

### ***Appendix Overview of Case Law Construing Section 1759 of The Public Utilities Code***

As the main document suggests, the California Supreme Court and the Courts of Appeal do not frequently issue written opinions reviewing decisions of the Commission. Review is limited pursuant to the discretionary writ procedures established by Section 1756.

Appellate courts also address the Commission's regulatory authority, however, in cases construing the extent to which Section 1759<sup>50</sup> constrains the Superior Court from acting in matters arguably affecting the Commission's exercise of its jurisdiction. In most cases involving Section 1759 the Commission is not a party. A case typically reaches the Court of Appeal through *direct appeal* (appeal as a matter of right) of a trial court proceeding rather than through a *discretionary writ* such as the writ of review provided for in Section 1756.

Before listing recent cases decided under Section 1759, it is worth noting a few of the predicate bodies of case law that set the stage for the latest decisions describing the limitation on the jurisdiction of the Superior Court (and, in many instances federal courts<sup>51</sup>) embraced in Section 1759.

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<sup>50</sup> 1759 provides as follows:

*(a) No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of court.*

*(b) The writ of mandamus shall lie from the Supreme Court and from the court of appeal to the commission in all proper cases as prescribed in Section 1085 of the Code of Civil Procedure.*

<sup>51</sup>See *Kairy v. SuperShuttle International*, 660 F.3d 1146 (2012). The Ninth Circuit reversed a trial court's ruling that Section 1759 barred a class action where the outcome sought would undermine a 1996 Commission Order construing General Order 158-A. The Commission, somewhat inexplicably, filed an *amicus* brief which played a major role in the Ninth Circuit's reversal of a District Court order affirming the primacy of Commission authority over the status of drivers of charter party carriers. See also, *Cooney v. Public Utilities Commission* (July 15, 2014) holding that Section 1759 cannot require a federal court to dismiss federal claims. (The court did dismiss claims against Commission President Michael Peevey and Attorney General Kamala Harris on other grounds). See also *United Energy Trading v. PG&E*, 2015 U.S. Dist. LEXIS 158060 rejecting PG&E's arguments that Section 1759 barred tort claims in federal court. Most recently, see *Rosen v. Uber Technologies* 2016 U.S. Dist. LEXIS 21960 (February 22, 2016) holding that Section 1759 required dismissal of unfair competition claims brought in federal court.